

AMENDMENT NO. _____ Calendar No. _____

Purpose: To protect certain vulnerable groups of asylum seekers.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1494

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the end, add the following:

2 **SEC. 7. PROTECTING CERTAIN VULNERABLE GROUPS OF**
3 **ASYLUM SEEKERS.**

4 (a) DEFINED TERM.—Section 101(a)(42) of the Im-
5 migration and Nationality Act (8 U.S.C. 1101(a)(42)) is
6 amended to read as follows:

7 “(42)(A) The term ‘refugee’ means any person
8 who—

9 “(i)(I) is outside any country of such per-
10 son’s nationality or, in the case of a person hav-

1 ing no nationality, is outside any country in
2 which such person last habitually resided; and

3 “(II) is unable or unwilling to return to,
4 and is unable or unwilling to avail himself or
5 herself of the protection of, that country be-
6 cause of persecution, or a well-founded fear of
7 persecution, on account of race, religion, nation-
8 ality, membership in a particular social group,
9 political opinion, or gender; or

10 “(ii) in such circumstances as the Presi-
11 dent may specify, after appropriate consultation
12 (as defined in section 207(e))—

13 “(I) is within the country of such per-
14 son’s nationality or, in the case of a person
15 having no nationality, within the country
16 in which such person is habitually residing;
17 and

18 “(II) is persecuted, or who has a well-
19 founded fear of persecution, on account of
20 race, religion, nationality, membership in a
21 particular social group, political opinion, or
22 gender.

23 “(B) The term ‘refugee’ does not include any
24 person who ordered, incited, assisted, or otherwise
25 participated in the persecution of any person on ac-

1 count of race, religion, nationality, membership in a
2 particular social group, political opinion, or gender.
3 A person who establishes that his or her actions
4 were committed under duress or while the person
5 was younger than 18 years of age shall not be con-
6 sidered to have ordered, incited, assisted, or other-
7 wise participated in persecution under this subpara-
8 graph.

9 “(C) For purposes of determinations under this
10 Act—

11 “(i) the term ‘gender’ includes the con-
12 cepts of sex, sexual orientation, and gender
13 identity;

14 “(ii) a person who has been forced to abort
15 a pregnancy or to undergo involuntary steriliza-
16 tion, or who has been persecuted for failure or
17 refusal to undergo such a procedure or for
18 other resistance to a coercive population control
19 program, shall be deemed to have been per-
20 secuted on account of political opinion;

21 “(iii) a person who has a well-founded fear
22 that he or she will be forced to undergo such
23 a procedure or subject to persecution for such
24 failure, refusal, or resistance shall be deemed to

1 have a well-founded fear of persecution on ac-
2 count of political opinion;

3 “(iv) the term ‘particular social group’
4 means, without any additional requirement not
5 listed in this clause, any group whose mem-
6 bers—

7 “(I) share—

8 “(aa) a characteristic that is im-
9 mutable or fundamental to identity,
10 conscience, or the exercise of the per-
11 son’s human rights such that the per-
12 son should not be required to change
13 it; or

14 “(bb) a past experience or vol-
15 untary association that due to its his-
16 torical nature cannot be changed;

17 “(II) are perceived as a group by soci-
18 ety or shall be deemed a particular social
19 group;

20 “(D)(i) The burden of proof shall be on the ap-
21 plicant to establish that the applicant is a refugee.

22 “(ii) To establish that the applicant is a ref-
23 ugee, persecution—

1 “(I) shall be on account of race, religion,
2 nationality, membership in a particular social
3 group, political opinion, or gender; and

4 “(II) may be established by demonstrating
5 that—

6 “(aa) a protected ground is at least
7 one reason for the applicant’s persecution
8 or fear of persecution;

9 “(bb) the persecution or feared perse-
10 cution would not have occurred or would
11 not occur in the future but for a protected
12 ground; or

13 “(cc) the persecution or feared perse-
14 cution had or will have the effect of harm-
15 ing the person because of a protected
16 ground.

17 “(E) Where past or feared persecution by a nonstate
18 actor is unrelated to a protected asylum ground, the caus-
19 al nexus link is established if the state’s failure to protect
20 the asylum applicant from the nonstate actor is on account
21 of a protected asylum ground.”.

22 (b) CONDITIONS FOR GRANTING ASYLUM.—Section
23 208(b) of the Immigration and Nationality Act (8 U.S.C.
24 1158(b)) is amended—

25 (1) in paragraph (1)(B)—

1 (A) in clause (i), by striking “at least one
2 central reason for persecuting the applicant”
3 and inserting “a factor in the applicant’s perse-
4 cution or fear of persecution”;

5 (B) in clause (ii), by striking the last sen-
6 tence and inserting the following: “If the trier
7 of fact determines that the applicant should
8 provide evidence that corroborates otherwise
9 credible testimony, the trier of fact shall pro-
10 vide notice and allow the applicant a reasonable
11 opportunity to file such evidence. The trier of
12 fact may not require such evidence if the appli-
13 cant does not have the evidence and dem-
14 onstrates that he or she cannot reasonably ob-
15 tain the evidence. Evidence shall not be consid-
16 ered reasonably obtainable if procurement of
17 such evidence would reasonably endanger the
18 life or safety of any person.”;

19 (C) by redesignating clause (iii) as clause
20 (iv);

21 (D) by inserting after clause (ii) the fol-
22 lowing:

23 “(iii) SUPPORTING EVIDENCE ACCEPT-
24 ED.—Direct or circumstantial evidence, in-
25 cluding evidence that the State is unable

1 or unwilling to protect individuals of the
2 applicant's race, religion, nationality, par-
3 ticular social group, political opinion, or
4 gender, or that the State's legal or social
5 norms tolerate persecution against individ-
6 uals of the applicant's race, religion, na-
7 tionality, particular social group, political
8 opinion, or gender may establish that per-
9 secution is on account of one of the
10 grounds enumerated in subsection
11 (a)(42)(A)(i)(II)."; and

12 (E) in clause (iv), as redesignated, by
13 striking “, without regard to whether an incon-
14 sistency, inaccuracy, or falsehood goes to the
15 heart of the applicant's claim, or any other rel-
16 evant factor.” and inserting “. If the trier of
17 fact determines that there are inconsistencies or
18 omissions, the alien shall be given an oppor-
19 tunity to explain and to provide support or evi-
20 dence to clarify such inconsistencies or omis-
21 sions.”; and

22 (2) in paragraph (2)(A)(vi), by inserting “A
23 stay in a third country that does not constitute firm
24 resettlement shall not be a ground of discretionary
25 denial of asylum.” after “United States.”.

1 (c) REMOVAL PROCEEDINGS.—Section 240(e)(4) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1229a(c)(4)) is amended—

4 (1) in subparagraph (B), by striking the last
5 sentence and inserting the following: “If the trier of
6 fact determines that the applicant should provide
7 evidence that corroborates otherwise credible testi-
8 mony, the trier of fact shall provide notice and allow
9 the applicant a reasonable opportunity to file such
10 evidence. The trier of fact may not require such evi-
11 dence if the applicant does not have the evidence
12 and demonstrates that he or she cannot reasonably
13 obtain the evidence. Evidence shall not be considered
14 reasonably obtainable under this subparagraph if
15 procurement of such evidence would reasonably en-
16 danger the life or safety of any person in the appli-
17 cant’s home country.”; and

18 (2) in subparagraph (C), by striking “, without
19 regard to whether an inconsistency, inaccuracy, or
20 falsehood goes to the heart of the applicant’s claim,
21 or any other relevant factor.” and inserting “. If the
22 trier of fact determines that there are inconsis-
23 tencies or omissions, the alien shall be given an op-
24 portunity to explain and to provide support or evi-
25 dence to clarify such inconsistencies or omissions.”.

1 (d) PROHIBITION ON DISCRETIONARY DENIALS
2 BASED ON TRANSIT THROUGH A THIRD COUNTRY.—Sec-
3 tion 208(b)(2)(A)(vi) of the Immigration and Nationality
4 Act (8 U.S.C. 1158(b)(2)(A)(vi)) is amended by adding
5 at the end the following: “Stays in third countries not
6 amounting to firm resettlement shall not be grounds for
7 discretionary denial of asylum.”.