



## FIRST FOCUS CAMPAIGN FOR CHILDREN STATEMENT FOR THE RECORD

### SUBCOMMITTEE ON IMMIGRATION POLICY AND BORDER SECURITY: “THE SEPARATION OF NUCLEAR FAMILIES UNDER U.S. IMMIGRATION LAW”

March 14, 2013

Chairman Gowdy, Ranking Member Lofgren, and Members of the Subcommittee on Immigration Policy and Border Security, thank you for the opportunity to submit this statement on the impact of the United States immigration system on nuclear families.

The First Focus Campaign for Children is a bipartisan children’s advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. Our organization is committed to ensuring that our nation’s immigration policies promote child well-being by ensuring that families stay together and that all children have the opportunity to live a healthy and successful life in the United States.

Although children of immigrants comprise 1 in 4 of all children in the U.S. and are the fastest growing segment of the child population,<sup>1</sup> current U.S. immigration law often ignores the unique needs and rights of children and provides few protections for children in mixed legal status families. In fact, families have been separated for years at a time due to an outdated family-based immigration system as well as policies regarding bars to re-entry and cancellations of removal that fail to consider the best interest of children. Immigration enforcement practices have also continued to tear families apart at record-setting numbers in recent years, leaving hundreds of thousands U.S. children to suffer as a result of enforcement efforts.<sup>2</sup> As Congress moves forward on immigration reform, it is critical that both the immigration system as well as immigration enforcement practices be reformed to promote family unity and child well-being.

#### **The Failure of Immigration Law to Value Children**

##### *Family-based Immigration Channels*

The current family-based immigration system allows U.S. citizens and legal permanent residents to petition for immigrant visas for certain family members. Though the backlog for family-based immigration means families can wait as long as 20 years for a family member to receive a visa, U.S. citizen children face an even larger obstacle to family-based immigration. A child-parent relationship is prioritized in family-based immigration, but only if the parent has legal immigration status and is petitioning on behalf of their child. A U.S. citizen child cannot file a petition for their undocumented parents to obtain lawful immigration status until the child is over 21-years-old,

and thus no longer a child. This is also the case for child asylees and refugees; while adult asylees and refugees can petition for status for their spouses and children, child asylees and refugees cannot petition for status for their parents.

#### *Waivers of Inadmissibility*

Even in cases when an immigration visa is available, certain grounds of inadmissibility may prevent a beneficiary from being able to immigrate to the United States to be with their child. Waivers exist to overcome grounds of inadmissibility in instances when a potential beneficiary can establish hardship to adult U.S. citizen family members, such as spouses and parents.<sup>3</sup> However, existing immigration statutes make hardship to children irrelevant in these cases.<sup>4</sup> This exclusion of U.S. citizen children within hardship standards extends to the Administration's new state-side visa waiver policy. . The new policy provides certain unlawfully present individuals with a "provisional waiver" to the 3- or 10- year unlawful presence bar *before* departing the United States to process their waiver if the individual can demonstrate hardship to a U.S. citizen spouse, parent or child over the age of 21.<sup>5</sup> U.S. citizen children under the age of 21 are explicitly excluded from consideration under the hardship rule even despite the fact that research has documented that young children are the most likely to experience severe long-term impacts to their economic and social well-being as a result of separation from a parent.<sup>6</sup>

#### *Cancellations of Removal*

Additionally, undocumented parents who face deportation often cannot receive a cancellation of removal even if that deportation would separate them from their U.S. citizen child. When seeking a cancellation of removal, an individual must prove "exceptional and extremely unusual hardship"<sup>7</sup> to a U.S. citizen spouse, parent or child. If that hardship is to children, it must be "substantially different from, or beyond that which would normally be expected from the deportation of an alien with close family members here."<sup>8</sup> It is not enough to prove hardship to a child to stop a parent's deportation; that hardship must be worse than it would be for any other citizen. This means that under current immigration law, children are expected and required to suffer vastly more than other individuals. Immigration policy is unlike most of our other laws in this way. Most law recognizes the unique needs of children and is designed to protect children, but immigration law takes a distinctly different approach and requires children to suffer more than other individuals.

#### *Immigration Enforcement & Family Separation*

Promoting family unity within immigration reform also requires that immigration enforcement policies be reformed to ensure that protections are in place to prevent the separation of families as well as the inappropriate termination of parental rights of detained or deported parents with children in the U.S. child welfare system. According to the Department of Homeland Security, nearly 205,000 parents of U.S. citizen children were deported in the 26 months between July 1, 2010 and September 31, 2012.<sup>9</sup> As a result, thousands of U.S. citizen children have moved abroad to be with deported parents, and an estimated 5,100 children are in the U.S. child welfare system.<sup>10</sup> The conflicting policies as well as a lack of coordination between the immigration enforcement and the child welfare systems means that children in foster care are at increased risk of being permanently separated from their detained or deported parents.

### **Prioritizing Children and Keeping Families Together in the U.S. Immigration System**

Recognizing the need for immigration reform to consider the interest of children, First Focus co-led an effort to develop a set of [children's principles for immigration reform](#) which have been endorsed by over 200 organizations. The principle on family unity reads as follows:

“Immigration reform should...[k]eep families together. Decisions regarding admissibility, enforcement, detention, and deportation of children and their parents must duly consider the best interests of children. Immigration judges should be allowed to exercise discretion in admission and removal decisions based on the hardship to U.S. citizen and lawfully permanent children, while current backlogs should be resolved and family-based immigration channels should be made adequate for future migration without lengthy family separation.”

Specifically, the First Focus Campaign for Children recommends the following family-focused provisions be included in immigration reform:

- Ensure that immigration judges are able to consider hardship to U.S. citizen children in decisions regarding a parent's admissibility, detention, or removal by reforming laws regarding cancellations of removal and waivers of inadmissibility. (HR 406, 113<sup>th</sup> Congress)
- Reform immigration enforcement policies to prevent the detention of parents whenever possible and in cases when a parent must be detained or removed, ensure that parents are granted due process rights and are able to make decisions regarding their child's care. (S 1399, 112<sup>th</sup> Congress; HR 2607, 112<sup>th</sup> Congress)
- Ensure that child welfare agencies have protocols in place to promote the reunification of system-involved children with parents who are involved in immigration proceedings. (HR 6128, 112<sup>th</sup> Congress)

## Conclusion

We believe that the immigration system as well as immigration enforcement policies must be reformed to better align with American values of protecting the best interests of our children. Without these changes, children in immigrant families will continue to be treated as collateral damage under current laws that disregard their needs and deny their basic rights. Instead of allowing for and encouraging these adverse outcomes for children, our federal immigration laws should protect and advance the interests of our nation's children.

Thank you again for the opportunity to submit this statement. Should you have any further questions, please contact Wendy Cervantes, Vice President of Immigration and Child Rights Policy at [wendyc@firstfocus.net](mailto:wendyc@firstfocus.net).

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<sup>1</sup> Karina Fortuny et. al., The Urban Institute (2010). *Young Children of Immigrants: The leading edge of America's future*. <http://www.urban.org/publications/412203.html>.

<sup>2</sup> U.S. Immigration and Customs Enforcement. Deportation of Parents of U.S. Citizen Children July 1, 2010- September 30, 2012. Accessed by Colorlines.com on December 12, 2012. [http://colorlines.com/archives/2012/12/deportations\\_of\\_parents\\_of\\_us-born\\_citizens\\_122012.html](http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html)

<sup>3</sup> Immigration and Nationality Act §212(a)(9)(B)(v), 8 U.S.C. §1182(a)(9)(B)(v)(2006).

<sup>4</sup>*Ibid*

<sup>5</sup> Federal Register. Department of Homeland Security Final Rule. January 2, 2013. *Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immigrant Relatives*. Retrieved from <https://www.federalregister.gov/articles/2013/01/03/2012-31268/provisional-unlawful-presence-waivers-of-inadmissibility-for-certain-immigrant-relatives>

<sup>6</sup> Capps, R., Castaneda, R.M., Chaudry, A., & Santos, R. (2007). *Paying the price: The impact of immigration raids on America's children*. Washington, DC: National Council of La Raza and Urban Institute.

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<sup>78</sup> U.S.C.A. § 1229b. <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title8/pdf/USCODE-2011-title8-chap12-subchapII-partIV-sec1229b.pdf>.

<sup>8</sup>In re Monreal-Aguinaga, 23 I & N Dec. 56, 65 (BIA 2001). Available: <http://www.justice.gov/eoir/vll/intdec/vol23/3447.pdf>.

<sup>9</sup> U.S. Immigration and Customs Enforcement. Deportation of Parents of U.S. Citizen Children July 1, 2010- September 30, 2012. Accessed by Colorlines.com on December 12, 2012. [http://colorlines.com/archives/2012/12/deportations\\_of\\_parents\\_of\\_us-born\\_citizens\\_122012.html](http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html)

<sup>10</sup> Seth Freed Wessler, Applied Research Center (2011). *Shattered Families: The perilous intersection of immigration enforcement and the child welfare system*. <http://arc.org/shatteredfamilies>.