



FIRST FOCUS CAMPAIGN FOR CHILDREN STATEMENT FOR THE RECORD

SENATE JUDICIARY COMMITTEE: “BUILDING AN IMMIGRATION SYSTEM WORTHY OF AMERICAN VALUES”

March 20, 2013

Chairman Leahy, Chairman Coons, Ranking Member Grassley, and Members of the Senate Judiciary Committee, thank you for the opportunity to submit this statement on the need to build an immigration system worthy of American values.

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 and family unity. We firmly believe that passage of immigration reform that strengthens families and improves child outcomes is critical to ensuring a prosperous future for all Americans.

The Failure of Immigration Law to Value Children

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,¹ current U.S. immigration law often ignores the unique needs and rights of children and provides few protections for mixed legal status families. In fact, children are often at a disadvantage within the immigration system not only because they are unable to petition for family members, but also because policies regarding bars to re-entry and cancellations of removal frequently fail to consider the best interest of children. Furthermore, immigration enforcement practices have continued to tear families apart at record-setting numbers, and parents are often denied their due process rights and the ability to participate in important family court proceedings impacting upon their child’s custody.² Finally, children who have made the dangerous journey to the U.S. alone (also known as “unaccompanied alien children”) are often faced with the same repercussions as adults and must face the immigration courts without guaranteed legal representation.

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.³ However, existing immigration statutes make hardship to children

irrelevant in these cases, despite the fact that research has consistently 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.⁴

Cancellations of Removal

The failure to provide meaningful consideration of children's best interests also applies to immigration removal proceedings. An individual facing removal may seek cancellation of the removal based, in part, on "exceptional and extremely unusual hardship" to his or her legal permanent resident or U.S. citizen spouse, parent, or child.⁵ This standard is difficult to meet, especially with regards to children. To qualify for relief, parents must demonstrate hardship to children "substantially different from, or beyond that which would normally be expected from the deportation of an alien with close family members here."⁶ Courts are unlikely to consider the harm to children left behind or forced to move abroad due to a parent's removal as sufficient grounds to meet the "exceptional and extremely unusual" hardship standard since such harm is considered a "common" and "expected" result of a parent's removal. In other words, harm to children as a result of parent-child separation is generally "accepted" under U.S. immigration law.⁷

Immigration Enforcement & Parental Rights

Our immigration laws often undermine family unity, and increased immigration enforcement in recent years has had devastating outcomes for children and families. According to the Department of Homeland Security, nearly 205,000 parents of U.S. citizen children were removed from the U.S. in the 26 months between July 1, 2010 and September 31, 2012, accounting for 23 percent of all removals during this period.⁸ As a result, thousands of U.S. citizen children have moved abroad to be with deported parents, and an estimated 5,100 children are consequently in the U.S. child welfare system.⁹ These alarming statistics are the result of the unintended consequences of U.S. immigration law as well as conflicting policies within the immigration enforcement and child welfare systems.

While the Department of Homeland Security has made an effort in recent years to focus immigration enforcement resources on "serious criminal aliens," the fact remains that many migrant parents have failed to benefit from such new policies because they still fall under ICE's enforcement priorities and are subject to "mandatory detention" under immigration law. By law, certain categories of people, including those who try to enter the United States without valid immigration documents, those who return to the United States after being removed, and those with certain criminal convictions (including convictions for minor crimes) fall under mandatory detention.¹⁰ While ICE has the discretion to forego immigration proceedings against a person who is subject to mandatory detention, and similarly could decide to use an alternative to detention, most officers are reluctant to do so, particularly if the individual was identified following contact with law enforcement. The reality is that without revision or elimination of mandatory detention laws, a large percentage of parents will continue to be detained and removed from the U.S.

Immigration enforcement policies also frequently fail to honor the due process rights of parents who apprehended, detained, or removed by immigration authorities. Immigration and Customs Enforcement (ICE) does not currently have any policies in place to ensure that parents are able to make phone calls for purposes of making child care arrangements upon apprehension, nor is there any policy to ensure that parents are able to maintain ongoing contact with their children. For detained parents with children in the child welfare system, the challenges pose even greater risks, including the possible termination of their parental rights. ICE does not have a consistent or

enforceable policy guaranteeing parents' right to participate in family court. Similarly, there is no clear policy on how a parent can request to participate in hearings, either telephonically or in person, and ICE and detention facility staff often claim they need a writ from the family court judge in order to facilitate an appearance.¹¹ In cases of a parent's removal, ICE also lacks a consistent policy to ensure that parents facing removal are able to make the necessary arrangements to take their children with them or leave their children behind with an alternative caregiver of their choice. Without targeted ICE policies to minimize the instances of family separation, hundreds of thousands of U.S. citizen children will continue to be torn apart from their parents.

Lack of Legal Representation for Unaccompanied Immigrant Children¹²

The number of unaccompanied immigrant children entering the U.S. has reached record-setting numbers in recent years, with more than 14,000 children coming into the custody of the Office of Refugee Resettlement in fiscal year 2012. Unaccompanied immigrant children are a particularly vulnerable segment of the child population. These children cross our borders every day seeking refuge, safety, and protection, and often reunification with family members. In addition to facing harm in their own countries, they also endure dangerous journeys where they are subject to violence, abuse, exploitation, and the high risk of becoming victims of trafficking. Once entering the U.S. these children encounter a new set of risks as they confront our complex laws and systems. Unaccompanied immigrant children are subject to the same harsh conditions as adults in border patrol stations, face immigration courts alone without guaranteed legal representation, have to defend against removal by proving eligibility for forms of relief designed almost exclusively for adults and which require the same burden of proof adults must meet, and are often repatriated or released without assessment of their safety.

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. These principles call on Congress to incorporate the following components in immigration reform:

- **A direct, clear, and reasonable pathway to citizenship.** Any pathway to citizenship must be open, affordable, safe, and accessible to children in need of status, including beneficiaries of Deferred Action for Childhood Arrivals (DACA), undocumented children under the age of 21, and unaccompanied immigrant children.
- **Protection and promotion of children's fundamental rights.** Our immigration system must uphold children's constitutional rights and ensure equal access to critical public services, programs, and economic supports for children and their families. The protection of fundamental rights also includes ensuring all children receive legal representation before all immigration authorities and, for all unaccompanied children, the appointment of an independent child advocate from the moment of detention throughout the course of any immigration or other related court proceedings.
- **Ensure that enforcement efforts have appropriate protections for children.** In all enforcement actions, including those along the border, the best interests of the child should be a primary consideration

and children must be given the benefit of the doubt during any investigation, inquiry or detention. There should be appropriate and accountable training policies and protocols for interacting with and screening children that reflects a humanitarian and protection-oriented approach, prohibits the use of force with children, and creates reasonable and safe conditions for children while in or released from the custody of all arms of the federal government.

- **Keep families together.** All policies regarding admissibility, enforcement, detention, and deportation of children and their parents must duly consider the best interests of children, including enabling immigration judges to exercise discretion in admission and removal decisions based on the hardship to U.S. citizen and lawful permanent resident children. The immigration system must be updated by resolving current backlogs and ensuring family-based immigration channels are adequate for future migration without lengthy family separation.

Conclusion

We believe our immigration laws must be revised to better align with our American values of strengthening families and putting children first. Thus, we urge Congress to reform our immigration system so that our immigration laws deliberately promote the best interest of all 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.

¹ 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>.

² 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

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

⁴ 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.

⁵ Immigration and Nationality Act §240A(b)(D)

⁶*In re Monreal Aguinaga*, 23 I & N Dec. 56, 65 (BIA 2001)

⁷ Thronson, D.C. (2013). Immigration enforcement and family courts. In Phillips, S.D., Cervantes, W., Lincroft, Y., Dettlaff, A.J., & Bruce, L. (Eds.). *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*. Washington, D.C.: Jointly published by The Sentencing Project and First Focus.

⁸ 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

⁹ Wessler, S. Applied Research Center (2011). *Shattered Families: The perilous intersection of immigration enforcement and the child welfare system*. <http://arc.org/shatteredfamilies>.

¹⁰ Butera, Emily & Cervantes, Wendy. D.C. (2013). Family unity in the face of immigration enforcement: past, present, and future. In Phillips, S.D., Cervantes, W., Lincroft, Y., Dettlaff, A.J., & Bruce, L. (Eds.). *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*. Washington, D.C.: Jointly published by The Sentencing Project and First Focus.

¹¹ *Ibid.*

¹² First Focus & Women's Refugee Commission (February 2013). "Principles for Children in Immigration Reform." <http://www.firstfocus.net/library/fact-sheets/principles-for-children-in-immigration-reform>