

May 30, 2023

The Honorable Maria Salazar
United States House of Representatives
Washington D.C. 20515

The Honorable Veronica Escobar
United States House of Representatives
Washington D.C. 20515

Dear Representatives Salazar and Escobar:

On behalf of the First Focus Campaign for Children, a bipartisan children's advocacy organization dedicated to making children and families the priority in federal policy and budget decisions, I write to express our position on the DIGNIDAD (Dignity) Act of 2023.

We strongly support provisions in this bill that would provide access to citizenship, and with it, stability and freedom, for immigrants and their children. 26 percent of children in the United States have an immigrant parent, and most of those children are U.S. citizens.¹ Nearly 5 million children have an undocumented parent² and combined, over 600,000 U.S. citizen children have a parent who has Deferred Action for Childhood Arrivals (DACA) or Temporary Protected Status (TPS).³ Approximately 728,000 children are undocumented.⁴ As we have written about extensively, access to citizenship for undocumented people has a plethora of benefits for those people, their children, their community, and our country at large.⁵

We have endorsed the American Dream and Promise Act, which would provide citizenship to DACA recipients, TPS holders, and those with Deferred Enforced Departure (DED).⁶ However, we believe that bill needs improvements, as it provides no pathway to citizenship for children too young to meet the bill's work and education requirements. We have also endorsed the American Families

¹ *Children in Immigrant Families*, Migration Policy Institute, <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families> (last accessed May 30, 2023).

² Randy Capps et al., *Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins*, Migration Policy Institute (Dec. 2020), https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrants-stablenumbers-changingorigins_final.pdf.

³ Nicole Prchal Svajlenka and Trihn Q. Truong, *The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition*, Center for American Progress (Nov. 24, 2021), <https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>. Temporary Protected Status Is Critically Important Immigration Relief for TPS Holders and the U.S. Economy, FWD.us (April 13, 2022), <https://www.fwd.us/news/temporary-protected-status-report/>.

⁴ Profile of the Unauthorized Population: United States, Migration Policy Institute, (Accessed Oct. 6, 2021), <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.

⁵ *Research Brief: How a Pathway to Citizenship Can Help Children Thrive*, Children Thrive Action Network (Oct. 28, 2021), <https://childrethrivemotion.org/2021/10/research-brief-how-a-pathway-to-citizenship-can-help-children-thrive/>.

⁶ *2022 Champions and Defenders for Children: Legislative Scorecard, 117th Congress – Full Session*, First Focus Campaign for Children, <https://static1.squarespace.com/static/5af098b35cfd79a2399b2840/t/642f1ad0aaa60456e8b4b95c/1680808657002/FF-CC-Scorecard-2022.pdf>.

United Act, which is an important step to protect children in immigrant families from family separation and restore equity for children born into mixed-status families.⁷

We further support provisions of the bill that would make important changes to the family-based immigration system, including eliminating the backlogs, raising per-country caps, ensuring children do not age out of status while waiting for a visa to become available, and including spouses and children of green-card holders as “immediate relatives.” We have endorsed these provisions in the past through the Reuniting Families Act.⁸

We also appreciate the codification of safe pathways for children within the Western Hemisphere to reunite with families within the United States. However, we urge that this provision is at least as expansive as the current iteration of the Central American Minors program, ensuring all children with parents who are lawfully present can access the program. Lastly, we support the provisions in this bill that would address the root causes of migration. We particularly appreciate that these provisions explicitly mention addressing needs of children and families in their home countries by strengthening child protection systems, expanding protection from gang and gender-based violence, and addressing poverty and lack of employment for young people.

However, we are concerned that in its current form, the bill includes other provisions that would result in harm to children to a degree that is unacceptable.

First, the bill would increase the number of border patrol personnel. Border patrol agents are law enforcement agents that lack experience interacting with children and families in a trauma-informed manner. Time and time again, border patrol agents been hostile to immigrant children and families, with dire consequences. Between 2018 and 2019, at least seven children died either in or after being in CBP custody due to dangerous conditions, lack of language access, and the absence of child-sensitive, trauma-informed medical and mental health care for arriving children and families.⁹ Just a few weeks ago, another child, Anadith, died after being in custody three times longer than Customs and Border Protection (CBP) policy dictates and her family was ignored after repeatedly raised concerns about her health to border patrol agents and medical personnel.¹⁰ Anadith’s death is evidence of continued failure of Border Patrol to provide trauma-informed care for children, with the worst of consequences. While the bill also directs CBP to hire border processing coordinators to provide administrative support, none of these addition staff are required to have expertise or training in caring for children and families, and this bill lacks other safeguards to ensure that children and families do not face prolonged border custody.

Second and relatedly, the bill directs that CBP operates “humanitarian campuses” along the border to process asylum claims for newly arriving families. We appreciate language in the bill to ensure that non-law enforcement agencies, such as Health and Human Services (HHS), are co-located in these campuses, that conditions are more suitable for children and families, and that non-profits have

⁷ *Id.*

⁸ *A Children’s Agenda for the 117th Congress*, First Focus Campaign for Children, <https://campaignforchildren.org/wp-content/uploads/sites/2/2021/06/FirstFocusChildrensAgenda.pdf>.

⁹ Nicole Acevedo, *Why are Migrant Children Dying in U.S. Custody?*, NBC News (May 29, 2019), <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316>.

¹⁰ Camilo Montoya-Galvez, *Migrant mother requested aid three times the day her 8-year-old daughter died in U.S. border custody*, CBS News (May 22, 2023), <https://www.cbsnews.com/news/anadith-tanay-reyes-alvarez-migrant-child-died-border-custody-mother-requested-medical-aid-three-times/>.

access to meet basic needs and provide legal orientation. However, we are deeply concerned that under the bill, these “campuses” will become a new form of family detention, as families will be required to wait in CBP custody up to three months. While families purportedly would be able to have movement around the campus, the fact remains that families would be detained—they would not be permitted leave the campus unless their case is referred to immigration court. Studies and reports have found that children developmentally regress and suffer from loss of appetite, sleep disturbances, clinginess, withdrawal, and aggression when in family detention.¹¹ Parents also exhibit depression, anxiety, and hopelessness.¹² This toxic stress for both parents and children results in strained parent-child relationships.¹³ In evaluating the impact of detention for children, the American Academy of Pediatrics stated that “there is no evidence indicating that any time in detention is safe for children.”¹⁴

Additionally, the bill states that families released from the humanitarian “campuses” would be subject to electronic monitoring, which the bill inaccurately terms “case management.” The use of technology to further monitor children and families seeking protection as an “alternative” to detention is also harmful. A survey of immigrants subject to electronic monitoring like ankle monitors found that most respondents experienced impacts on their physical and mental health and social isolation as a result of such technology.¹⁵ These technologies’ effects on adults impact children—in the same survey, respondents spoke of being unable to care for their children, play with their children, or engage in their children’s education because of the ankle monitor.¹⁶ Additionally, one parent noted that the stigma and fear of electronic surveillance caused people to distance themselves not only from her, but also from her children.¹⁷ The distance from parents and community that results from electronic monitoring of immigrants has serious impacts on children’s well-being and development, and such technology is unnecessary. True case management programs have ensured that children and families have access to services in the community and better understand their responsibilities for their immigration case, without the need for electronic surveillance and constant government check ins.¹⁸ We urge you to instead support these programs.

Third, the bill would expand the Department of Homeland Security’s (DHS) ability to unnecessarily collect DNA to assess family relationships during visa processing, which is contrary to best practices and could lead to both erroneous family separation and unfounded allegations of fraud in a visa application. The government has long stated that DNA evidence is one of *several* forms of *secondary*

¹¹ *Locking Up Family Values, Again*, Lutheran Immigration and Refugee Service, The Women’s Refugee Commission (2014), https://www.lirs.org/assets/2474/lirswrc_lockingupfamilyvaluesagain_report_141114.pdf.

¹² *Id.*

¹³ *Id.*

¹⁴ Julie Linton, et al., *Detention of Immigrant Children*, Pediatrics (May 1, 2017), <https://publications.aap.org/pediatrics/article/139/5/e20170483/38727/Detention-of-Immigrant-Children?autologincheck=redirected>.

¹⁵ Tosca Guistini, et al., *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, Cardozo School of Law Immigration Justice Clinic, Freedom for Immigrants, Immigration Defense Project 3 (July 2021), <https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=1002&context=faculty-online-pubs>.

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 21.

¹⁸ *The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration*, Women’s Refugee Commission 8 (June 2019), <https://s33660.pcdn.co/wp-content/uploads/2020/04/The-Family-Case-Management-Program.pdf>.

evidence that personnel may consider when determining the veracity of a family relationship.¹⁹ Furthermore, a child's lack of a biological relationship with an adult is sometimes irrelevant to the relationship between a child and an adult. Within and outside the United States, there are many families whose relationships are not determined by biology.²⁰ Research shows that when a child is separated from a loving caregiver, whether or not that person is biologically related to them, they experience the same level of toxic stress and trauma as when they have been separated from a parent.²¹ Given other methods of verifying family relationships, this bill's provisions allowing DHS to require DNA testing as a first and not last resort, as well as requirements to keep that DNA information for other purposes, creates an unnecessary invasion of privacy and increases the risk that children will experience family separation.

Fourth, the bill includes inequitable applications of grounds for inadmissibility and deportability based on contact with the criminal legal system that fails to account for years of research and the public's growing understanding of how systematic racism impacts the criminal legal system.²² The provisions incorporating the Dream and Promise Act deny a pathway to citizenship to youth who have had contact with the juvenile justice system or were allegedly or actually involved in gang activity, which disproportionately harms Black and Brown youth who are targeted through overpolicing and surveillance. Similarly, the provisions incorporating the American Families United Act include a broad list of inadmissibility and deportability bars that would import our criminal legal systems history of systemic racism without a case-by-case analysis to address inequities, denying certain families relief.

Furthermore, the bill includes new inadmissibility and deportability bars for membership or participation in a gang. As mentioned earlier, this provision ignores years of research about how racism is intertwined with the criminal legal system, leading to the targeting of Black and Brown youth in the form of over-policing, harmful databases, and more.²³ These provisions also fail to fully account for the fact that many young people are forcibly recruited into gangs and forced to participate in gang activity.²⁴ A 2015 report by the Jesuit Conference of Canada and the United States found that gangs often threaten children and youth or their loved ones as a method of forced

¹⁹ *Matter of Rehman*, 27 I&N Dec. 124 (BIA 2017).

²⁰ *The American Family Today*, Pew Research Center (December 17, 2015), <https://www.pewsocialtrends.org/2015/12/17/1-the-american-family-today/>. Marcia Carteret, *Cultural Differences in Family Dynamics*, Dimensions of Culture (November 2, 2010), <https://www.dimensionsofculture.com/2010/11/culture-and-family-dynamics/> (“In cultures such as American Indian, Asian, Hispanic, African, and Middle Eastern, individuals rely heavily on an extended network of reciprocal relationships with parents, siblings, grandparents, aunts and uncles, cousins, and many others.”).

²¹ *Key Points: Traumatic Separation and Refugee & Immigrant Children*, The National Child Traumatic Stress Network, https://www.nctsn.org/sites/default/files/resources/tip-sheet/key_points_traumatic_separation_and_refugee_immigrant_children.pdf (last visited Apr. 23, 2021) (noting that a child's relationships with a primary caregiver is critical to a children's ability to thrive, and that separation is one of the most potent stressors a child can experience).

²² Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 *Natural Human Behavior* 736, 737, 739 (May 4 2020), <https://www.nature.com/articles/s41562-020-0858-1>.

²³ Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 *Natural Human Behavior* 736, 737, 739 (May 4 2020), <https://www.nature.com/articles/s41562-020-0858-1>.

²⁴ See, e.g., U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2019: Guatemala* 18 (2020) (stating that street children are often recruited by gangs).

recruitment.²⁵ This bill would also deny immigrants access to protection based on a adjudication on juvenile delinquency. The immigration system does not count acts of juvenile delinquency as crimes or consider juvenile delinquency adjudications as criminal convictions that would impose adverse immigration consequences.²⁶ This recognizes that children are different from adults, and that adolescents sometimes make decisions while they are still developing that should not have lifelong consequences. Lastly, we note that these types of categorical bars for adults who are parents or caregivers of children, without any further analysis of equities, could result in prolonged family separation with harmful impacts on children. We urge you to reconsider these provisions and instead eliminate categorical bars in favor of case-by-case analysis of the facts and of equities for each person within the immigration system.

Fifth, we are concerned about the bill's provisions that would compress the timeline of for evaluating children and families' claims for humanitarian protection. We have repeatedly expressed opposition to past proposals to further increase the timeline under which children and families must make their claims for protection. Expedited immigration processes deprive families and children in them a fair opportunity to articulate their fear of persecution upon return to their country of origin, which First Focus and the Young Center for Immigrant Children's Rights explained in a recently published report.²⁷ The report explains how such expedited timelines fail to consider children's developmental stages, the impact of their trauma on making a claim, their lack of legal representation, and the fact that they may have claims for protection independent of their parent or legal guardian. Detention further makes expedited removal harmful, as it decreases the likelihood that families will find counsel.²⁸ It also retraumatizes people seeking protection and makes it more difficult for them to share sensitive information, whether with an asylum officer or with counsel. This is especially the case for children, as family detention undermines the physical and mental well-being of children and their parents and strains parent-child relationships.²⁹ While the bill provides a 72-hour "rest period" for immigrants and an expanded opportunity to find counsel than current policy, the fact remains that expedited processes are inherently harmful to children and families trying to navigate an already complex system after an arduous journey, facing adjudicators of often lack trauma-informed or child-specific training or expertise. We instead recommend an end to expedited processes in favor of specialized corps of adjudicators for children and family cases child-sensitive training for adjudicators, and expanded legal representation, which would both ensure due process for children and families and improve the efficiency of cases for protection.

Lastly, we are deeply concerned about the bill's provision that would require additional background checks and limitations on sponsorship for unaccompanied children in HHS custody. First, the bill is

²⁵ Jesuit Conference of Canada and the United States, *Unwilling Participants: The Coercion of Youth into Violent Criminal Grounds in Central America's Northern Triangle* 7 (2015), http://jesuits.org/Assets/Publications/File/Report_UnwillingParticipants_v4.pdf.

²⁶ Matter of Devinson, 22 I&N Dec. 1362 (BIA 2000); Matter of Ramirez-Rivero, 18 I. & N. Dec. 135, 138 (BIA 1981); Matter of CM, 5 I. & N. Dec. 327, 335 (BIA 1953).

²⁷ *Issue Brief: Fast Not Fair—How Expedited Processes Harm Immigrant Children Seeking Protection*, First Focus on Children, Young Center for Immigrant Children's Rights (March 6, 2023), <https://firstfocus.org/resources/fact-sheet/fast-not-fair-how-expedited-processes-harm-immigrant-children-seeking-protection>.

²⁸ Ingrid Eagly, Steven Shafers, and Jana Whalley, *Detaining Families: A Study of Asylum Adjudication in Family Detention*, American Immigration Council 14-15 (August 2018), https://www.americanimmigrationcouncil.org/sites/default/files/research/detaining_families_a_study_of_asylum_adjudication_in_family_detention_final.pdf.

²⁹ *Locking Up Family Values, Again*, Lutheran Immigration and Refugee Service and The Women's Refugee Commission (October 2014), https://www.lirs.org/assets/2474/lirswrc_lockingupfamilyvaluesagain_report_141114.pdf.

redundant of protections that already exist to ensure unaccompanied children are safe upon release—the Office of Refugee Resettlement (ORR) already has extensive screening procedures to ensure that a child would be safe with a potential sponsor, including criminal background checks and child abuse and neglect checks. Like all children separated from family, the best setting for unaccompanied children who need to recover from their traumatic experiences and fairly pursue their immigration case is with family or in a family-based setting.³⁰ If potential sponsors face additional administrative barriers or fear that their information could be used for immigration enforcement, they are unlikely to come forward to sponsor a child from ORR custody. As a result, children will face prolonged stays in government custody and separated from family, mostly in large, institutionalized settings that are known to be harmful to children.³¹ The 2018 memorandum of agreement regarding information sharing between HHS and DHS bore this out—it resulted in children remaining in ORR custody for prolonged periods and deteriorating physical, mental, and behavioral health for children.³² While this bill does not include such a requirement for information-sharing, we fear additional and unnecessary background checks will have a similar result.

Additionally, this bill puts additional limitations on placement with a sponsor based on certain criminal convictions or ongoing trials for particular offenses. Again, we note that this is redundant as ORR can deny placement with a potential sponsor where they assess that such placement would put a child in danger. This provision of the bill is particularly when applied to parents and legal guardians of children in ORR custody. Parents and legal guardians have a have a constitutional right to family unity with their child and have due process rights regarding being denied custody of their child.³³ By requiring ORR to deny court-involved parents and legal guardians' reunification with their child and to not consider the underlying fact of the case or the wishes of a child and their parent or legal guardian regarding care and custody, this legislation goes beyond domestic child welfare laws and violates children and families' constitutional rights.

We applaud you for developing a bipartisan immigration proposal that would take important steps to protect immigrant children and families. However, we urge you to consider our recommended changes to other provisions in the bill to ensure that it fully advances the safety, health, and well-being of immigrant children. Thank you for your consideration, and please reach out with any questions.

³⁰ *The Child Welfare Placement Continuum: What's Best for Children?*, National Conference of State Legislatures (November 3, 2019), <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>.

³¹ Neha Desai, et al., *Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policymakers* 9 (December 2019), <https://youthlaw.org/sites/default/files/attachments/2022-02/Briefing-Child-Welfare-Unaccompanied-Children-in-Federal-Immigration-Custody-A-Data-Research-Based-Guide-for-Federal-Policy-Makers.pdf> (finding that more than half of unaccompanied children are in a facility with 200 beds or more.). *Every Kid Needs a Family: Giving Children in the Child Welfare System the Best Chance for Success*, Annie E. Casey Foundation 5 (May 19, 2015), <https://assets.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf#page=5>.

³² *Children as Bait: Impacts of the ORR_DHS Information-Sharing Agreement*, Women's Refugee Commission et al. (March 2019), <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2019-03/Children-as-Bait.pdf>.

³³ *Troxel v. Granville*, 530 U.S. 57, 65, 66 (2000).

Sincerely,

Bruce Lesley

Bruce Lesley
President