

FIRST FOCUS CAMPAIGN FOR CHILDREN STATEMENT FOR THE RECORD

COMMITTEE ON THE JUDICIARY: “COMPREHENSIVE IMMIGRATION REFORM”

February 13, 2013

Chairman Leahy, Ranking Member Grassley, and Members of the Senate Judiciary Committee, thank you for the opportunity to submit this statement on comprehensive reform of the United States immigration system.

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 unity and that all children have the opportunity to live a healthy and successful life in the United States.

Children have historically been disregarded or intentionally excluded from U.S. immigration policy decisions. Children have few special protections under current immigration law and their best interests are often not considered when making critical decisions regarding their own or a parent’s ability to enter or stay in the U.S. This failure to consider children’s best interests, combined with increased immigration enforcement, has had devastating results for children and their families. Current immigration policy should be reformed to include consideration and protection of children and their best interests.

The Failure to Consider Children in Current Immigration Policy

Although children of immigrants comprise roughly 1 in 4 of all children in the U.S. and are the fastest growing segment of the child population,¹ current law ignores the unique needs and rights of children and provides few protections for these mixed legal status families. In fact, a common result of current immigration law is the separation, sometimes permanent, of children from their parents as a result of deportation or detention.

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

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>.

parent has legal immigration status and is petitioning on behalf of their undocumented 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.

Additionally, undocumented parents who face deportation often cannot receive a cancellation of deportation 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”² 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.”³ 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.

Finally, current immigration policy consistently punishes children for their parents’ actions. While criminal law does not expect the same level of decision making and maturity from children as it does from adults and typically assigns less burdensome punishments to children, immigration policy makes no such distinction. Children brought here as minors by their parents face the same penalties and barriers that adults who enter the country. Even the youngest undocumented children who entered the country face the same penalties and obstacles as adults.

Causing Children Harm

Combined with increased immigration enforcement, this complete disregard for children’s best interest in immigration policy has had a devastating effect on children, their families, and their communities. It has resulted in family separation, sometimes permanent, and the creation of a large untapped population of youth with limited access to higher education and only temporary legal means to work.

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, 2012.⁴ As a result, an estimated 5,100 children are in the U.S. child welfare system due to their parent’s deportation or detention and face potentially permanent separation from their parents, while thousands more U.S. citizen children have moved abroad with their deported parents.⁵ Children separated from their parents due to detention or deportation suffer short-term and long-term behavioral changes, including increased fear, anger, and instances of crying, as well changes in sleeping and eating habits.

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

³In re Monreal-Aguinaga, 23 I & N Dec. 56, 65 (BIA 2001). Available: <http://www.justice.gov/eoir/vll/intdec/vol23/3447.pdf>.

⁴U.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

⁵ Seth Freed Wessler, Applied Research Center (2011). *Shattered Families: The perilous intersection of immigration enforcement and the child welfare system*. <http://arc.org/shatteredfamilies>.

Additionally, families often suffer economic hardship, including housing and nutrition instability, as a result of the deportation or detention of a parent.⁶

There are also approximately 1 million children and youth with limited access to higher education and only temporary legal means to join the workforce.⁷ These children and youth were brought to the U.S. as minors and have grown up here, including attending our public schools and contributing to our communities. They are commonly called DREAMers after past legislation that would have given them a path to citizenship, and they only have temporary two year work authorization due to the Department of Homeland Security's (DHS) Deferred Action for Childhood Arrivals (DACA) policy. Despite DACA, these individuals still face barriers to higher education, including lack of access to financial aid, and are in the tenuous position of being considered legally present for only two years with a chance at renewal. While DACA-grantees are considered lawfully present by DHS, they still lack access to health coverage because the Department of Health and Human Services has made DACA-grantees ineligible for CHIP and Medicaid and will not allow them to purchase insurance through the Affordable Care Act Exchanges.

Solutions

As stated above, U.S. immigration policy currently ignores or disregards children, with devastating effect on both undocumented and citizen children. Congress now has an opportunity to enact policy changes that will allow for immigration law to adequately account for and protect the unique needs and rights of children. The following principles have been endorsed by over 200 national and state organizations that support an immigration reform proposal that considers the best interest of children. The principles, which are also attached in their entirety, state that immigration reform should:

- **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

⁶ Ajay Chaundry et. al., The Urban Institute (2010). *Facing our Future: Children in the aftermath of immigration enforcement*. http://www.urban.org/UploadedPDF/412020_FacingOurFuture_final.pdf.

⁷ Immigration Policy Center (2012). *Who and Where the DREAMers are*. <http://www.immigrationpolicy.org/just-facts/who-and-where-dreamers-are>.

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

While current U.S. immigration policy does not acknowledge or account for the unique needs of children, there are concrete policy reforms that would bring the immigration system in line with other laws and our national values that give special protections to children. Millions of children in the U.S. have been separated from their parents or live in fear of separation, they lack access to important public supports and higher education, they have been punished for actions they had no control over, and have suffered unnecessary hardship due to current immigration policy. Instead of allowing for and encouraging these outcomes, our federal immigration system should be reformed to ensure that it protects and advances 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.

Enclosed: Principles for Children in Immigration Reform

Principles for Children in Immigration Reform

As our nation's leaders move forward with the important task of reforming the federal immigration system it is critical that they consider the specific needs of children and youth. Children of immigrants currently comprise 1 in 4 of all children in the U.S. and represent the fastest growing segment of the child population. The number of unaccompanied immigrant children entering the U.S. has also 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.

Despite the significant impact of immigration policy on children's lives, children have historically been disregarded and often intentionally excluded in U.S. immigration policy decisions. Even the youngest children have few special protections under current immigration law and their best interests are often considered irrelevant in critical decisions regarding their own or a parent's ability to enter or stay in the United States. Furthermore, complicated laws determining immigrant eligibility for federally funded services have created significant barriers for children in immigrant families. As a result, both children who are immigrants themselves as well as U.S. citizen children with immigrant parents continue to face high rates of family separation, emotional trauma, economic instability, poor educational outcomes, and limited access to critical services and programs.

The consistent failure of immigration policies to consider children's well-being, protect children's rights, and promote family unity has had devastating outcomes. The Department of Homeland Security reports that 205,000 parents of U.S. citizen children were deported in the 26 months between July 2010 and September 2012. It is estimated that 5,100 children are in the U.S. child welfare system due to a parent's immigration detention or deportation, and thousands of U.S. citizen children have moved abroad with their deported parents. Currently, 5.5 million children in the U.S. live in mixed-legal status families and are at risk of being separated from a parent at any time, and 1 million undocumented children under the age of 18 face limited access to a higher education and only temporary legal means to join the workforce.

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 and irrespective of their best interests.

The fact is that America's future prosperity will depend on our ability to ensure that *all* children have a fair shot at achieving their full potential. As the youngest and most vulnerable members of our society, children are the most deserving of protection under the law, and every child should have access to the services and resources they need to grow and thrive. **Thus, any long-term solution to our immigration system must take into account the unique needs of children and protect and promote their fundamental rights and overall well-being.**

As advocates for children, we urge Congress and the Administration to incorporate the following principles 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.

Endorsing Organizations

National and International

Alianza por los Derechos Ninas Ninos y Adolescentes

Alliance for a Just Society

American Civil Liberties Union (ACLU)

American Immigration Council

Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center

America's Promise Alliance

Asian & Pacific Islander Institute on Domestic Violence

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Asian American Justice Center (AAJC), member of Asian American Center for Advancing Justice
ASISTA Immigration Assistance
Association for Childhood Education International
Association of Farmworker Opportunity Programs (AFOP)
Ayuda
Breakthrough
Capital Area Immigrants' Rights Coalition
Casa Esperanza
Catholic Legal Immigration Network, Inc. (CLINIC)
Center for Gender & Refugee Studies
Center for Law and Social Policy (CLASP)
Center for the Vulnerable Child
Children's Defense Fund (CDF)
Christian Church (Disciples of Christ) Refugee and Immigration Ministries
Church World Service
Clergy and Laity United for Economic Justice
Concerned Educators Allied for a Safe Environment (CEASE)
Congressional Coalition on Adoption Institute (CCAI)
Department of Anthropology, Georgetown University
Emory Child Rights Project
First Focus
Foster Care to Success Foundation
Foster Family-based Treatment Association
Franciscan Action Network
Franciscan Federation
Franciscan Friars
Franciscan Friars, TOR
Franciscan Sisters
Franciscan Sisters of Little Falls Leadership
Franciscan Sisters of the Atonement (International)
Franciscans for Justice
Futures Without Violence
HAIS (Hebrew Immigrant Aid Society)
Healthy Teen Network
Hoyas for Immigrant Rights
Immigration Equality
Immigrant Legal Resource Center
IMUMI (Instituto para las Mujeres en la Migración)
International Detention Coalition
Kids in Need of Defense (KIND)
Leadership Team of the Felician Sisters of North America

Legal Services for Children
LULAC Council 7226
Lutheran Immigration and Refugee Service
Lutheran Social Services of New England
Main Street Alliance
MomsRising.org
NAFSA: Association of International Educators
NAKASEC
National Asian Pacific American Women's Forum (NAPAWF)
National Association for the Education of Homeless Children and Youth (NAEHCY)
National Center for Adoption Law & Policy
National Domestic Workers Alliance (NDWA)
National Education Association (NEA)
National Immigrant Justice Center
National Immigration Law Center (NILC)
National Latina Institute for Reproductive Health
National Latino Children's Institute
OneAmerica
Providential Support Service
Sin Fronteras (International)
Sisters of Saint Francis of Perpetual Adoration (International)
Sisters of St. Francis (International)
Southern Poverty Law Center
Tahirih Justice Center
TESOL International Association
The Advocates for Human Rights
The Coalition to Abolish Slavery & Trafficking (CAST)
The Episcopal Network for Economic Justice
The Young Center for Immigrant Children's Rights
U.S. Committee for Refugees and Immigrants
United Methodist Church, General Board of Church and Society
United Methodist Women
United States Conference of Catholic Bishops (USCCB)
United We Dream
Women's Refugee Commission
Youth Law Center

State and Local Organizations

Arizona

Children's Action Alliance

Coalicion de Derechos Humanos
Kino Border Initiative
No More Deaths
Somos America/We Are America Coalition
The Florence Immigrant & Refugee Rights Project
University of Arizona, Center for Latin American Studies

Arkansas

Arkansas Advocates for Children and Families

California

Asian Pacific American Legal Center, a member of the Asian American Center for Advancing Justice
California Immigrant Policy Center
California Pan-Ethnic Health Network
California Primary Care Association
Children's Defense Fund
Children's Hospital Oakland
Children Now
CLUE Santa Barbara
Coalition to Abolish Slavery & Trafficking
Esperanza Immigrant Rights Project, Catholic Charities of Los Angeles, Inc.
Families & Criminal Justice (formerly the Center for Children of Incarcerated Parents)
Immigration Center For Women and Children
Kids in Common, a program of Planned Parenthood Mar Monte (California and Nevada)
Latino Health Alliance
Modoc Child Care Council
Public Counsel
Southwestern Law School Immigration Clinic
The Children's Partnership
United Advocates for Children and Families
University of California Davis School of Law Immigration Clinic

Colorado

Immigrant Legal Center of Boulder County
Rocky Mountain Immigrant Advocacy Network
Servicios de La Raza
Sisters of St. Francis

Delaware

Delaware Family Voices

Florida

The Center on Children & Families, University of Florida Levin College of Law
UNO Immigration Ministry

Georgia

Georgia Rural Urban Summit

Illinois

Center for the Human Rights of Children, Loyola University Chicago
Chicago Legal Advocacy for Incarcerated Mothers
Franciscan Sisters of Chicago
Illinois Coalition for Immigrant and Refugee Rights

Indiana

Justice & Peace Office for Oldenburg Franciscans

Iowa

Iowa Justice For Our Neighbors
Luther College Office for Campus Ministries
Unitarian Universalist Fellowship of Ames

Louisiana

Jesuit Social Research Institute, Loyola University New Orleans

Maine

Maine Children's Alliance
University of Maine School of Law, Cumberland Legal Aid Clinic (Refugee and Human Rights Clinic)

Maryland

Advocates for Children and Youth
Grossman Law, LLC

Massachusetts

Applied Developmental & Educational Psychology Department, Boston College Lynch School of Education
Center for Human Rights and International Justice, Boston College
Immigrant Integration Lab, Boston College
Migration and Human Rights Project, Boston College
Political Asylum/Immigration Representation Project

Michigan

Casa Latina
CMSJ Consulting L3C
Washtenaw Interfaith Coalition for Immigrant Rights

Minnesota

Immigrant Law Center of Minnesota
Interfaith Coalition on Immigration
Law Office of Allison Anastos
Sisters of St. Francis, Rochester

Montana

Sisters of St. Francis, Savannah

Nebraska

Center for Legal Immigration Assistance
Nebraska Families Collaborative

New Mexico

For Families LLC
New Mexico Children Youth and Families Department
New Mexico Forum for Youth in Community
New Mexico Voices for Children
Pegasus Legal Services for Children

New Jersey

Advocates for Children of New Jersey
American Friends Service Committee
Family Voices NJ
IRATE & First Friends New Jersey
Missionary Sisters of the Immaculate Conception
Reformed Church of Highland Park, NJ
Rutgers School of Law - Camden
Statewide Parent Advocacy Network
Stockton College

New York

Catholic Charities
Coalition for Asian American Children & Families
Feerick Center for Social Justice (Fordham University Law School)
Legal Aid Society (NYC)
Maya Media Corp.

Northern Manhattan Coalition for Immigrant Rights
The Door's Legal Services Center

North Carolina

Action for Children NC
North Carolina Immigrant Rights Project

Ohio

Church of Our Saviour Episcopal/La Iglesia de Nuestro Salvador
Franciscan Sisters of the Poor
Sisters of St. Francis, Sylvania

Oklahoma

University of Tulsa College of Law Legal Clinic

Oregon

Immigration Counseling Service (ICS)

Pennsylvania

Advocacy Committee of the Sisters of St. Francis of Philadelphia
Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia
HIAS Pennsylvania
Pennsylvania Council of Churches
Sisters of St. Francis of Philadelphia
Sisters of St. Joseph Welcome Center

Rhode Island

Family Voices Rhode Island
Rhode Island KIDS COUNT

South Carolina

South Carolina Appleseed Legal Justice Center
South Carolina Department of Social Services

Tennessee

Franciscan Friars

Texas

Alternatives Centre for Behavioral Health
American Gateways
Cabrini Center for Immigrant Legal Assistance of the Archdiocese of Galveston (Houston)

Center for Public Policy Priorities
Diocesan Migrant & Refugee Services, Inc. (DMRS)
Dominican Sisters of Houston
Fabens ISD
Human Rights Initiative of North Texas
Paso Del Norte Civil Rights Project
Texans Care for Children

Utah

Voices for Utah Children

Virginia

Voices for Virginia's Children

Washington

Children's Alliance
Episcopal Church
OneAmerica
PAVE
Stop the Checkpoints
Washington Department of Corrections

Wisconsin

Capuchin Justice & Peace Office, Milwaukee
Wisconsin Council on Children and Families