

March 31, 2023

The Honorable Debbie Lesko  
United States House of Representatives  
Washington D.C. 20515

The Honorable Mariannette Miller-Meeks  
United States House of Representatives  
Washington D.C. 20515

Dear Representative Lesko and Representative Miller-Meeks:

I am writing on behalf of First Focus Campaign for Children, a bipartisan child advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. We write to oppose H.R. 801, the Securing the Border for Public Health Act of 2023, and urge you to instead support legislation that advances the safety and well-being of immigrant children and families.

Over several years, the demographic of those arriving at our border seeking safety has shifted to a greater proportion of children and families.<sup>1</sup> These children and families make a perilous journey to flee persecution, trafficking, and abuse in their countries of origin.<sup>2</sup> Too often when families arrive at our borders and request humanitarian protection, they are met with detention and a complex and confusing immigration system that they must navigate without support, at an increased risk of being returned to the very persecution, trafficking, or abuse they fled. We are concerned that rather than promoting children's health and safety, this legislation would create unsurmountable barriers to children and families' access to the humanitarian protection afforded them under federal law.

In the wake of the Holocaust, the United States' rejection of Jewish people seeking safety from certain persecution and death, and the death of millions of Jews due to their ethnicity, the United States ratified the Refugee Convention through ratification of the 1967 Protocol.<sup>3</sup> Under the Convention, the United States is obligated to ensure that no person is returned to a country where their life or freedom would be threatened on account of their race, religion, nationality, political opinion, or membership in a particular social group.<sup>4</sup> Similarly, the United States has ratified the Convention against Torture and cannot return a person to country where they would experience

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<sup>1</sup> *Growing Numbers of Children Try to Enter the U.S.*, TRAC Immigration (June 28, 2022), <https://trac.syr.edu/immigration/reports/687/>.

<sup>2</sup> *Families on the Run: Why Families Flee From Northern Central America?*, UN High Commissioner for Refugees, UNICEF (2020), <https://familiesontherun.org/>.

<sup>3</sup> Kristine Phillips, *What the U.S. Learned from Turning Away Refugees Who Fled the Nazis*, The Washington Post (January 29, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/01/29/what-the-u-s-learned-from-turning-away-refugees-who-fled-the-nazis/>.

<sup>4</sup> UN General Assembly, *Convention Relating to the Status of Refugees* art. 33, July 28, 1951, United Nations Treaty Series, vol. 189, p. 137, <https://www.refworld.org/docid/3be01b964.html>.

torture.<sup>5</sup> More than 30 years ago, Congress integrated that obligation into our federal laws by passing the Refugee Act of 1980.<sup>6</sup> Our federal law explicitly states that “any [noncitizen] physically present in the United States or who arrives in the United States (*whether or not at a designated port of entry or arrival and...*) *irrespective of such [noncitizen’s] status*, may apply for asylum . . . .” (emphasis added).<sup>7</sup> Furthermore, Congress unanimously passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to protect immigrant children from trafficking.<sup>8</sup> The TVPRA mandates the transfer of unaccompanied children to the custody of the Department of Health and Human Services (HHS) for safe care and reunification with vetted sponsors before pursuing their claim for protection.<sup>9</sup> For decades, these two laws have ensured that children, whether with family or arriving by themselves, are not returned to situations where they would experience persecution, torture, or trafficking.

Contrary to our international treaty obligations, our laws, and our values of ensuring that no one returns to a country where their life or freedom is threatened, your proposed legislation would permit the Secretary of Health and Human Services, through regulation, to restrict the entry of all individuals, including unaccompanied children and children with families, to the United States based on the existence of “any communicable disease” or “certain controlled substances in a foreign country,” without any evaluation of whether they would experience harm if returned to another country or their country of origin. First of all, this legislation echoes harmful stereotypes of immigrants as carriers of disease, which are untrue—a two year study by the UCL-Lancet Commission on Migration and Health found this to be false, and also that migrants contribute to the healthcare workforce in many countries to which they move.<sup>10</sup> Secondly, the bill also falsely assumes that controlled substances enter the United States because of immigrants, while the federal government itself has stated that most controlled substances enter the U.S. at the southern border at ports of entry, and often are brought into the United States by U.S. citizens.<sup>11</sup>

This legislation would result in certain harm for children.<sup>12</sup> Under the current policy of expulsions under the current misuse of Title 42, between March 2020 and May 2022 DHS expelled over

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<sup>5</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* art. 3, December 10, 1984. United Nations Treaty Series, vol. 1465, p. 85, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

<sup>6</sup> 102 Public Law 96-212 (March 17, 1980).

<sup>7</sup> 8 U.S.C. § 1158(a)(1).

<sup>8</sup> 8 U.S.C. § 1232(b).

<sup>9</sup> *Id.*

<sup>10</sup> Maggie Fox. *Migrants Don’t Bring Disease. In Fact, They Help Fight It, Report Says*, NBC News (December 5, 2018), <https://www.nbcnews.com/storyline/immigration-border-crisis/migrants-don-t-bring-disease-fact-they-help-fight-it-n944146>. See also Ibrahim Abubakar et al., *The UCL-Lancet Commission on Migration and Health: The Health of a World on the Move*, Lancet (December 5, 2018), <https://pubmed.ncbi.nlm.nih.gov/30528486/>.

<sup>11</sup> U.S. Department of Justice, Drug Enforcement Administration, 2020 National Drug Threat Assessment 69 (March 2021), [https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment\\_WEB.pdf](https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf) (stating that “the most common method” of drug smuggling is through “U.S. [ports of entry] in passenger vehicles”). See also Aaron Reichlin-Melnick, *Fact Check: Migrants Aren’t the Ones Smuggling Fentanyl Into the United States*, Immigration Impact (September 7, 2022), <https://immigrationimpact.com/2022/09/07/fact-check-migrants-smuggling-fentanyl-into-united-states/> (finding that U.S. Customs and Border Protection statistics and press releases show that 95 percent of fentanyl seized by the government occurred at a port of entry, and most of these cases involve U.S. citizens).

<sup>12</sup> *Children and Families Must Have Access to Asylum*, Children Thrive Action Network (September 2022), <https://childrethrivemotion.org/wp-content/uploads/2022/09/Title-42-Factsheet-1.pdf>.

125,000 children to Mexico, over 30,000 of whom were children 3 and under.<sup>13</sup> Cato Institute found that about 41 percent of these expulsions took place at midnight or later, making children and families uniquely vulnerable to kidnapping, trafficking, and violence. Additionally, Title 42 has been a tool for family separation, which has been condemned as an egregious result of past immigration policies by policymakers of all parties.<sup>14</sup> According to data requested through a Freedom of Information Act request, more than 12,000 children in fiscal year 2021 entered the United States as unaccompanied children after previously being expelled with their parents under Title 42, as parents made the impossible choice to send their children to the border alone in hopes that they will find safety.<sup>15</sup>

Rather than prevent harm to children, this bill would allow false stereotypes of immigrants to dictate immigration policy. It would also further codify the existing misuse of public health law under Title 42 of the U.S. Code, thus increasing the risk that children will be returned to countries where they would experience harm.

Three fourths of Americans of all political affiliations agree that our country should provide asylum to people fleeing persecution and violence.<sup>16</sup> Danger to children should not be an outcome of our federal laws. When policies focus on children, which the American people agree that all federal policies must do,<sup>17</sup> there are common-sense, workable solutions for the border that give all people a meaningful and reasonable process to make their claim for protection.<sup>18</sup> We are eager to work with you to advance legislation that provides true solutions to U.S. border management and are in children's best interests by protecting their safety, family unity, and general well-being. Thank you for your consideration.

Sincerely,



Bruce Lesley  
President

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<sup>13</sup> David J. Bier, *CBP Is Expelling Thousands of Infants and Toddlers to Mexico After Midnight*, Cato Institute (August 1, 2022), <https://www.cato.org/blog/cbp-expelling-thousands-infants-toddlers-mexico-after-midnight>.

<sup>14</sup> Jeff Cirillo, *Here Are the Republicans Opposing Migrant Family Separation*, Roll Call (June 19, 2018), <https://rollcall.com/2018/06/19/here-are-the-republicans-opposing-migrant-family-separation/>.

<sup>15</sup> Camilo Montoya-Galvez, *12,212 Migrant Children Reentered U.S. Border Policy Alone in 2021 After Being Expelled*, CBS News (May 20, 2022), <https://www.cbsnews.com/news/immigration-migrant-children-us-border-custody-unaccompanied-minors-2021/>.

<sup>16</sup> *Post-Midterms Asylum Survey*, U.S. Immigration Policy Center, Welcome with Dignity (November 15, 2022), <https://welcomewithdignity.org/asylum-survey/>.

<sup>17</sup> *Fact Sheet: Voters Strongly Support Making Investments in Our Children and Grandchildren*, First Focus on Children (June 30, 2022), <https://firstfocus.org/blog/fact-sheet-voters-support-investments-in-kids>.

<sup>18</sup> Miriam Abaya, *Fact Sheet: Border Policies that Protection and Support Children*, First Focus on Children (January 18, 2023), [https://firstfocus.org/resources/fact-sheet/fact-sheet-border-policies-that-protect-and-support-children?utm\\_campaign=kidangle&utm\\_medium=email&utm\\_source=kidangle-117&emci=849c301d-3398-ed11-994c-00224832eb73&emdi=ea000000-0000-0000-0000-000000000001&ccid=](https://firstfocus.org/resources/fact-sheet/fact-sheet-border-policies-that-protect-and-support-children?utm_campaign=kidangle&utm_medium=email&utm_source=kidangle-117&emci=849c301d-3398-ed11-994c-00224832eb73&emdi=ea000000-0000-0000-0000-000000000001&ccid=).