

First Focus Campaign for Children
U.S. House of Representatives House Judiciary Committee
Vote Recommendation: Mark up of the Border Security and Enforcement Act of 2023
April 19, 2023

First Focus Campaign for Children is a bipartisan organization dedicated to making children and families the priority in federal policy and budget decisions. As advocates for children, we are committed to ensuring that all immigration policies are in the best interests of children and advance children's safety, family unity, and well-being. We urge members of the House Judiciary Committee to vote **NO** on the Border Security and Enforcement Act of 2023.

Over several years, the demographic of those arriving at our border seeking safety has shifted to a greater proportion of children and families.¹ These children and families make a perilous journey to flee persecution, trafficking, and abuse in their countries of origin.² Too often when children and 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 international treaties and federal law and send them into harm's way.

Title I—Asylum Reform and Border Protection

These provisions would undermine children's safety and well-being by:

- Allowing the Department of Justice (DOJ) and Department of Homeland Security (DHS) to remove people seeking asylum based on their sole discretion that a country would be safe, despite clear evidence about the danger children and families experience in certain countries;
- Statutorily implementing transit and entry bans for those seeking safety. See First Focus' analysis of why such bans are harmful to children [here](#);
- Vastly expanding asylum bars, including some that would directly impact children;
- Increasing barriers to accessing asylum and work authorization through fees;
- Increasing the risk that children will be returned to danger by narrowing bases for asylum that are very common for children, given their status and various governments' inability or unwillingness to protect children (especially the grounds of particular social group, forcible gang recruitment, and criminal acts against children);
- Heightening the standard for "persecution" without regard for the unique ways in which children experience and perceive persecution; and

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

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

- Deny children access to asylum if their parent is found to have “firmly resettled” in a country, though decisions to remain in another country are often not in a child’s control and children may independently experience harm in another country.

Title II—Border Safety and Migrant Protection

Provisions under this title would require DHS to either detain, return to a contiguous country, deport, or expel children, families, and individuals seeking safety at the southern border and who do not cross at a designated port of entry. These provisions would harm children for the following reasons:

- The Trump Administration’s Remain in Mexico program (officially designated the “Migrant Protection Protocols,” or “MPP”), which is similar to what this legislation would require, effectively returned asylum seekers who have arrived at the border back to cartels and corrupt Mexican government agents who kidnap, rape, torture, traffic, and extort them and their family members. Under the program, children [experienced](#) violence, family separation, and sham court proceedings that denied them due process. Under this legislation, both unaccompanied children and children in families would be returned to such harm in Mexico.
- As of February 19, 2021, Human Rights First [documented](#) at least 1,544 publicly reported cases of murder, rape, torture, kidnapping and other violent assaults against migrants forced to return to Mexico under the first iteration of the MPP policy.
- The dangers of the Remain in Mexico program led [hundreds](#) of families to make the impossible choice to send their children across the border alone to flee harm and seek safety.
- Similarly, requiring DHS to turn away children and families if the agency cannot adhere to certain requirements would also result in harm to children. Expulsions under Title 42 repeatedly put children, families and individuals in danger, with more than [13,000](#) reports of violent attacks recorded so far in President Biden’s term alone. Additionally, under Title 42 thousands of children have been [separated](#) from family.

Title III—Ensuring United Families at the Border

The provisions of this title would permit and, in some instances, require family detention. The legislation would also prevent states from requiring facilities holding families to be licensed. These provisions would harm children:

- **Detention is extremely harmful to children.** The American Academy of Pediatrics [has stated that](#) “there is no evidence that any time in detention is safe for children.” Research shows that [detention causes children to developmentally regress](#) and suffer from loss of appetite, sleep disturbances, clinginess, withdrawal, and aggression. Parents also exhibit depression, anxiety, and hopelessness. Detention undermines parents’ role in their children’s lives and strains parent-child bonds.
- **Family detention does not deter children and families seeking safety.** Where children and families fear harm in their home country and their government is unwilling and unable to protect them, they will flee. The number of children and families arriving at our border [has increased since 2008](#)—despite deterrence-based policies like family detention—because children and families do not feel safe in their home communities.

Title IV—Protection of Children

Title IV of the bill incorporates H.R. 2417, the Protection for Children Act of 2023. Contrary to its name, the bill would undermine important protections in our federal laws by:

- Allowing all unaccompanied children to be turned away at our border without adequate screening for protection needs;
- Allowing DHS to hold children for a prolonged time, despite evidence that conditions in DHS custody are harmful for children;
- Subjecting children to unnecessary and prolonged government custody by requiring the Department of Health and Human Services to share personal information about a child's sponsor with DHS;
- Undermining due process for children by prohibiting the use of government funds to support children's access to lawyers and fast-tracking them immigration proceedings; and
- Increasing the burden of proof for children who have been abused, neglected, or abandoned by a parent to gain protection, thus risking that they will be returned to harm.

Read more about how these provisions of the bill would harm children [here](#).

Three fourths of Americans of all political affiliations agree that our country should provide asylum to people fleeing persecution and violence.³ 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,⁴ there are common-sense, workable solutions for the border that give all people a meaningful and reasonable process to make their claim for protection.⁵ 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. However, this legislation is it, and we urge you to vote **NO** on the Border Security and Enforcement Act of 2023.

Thank you for your consideration. For more information, please contact Miriam Abaya, Vice President for Immigration and Children's Rights, at miriama@firstfocus.org.

³ *Post-Midterms Asylum Survey*, U.S. Immigration Policy Center, Welcome with Dignity (November 15, 2022), <https://welcomewithdignity.org/asylum-survey/>.

⁴ *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>.

⁵ 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&ceid=.