

April 13, 2023

The Honorable John Carter  
United States House of Representatives  
Washington D.C. 20515

Dear Representative Carter:

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, to state our opposition to the Protection for Children Act of 2023 (H.R. 2417).

For more than a decade, 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 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 contrary to its name, this legislation would do nothing to protect children but rather would undermine important protections in our federal laws to ensure children's safety, health, and well-being.

The bill also eliminates protections for unaccompanied children in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which Congress unanimously passed to protect children from trafficking and abuse. The bill would allow migrant children to be sent back to their country of origin without any consideration for their safety based on the discretion of immigration officers, essentially subjecting children to expedited removal. Research of the circumstances of return for Mexican children, who are immediately turned away at the border under the current contiguous country provision of the TVPRA, finds that border patrol agents repeatedly fail to sufficiently screen children for safety concerns and send children back to situations where they would experience violence and exploitation.<sup>3</sup> Applying this policy to all unaccompanied children will all but guarantee that children who would qualify for asylum or other forms of protection will be

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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/> (finding that the number of children arriving at the border have increased five-fold since 2008).

<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> *Border Screening for Children Has Failed*, Young Center for Immigrant Children's Rights (August 5, 2019), <https://www.theyoungcenter.org/stories/2019/8/5/current-border-screening-of-unaccompanied-children-from-mexico-has-failed-and-should-not-be-a-model-for-reform>. *USA: Pushed into Harm's Way: Forced Returns of Unaccompanied Migrant Children to Danger by the USA and Mexico*, Amnesty International (June 11, 2021), <https://www.amnesty.org/en/documents/amr51/4200/2021/en/>.

denied that protection and returned to the persecution or trafficking that they fled. Children also are unlikely to share sensitive information related to their fear of harm or trafficking with border patrol agents that are armed, in uniform, and who often do not apply child-sensitive or trauma-informed interviewing techniques when talking to children. Additionally, expedited processes such as expedited removal are inherently inappropriate for children because they ignore the effect of trauma on children, ignores their developmental stages, and denies them the support of counsel to make their claims for protection.<sup>4</sup>

The bill also would allow the Department of Homeland Security (DHS) to hold a child for 30 days before transferring them to the custody of the Department of Health and Human Services (HHS). This provision creates a real risk of physical danger for children. Between 2018 and 2019, at least seven children died either in or after being in Customs and Border Protection (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.<sup>5</sup> CBP custody is no place for children under the current federal mandate of 72 hours. It could be deadly for children under the bill's proposed expansion of children's stay in DHS custody.

The bill would also add restrictions to unaccompanied children's release to sponsors by would requiring HHS to share personal and identifiable information related to a sponsor with DHS. The bill also permits DHS to put a sponsor into removal proceedings if they are undocumented, even after a child has been released to that sponsor. 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.<sup>6</sup> Fortunately, over 80 percent of unaccompanied children have a parent or close family relative in the United States who could be a potential sponsor of their release from government custody.<sup>7</sup>

If potential sponsors fear that their information will be shared with DHS, they are unlikely to come forward to sponsor a child from HHS 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.<sup>8</sup> The 2018 memorandum of agreement between HHS and DHS bore this out—it resulted in children remaining in HHS custody for prolonged periods and

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<sup>4</sup> *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>.

<sup>5</sup> 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>.

<sup>6</sup> *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>.

<sup>7</sup> U.S. Department of Homeland Security, *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, (March 16, 2021), <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>

<sup>8</sup> 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>.

deteriorating physical, mental, and behavioral health for children.<sup>9</sup> Then-Assistant Secretary of the Administration for Children and Families Lynn Johnson, appointed by President Trump, reversed extra vetting for sponsors of unaccompanied children, stating that “the government makes lousy parents” and the extra screening “is not adding anything to the protection and safety of children.”<sup>10</sup> Furthermore, requiring DHS to initiate removal proceedings after a child has been placed with an undocumented sponsor would retraumatize the child through family separation and their re-placement into government custody.

The bill also appears to eliminate *existing* programs that support legal representation for unaccompanied children in immigration proceedings by stating that HHS shall ensure children have “access to counsel,” and that efforts to ensure children have access should be at no expense to the government. Due to their age and stages of development, children are different from adults. Therefore, ensuring due process for children during immigration proceedings requires specific considerations. Yet, they are mostly forced to go through the same complex immigration system as adults do—many children and families must make their claim for protection in adversarial settings before a judge and with a government attorney arguing against their claim. Without policies that take their needs into account, children with strong cases for protection may nevertheless have their cases denied, especially if they are unrepresented.<sup>11</sup>

Most children go through this complex process, which often has life or death consequences, without an attorney. In 2017, over 75 percent of children were unrepresented in their immigration proceedings.<sup>12</sup> These due process violations often result in children being returned to the very danger they fled, in violation of our domestic and international obligations. Research also shows that when individuals are appointed counsel, the efficiency of proceedings significantly improves, and people are more likely to be granted a form of humanitarian relief for which they are eligible.<sup>13</sup>

Under current law, government funding for the HHS provides some children with legal screenings and legal representation. This legislation would end that program, and as a result not only would it force children to prove complex legal standards in an adversarial setting, but it would also add to an already large backlog of cases by making them far more inefficient.

On top of this, the bill would require children transferred to HHS custody to have a hearing before an immigration judge within 14 days. This provision ignores the reality that many children would have just undergone a perilous journey and will still be in government custody, separated from family, when this first hearing occurs. During these hearings, immigration judges explain immigration proceedings to children and ask them questions about their claim for protection. As

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<sup>9</sup> *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>.

<sup>10</sup> Miriam Jordan, *Thousands of Migrant Children Could Be Released After Sponsor Policy Change*, New York Times (December 18, 2018), <https://www.nytimes.com/2018/12/18/us/migrant-children-release-policy.html>.

<sup>11</sup> Karen Berberich & Nina Suile, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, Vera Institute of Justice (November 2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf>.

<sup>12</sup> *Children: Amid a Growing Court Backlog Many Still Unrepresented*, TRAC Immigration (September 28, 2017), <https://trac.syr.edu/immigration/reports/482/>.

<sup>13</sup> Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council (September 2016), [https://www.americanimmigrationcouncil.org/sites/default/files/research/access\\_to\\_counsel\\_in\\_immigration\\_court.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf).

stated earlier, due to their age and stages of development, ensuring due process for children during immigration proceedings requires specific considerations, and yet they are mostly forced to go through the same complex immigration system as adults do. In situations where children have barely entered the country and remain in government custody with very little time to consult legal counsel or recover from their trauma, the bill's requirement would likely result in violations of due process, whereby children will waive rights that they do not understand and may forego the opportunity to seek legal protection.

Lastly, the bill would increase the burden of proof for children seeking Special Immigrant Juvenile Status (SIJS). Congress created SIJS as a child-specific form of humanitarian protection for children and youth who have been abused, neglected, or abandoned by one or both parents and for whom it is not in their best interests to return to their countries of origin.<sup>14</sup> By increasing the burden of proof for children, this bill would increase the risk that children will be returned to abuse or conditions where they are more vulnerable to exploitation.

Overall, this legislation would increase children's risk of physical and emotional harm in government custody and wrongful denial of their valid claims for humanitarian protection afforded them by Congress. We cannot accept such outcomes for children in our federal laws. We are eager to work with you to instead advance legislation that is in the best interests of children arriving at the border by protecting their safety, health, and well-being.<sup>15</sup> Thank you for your consideration.

Sincerely,



Bruce Lesley  
President

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<sup>14</sup> 8 U.S.C. § 1101(a)(27)(J).

<sup>15</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/border-policies-that-protect-and-support-children>.