

April 5, 2023

The Honorable Mike Johnson  
United States Senate  
Washington D.C. 20515

Dear Representative Johnson:

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 Asylum Reform and Border Protection Act of 2023 (H.R.1183).

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, harmful stereotyping, 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 undermine important protections in our federal laws to ensure children's safety, health, and well-being.

First, the bill would appear to eliminate *existing* programs that support legal representation for children in immigration proceedings by stating that “*in no instance shall the Government bear any expense for counsel for any person in proceedings described in this section*” (emphasis added). 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 and families with strong cases for protection may nevertheless have their cases denied, especially if they are unrepresented.<sup>3</sup>

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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> Karen Berberich & Nina Sulic, *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>.

Most children and families 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>4</sup> In 2016, 70 percent of families did not have an attorney when their cases closed.<sup>5</sup> These due process violations often result in children and families 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>6</sup>

Under current law, government funding for the Department of Health and Human Services (HHS) provides some children with legal representation, and pilot programs run by the Department of Justice (DOJ) fund legal representation for some children and families. Under this legislation, both programs could end, and others could not be considered. 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.

The bill would also eliminate protections for unaccompanied children which give them exceptions to the one-year time limit to file an asylum claim and the safe third country limitation on asylum. In 2008, Congress unanimously passed and President George W. Bush signed the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), which protects children from trafficking and abuse.

Unaccompanied children arrive at our borders without a parent or legal guardian from around the world, many of them fleeing persecution, trafficking, or abuse.<sup>7</sup> Because they do not have a legal decisionmaker present when they arrive at the border, the TVPRA mandates the transfer of unaccompanied children to the custody of the HHS for safe care and reunification with vetted sponsors before pursuing their claim for protection.<sup>8</sup> Some children spend a prolonged period in government custody, which often is an institutionalized setting where children are separated from family and are unable to build trusted adult relationships to share the circumstances which may be their basis for legal protection. Additionally, as mentioned earlier, most unaccompanied children do not have a lawyer to help them develop their case and file an asylum claim.<sup>9</sup> Under these circumstances, it is unreasonable to expect that children can file an asylum claim one year after their arrival in the United States. This provision would likely result in children with valid claims being returned to persecution because circumstances outside their control denied them a fair opportunity to file an asylum claim within one year.

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<sup>4</sup> *Children: Amid a Growing Court Backlog Many Still Unrepresented*, TRAC Immigration (September 28, 2017), <https://trac.syr.edu/immigration/reports/482/>.

<sup>5</sup> Karen Berberich and Nina Siulc, *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>6</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).

<sup>7</sup> *Families on the Run: Why Families Flee From Northern Central America?*, UN High Commissioner for Refugees, UNICEF (2020), <https://familiesontherun.org/>.

<sup>8</sup> 8 U.S.C. § 1232(b).

<sup>9</sup> *Children: Amid a Growing Court Backlog Many Still Unrepresented*, TRAC Immigration (September 28, 2017), <https://trac.syr.edu/immigration/reports/482/>.

The legislation would also allow unaccompanied children to be removed to a third country. Furthermore, it changes the safe third country provision by eliminating the requirement that the United States have an agreement with another country and instead allows those seeking protection to be removed based solely on the Secretary of Homeland Security's determination that those seeking protection, including children, would not face threats to their life and freedom in a third country and would have a fair opportunity to seek asylum.

There is plenty of evidence that children would experience harm in third countries within the Western Hemisphere. There have been over 13,000 attacks reported against asylum seekers and migrants stranded in Mexico under the Title 42 policy over the past two years alone.<sup>10</sup> Many children and families do not have access to fair asylum or other protection procedures in Mexico, as there are confirmed reports that Mexican police and other government officials extort them by threatening them with deportation.<sup>11</sup> A UNICEF report on the situation for children in El Salvador found that many communities are effected by gang violence, extortions, death threats and forced recruitment, and the lack of specialized services for children hinders their protection.<sup>12</sup> A similar report for Honduras stated that violence in the form of killings, extortion, abuse, and forced recruitment are a “daily reality” for children and families.<sup>13</sup> In Guatemala, children are exposed to high rates of violence and exploitation, with high rates of impunity and little access to protection services.<sup>14</sup> If these threats are common for children and families from these countries, it is fair to assume such harms are also likely for migrant children and families. Lastly, U.S. government reports describe the asylum systems of several countries in the Western Hemisphere as inaccessible.<sup>15</sup> This legislation would increase the risk that children and families will wrongfully be sent to countries where they would experience persecution, trafficking, and abuse.

Additionally, the bill would deny access to asylum for children who are forcibly recruited in gangs or have experienced a crime in their home country, while also narrowing the definition of “membership in a particular social group.” This bill ignores that fact that these forms of violence are often based on children's specific status, such that U.S. courts have recognized child claims for

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<sup>10</sup> *Human Rights Stain, Public Health Farce*, Human Rights First (December 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/12/HumanRightsStainPublicHealthFarce-1.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *Country Office Annual Report 2021: El Salvador*, UNICEF 2 (2021), <https://www.unicef.org/media/116261/file/El-Salvador-2021-COAR.pdf>.

<sup>13</sup> *Country Office Annual Report 2021: Honduras*, UNICEF 1 (2021), <https://www.unicef.org/media/117051/file/Honduras-2021-COAR.pdf>.

<sup>14</sup> *Country Office Annual Report 2022: Guatemala*, UNICEF 2 (2022), <https://www.unicef.org/media/135941/file/Guatemala-2022-COAR.pdf> (stating that sexual violence against children represented 72 percent of total cases registered in the country).

<sup>15</sup> The U.S. government describes El Salvador's asylum system as having “major regulatory and operational gaps.” U.S. Department of State, *2021 Country Reports on Human Rights Practices: El Salvador*, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/el-salvador/> (last accessed March 22, 2023). Similarly, the U.S. government reports that Honduras' asylum system is “nascent” and that those trying to access the system, including children, were particularly vulnerable to abuse and sexual exploitation. U.S. Department of State, *2021 Country Reports on Human Rights Practices: Honduras*, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/honduras/> (last accessed March 22, 2023). The U.S. government human rights report on Guatemala states that the country's asylum system fails to adequately identify asylum seekers and limits access. U.S. Department of State, *2021 Country Reports on Human Rights Practices: Guatemala* <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/guatemala/> (last accessed March 22, 2023).

asylum based on such violence.<sup>16</sup> Our own government recognizes that children are often targets for gang recruitment and gang violence in their home countries.<sup>17</sup> 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 recruitment.<sup>18</sup> Additionally, for many children who have been or fear being a victim of a crime in their home country, they must flee precisely because the government is unable or unwilling to control non-state actors who would harm children and families. Rather than recognizing the unique threats that make children flee for safety, this bill would deny them protection and send them back to the danger they fled.

Overall, this legislation would increase children's risk of wrongfully being denied for 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>19</sup> Thank you for your consideration.

Sincerely,



Bruce Lesley  
President

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<sup>16</sup> Center for Gender and Refugee Studies, Children's Asylum Claims: CGRS Practice Advisory 18 (2015), [https://cgrs.uchastings.edu/sites/default/files/CGRS\\_Child\\_Asylum\\_Advisory\\_3-31-2015\\_FINAL.pdf](https://cgrs.uchastings.edu/sites/default/files/CGRS_Child_Asylum_Advisory_3-31-2015_FINAL.pdf) (listing gender, family membership, domestic relationships, mental illness, childhood at the time of persecution, and others as immutable and fundamental characteristics).

<sup>17</sup> 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).

<sup>18</sup> 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](http://jesuits.org/Assets/Publications/File/Report_UnwillingParticipants_v4.pdf).

<sup>19</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>.