

January 25, 2023

The Honorable Chip Roy  
United States House of Representatives  
Washington D.C. 20515

Dear Representative Roy:

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. 29, the Border Safety and Security 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.<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 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> Since the passage of that Act, our federal law has stated 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

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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>.

<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).

Reauthorization Act of 2008 (TVPROA) to protect immigrant children from trafficking.<sup>8</sup> The TVPROA mandates transfer 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 Homeland Security to indiscriminately expel all individuals, including unaccompanied children and children with families, without any evaluation of whether they would experience harm if returned to another country or their country of origin. Furthermore, the bill would require the Secretary to expel all individuals—again, including children and families—where the Department of Homeland Security (DHS) cannot either detain or return to Mexico all asylum seekers and migrants.

This legislation would result in certain harm for children.<sup>10</sup> Under the current policy of expulsions under Title 42, between March 2020 and May 2022 DHS expelled over 125,000 children to Mexico under Title 42, over 30,000 of whom were children 3 and under.<sup>11</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>12</sup> According to data requested through a Freedom of Information Act request, more than 12,000 children in fiscal year 2021 entered the U.S. 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>13</sup>

Similar to Title 42, past implementation of the “Migrant Protection Protocols” or Remain in Mexico program, which this legislation would require DHS to use, resulted in children’s return to danger or family separation. Under this program, more than 20,000 children were returned to Mexico.<sup>14</sup> In Mexico, children and families experienced high rates of kidnapping, sexual assault, and other violence.<sup>15</sup> Also like Title 42 expulsions, children were either separated from their families by DHS agents or were put in the impossible position of separating from their families to cross the border unaccompanied to find safety.<sup>16</sup> First Focus and other child advocacy organizations joined an amicus brief filed with the Supreme Court outlining story after story of the danger and indignity children and their families faced in Mexico under the Remain in Mexico program.<sup>17</sup>

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<sup>8</sup> 8 U.S.C. § 1232(b).

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

<sup>10</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>.

<sup>11</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>12</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>13</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>14</sup> *US: Border Program’s Huge Toll on Children*, Human Rights Watch (February 2, 2022), <https://www.hrw.org/news/2022/02/04/us-border-programs-huge-toll-children>.

<sup>15</sup> *“Like I’m Drowning:” Children and Families Sent to Harm by US ‘Remain in Mexico’ Program*, Human Rights Watch (January 6, 2021), <https://www.hrw.org/report/2021/01/06/im-drowning/children-and-families-sent-harm-us-remain-mexico-program>.

<sup>16</sup> *Id.*

<sup>17</sup> *Wolf v. Innovation Law Lab, Brief amicus curiae of Young Center for Immigrant Children’s Rights et al.* (January 22, 2021), [https://www.supremecourt.gov/DocketPDF/19/19-1212/167044/20210122180800456\\_19-1212%20Amici%20Curiae.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1212/167044/20210122180800456_19-1212%20Amici%20Curiae.pdf).

This legislation would also mandate the use of family detention, which is harmful to children. Studies and reports have found that children developmentally regress and suffer from loss of appetite, sleep disturbances, clinginess, withdrawal, and aggression when in family detention.<sup>18</sup> Parents also exhibit depression, anxiety, and hopelessness.<sup>19</sup> This toxic stress for both parents and children results in strained parent-child relationships.<sup>20</sup> In evaluating the impact of detention for children, the American Academy of Pediatrics stated that “there is no evidence indicating that any time in detention is safe for children.”<sup>21</sup>

Lastly, the policies in this bill would cause the very chaos and insecurity it purports to address. Analysis of DHS encounters at the border since Title 42 was put in place shows inflated numbers—from the start of fiscal year 2021 through April 2022, one in three border encounters were of a person who had returned to the border after being expelled.<sup>22</sup> As mentioned above, both Title 42 and the Remain in Mexico program made children and families more vulnerable to exploitation by criminal organizations operating at the border. Additionally, these policies push children and families to more dangerous points at the border when they are denied access to ports of entry. Because Title 42 denied families access to safe entry into the United States at ports of entry, last year multiple young children tragically died attempting to cross the Rio Grande River.<sup>23</sup>

Three fourths of Americans of all political affiliations agree that our country should provide asylum to people fleeing persecution and violence.<sup>24</sup> Danger to children should not be an outcomes of our federal laws. When policies focus on children, which the American people agree that all federal policies must do,<sup>25</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>26</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>18</sup> *Locking Up Family Values, Again*, Lutheran Immigration and Refugee Service, The Women’s Refugee Commission (2014), [https://www.lirs.org/assets/2474/lirswrc\\_lockingupfamilyvaluesagain\\_report\\_141114.pdf](https://www.lirs.org/assets/2474/lirswrc_lockingupfamilyvaluesagain_report_141114.pdf).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Julie Linton, et al., *Detention of Immigrant Children*, Pediatrics (May 1, 2017), <https://publications.aap.org/pediatrics/article/139/5/e20170483/38727/Detention-of-Immigrant-Children?autologincheck=redirected>.

<sup>22</sup> *A Guide to Title 42 Expulsions at the Border*, American Immigration Council (October 15, 2021), <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>.

<sup>23</sup> *Two Years of Suffering: Biden Administration Continues Use of Discredited Title 42 Order to Flout Refugee Law*, Human Rights First 5 (March 2022), <https://www.humanrightsfirst.org/sites/default/files/TwoYearsofSuffering.pdf>.

<sup>24</sup> *Post-Midterms Asylum Survey*, U.S. Immigration Policy Center, Welcome with Dignity (November 15, 2022), <https://welcomewithdignity.org/asylum-survey/>.

<sup>25</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>26</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&ceid=](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=)