

April 5, 2023

The Honorable Lindsey Graham
United States Senate
Washington D.C. 20515

Dear Senator Graham:

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 Secure and Protect Act of 2023 (S. 425).

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

The bill would roll back protections in the Flores Settlement Agreement that set standards of care for children in federal custody. 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.³ Additionally, this legislation would permit children to be held in family detention for a prolonged period. 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.⁴ Parents also exhibit depression, anxiety, and hopelessness.⁵ This toxic stress for both parents and children results in strained parent-child relationships.⁶ In evaluating the impact of detention for children, the American Academy of Pediatrics stated that "there is no evidence indicating that any

¹ *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).

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

³ 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>.

⁴ *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.

⁵ *Id.*

⁶ *Id.*

time in detention is safe for children.”⁷ While we appreciate provisions in the bill to ensure basic standards of care in family detention, the fact remains that detention is inherently dangerous for children. Furthermore, the legislation’s provision preventing states from requiring family detention facilities to adhere to state licensing requirements further increases the risk that children will experience harmful conditions while in detention.

The bill also eliminates protections for unaccompanied children in the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRRA), which Congress unanimously passed to protect children from trafficking and abuse. The legislation would allow migrant children to be sent back to their country of origin without any consideration for their safety based on the unreviewable 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 TVPRRA, 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.⁸ 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 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.⁹

The bill would also add restrictions to unaccompanied children’s release to sponsors. First, the bill is redundant of protections that already exist to ensure unaccompanied children are safe upon release. Second, the bill would require the Department of Health and Human Services (HHS) to share information related to a sponsor, potential sponsor, or member of a sponsor’s household with the Department of Homeland Security (DHS). 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.¹⁰ Fortunately, over 80 percent of

⁷ 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>.

⁸ *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/>.

⁹ *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>.

¹⁰ *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>.

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.¹¹

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.¹² The 2018 memorandum of agreement between HHS and DHS bore this out—it resulted in children remaining in ORR custody for prolonged periods and deteriorating physical, mental, and behavioral health for children.¹³ 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.”¹⁴

Additionally, 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.¹⁵ 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.

The bill would also deny asylum to those who do not enter the country at a designated port of entry. This provision would contravene the Refugee Convention’s prohibition against imposing penalties on those seeking asylum based on irregular entry into a country of refuge,¹⁶ which the United States is obligated to uphold since it acceded to the 1967 Protocol Related to the Status of Refugees.¹⁷ This provision would impact both unaccompanied children and children in families, denying them asylum not because they do not have a well-founded fear of persecution in the country they fled but because of how they crossed the border in a circumstance of desperation and urgency. This provision further ignores that children often have no control over how they cross the border, and yet would penalize children for a decision over which they have no control.

Lastly, the bill would raise the burden of proof for credible fear interviews, which occur in the context of expedited removal. Expedited removal deprives families and children in them a fair

¹¹ 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>

¹² 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>.

¹³ *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>.

¹⁴ 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>.

¹⁵ 8 U.S.C. § 1101(a)(27)(f).

¹⁶ UN General Assembly, *Convention Relating to the Status of Refugees* art. 31(1), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <https://www.refworld.org/docid/3be01b964.html>.

¹⁷ See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987).

opportunity to articulate their fear of persecution upon return to their country of origin, as First Focus and the Young Center for Immigrant Children’s Rights explained in our recently published report.¹⁸ Under the policy, armed and uniformed agents, with whom families are unlikely to recount sensitive facts related to their claim for protection, perform the initial processing and screening.¹⁹ Additionally, the speed of expedited removal makes it difficult for families to access the support of counsel, which both increases efficiencies in the immigration court system and the effective presentation of asylum seekers’ cases.²⁰ Detention, which would occur for families under this legislation, further makes expedited removal harmful as it decreases the likelihood that families will find counsel.²¹

Expedited removal also denies children the opportunity to make a claim for protection independent of their parent or legal guardian. A report by the U.S. Commission for International Religious Freedom on expedited removal found that children under 14 arriving with parents had few opportunities to make an independent claim for protection from their parents, as border patrol agents question the parent on behalf of the child.²² When asked about scenarios where children might have a claim independent from their parent or legal guardian, “border patrol agents responded . . . that they were confident that, since the child had made it to the safety of the United States, s/he would voice any concerns s/he had.”²³ It is understandable that children recently arriving to the United States would not feel comfortable speaking to an armed agent in uniform about their fear. Furthermore, border agents often are not trained in speaking to or interviewing children and are unlikely to learn the facts necessary to determine whether a child has a separate fear of return to their country of origin. Thus, by its very nature, expedited removal is harmful to children seeking protection.

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.²⁴ Thank you for your consideration.

¹⁸ *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>.

¹⁹ Elizabeth Cassidy and Tiffany Lynch, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, U.S. Commission on International Religious Freedom, 30 (2016), <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.

²⁰ Karen Berberich and Nina Suilc, *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>.

²¹ Ingrid Eagly, Steven Shafers, and Jana Whalley, *Detaining Families: A Study of Asylum Adjudication in Family Detention*, American Immigration Council 14-15 (August 2018), https://www.americanimmigrationcouncil.org/sites/default/files/research/detaining_families_a_study_of_asylum_adjudication_in_family_detention_final.pdf.

²² Elizabeth Cassidy and Tiffany Lynch, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, U.S. Commission on International Religious Freedom, 30 (2016), <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.

²³ *Id.*

²⁴ 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>.

Sincerely,

Bruce Lesley

Bruce Lesley
President