

**First Focus Campaign for Children  
Statement for the Record  
U.S. House of Representatives Judiciary Committee  
Hearing: “The Biden Border Crisis: Part 1”**

**February 1, 2023**

Chairman Jordan, Ranking Member Nadler, and Members of the House Judiciary Committee, we thank you for the opportunity to submit this statement for the record. First Focus Campaign for Children is a bipartisan child advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. As an organization that advocates for the health and well-being of all children, we have long urged both Congress and various administrations to uphold the best interests of the child in all immigration policy. Approaching policy with this principle would lead to clear solutions for border policy, ensuring that children are safe, adequately cared for, and have a fair opportunity to seek protection in the United States.

It is imperative that we identify the true “crisis:” the danger and insecurity that children and families face in their countries of origin, on their journey to find safety, and at our border. The circumstances at our border do not start there, but rather originate in children’s countries of origin. For many years, children have fled violence, abuse, and persecution in Central America and other countries of origin to seek protection in the United States.<sup>1</sup> In November 2022, the UN Committee for the Rights of the Child warned about severe violations of children’s rights in Haiti, including increased risk of being forcibly recruited, sexually abused, kidnapped, injured or killed by armed gangs.<sup>2</sup> The U.S. Institute of Peace states that Venezuela is in the midst of an “unprecedented social and humanitarian collapse” resulting from bad economic policies and political conflict, resulting in the second largest migrant displacement crisis in the world.<sup>3</sup> In June 2022, then-UN High Commissioner for Human Rights Michelle Bachelet stated noted that Nicaragua has faced political, human rights, and electoral crises for the past four years.<sup>4</sup> With little protection from traffickers, gangs, and gender-based violence in the region and with few other channels to safely resettle, children and families are fleeing to seek safety at our borders.

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<sup>1</sup> *Central American Migration: Root Causes and U.S. Policy*, Congressional Research Services (Apr. 22, 2021), <https://s3.amazonaws.com/fn-document-service/file-by-sha384/67af38233d694a1d8d7781e777d6b472dea23629425105dcacbb646e31d4fec58c4a8a98611df2b1aac4cc98a881abb>. *Families on the Run: Why Families Flee From Northern Central America?*, UN High Commissioner for Refugees, UNICEF (2020), <https://familiesontherun.org/>.

<sup>2</sup> *Immediate Action Needed to Save Children’s Lives in Haiti Amid Triple Threat of Cholera, Malnutrition, and Violence*, UN Child Rights Committee Warns, United Nations Office of the High Commissioner for Human Rights (November 1, 2022), <https://www.ohchr.org/en/statements/2022/11/immediate-action-needed-save-childrens-lives-haiti-amid-triple-threat-cholera>.

<sup>3</sup> *The Current Situation in Venezuela: A USIP Fact Sheet*, U.S. Institute of Peace (February 18, 2022), <https://www.usip.org/publications/2022/02/current-situation-venezuela>.

<sup>4</sup> *Amid ‘Inhumane’ Conditions, Bachelet Urges Nicaragua to Release All Detainees*, UN News (June 16, 2022), <https://news.un.org/en/story/2022/06/1120612>.

Over several years, the demographic of those arriving at our border seeking safety has shifted to a greater proportion of children and families.<sup>5</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 rather than promoting children's health and safety, Administration policies and legislative proposals would create unsurmountable barriers to children and families' access to the humanitarian protection afforded them under federal law.

### **The History of U.S. Law on Humanitarian Protection**

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>6</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>7</sup> Similarly, the United States has ratified the Convention against Torture and cannot return a person to country where they would experience torture.<sup>8</sup> More than 40 years ago, Congress integrated that obligation into our federal laws by passing the Refugee Act of 1980.<sup>9</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>10</sup>

Furthermore, Congress unanimously passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to protect immigrant children from trafficking.<sup>11</sup> The TVPRA mandates transfer of 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>12</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.

### **Past and Current Policies Harm Children**

Even though country conditions have forced children and families to flee their countries of origin and that our laws mandate that they have an opportunity to make a claim for humanitarian protection, policymakers continue to propose or implement border policies focused on deterrence

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<sup>5</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 U.S. border has increased five-fold since 2008).

<sup>6</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>7</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>8</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>9</sup> 102 Public Law 96-212 (March 17, 1980).

<sup>10</sup> 8 U.S.C. § 1158(a)(1).

<sup>11</sup> 8 U.S.C. § 1232(b).

<sup>12</sup> *Id.*

and which are proven to put children in harm's way. Under multiple administrations, children have been subjected to prolonged detention that undermined their safety,<sup>13</sup> dangerous conditions that resulted in the death of at least seven children after being in border facilities,<sup>14</sup> and barriers to accessing our asylum system.

In 2019, the previous Administration began to implement “Migrant Protection Protocols” or Remain in Mexico program, a novel interpretation of immigration law. The Remain in Mexico program resulted in the return of children to danger or family separation. Under this program, more than 20,000 children were returned to Mexico.<sup>15</sup> In Mexico, children and families experienced high rates of kidnapping, sexual assault, and other violence.<sup>16</sup> The policy also resulted in family separation, which has been condemned as an egregious result of past immigration policies by policymakers of all parties.<sup>17</sup> 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>18</sup> First Focus and other child advocacy organizations joined an amicus brief filed with the United States 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>19</sup>

In the wake of the COVID-19 pandemic, the previous Administration also misused a public health provision under Title 42 of the U.S. Code to indiscriminately turn away children, families, and individuals at our border without any evaluation of whether they would be safe in Mexico or upon return to their home country. The result was certain harm for children.<sup>20</sup> Before federal courts ordered unaccompanied children exempt from Title 42 expulsions in November 2020, Border Patrol turned away unaccompanied children more than 13,000 times.<sup>21</sup> Additionally, between March 2020 and May 2022, Cato Institute found that DHS expelled over 125,000 children to Mexico under Title 42, over 30,000 of whom were children 3 and under.<sup>22</sup> About 41 percent of these expulsions took place at midnight or later, making children and families uniquely vulnerable to kidnapping, trafficking, and violence. Title 42 has also been a tool for family separation. According to data

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<sup>13</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>. (stating that “there is no evidence indicating that any time in detention is safe for children.”)

<sup>14</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>15</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>16</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>17</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>18</sup> *Id.*

<sup>19</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).

<sup>20</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>21</sup> Hamed Aleaziz, *Border Officials Turn Away Unaccompanied Immigrant Children More Than 13,000 Times Under Trump’s Pandemic Policy*, BuzzFeed News (October 28, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/border-officials-turned-away-unaccompanied-immigrants>.

<sup>22</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>.

requested through a Freedom of Information Act request, more than 12,000 children in Fiscal Year 2021 entered the U.S. as unaccompanied 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>23</sup> The Biden Administration's expansion of Title 42 and new but narrow parole programs continue to keep children in danger. Just last week, Jairon Abraham Cruz, a 17-year-old from Cuba, was killed while waiting for the appointment his family had in February to cross the border.<sup>24</sup>

Lastly, policies like Remain in Mexico and Title 42—which have been touted as solutions to border safety and security<sup>25</sup>—cause the very chaos and insecurity policymakers claim they would 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>26</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>27</sup> The results of these policies take a toll on both border officials and the children, families, and individuals who want a fair opportunity to seek safety.

## Recommendations

Despite clear evidence that deterrence-based policies do not work and inflict harm on children and families, and 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, both the Administration and members of Congress continue to lean on these policies as solutions. Danger to children should not be an outcome of our federal laws and policies, and the American people agree. Three fourths of Americans of all political affiliations agree that our country should provide asylum to people fleeing persecution and violence.<sup>28</sup> They also agree that federal policy should always be governed by standards that make children's best interests and well-being the first priority.<sup>29</sup> When policies focus on children, 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>30</sup>

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<sup>23</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>24</sup> *Joven Migrante Cubano, Asesinado a Tiros en un Hotel en México: Estaba a la Espera de Llegar a EEUU*, Univision (January 23, 2023), <https://www.univision.com/local/miami-wltv/joven-migrante-cubano-asesinado-a-tiros-en-un-hotel-en-mexico-estaba-a-la-espera-de-llegar-a-eeuu-video>.

<sup>25</sup> H.R. 29 – *Border Safety and Security Act of 2023*, Congress.gov (January 9, 2023), <https://www.congress.gov/bill/118th-congress/house-bill/29/text?r=4&s=1>.

<sup>26</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>27</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>28</sup> *Post-Midterms Asylum Survey*, U.S. Immigration Policy Center, Welcome with Dignity (November 15, 2022), <https://welcomewithdignity.org/asylum-survey/>.

<sup>29</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>30</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->

We encourage Congress and the Administration to implement the following recommendations:

1. **Support children’s well-being in their countries of origin and through safe pathways to the United States.** U.S. foreign assistance to Central America and other parts of the world should prioritize outcomes that are in the best interests of children, such as addressing child poverty, improving child protection systems, better access to education, nutrition, medical and mental health care, and support for whole families. We applaud the Administration for restarting the Central American Minors Program and urge the expansion of that program and the beginning of other programs. However, such programs must supplement our asylum system, not replace it.
2. **Build a welcoming and safe reception system at the border.** Children and families should have unrestricted access to the U.S. border, including ports of entry, to seek protection, as the law requires. The government should create child-friendly reception centers staffed with professionals in child protection that meet children and families’ immediate and basic needs in the shortest period possible. Unaccompanied children should be transferred to the custody of Health and Human Services, and families should be referred to government-supported nonprofits that provide shelter, reception, and support for people to get to their final destinations. Throughout this process, families should remain together.
3. **Invest in programs that provide support to children and families seeking protection in community.** Rather than being jailed or subject to electronic surveillance, children and families should have access to voluntary and wholistic services in the community to help them understand the immigration system and meet their social and emotional needs through basic health, mental health, housing, and income support services. The government should reallocate funds used for immigration detention and surveillance for these services in receiving communities. Unaccompanied children should have access to family and community-based placements until they are promptly and safely reunited with a sponsor and have access to services in their communities once released from government custody.
4. **Build child-friendly programs and procedures that provide children and families a fair opportunity to make their claim for protection.** Children and families should have guaranteed access to legal representation and adequate time to begin to recover from their journey and build their case. The government should implement child-friendly policies and procedures for immigration proceedings, including a trauma-informed children’s corps of asylum officers and immigration judges that handle all child and family cases.
5. **Establish a best interest standard for all immigration decisions.** All federal agencies that deal with unaccompanied children should adopt a best interest of the child standard to consistently guide all decisions made regarding their care and their eligibility for humanitarian relief.<sup>31</sup> A best interests standard considers a policy’s impact on a child’s safety, health, development, family unity, and identity.<sup>32</sup> In a May 2022 poll by Lake Research Partners, an overwhelming 82 % of voters of across all political persuasions supported the

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<sup>31</sup> Jennifer Nagda & Maria Woltjen, “Best Interests of the Child Standard: Bringing Common Sense to Immigration Decisions,” Big Ideas 2015 – Pioneering Change: Innovative Ideas for Children and Families, 11, March, 2015, <https://firstfocus.org/wp-content/uploads/2015/04/Best-Interests-of-the-Child-Standard.pdf>.

<sup>32</sup> *Id.*

establishment of such a standard, with 69 percent in strong agreement.<sup>33</sup> We urge both Congress and the Administration to adopt and apply such a standard to all policies that impact children.

We thank you again for this opportunity to submit this written testimony. We look forward to working with you to advance true solutions to U.S. border management that are in children's best interests by protecting their safety, family unity, and general well-being. Should you have any further questions please contact Miriam Abaya, Vice President for Immigration and Children's Rights at [miriama@firstfocus.org](mailto:miriama@firstfocus.org).

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<sup>33</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>.