

**First Focus Campaign for Children
Statement for the Record
U.S. House of Representatives Judiciary Committee
Hearing: “The U.S. Immigration System: The Need for Bold Reforms”**

February 11, 2021

Chairman Nadler, Ranking Member Jordan, and Members of the House Judiciary Committee, we thank you for the opportunity to submit this statement for the record for the hearing on the need for bold reforms to the U.S. immigration system, including a path for citizenship for undocumented people, the modernization of family-based immigration, and strengthening our asylum and refugee systems. We understand that President Biden’s immigration bill would reform all of these aspects of the immigration system, and we commend their inclusion.

The First Focus Campaign for Children is a bipartisan advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. Our organization is committed to ensuring that our nation’s immigration policies promote the best interests of children by ensuring that all children are given their fundamental rights, are kept together with their families, and have the opportunity to live a healthy and successful life in the United States.

The American people agree that every law and policy must be guided by a “best interest of the child” standard.¹ However, children have historically been disregarded or targeted for intentional cruelty in U.S. immigration policy decisions. Children have few protections under current immigration law, and their best interests are often not considered when making critical decisions about their own or their family members’ ability to enter or stay in the United States. Overall, immigration law and policy’s failures to consider children’s best interests has negatively impacted children, their families, and their communities. Bold reform means creating an immigration system that protects children and ensures consideration of their best interests.

The Failure to Consider Children in Current Immigration Policy

Children of immigrants comprise approximately one in four of all children in the United States and are the fastest growing segment of the child population.² Of these children, approximately 5 million have a parent who is undocumented or is a DACA or TPS recipient.³ Additionally, children

¹ Bruce Lesley, *Voters Have Spoken and They Support Children*, First Focus on Children (Nov. 23, 2020), <https://firstfocus.org/blog/voters-have-spoken-and-they-support-children>.

² *Children in U.S. Immigrant Families*, Migration Policy Institute, <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families?width=1000&height=850&iframe=true>. (Accessed Nov. 5, 2020).

³ Randy Capps, Michael Fix, & Jie Zong, *A Profile of U.S. Children with Unauthorized Immigrant Parents*, Migration Policy Institute (Jan. 2016), <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>. Nicole Prchal Svajlenka, *What We Know About DACA Recipients in the United States* (Sept. 5, 2019), <https://www.americanprogress.org/issues/immigration/news/2019/09/05/474177/know-daca-recipients-unitedstates/>.

and families make up most of those arriving at our borders in search of safe haven from violence and harm.⁴ However, current immigration law provides few protections for children who are immigrants themselves or children of immigrants and their families.

The current family-based immigration system allows U.S. citizens and legal permanent residents to petition for immigrant visas for certain family members. The backlog of family-based immigration means families might wait as long as 20 years to receive a visa, and U.S. citizen children face an even larger obstacle to family-based immigration. A child-parent relationship is prioritized in family-based immigration, but only if the parent has legal immigration status and is petitioning on behalf of their undocumented children. A U.S. citizen child cannot file a petition for their undocumented parents to obtain lawful immigration status until the child is over 21 years old, and thus is no longer a child. This is also the case for child asylees and refugees—while adult asylees and refugees can petition for status for their spouses and children, child asylees and refugees cannot petition for status for their parents. Immigration law also places additional burdens on family-based immigration for other family members and for those with legal permanent residency status, failing to acknowledge other family members who might be primary caregivers of children and creating a hierarchy of who is able to reunify with family.

Additionally, undocumented parents who face deportation face barriers to cancellation of removal, even if deportation would separate them from their U.S. citizen or legal permanent resident child. When seeking cancellation of removal, an individual must prove “exceptional and extremely unusual hardship”⁵ to a U.S. citizen spouse, parent or child. Case law defines “exceptional and extremely unusual hardship” as “substantially different from, or beyond that which would normally be expected from the deportation of an alien with close family members here.” Thus, U.S. immigration law requires the disproportionate suffering of children to stop a parent’s deportation. As mentioned earlier, immigration law also does not account for other family member who are primary caregivers of children and whose deportation might result in similar trauma and hardship for children. While other areas of law recognize the unique needs of children and are designed to preserve family unity and ensure children’s well-being, immigration law takes a distinctly different, and harmful, approach.

There are also children and families who arrive at our borders seeking safety from persecution and violence. These children and families often lack other safe channels, like refugee resettlement, to seek protection from persecution. Instead, after arriving at our border they face our complex immigration system, which includes adversarial proceedings before an immigration judge, without the guarantee of legal representation and often in some form of detention. Children in families are also subject to various asylum bars, including the safe third country bar and the one-year filing deadline.

Unaccompanied children have few but vital protections in immigration law. Under the 2008 Trafficking Victims Protection Act, unaccompanied children from countries that do not border the United States are immediately transferred to the custody of the Office of Refugee Resettlement (ORR), where they are placed in shelters with access to legal, medical, and mental health services before being promptly and safely released to a sponsor, most often a family member.⁶

⁴ *Southwest Border Migration FY 2020*, U.S. Customs and Border Protection (Oct. 14, 2020), <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

⁵ 8 U.S.C.A. § 1229b.

⁶ 8 U.S.C. § 1232(b-c).

Unaccompanied children also have the right to first pursue their claim for protection in a non-adversarial process before U.S. Citizenship and Immigration Services (USCIS), and are exempt from the safe third country and one-year filing deadline bars for asylum.⁷ However, there are still many gaps in protection for unaccompanied children—they are not guaranteed legal representation in their immigration proceedings and generally face the same complex immigration system as adults.

Causing Children Harm

Immigration law's complete disregard for children's best interests result in high rates of family separation, emotional trauma, economic instability, and limited access to critical services and programs for children and families.

According to the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) deported approximately 28,000 parents of U.S. citizen children in 2019 alone.⁸ Children separated from their parents due to detention or deportation experience toxic stress, often exhibited in increased fear, anger, crying and changes in sleeping and eating habits.⁹ Additionally, families often experience economic hardship, including instability in housing and nutrition, because a parent's deportation or detention.¹⁰ Separation from parents or primary caregivers also deny children important foundational relationships that help them regulate their emotions, meet developmental milestones, and more fully engage with their family, peers, and community.

There are also many children and youth who were brought to the United States as minors, who have grown up in the United States, and are vital to our communities and our country. In 2012, the Department of Homeland Security created the Deferred Action for Childhood Arrivals (DACA) program, which granted young people eligible for the program relief from deportation and improved access to higher education, career opportunities, and basic necessities such as a driver's license or credit card.¹¹ However, DACA recipients and other immigrant youth still face barriers to higher education, including the lack of financial aid.¹² DACA recipients also face barriers to health coverage, as the Department of Health and Human Services has not yet expanded eligibility for CHIP, Medicaid, and the Affordable Care Act exchanges despite DACA recipients being lawfully present.¹³ DACA is not permanent, and has been under threat multiple times from some Republican

⁷ 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C).

⁸ U.S. Department of Homeland Security, *Deportation of Parents of U.S.-Born Children: First Half, Calendar Year 2019* (Apr. 13, 2020), https://www.dhs.gov/sites/default/files/publications/ice_-_deportation_of_parents_of_u.s.-born_children_first_half_cy_2019.pdf. U.S. Department of Homeland Security, *Deportation of Parents of U.S.-Born Children: Second Half, Calendar Year 2019* (July 22, 2020), https://www.dhs.gov/sites/default/files/publications/ice_-_deportation_of_parents_of_u.s.-born_children_second_half_cy_2019.pdf.

⁹ Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-being of Children in Immigrant Families*, Urban Institute (Sept. 2015), <https://www.urban.org/sites/default/files/alfresco/publication-exhibits/2000405/2000405-Implications-of-Immigration-Enforcement-Activities-for-the-Well-Being-of-Children-in-Immigrant-Families.pdf>.

¹⁰ *Id.*

¹¹ *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca> (last updated Feb. 4, 2021).

¹² Christian Juarez, *The Obstacles Unauthorized Students Face in Postsecondary Education*, Center for American Progress (Dec. 21, 2017), <https://www.americanprogress.org/issues/immigration/news/2017/12/21/444414/obstacles-unauthorized-students-face-postsecondary-education/>.

¹³ Vanessa Lopez & Tim K Mackey, *The Health of Dreamers*, Health Affairs (Feb. 13, 2018), <https://www.healthaffairs.org/doi/10.1377/hblog20180209.367466/full/>. *Frequently Asked Questions: DHS DACA FAQ's*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/consideration-of-deferred->

Attorneys General and the Trump Administration. Moreover, only some immigrants are eligible for DACA, leaving others vulnerable to deportation.

Lastly, children of immigrants and their families face multiple structural barriers to critical public services and programs that support their healthy development, including CHIP, Medicaid, food assistance through SNAP, and economic support through TANF. Children and families who have recently received legal permanent residency must wait for a five-year period before being eligible for these benefits, and undocumented children and families are barred from accessing these benefits.¹⁴ Changes to the immigration system like the Trump administration's public charge rule acted as a scare tactic and led families to avoid critical services for which they were eligible.¹⁵ Additionally, barriers of cumbersome applications processes, lack of language access, and fear of enforcement based on immigration status prevent children of immigrants and their families from utilizing programs that contribute to children's health, development, and economic stability.¹⁶

Our immigration system also has a legacy of anti-Black racism, disproportionately impacting Black immigrants and their children. Black immigrants disproportionately face longer periods in detention, higher bond, and greater risk of deportation.¹⁷ Though 7 percent of non-citizens in the United States, Black immigrants make up one fifth of those facing deportation on criminal grounds, displaying the intersection of racism in our immigration and criminal legal systems.¹⁸ During the COVID-19 pandemic, almost half of the families in family detention were Haitian.¹⁹ As a result, Black children of immigrants face higher risk of family separation and emotional trauma, on top of other systemic barriers experienced by Black children in the United States.

Recommendations:

We cannot continue with immigration policy that disregards or intentionally harms children and their families. Congress now has an opportunity to enact bold reforms that are in children's best interests—promoting their safety, family unity, and the opportunity to grow into their full potential. Immigration reform should do the following:

1. **Create a clear, direct, and reasonable pathway to citizenship.** We understand that the Biden administration's immigration bill provides an 8-year path to citizenship for all undocumented people and immediate green cards for Dreamers and others with temporary status. We urge Congress to move forward with this path to citizenship.

[action-for-childhood-arrivals-daca/frequently-asked-questions#:~:text=An%20individual%20who%20has%20received,deferred%20action%20is%20in%20effect](#) (last updated Feb. 4 2021).

¹⁴ Tanya Broder, Avidah Moussavian, & Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, National Immigrant Law Center (Dec. 2015), <https://www.nilc.org/wp-content/uploads/2015/12/overview-immeligfedprograms-2015-12-09.pdf>.

¹⁵ Hamutal Bernstein et al., *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute (May 2020), https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf.

¹⁶ *Id.*

¹⁷ *Black Immigrant Lives are Under Attack*, RAICES, https://www.raicestexas.org/2020/07/22/black-immigrant-lives-are-under-attack/?ms=raices_tw (last visited Feb. 9, 2021).

¹⁸ Juliana Morgan-Trostle & Kexin Zheng, *The State of Black Immigrants*, Black Alliance for Just Immigration, <http://baji.org/wp-content/uploads/2020/03/sobi-fullreport-jan22.pdf> (last visited Feb. 9, 2021).

¹⁹ *Black Immigrant Lives are Under Attack*, *supra* note 17.

2. **Keep families together.** All immigration laws and policies related to children and their families must promote and prioritize family unity. All children should remain with their parents and other family members at the border, and immigration law must prohibit the separation of families as a deterrent for migration. Immigration law should enable immigration judges and DHS officials to exercise discretion in enforcement, admission and removal decisions to prevent the harm of family separation on children. The immigration system must also be modernized to eliminate discrimination and limitations in the family-based immigration system, including clearing current backlogs, increasing the number of family-based and diversity visas, and expanding which family members are eligible for visas as immediate relatives.
3. **Protect and promote children’s fundamental rights.** Immigrant children must have equal access to services that support their safety, health and well-being, particularly legal representation to support their claims for humanitarian protection. We understand that the Biden administration’s bill would provide guaranteed legal representation for all children who face immigration authorities. We urge Congress to ensure that all children have legal representation, and all vulnerable unaccompanied children are appointed an independent child advocate to advocate for their best interests.
4. **Promote children’s healthy development and economic security.** Access to social supports ensure that all children grow up healthy, well fed, and with access to future opportunities. Immigration reform must ensure that children of immigrants and their families can access these supports, regardless of where they are on the path to citizenship.
5. **Adopt a Best Interests of the Child Standard for all immigration decisions.** A best interest of the child standard is one of many safeguards necessary to ensure that government policies consider the needs and rights of children. This standard would ensure that children’s safety, views, family unity, liberty, development, and identity are considered in immigration policy,²⁰ and that policies are implemented equitably to ensure the non-discrimination of children based on their race, ethnicity, immigration, and other status.

We thank you again for the opportunity to submit this written testimony. We look forward to working with Congress to ensure immigration reform that is in the best interests of children. Should there be any questions regarding this statement, please contact Miriam Abaya, Senior Director for Immigration and Children’s Rights at miriama@firstfocus.org.

²⁰ 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>.