



FIRST FOCUS

MAKING CHILDREN & FAMILIES THE PRIORITY

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**First Focus
Statement for the Record**

**U.S. House of Representatives Committee on Homeland Security
Hearing on the Way Forward on Border Security**

March 6, 2019

Chairman Thompson, Ranking Member Rogers, and Members of the House Committee on Homeland Security, we thank you for the opportunity to submit this statement for the record. First Focus is a bipartisan children’s 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 in the United States, we are deeply concerned with the Trump Administration’s enforcement only approach to border security and the broader immigration enforcement attacks on immigrant children and families.

Immigration policies that guide enforcement procedures including the arrest, detention, and removal of non-U.S. citizens have a significant impact on the lives of the children involved in these circumstances. Despite being directly affected, children are often an afterthought in policy efforts to curb legal and illegal immigration. Recent changes to immigration and asylum policies are already having a significant impact on the lives of children and families.

The Administration’s 2018 “zero- tolerance” policy resulted in thousands of children being separated from their parents, and families continue to be subjected to separation in some areas of the border due to the increased criminalization of asylum seekers.¹ Alarmingly, in October of last year, the Trump Administration considered a renewed effort of forcing family separation by intimidating parents with the idea of keeping them detained indefinitely with their children in prison-like settings.²

During the recent series of House oversight hearings, on the “zero-tolerance” policy, it was evident that Federal agencies are content to pass the buck on the responsibility for reunifying children and families who were subjected to this cruel and unnecessary separation. Chief Provost of Customs and Border Protection (CBP) stated that in the eyes of her department the “zero-tolerance” policy was a “prosecution initiative” and reunification was not in their wheelhouse. Federal agencies must be held accountable for their roles in implementing this outrageous policy. It was the collective effort of multiple federal agencies, and each agency must be involved in efforts to repair the damages.

¹ <http://time.com/5534255/texas-civil-rights-project-report-2019/>

² <https://firstfocus.org/news/press-release/statement-new-family-separation-efforts-will-lead-to-imprisonment-of-children>

Additionally, in January, the Administration increased their efforts to deter families with children from seeking asylum in the United States via the “Migrant Protection Protocols.” This so-called “humanitarian approach”³ forces asylum seekers who have traveled thousands of miles to remain in Mexico for prolonged periods of time while their application for asylum is processed.

This program further exposes already vulnerable populations to violence, trafficking and dangerous situations which is in direct contradiction to the administration’s stated purpose of the policy. According to a report by Kids in Need of Defense (KIND), “Children are languishing in dangerous and unsanitary makeshift camps. There is no running water and in some cases, irregular access to food.”⁴ This program has caused a humanitarian crisis at our very border and once again, the Department of Homeland Security (DHS) has prioritized deterrence over the health and well-being of children and families.

Finally, we are alarmed at the increasing use of the term “loophole” when discussing protections for vulnerable children. We are concerned with the Administration’s attempts to undermine protections including but not limited to, the Trafficking Victims Protection Reauthorization Act (TVPRA) and the Flores Settlement Agreement (FSA). Rather than weakening protections for children, Congress and the Administration should be strengthening such guidelines. We have seen the need for strengthening these important protections in the deaths of 7-year old Jakelin Caal⁵ and 8 -year old Felipe Alonzo⁶ while in the custody of CBP.

As the conversation continues with regards to the way forward on border security, we ask that Congress uphold current protections for migrant children and build on that foundation by instituting a “best interest of the child” standard for all immigration policies. Children are often invisible during the process of asylum, and children and parents are often seen as separate units. We ask that you consider the role of children in the family and understand it is in the best interest of the child to be free from fear, free from detention, and together with his/her loved ones.

We thank you again for the opportunity to submit this written testimony. We look forward to working with you to implement policies that will help shape this conversation and ensure that all children thrive in the United States. Should you have any further questions please contact Kristen Torres, Policy Director for Child Welfare and Immigration at kristent@firstfocus.org.

³ <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

⁴ <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>

⁵ <https://www.npr.org/2018/12/13/676622047/7-year-old-migrant-girl-dies-of-dehydration-and-shock-in-border-patrol-custody>

⁶ <https://www.npr.org/2018/12/25/680066848/8-year-old-migrant-boy-dies-in-government-custody-in-new-mexico-hospital>

Recommendations:

The United States must implement a “Best Interest of the Child” standard for all border security measures and immigration enforcement efforts.⁷ This standard must ensure that a child’s safety is a priority in all decisions, the child has a voice in his/ her proceedings, the child remains together with family members in the least restrictive setting, and all decisions must promote the health and well-being of the child.

1. Guarantee Children Facing Immigration Court Proceedings Have Legal Representation

Children must have a voice in the decisions that will affect the rest of their lives. In order to pursue this standard, we must ensure that all children in immigration proceedings, both accompanied and unaccompanied, have legal representation. Additionally, the needs of both the children and parents must be considered during proceedings. Children must be appointed an advocate who acts on the wishes and in the best interest of the child when determining the care and custody of immigrant children.

2. Ensure Children are Free from Detention and Placed in the Least Restrictive Setting as Quickly as Possible

The U.S. government must seek out alternatives to detention (ATDs) for children and families. The detention of a child even if he/she is with family, is traumatic and has significant effects on a child’s mental health and physical development. Decades of litigation over the horrific conditions in which migrant children were being held in detention resulted in the 1997 Flores Settlement Agreement (FSA). This agreement set national standards for the detention, release, and treatment of children in the custody of DHS and declares that children should be in the least restrictive setting. This agreement must not be undermined or modified to meet the needs of an enforcement-only approach to immigration reform. If the FSA is modified to allow for indefinite family detention, children will suffer negative life-long consequences and impediments to their childhood development.

3. Prioritize Keeping Families Together in Immigration Policy Decisions When It Is in the Best Interest of the Child

Family unity must be a priority in both the claims of the parent and the child involved in removal proceedings. Congress must prohibit the removal of children from their parents by DHS or the Department of Justice (DOJ) within 100 miles of the U.S. border unless it is in the child’s best interest. Congress must also ensure that the best interest of the child is considered when determining repatriation or referral for prosecution of parents and legal guardians of children. Parents must be allowed to make arrangements for their child’s care and for children to visit their parents while they are detained. U.S. Immigration and Customs Enforcement (ICE) must consider the best interests of the children in all detention, release, and transfer decisions affecting their parents. Family unity should be a priority both at the border and during interior enforcement activities such as workplace raids. Other steps to promote family unity include reinstating judicial

⁷ <https://campaignforchildren.org/wp-content/uploads/sites/2/2018/12/Proactive-Kids-Agenda-FFCC-1.22.19.pdf>

discretion in cases involving the caregivers of minor children and allowing parents in removal proceedings to argue the hardship on behalf of their children.

4. Ensure All Decisions Account for Child Well-Being and Healthy Development

Finally, border security and immigration enforcement decisions involving children must incorporate child welfare professionals and consultation with experts on the healthy development needs of children. Qualified child welfare professionals and language interpreters must be available at ports of entry as well as border patrol stations. Additionally, more must be done to ensure children are guaranteed a safe and sanitary living environment, access to legal services, and access to food and climate appropriate clothing. Immigration enforcement decisions should never impede a child's healthy development or a child's right to education.