

CLASP Statement for the Record
House Committee on the Judiciary
Markup of H.R. 2920, American Families United Act
July 27, 2022

Chairman Nadler, Ranking Member Jordan, and Members of the House Committee on the Judiciary, we thank you for this opportunity to submit a statement for the record for the markup of H.R. 2920, the American Families United Act. Established in 1969, CLASP is a national, non-partisan organization that advances policy solutions for people with low-incomes and communities of color. CLASP conducts research on the impact of immigration policies on children and families and advocates for federal and state policies that mitigate the harm of immigration enforcement and strengthen immigrant families. As experts on the intersection of child development and immigration, we support H.R. 2920 as an important step in improving our immigration laws to keep families together and promote the best interests of children.

Expanding Discretion in Immigration Decisions to Promote Child Well-being and Family Unity

U.S. immigration law has historically devalued children by limiting their rights, failing to consider their best interests, and explicitly disregarding the harmful impact of critical immigration decisions on their safety and well-being. We strongly support the provisions in H.R. 2920 that would allow the Attorney General and the Secretary of the Department of Homeland Security (DHS) to exercise discretion in decisions on whether to remove an individual from the U.S. or bar their entry, for cases when hardship to a U.S. citizen spouse, parent, or child can be demonstrated. Currently, it is estimated that more than 10.6 million U.S. citizens live with at least one undocumented immigrant, and approximately 4.4 million U.S. citizen children¹ have at least one undocumented parent. Every day, these mixed-status families are at risk of being separated due to detention or deportation, and millions have already experienced loss of a family member due to immigration enforcement. For children in particular the consequences are often devastating.

While some policies have been adopted in recent years to mitigate the harm of immigration enforcement on children and families,² thousands of parents of U.S. citizen children continue to be deported each year.

¹ Phillip Connor, *Immigration reform can keep millions of mixed-status families together*, Fwd.us (Sep. 9, 2021), <https://www.fwd.us/news/mixed-status-families/>; Randy Capps et al., *Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins*, Migration Policy Institute (Dec. 2020), <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.

² Emily Butera and Wendy Cervantes, *Family unity in the face of immigration enforcement: Past, present, and future*, In *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*, 51-65, Jointly published by The Sentencing Project and First Focus (Jan. 2013), <https://firstfocus.org/wp-content/uploads/2013/02/Children-in-Harms-Way.pdf>.

Based on congressionally mandated DHS reporting, more than 17,000 immigrants with at least one U.S. citizen child were removed from the United States between July 2019 and July 2020.³ A vast body of research, including research by CLASP focused on young children, has shown that separation from a parent due to detention or deportation has significant consequences on a child’s mental and physical health, economic security, and educational outcomes.⁴ A child’s stable connection to a parent or caregiver is one of the most critical factors affecting their short and long-term development, especially in the early years.⁵ Even the threat of detention and deportation has harmful effects on the health and well-being of children, including low birth weight and declines in food security and health care utilization.⁶ Moreover, the financial stability of children whose parents are deported is greatly undermined, especially when that parent is the primary breadwinner for their family. This increases children’s chances of growing up in poverty or with low incomes, leading to worse child development outcomes, especially cognitive developmental and educational outcomes.⁷

Under current law, cancellations of removal can be waived in certain instances when “exceptional or extremely unusual hardship” can be demonstrated as the result for an individual’s lawfully present or U.S. citizen spouse, parent, or child. However, in particular for children, the threshold for “exceptional or extremely unusual” is often very difficult to meet as immigration law accepts the material and emotional harms of separation from a parent as an “expected and normal” outcome of a parent’s removal. This same “expected and normal” standard also applies to the educational and other social harms that a child experiences in cases where deported parents choose to take their U.S. citizen children with them. In other words, immigration law is designed to dismiss the significant body of research emphasizing the

³ *Deportation of Parents of U.S.-Born Children: Second Half, Calendar Year 2019*, Immigration and Customs Enforcement (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.

⁴ Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Policy Institute (September 2015), <https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families>; Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, *Our Children’s Fear: Immigration Policy’s Effects on Young Children*, Center for Law and Social Policy (Mar. 2018), <https://www.clasp.org/publications/report/brief/our-childrens-fear-immigration-policys-effects-young-children-2/>.

⁵ Sharon H. Bzostek and Audry N. Beck, *Familial Instability and Young Children’s Physical Health*, *Social Science and Medicine* 73 (2011); Heather Sandstrom and Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis*, Urban Institute (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-ofInstability-on-ChildDevelopment-A-Research-Synthesis.PDF>.

⁶ Romina Tome et al., *Heightened immigration enforcement impacts US citizens’ birth outcomes: Evidence from early ICE interventions in North Carolina*, *PLoS ONE* 16(2): e0245020 (2021), <https://doi.org/10.1371/journal.pone.0245020>; Catalina Amuedo-Dorantes, Brandyn Churchill, and Yang Song, *Immigration enforcement and infant health*, *American Journal of Health Economics* 8(3) (2022), <https://www.journals.uchicago.edu/doi/epdf/10.1086/718510>; Scott D. Rhodes et al., *The impact of local immigration enforcement policies on the health of immigrant Hispanic/Latinos in the United States*, *American Journal of Public Health* 105: 329-337 (2015), <https://doi.org/10.2105/AJPH.2014.302218>; Julia Gelatt et al., *State immigration enforcement policies: How they impact low-income households*, Urban Institute (2017), <https://www.urban.org/research/publication/state-immigration-enforcement-policies>.

⁷ Ajay Chaudry and Christopher Wimer, *Poverty is not just an indicator: The relationship between income, poverty, and child well-being*, *Academic Pediatrics* 16(3): S23-S29 (2016), <https://doi.org/10.1016/j.acap.2015.12.010>.

importance of stability and the child-parent connection to a child's long-term development and capacity to thrive.⁸

Individuals who are deported also face barriers to re-entry and are often unable to return up to 3 to 10 years or longer, forcing many deported parents to make the difficult decision to return to the United States without authorization in order to reunify with their children. It is also important to note that bars to re-entry disproportionately impact immigrants of color. A 2021 federal court decision found that the law that criminalized unauthorized re-entry following deportation was created with racist malice and has been applied discriminately.⁹ The 1996 Illegal Immigration and Responsibility Act further exacerbated the consequences for those who re-enter without authorization by subjecting them to mandatory detention, a practice that since has led to a 300% increase in the detention of immigrants—predominantly Black and brown immigrants, many of whom are parents.¹⁰

Once again, U.S. immigration law only allow waivers of inadmissibility in cases where individuals can prove significant harm to a U.S. citizen parent or spouse. The impact to children—including those who are U.S. citizens—is not even a factor. As previously mentioned, parent-child separation is consistently associated with negative child outcomes related to social-emotional development, well-being, and mental health.¹¹ The negative impact is exacerbated the longer children are separated from their caregivers.¹² Yet, our immigration laws explicitly dismiss the significant harm to children caused by parental separation.¹³ Even under the provisional state-side waiver process as established by a 2013 DHS rule that allows certain individuals to remain in the United States as they await the decision of their request, such waivers can only be granted in instances where extreme hardship can be demonstrated impacting an individual's U.S. citizen spouse, parent, or *adult* child, *not* a minor child.¹⁴

H.R. 2920 would remedy the fundamental flaw in our immigration laws that devalue children and undermine their well-being by granting DHS and the Attorney General additional discretion in removal

⁸ David B. Thronson, *Immigration enforcement and family courts*, In *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare* (pp. 51-65), Jointly published by The Sentencing Project and First Focus (Jan. 2013), <https://firstfocus.org/wp-content/uploads/2013/02/Children-in-Harms-Way.pdf>.

⁹ United States v. Carrillo-Lopez, Case No. 20-cr-00026-MMD-WGC, 2021 WL 3667330 (D. Nev. Aug. 18, 2021).

¹⁰ Jesse Franzblau, *A Legacy Of Injustice: The U.S. Criminalization Of Migration*, National Immigrant Justice Center (Jul. 2020), <https://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration>.

¹¹ Luis H. Zayas et al., *The Distress of Citizen-Children with Detained and Deported Parents*, *J Child Fam Stud* 24, 3213–3223 (2015), <https://doi.org/10.1007/s10826-015-0124-8>; Lisseth Rojas-Flores et al., *Trauma and psychological distress in Latino citizen children following parental detention and deportation*, *Psychological Trauma: Theory, Research, Practice, and Policy*, 9(3), 352–361 (2017), <https://doi.org/10.1037/tra0000177>; Kristina Lovat, *Forced separations: A qualitative examination of how Latino/a adolescents cope with parental deportation*, *Children and Youth Services Review* 98: 42-50 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0190740918305498>; Laura C.N. Wood, *Impact of punitive immigration policies, parent-child separation and child detention on the mental health and development of children*. *BMJ Paediat Open*. 2(1) (2018), doi: [10.1136/bmj po-2018-000338](https://doi.org/10.1136/bmjpo-2018-000338).

¹² Anne Bentley Waddoups, Hirokazu Yoshikawa, and Kendra Strouf, *Developmental effects of parent-child separation*, *Annu. Rev. Dev. Psychol.* 2019. 1:387–410 (2019), https://www.researchgate.net/profile/Hirokazu-Yoshikawa/publication/338157788_Developmental_Effects_of_Parent-Child_Separation/links/5e0a228b299bf10bc384f608/Developmental-Effects-of-Parent-Child-Separation.pdf.

¹³ Thronson, *Immigration enforcement and family courts*.

¹⁴ "Stateside" Waiver Available to Many More People Seeking Permanent Residence, National Immigration Law Center (Dec. 2016), <https://www.nilc.org/wp-content/uploads/2017/04/stateside-waiver-facts-2016-12-14.pdf>.

and inadmissibility decisions for certain individuals with U.S. citizen spouses, parents, and children who may experience hardship, and allowing “family separation” to qualify under the definition of “hardship.” CLASP recommends expanding this provision further to ensure that consideration of hardship to minor children is included in both kinds of decisions and does not require a higher threshold. CLASP also recognizes the significant limitations of mandatory detention and other laws that have criminalized the act of migration, and therefore we encourage Congress to review criminal bars to re-entry to ensure that they do not intentionally discriminate against individuals who have been unjustly targeted by misguided, racist, and exclusionary immigration policies.

Ensuring All Children Have Access to the Rights and Protections of U.S. Citizenship

CLASP also supports the provision in H.R. 2920 that would expand birthright citizenship to more children of U.S. citizens born abroad by removing the 5-year physical presence requirement for the parent before a child’s birth. Recent green card backlogs have delayed family reunification, sometimes for decades.¹⁵ This makes it critical for children of U.S. citizens to access birthright citizenship, even if the family has had to reside out of the nation for more than five years prior to the child’s birth. Due to the long process to obtain green cards, these families may have been forced to separate or had to reside outside of the U.S. in order to be together.

Furthermore, birthright citizenship in the United States is grounded in the American value that all our children should have equitable access to the resources they need to thrive from birth, including access to essential healthcare, nutrition, housing, and education.¹⁶ This principle should be extended to children born outside the country to U.S. citizens without any requirement that would force such children to wait, since any delay puts them at risk of not having their basic needs met, which can be particularly harmful in the early years. Children born outside the U.S. are also at risk of becoming stateless, which several studies have demonstrated can have significant harms for child development.¹⁷ Stateless children are vulnerable to discrimination and abuse as they have little to no legal protection. They are also more likely to have poor long-term outcomes with little to no access to government supports throughout their life as well as difficulty as adults in pursuing higher education, obtaining work visas, or moving from one country to another.¹⁸

Conclusion

The American Families United Act would help address flaws in our immigration laws that undermine our American values of protecting children and keeping families together. We support passage of this bill as well as other legislative proposals that would support immigrants and our nation, such as a pathway to

¹⁵ Andrew Moriarty, *Family-Based Immigration Backlogs: 5 Things to Know*, Fwd.us (Feb.10, 2022), <https://www.fwd.us/news/family-based-immigration-backlogs/>.

¹⁶ Wendy Cervantes, *Birthright citizenship: A fundamental right for America’s children*, First Focus and the Center for the Children of Immigrants (2015), <https://firstfocus.org/wp-content/uploads/2015/08/Birthright-Citizenship-A-Fundamental-Right-for-Americas-Children.pdf>.

¹⁷ Aisha K. Yousafzai et al., *Statelessness and Young Children*, *Statelessness & Citizenship Review*, 4(1) 154-162 (2022), <https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/415>.

¹⁸ *Citizens of nowhere: Solutions for the stateless in the U.S.* United Nations High Commissioner for Refugees and Open Society Justice Initiative (Dec. 2012), <https://www.unhcr.org/en-us/about-us/background/56bfcea4/citizens-of-nowhere-solutions-for-the-stateless-in-the-us.html>.

citizenship for the millions of immigrants who call this country home, long overdue improvements to our family-based immigration system, and the dismantling of laws that exclude immigrants and their families from accessing health care and other basic needs.

We thank you again for the opportunity to submit this written statement for the record. For any questions regarding this statement, please contact Wendy Cervantes, Director of Immigration and Immigrant Families at CLASP, at wcervantes@clasp.org.