



Women's Refugee Commission  
Statement on Comprehensive Immigration Reform

Hearing before the Senate Judiciary Committee

February 13, 2013

The Women's Refugee Commission welcomes the Senate Judiciary Committee's hearing on Comprehensive Immigration Reform. As the Committee considers a commonsense approach to immigration reform, it is imperative that women and children be afforded opportunities, protections and pathways equal to those of men. Reform cannot be comprehensive unless it addresses the lived realities of all migrants in the United States.

Migrant women and children are too often omitted from public discourse around immigration reform, even though they comprise a significant proportion of the total immigrant population. They come to the United States in search of opportunity, freedom, family unity and safety from violence in their home country. However, they have unique vulnerabilities that our immigration laws do not sufficiently address. Women and children are more likely to face exploitation and danger both at the border and in the interior. In addition, because women often lack access to higher education, they may not be able to avail themselves of the same opportunities for employment-based migration and suffer disproportionately from the backlogs in our family-based system. Families are too often separated by immigration enforcement practices that threaten women's custody of their children. And migrant children, many of them unaccompanied, have no access to legal pathways through employment-based migration and limited access to counsel and critical social services. Furthermore, they experience emotional trauma and instability as a result of limited discretion and due process in our immigration laws.

While we recognize the need to address inadequacies in the employment-based system and to ensure security at the border, such reforms cannot be made at the expense of family unity, civil and human rights, and due process. The Women's Refugee Commission urges the Committee to commit to a solution that is fully inclusive of all immigrants — including women and children — and that protects core American concepts, including family unity and equal rights.

In order to accomplish immigration reform that is truly inclusive and comprehensive, the Women’s Refugee Commission highlights four key issues that the Committee must include in any piece of legislation:

- A pathway to citizenship that includes women and children
- Mechanisms for ensuring family unity
- Smart border enforcement
- Due process protections

### A Pathway to Citizenship That Includes Women and Children

As noted in the “Statement on Principles on Women and Immigration Reform,” endorsed by over 200 local, state and national organizations (*see attached*), the face of the migrant in the United States is increasingly that of a woman. Fifty-one percent of the immigrant population is made up of women.<sup>1</sup> One hundred immigrant women arrive in the United States for every 96 men.<sup>2</sup> Approximately 5 million undocumented women<sup>3</sup> and 1 million undocumented children<sup>4</sup> currently live in the United States. Yet our immigration laws and policies have historically been — and continue to be — unfair to both groups. Pathways to citizenship that rely on traditional standards for employment verification disadvantage immigrant women workers, who are more likely than men to work in the informal economy or as homemakers, and children, who cannot legally work below a certain age. Thousands of women and children who enter lawfully as beneficiaries of an employment-based visa application have no work authorization. They are wholly dependent on the principal visa holder and thus are highly vulnerable to exploitation and abuse. Decades-long backlogs in the family-based immigration system — more often utilized by women — mean that women have fewer opportunities than men to lawfully join family in the United States and greater incentives to cross the border through unlawful channels. In addition, the children of immigrants represent the fastest growing segment of the child population, as stated in the “Principles for Children in Immigration Reform,” also endorsed by over 200 local, state and national organizations (*see attached*). They currently comprise 1 in 4 of all children in the United States.<sup>5</sup> Immigration policies that fail to meet the needs and realities of their parents fail them as well.

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<sup>1</sup>United States Census Bureau. *2011 American Community Survey 1-Year Estimates. Selected Characteristics of the Native and Foreign-Born Populations*. Available at

<http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>. Accessed on February 11, 2013.

<sup>2</sup>Migration Policy Institute. *MPI Data Hub: Foreign-Born Males per 100 Foreign-Born Females, for the United States: 1870 to 2011*. Available at <http://www.migrationinformation.org/datahub/charts/final.malesfemales.shtml>. Accessed on February 11, 2013.

<sup>3</sup>Hoefler M, Rytina N and Baker B. U.S. Department of Homeland Security. *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*. March 2012. Available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf). Accessed on January 15, 2013.

<sup>4</sup>Urban Institute, <http://www.urban.org/publications/412203.html>.

<sup>5</sup>Foundation for Child Development. *Children in Immigrant Families: Essential to America’s Future, 3* (June 2012). Available at <http://fcd-us.org/resources/children-immigrant-families-essential-americas-future>. Accessed on February 11, 2013.

If it is to be effective in the long term, solutions to our broken immigration system must broaden the opportunities for women and children to migrate lawfully and to become full contributors to the economic and social fabric of our society. Any pathway to citizenship must be open, affordable, safe and accessible to all women and children in need of status. For women, the pathway must include those whose work is in the home and those who are employed in the informal economy. For children, it must include beneficiaries of Deferred Action for Childhood Arrivals (DACA), undocumented children under the age of 21 and unaccompanied immigrant children. Furthermore, any avenue for self-petition for legal status for persons vulnerable to abuse by principal applicants must also be preserved. Lastly, reform must reduce backlogs in the family-based system, provide protections for those who migrate through the employment-based system and avoid the temptation to sacrifice family-based visas to the demand for high-skilled workers.

### Mechanisms for Ensuring Family Unity

The story of a mother and son whom the Women's Refugee Commission met at the Berks Family Residential Center in Leesport, Pennsylvania, illustrates the urgent need to ensure that immigration enforcement does not undermine children's safety and tear families apart. Luz was detained in rural Pennsylvania and ordered deported. She left her one-year-old son, a U.S. citizen child, with a neighbor, expecting to return in a few days. However, Border Patrol apprehended Luz and her son shortly after she picked the boy up from a facility for unaccompanied alien children in Arizona. They were taken into custody and transferred to a family detention facility across the country. Because Luz was in detention, it was impossible for her to make long-term care arrangements for her infant or to arrange to take the child with her to her home country. She called her neighbor, her consulate and her deportation officer for help — all to no avail. Luz was deported without her baby and is unlikely to be able to reunify with him in the future.<sup>6</sup>

Luz's story is a frightening reality for many parents. Some 5.5 million children in the United States live in fear of being separated from a parent because their family is of mixed legal status.<sup>7</sup> Current immigration policies tear hundreds of thousands of these families apart every year. Over 200,000 parents of U.S. citizen children were deported between July 2010 and September 2012, according to the Department of Homeland Security.<sup>8</sup> Many parents apprehended during immigration enforcement operations have no opportunity to make care arrangements for their children, and children are needlessly placed in the child welfare system. Over 5,000 children are currently in the child welfare system as a result of a parent's detention or deportation,<sup>9</sup> and the complications that arise at the intersection of immigration and child welfare law mean that family reunification will be all but impossible in many of these cases.

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<sup>6</sup>Women's Refugee Commission. *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*, 12 (December 2010). Available at <http://womensrefugeecommission.org/programs/detention/parental-rights>. Accessed on February 11, 2013.

<sup>7</sup> Id.

<sup>8</sup>Immigration Policy Center. *Falling Through the Cracks*. Available at <http://www.immigrationpolicy.org/just-facts/falling-through-cracks>. Accessed on February 11, 2013.

<sup>9</sup> Id.

The family unit is an integral building block of thriving and successful communities. Children cannot achieve their full potential when they grow up without their parents and parents cannot raise strong, capable and successful children when they live in constant fear of detection and removal. It is essential that reform place family unity back at the center of our immigration policy. Undocumented family members must have a mechanism to come out of the shadows and access full citizenship. Detained and deported parents must have a meaningful opportunity to protect their parental rights. The immigration system must also speedily resolve the current visa backlogs and provide adequate channels for family-based immigration that minimize prolonged family separation and remove incentives to migrate unlawfully.

### Smart Border Enforcement

For immigration reform to be effective, border enforcement must include security of the person and migrants seeking safety should be quickly identified and given the right to seek protection in accordance with international law. In the past two years the use of lethal force against migrants, even children, has escalated and hundreds of stories of physical abuse against migrants have been reported. For example, a 16-year-old girl told the Women's Refugee Commission that when she was apprehended by Border Patrol the agent kicked her hard on the leg. When the agent eventually agreed to take her to a doctor because she couldn't walk on that leg, he threatened her and told her she couldn't tell the doctor who had hurt her leg. The agent sat with the girl while the doctor examined her and she was unable to report the abuse.

Every year, thousands of unaccompanied children come to the United States, many of whom are fleeing persecution and violence in their home country. When these children are apprehended by Border Patrol, they are held in the same inappropriate conditions as adults, in freezing cold border stations without sufficient food, water, clothing or blankets. Although these children have experienced violence and trauma along the way, they have no one to help them understand what is happening to them — or to explain their legal options — during these first days in the country. As a result, many who have asylum claims or are victims of trafficking are a risk of being returned to their country without an opportunity to pursue protection here.

Money allocated to enforcement should be spent wisely — not to already well resourced Border Patrol or deterrence programs that have not been proven to be effective, but to provide adequate training, oversight and accountability mechanisms that ensure migrants are being treated with respect and dignity. When dealing with children, enforcement efforts must take into consideration the best interest of the child. Children should be given the benefit of the doubt during any investigation, inquiry or detention. There must also be appropriate and accountable training policies and protocols for interacting with and screening children and asylum seekers. The use of force should be prohibited, except where there is a demonstrated need, and it is essential that women, children and families be provided a safe environment while they are in the custody of the federal government.

The Women's Refugee Commission acknowledges the importance of ensuring rule of law and protecting against genuine threats; however, it is of utmost importance that the security of our country's borders does not come at the cost of undermining our nation's traditions of due process and at the expense of the human rights of migrants.

### Due Process Protections

Soledad arrived at the Eloy detention facility in Arizona in December 2011. As an asylum seeker, she was subject to mandatory detention. She immediately reported she was pregnant and suffering abdominal pains. After days of making complaints that were ignored by medical staff at the facility, Soledad began bleeding. She was finally taken to a doctor who told her she was losing her baby. Soledad was sent back to her cell to deal with the miscarriage by herself and remained in detention as she delivered her fetus. Soledad was eventually released on bail and is fighting her asylum claim based on being a victim of domestic violence.

Due process is the bedrock of the American justice system. It is a basic right that is essential to preserving American values of fairness and equality. However, thousands of immigrants experience mandatory or prolonged detention without any opportunity for a hearing. In 2012 alone, the United States detained almost 400,000 immigrants — at the expense of tax payers.<sup>10</sup> Many of these detainees are women, children and families seeking safety from persecution or other human rights abuses. For example, under Expedited Removal, asylum seekers without proper documentation must be detained without bond hearings while their cases are reviewed. Conditions in immigration detention facilities are too often based on a correctional model. These facilities may be hundreds of miles away from city centers, making it almost impossible for family or counsel to visit. Mandatory detention forces the federal government to spend money on detention beds even though economical and effective alternatives to detention and alternate forms of detention exist.

Immigration reform must respect the due process rights of immigrants. To do so, mandatory detention laws should be eliminated and replaced with individualized determinations of the need to detain. If detention is required, it must consist of the least restrictive means possible, which includes alternative forms of custody such as ankle monitors or house arrest. Alternatives to detention should also be expanded and the costly legislative requirement for a minimum numbers of detention beds must be eliminated. Moreover, the conditions of custody must reflect the civil nature of immigration violations. Detention facilities should be non-penal and minimally restrictive. NGOs should be given access to all Immigration and Customs Enforcement and Customs and Border Protection detention facilities to monitor conditions and provide independent oversight of the Department of Homeland Security's operations. Finally, all children and persons with disabilities in removal proceedings should have access to government paid counsel in their proceedings.

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<sup>10</sup> <http://www.ice.gov/news/releases/1212/121221washingtondc2.htm>.

## Conclusion

The Women's Refugee Commission is encouraged by the Senate Judiciary Committee's strong desire to fix a broken immigration system. This is an important moment not just for immigrants but for all who live in the United States. Immigrant women and children have played a critical role in this country's many successes, and their contributions to our society and economy must be acknowledged with a pathway to citizenship, protections for family unity and respect for their basic human rights.