



Committee on Migration

c/o Migration and Refugee Services, USCCB

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September 28, 2023

Dear Senator:

I write on behalf of the U.S. Conference of Catholic Bishops' (USCCB) Committee on Migration to express our strong opposition to the "Secure the Border Act of 2023" (S. 2824), introduced and passed on a partisan basis in the House of Representatives as H.R. 2. If enacted, this measure would fundamentally weaken our nation's decades-long commitment to humanitarian protection. Provisions of this bill would endanger unaccompanied children and inflict harm on other vulnerable persons, decimate access to asylum, mandate damaging detention and removal practices, restrict access to legal employment, limit—and potentially eliminate—federal partnerships with faith-based and other nongovernmental organizations (NGOs), undermine the rule of law, and more.

We do not question the good intentions of lawmakers who seek to enact legislation that would secure our nation's borders. Indeed, we join in the call to enact effective and humane border management as part of a framework of comprehensive immigration reforms. As stated previously,¹ we also do not discount the challenges at our border with Mexico, nor the right of nations to maintain their borders. We have continuously acknowledged the right of sovereign states to impose certain juridical conditions on immigration for the sake of the common good, consistent with Catholic teaching.² However, our faith also compels us to be "vigilant advocate[s], defending against any unjust restriction [on] the natural right of individual persons to move freely within their own nation and from one nation to another" and to call attention "to the rights of migrants and their families and to respect for their human dignity, even in cases of non-legal immigration."³

Pope Francis has stated that "safe, orderly, regular and sustainable migration is in the interest of all countries."⁴ Undoubtedly, effective border management is necessary to achieve that. However, S. 2824 would not humanely secure our border with Mexico or help to alleviate increased migration throughout the Western Hemisphere.

We understand that there may well be a number of provisions in this bill that you support. However, this legislation contains such a combination of harmful measures that we believe its passage, on the whole, is beyond justification. Such provisions include those that would:

¹ See, e.g., Letter to Congressional Leadership on Title 42 (Apr. 27, 2022), <https://bit.ly/41VTD4J>.

² CATECHISM OF THE CATHOLIC CHURCH, no. 2241.

³ Pope John Paul II, *Ecclesia in America*, no. 65 (Jan. 29, 1999).

⁴ Pope Francis, Address to Refugees Arriving in Europe through Humanitarian Corridors and Representatives of Receiving Institutions and Communities (Mar. 18, 2023), <https://bit.ly/421gIZ0>.

Endanger Unaccompanied Children

We are deeply concerned about the impact this bill would have on unaccompanied children (UC). The measure would override many of the fundamental protections put in place by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 and the *Flores* Settlement Agreement. For example, it would eliminate protections for young children and children with intellectual disabilities by removing the requirement that Department of Homeland Security (DHS) officials ascertain whether a child is able to make an independent decision to withdraw his or her application for admission to the United States prior to possible removal. It would also subject every UC to expedited screening and, for those deemed eligible at that time, appearance before an immigration judge within 14 days, without any meaningful access to legal counsel or a child advocate. This is coupled with a provision that would abolish all existing government-funded legal representation programs for UC. Furthermore, the bill would eliminate the current requirement that UC be transferred to the custody of the Department of Health and Human Services (HHS) within 72 hours of being encountered by DHS, and those deemed ineligible for relief by Customs and Border Protection (CBP) could be detained indefinitely by DHS. Detention facilities operated by DHS are notoriously inadequate places for children to spend any length of time. Collectively, these and other changes made by the bill would intolerably alter how our country responds to these vulnerable children, many of whom suffer severe trauma before even reaching our border.

Decimate Access to Asylum

As conveyed earlier in the 118th Congress,⁵ we oppose efforts to inhibit meaningful access to our nation's asylum process, which this bill would do in several ways. For instance, it would eliminate asylum as an option for anyone who enters the United States in between ports of entry with no exceptions for highly vulnerable individuals, including unaccompanied children. However, under this bill, even the ability to seek asylum at a port of entry could effectively be blocked in favor of "operational control" for any person without a visa, as well as those who transited a third country before seeking asylum in the United States. This is coupled with provisions that, among other things, bar asylum for anyone who makes a claim based on resistance to recruitment or coercion by criminal or terrorist organizations, effectively requiring that persecution be carried out by the state, even in situations where the state is unwilling or unable to intervene in persecution committed by non-state actors. Such limitations are inconsistent with international agreements acceded to by the United States and longstanding precedent. They also demonstrate a concerning disregard for the prominence and impunity enjoyed by criminal and terrorist organizations in many countries. Furthermore, the bill would require a fee of "not less than \$50" for each asylum application filed without the possibility of a waiver. The right to seek asylum should never hinge entirely on one's ability to pay for it. It is already difficult to qualify for asylum under existing law, and further limiting asylum eligibility in these ways will merely increase obstacles to potential relief for those with bona fide claims.

⁵ Letter to the House of Representatives Regarding the Border Safety and Security Act (Jan. 17, 2023), <https://bit.ly/3nu197G>.

Mandate Damaging Detention and Removal Practices

As mentioned, the bill would subject unaccompanied children to indefinite detention by DHS. This would also be extended to families with children on a mandatory basis and seems to apply retroactively, meaning families already awaiting the completion of their immigration proceedings for any length of time before enactment of the bill would be required to be remanded to immigration detention. Moreover, suggesting a disregard for accountability and the wellbeing of persons placed in immigration detention, the bill would defund the Office of the Immigration Detention Ombudsman, curtailing oversight at the same time it maximizes detention for all individuals, families, and unaccompanied children. Likewise, the bill would eliminate funding for the Case Management Pilot Program, a more humane and cost-effective alternative to detention specifically designed to facilitate compliance with immigration proceedings, even for those ultimately deemed ineligible for relief in the United States. For asylum seekers who enter the United States from Canada or Mexico (whether at or between ports of entry) who cannot be detained or removed, the bill requires that they be returned to the contiguous country from which they arrived and remain there for the duration of their immigration proceedings. In seeking to revive an expanded version of the immoral and unlawful Migrant Protection Protocols,⁶ the bill dismisses the need for diplomatic negotiations and creates significant constitutional questions.

Restrict Legal Employment Access

Eligibility for employment authorization is already limited under existing law for those seeking asylum. However, this bill would go even further by requiring that eligible asylum seekers (those whose cases have been pending for at least 180 days) reapply for employment authorization every six months. These applications to renew work authorization will compound the existing backlog for immigration benefits adjudicated by U.S. Citizenship and Immigration Services (USCIS), further delaying all manner of benefits under the agency's purview. Because USCIS processing times already exceed six months for many seeking employment authorization, it could be impossible for an asylum seeker to attain lawful employment at all under the terms of this bill, regardless of how long his or her case is pending. The measure would also prevent most people granted humanitarian parole from seeking employment authorization. These changes would only encourage asylum seekers and parolees to pursue employment without authorization or else leave them with no choice but to rely on social services, charity, and emergency care to meet their basic needs.

Limit Federal Partnerships with NGOs

Multiple provisions of this bill target NGOs that partner with DHS to provide a myriad of services to citizens and noncitizens alike. Ostensibly, these provisions would prevent the disbursement of DHS funding to NGOs that "facilitate or encourage unlawful activity, including unlawful entry," as well as those that "provide, or facilitate the provision of, transportation, lodging, or immigration legal services to inadmissible aliens." In both cases, this language is overly broad, ambiguous, and unworkable. Given their vast expertise and the trust they've earned from American communities, many Catholic and other faith-based organizations have long partnered with DHS to provide a

⁶ See generally, Brief for the USCCB, Catholic Legal Immigration Network, Inc., & Catholic Charities USA as Amicus Curiae Supporting Petitioners, *Biden v. Texas*, No. 21-954 (U.S. 2022), <https://bit.ly/3VwSRIU>.

range of services, including disaster relief, assistance for lawful immigrants seeking to naturalize as U.S. citizens, humanitarian relief, services for victims of trafficking, and more. The phrase “inadmissible aliens” would be difficult, if not impossible, for NGOs to apply, since admissibility of noncitizens is not always readily apparent and, indeed, is often a matter to be adjudicated by the government. Contrary to the same subsection’s heading, “inadmissibility” is also not an indicator of unlawful entry into, or unlawful presence in, the United States. As drafted, these provisions could even be interpreted to prevent schools, houses of worship, and other organizations from qualifying for the Nonprofit Security Grant Program amid a rise in violent attacks on those places. Equally concerning is that the same section of the bill would prevent any funds from being appropriated to DHS for the purpose of processing into the United States any persons arriving between ports of entry, calling into question DHS’ ability to rescue persons encountered in the desert in life-threatening circumstances and process unaccompanied children, victims of trafficking, victims of torture, and others who—even under the bill’s own terms—would warrant such processing.

Diminish the Humanitarian Parole Authority

Humanitarian parole has been used by every administration, whether Republican or Democrat, since President Dwight D. Eisenhower, who directed the Attorney General to parole into the United States 15,000 Hungarian refugees fleeing the Hungarian Revolution of 1956.⁷ The use of parole has often been necessitated by emergencies emanating from war and other conflicts—situations in which such a streamlined mechanism proved vital to save lives. Even when Congress enacted the Refugee Act of 1980, largely due to dissatisfaction with the executive branch’s use of parole, it chose to preserve this discretionary authority, acknowledging the need to “avoid crippling the [United States’] ability to respond to [such] emergencies.”⁸ This bill, however, would abandon that realistic understanding by severely limiting the use of parole in such situations. It would also restrict the use of parole for those seeking asylum, such that it would effectively be unavailable, furthering the unnecessary and inhumane use of detention.

Expedite Border Wall Construction at Any Cost

We have long opposed the construction of a wall spanning the entire U.S.-Mexico border,⁹ especially with the dangers it poses to human life and the environment. However, this bill would establish unprecedented authorities to advance border wall construction, which include the ability of the Secretary of Homeland Security to waive “all legal requirements necessary” to ensure the wall’s expeditious design, testing, construction, and maintenance. This is combined with a prohibition on consultation with local leaders and property owners, among others, that exceeds seven days, with the purpose of such consultation being to “minimize the impact on natural resources, commerce, and sites of historical or cultural significance for the communities and residents” (removing existing references to “quality of life”) located near the border. The bill

⁷ CONGRESSIONAL RESEARCH SERVICE, IMMIGRATION PAROLE, R46570, at 2 (Oct. 15, 2020), <https://bit.ly/3HCtYpi>.

⁸ Edward M. Kennedy, *Refugee Act of 1980*, 15 Int’l Migration Rev. 141, 146 (1981).

⁹ See, e.g., Press Release, USCCB, Committee on Migration Chair Strongly Opposes Administration’s Announcement to Build a Wall at U.S.-Mexico Border, Increase Detention and Deportation Forces (Jan. 26, 2017), <https://bit.ly/3LAO7gU>.

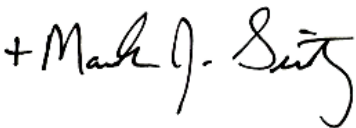
would effectively undermine constitutional property rights and further abrogate the rights of those living near the border by prioritizing federal land acquisition above such rights.

This is by no means an exhaustive explanation of the objectionable provisions contained within S. 2824, given, for example, its criminalization of visa overstays for the first time in our country's history (even if inadvertent or based on a pending adjustment of status) and its E-Verify mandate for all employers, among other issues. Nevertheless, the provisions discussed underscore the extreme nature of this bill, its incompatibility with Catholic social teaching, and its inconsistency with our nation's broadly bipartisan commitment to humanitarian protection.

We take this opportunity to reiterate that “[n]o combination of legal pathways or harsh enforcement measures will suffice to meet the complex challenge of forced migration facing our country and hemisphere. Only through a long-term commitment to addressing root causes and promoting integral human development throughout the Americas, combined with an overhaul of our immigration system, will we be able to achieve the conditions necessary to sustainably reduce irregular migration.”¹⁰

For these reasons, we urge you to oppose the passage of S. 2824 and to support the drafting of bipartisan legislation that is more in keeping with our nation's rich tradition of welcome. We remain committed to working with you and the Administration to address the complex issue of migration, including the need for humane border management that respects the God-given dignity of migrants. Thank you for considering our views and for your work in service of the common good.

Sincerely,

A handwritten signature in black ink that reads "+ Mark J. Seitz". The signature is written in a cursive style with a plus sign at the beginning.

Most Reverend Mark J. Seitz
Bishop of El Paso
Chairman, USCCB Committee on Migration

CC: All U.S. Senators

¹⁰ Press Release, USCCB, U.S. Bishops' Migration Chairman Addresses New Regional Migration Mitigation Efforts (Apr. 28, 2023), <https://bit.ly/424bDd6>.