

**UNACCOMPANIED CHILDREN AT THE BORDER:  
STAKEHOLDER PERSPECTIVES ON THE WAY  
FORWARD**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
BORDER SECURITY, FACILITATION,  
AND OPERATIONS**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTEENTH CONGRESS**

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# UNACCOMPANIED CHILDREN AT THE BORDER: STAKEHOLDER PERSPECTIVES ON THE WAY FORWARD

Tuesday, April 27, 2021

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON BORDER SECURITY,  
FACILITATION, AND OPERATIONS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:01 p.m., via Webex, Hon. Nanette Diaz Barragán [Chairwoman of the subcommittee] presiding.

Present: Representatives Barragán, Correa, Cleaver, Green, Clarke, Jackson Lee, Thompson (ex officio), Higgins, Guest, Bishop, and Clyde.

Ms. BARRAGÁN. The Subcommittee on Border Security, Facilitation, and Operations will come to order.

The subcommittee is meeting to hear stakeholder perspectives on addressing unaccompanied children at the U.S.-Mexico border.

The challenge posed by children arriving at our border is not new. Unaccompanied children from Mexico, Central America, and elsewhere have long sought refuge in the United States. This is also not the first time we have seen increased numbers of unaccompanied children at our Southern Border. There were similar increases in 2014 and 2019.

Northern Triangle countries suffer from unspeakable violence, corruption, and poverty. Last November, the region was hit by 2 devastating hurricanes that destroyed homes and wiped out critical infrastructure, worsening the situation and prompting more desperate families and children to flee.

Migrant children are undertaking the arduous, dangerous journey because conditions at home are so dire. Many hope to reunite with family living in the United States. Like many of my colleagues, this breaks my heart, seeing them waiting to be reunited.

The increased number of child migrants is certainly a challenge, but the U.S. Government must provide these children with protections guaranteed to them under law. These protections ensure that children are quickly transferred from Customs and Border Protection, CBP, custody, from there into the Department of Health and Human Services, or HHS, which is much better equipped to handle these children and to care for them, as well as unite them with their families or sponsors.

The Biden administration is rapidly building capacity to provide proper care for migrant children after President Trump dismantled the system. I have heard a number of my colleagues urge the current administration to reimpose policies incredibly harmful to children, particularly unaccompanied children, like expelling kids under Title 42.

Under Title 42, the Trump administration sent young children back to the very dangerous conditions they are fleeing, scared and alone. This is unconscionable and we cannot go back.

Under the last administration, the Department of Homeland Security also neglected to prepare for an increase in migration that was long-predicted. DHS saw the warning signs in mid-2020 of another increase. It chose not to build the capacity needed to process and care for vulnerable migrants.

Now is not the time to score political points. We must work together to improve our asylum system and border policies and do so respecting the humanity and unique needs of child migrants.

I am encouraged that President Biden committed to reinstitute humane border policies. The law requires we treat unaccompanied children humanely and allows children to apply for asylum. It is simply the right thing to do legally and morally.

Like many Members, I recently traveled to the Rio Grande Valley to conduct an oversight visit. I toured the Donna Processing Facility where many of the children are held until they are transferred to HHS care. I spoke to little girls from El Salvador, Guatemala, and Honduras, girls who look just like I did at their age.

While CBP processing facilities are no place for children, the facility conditions have improved tremendously compared to what I saw under the previous administration. No doubt there is still more to be done. For example, I met too many children that did not know they could use the phone to call their families.

The number of kids in Border Patrol custody has fallen dramatically in recent weeks, and the average time for children in custody is now well under the 72-hour threshold mandated by the Trafficking Victims Protection Reauthorization Act of 2008. This is due in large part to the stand-up of new emergency intake sites and influx care facilities to facilitate and expedite the movement of children out of the hands of Border Patrol and into the custody of child welfare specialists.

In fact, HHS has opened an emergency intake site at the Long Beach Convention Center just outside my district here in California. I am pleased to be joined today by the mayor of Long Beach to discuss that effort.

My district does include North Long Beach, and I am proud to represent such a welcoming community and work with a leader like Mayor Garcia.

The progress we have seen over the last few weeks are initial steps to improve conditions and the process addressing children at our border. Federal agencies are not alone in providing care to unaccompanied minors. Rather, this is a whole-community approach where civil society, service care providers, pro bono lawyers, NGO's and many others supplement the efforts of the Federal Government.

Protecting vulnerable children is an American value, and I look forward to hearing the witnesses' perspectives on the administration's response and recommendations on how to move forward from here.

[The statement of Chairwoman Barragán follows:]

STATEMENT OF CHAIRWOMAN NANETTE DIAZ BARRAGÁN

APRIL 27, 2021

The challenge posed by children arriving at our border is not new. Unaccompanied children from Mexico, Central America, and elsewhere have long sought refuge in the United States. This is also not the first time we have seen increased numbers of unaccompanied children at our Southern Border—there were similar increases in 2014 and 2019.

Northern Triangle countries suffer from unspeakable violence, corruption, and poverty. Last November, the region was hit by 2 devastating hurricanes that destroyed homes and wiped out critical infrastructure, worsening the situation and prompting more desperate families and children to flee.

Migrant children are undertaking the arduous, dangerous journey because conditions at home are so dire. Many hope to reunite with family living in the United States. Like many of my colleagues, my heart breaks seeing them waiting to be reunited. The increased number of child migrants is certainly a challenge, but the U.S. Government must provide these children with protections guaranteed to them under law.

These protections ensure that children are quickly transferred from Customs and Border Protection (CBP) custody to the Department of Health and Human Services (HHS), which is much better equipped to care for these children as well as unite them with their families or sponsors. The Biden administration is rapidly building capacity to provide proper care for migrant children after President Trump dismantled the system.

I have heard a number of my colleagues urge the current administration to reimpose policies incredibly harmful to children—particularly unaccompanied children—like expelling kids under Title 42. Under Title 42, the Trump administration sent young children back to the very conditions they are fleeing, scared and alone. This is unconscionable and we cannot go back. Under the last administration, the Department of Homeland Security also neglected to prepare for an increase in migration that was long-predicted. DHS saw the warning signs in mid-2020 of another increase. It chose not to build the capacity needed to process and care for vulnerable migrants.

Now is not the time to score political points; we must work together to improve our asylum system and border policies—and do so respecting the humanity and unique needs of child migrants. I am encouraged that President Biden committed to reinstitute humane border policies. The law requires we treat unaccompanied children humanely and allows children to apply for asylum. It is simply the right thing to do—legally and morally.

Like many Members, I recently traveled to the Rio Grande Valley to conduct an oversight visit. I toured the Donna Processing Facility where many of the children are held until they are transferred to HHS care. I spoke to little girls from El Salvador, Guatemala, and Honduras—girls who look just like I did at their age. While CBP processing facilities are no place for children, the facility conditions have improved tremendously compared to what I saw under the previous administration. No doubt there is still more to be done. For example, I met too many children that did not know they could use the phones to call their families.

The number of kids in Border Patrol custody has fallen dramatically in recent weeks, and the average time for children in custody is now well under the 72-hour threshold mandated by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008. This is due in large part to the stand-up of new Emergency Intake Sites (EIS) and Influx Care Facilities (ICF) to facilitate and expedite the movement of children out of the hands of Border Patrol and into the custody of child welfare specialists.

In fact, HHS has opened an Emergency Intake Site at the Long Beach Convention Center just outside my district in California. I am pleased to be joined today by the Mayor of Long Beach to discuss that effort. My district does include North Long Beach, and I am proud to represent such a welcoming community and work with a leader like Mayor Garcia. The progress we have seen over the last few weeks are

initial steps to improve conditions and the process addressing children at our border.

Federal agencies are not alone in providing care to unaccompanied minors. Rather, this is a whole-community approach where civil society, service care providers, pro-bono lawyers, NGO's, and many others supplement the efforts of the Federal Government. Protecting vulnerable children is an American value, and I look forward to hearing the witnesses' perspective on the administration's response and recommendations on how to move forward from here.

Ms. BARRAGÁN. With that, the Chair now recognizes the Ranking Member of the subcommittee, Mr. Higgins of Louisiana, for an opening statement.

Mr. HIGGINS. Thank you, Madam Chair. Thank you to our witnesses for being here.

We have difficult ground to cover and we are going to discuss some uncomfortable things, but I would like to say at the outset that I have a personal conviction regarding the Chairwoman's compassionate determination to seek a path forward, and I have faith that my colleagues on both sides of the aisle can come together to move forward to find real solutions despite the fact that we will have difficult conversations, because it is a tough subject.

There is a crisis on our Southwest Border with no end in sight. That is reality. The administration's campaign statements, coupled with what I believe to be an overzealous renunciation of the prior administration's border policies, which had proven to be effective ultimately, I believe these circumstances have invited this activity to our borders. Specifically, the suspension of the wall system construction was a major error.

The Remain in Mexico policy should be reinstated. Asylum Cooperative Agreements should be continued and enhanced. Some of these policies, coupled with enabling of the catch-and-release practice, restricting immigration enforcement, and the refusal to equally apply Title 42 across the board, these decisions have exacerbated the crisis at the border.

The Secretary of Homeland himself stated that we are on track to see the highest number of illegal crossings in over 20 years. However, no one in the current administration has stepped forward to really take a leadership role to deal with this crisis. The border coordinator is leaving after 3 months on the job. The Vice President has yet to publicly engage at the border and visit the border. Secretary Mayorkas continues to, in my opinion, ignore legitimate information requests from this oversight body about the operational realities on the ground. In good faith, perhaps they are working on it, but he has not provided many answers to the questions we have submitted.

Last month, Customs and Border Protection encounters surpassed 172,000 at the Southwest Border, and we all know that that is a percentage of the actual crossings, because we never touch 100 percent. That is reality. So the truth is the number was greater than 172,000, if you are looking for the number of actual illegal crossings.

The administration continues to claim that single adults and family units are being expelled under Title 42 public health emergency authority. However, DHS's own statistics show this to be false. In March, only 60 percent were denied entry.



Border Patrol facilities and temporary processing centers, the same ones used by the Trump administration, remain over capacity. My colleagues, respectfully, on the other side of the aisle slammed conditions in 2019, and now are referring to the same facilities under the Biden administration as more humane. May I argue that more crowded does not equal more humane. This is just another example of the incredible things that happen in the bizarre realm of the District of Columbia.

This subcommittee and the committee as a whole must have the courage to honestly engage and to find solutions, because the American people see through political posturing. A new *Washington Post*-ABC News poll shows that a majority of Americans disapprove of the Biden administration's handling of the situation at the Southwest Border. That is just reality.

Less than 20 percent of the crossings make a credible fear claim. Now, this is important to note because that is the first step in the process for asylum at the land border. Now, this doesn't mean that more didn't seek it as a defense against removal later on, but we should not state or suggest that everyone at the border is seeking asylum, because that is just not true and we know that to be not true. We must push through the political posturing and seek truth and resolution to these situations.

The Biden administration's decision to use prosecutorial discretion in the RGV sector, the Rio Grande Valley sector, most people not able to be immediately expelled are released en masse, some without ever being entered into removal proceedings.

Border Patrol agencies on the ground told us, and told me, that the Federal Government has become the largest facilitator of human smuggling at the border. That is the perception of the boots on the ground largely when you talk to those guys, that their law enforcement mission has been transformed into facilitators of illegal crossings. That should be a wake-up call for Congress, and we should work together, again, toward solutions.

Another persistent issue at our border concerns the activities of TCOs, the cartels. Months-old babies and toddlers don't just appear at the Southwest Border on their own. They are smuggled to our border by cartels who don't care about their safety or well-being, and they are not hydrated properly or fed properly, or if the adult holding them is related to them, that is very much in question.

TCOs, they only care about cash. Cartels are making American cash dollars hand over fist. There have been reports of smugglers throwing toddlers in the Rio Grande River to distract Border Patrol. We have all seen the footage of smugglers dropping toddlers over the wall. It is horrific what they are doing. That is where we should be focused, on how to combat these cartels, the pipeline that is feeding illegal crossings into our Southern Border.

The best practices of treating children at the border we will hear today doesn't matter to the cartels. Every child they smuggle or use to distract from their loads of drugs and sex trafficking makes them more emboldened. Criminal cartels are profiting at an unprecedented level from this administration's policies. That is not to mean that my colleagues on this committee don't have compassionate hearts in the right place. I am just saying we have to admit that this administration's policies are not working. We have to

communicate with the Biden administration effectively and encourage real solutions.

The decision not to expel unaccompanied minors is causing some parents to make the decision to self-separate.

We have heard from Customs and Border Protection that they have encountered many adults claiming to be children at the border in hopes of not being expelled. I don't have to explain the dangers of putting unrelated adults in facilities with children. It is a recipe for disaster and, indeed, it is happening. There are at least 3 facilities that house unaccompanied minors with serious outstanding allegations of misconduct just in the last month. One shuttered overnight, with reports of children being forced into untenable positions with no toilets available.

The administration's failure to properly address the border crisis endangers our Republic, bottom line. Failure to take decisive action will have an immeasurable lasting consequence. Inaction in the name of political expediency is not acceptable. I know my Chairwoman's heart is in the right place. I have faith we can come together.

Madam Chairwoman, thank you for your consideration, and I yield.

[The statement of Ranking Member Higgins follows:]

STATEMENT OF RANKING MEMBER CLAY HIGGINS

APRIL 27, 2021

Thank you Madam Chair, and thank you to our witnesses for being here today. Make no mistake, there is a crisis on our Southwest Border with no end in sight.

This administration's campaign rhetoric coupled with an over-zealous renunciation of the prior administration's border policies which had proven effective, have invited this activity at our border.

Specifically, the suspension of wall system construction, the Remain in Mexico policy, and Asylum Cooperative Agreements, coupled with the enabling of 'catch and release' practices, restricting immigration enforcement and the refusal to equally apply Title 42 across the board, have exacerbated the crisis.

The Secretary of Homeland Security himself stated that we are on track to see the highest number of illegal crossings in over 20 years.

However, no one in the current administration has stepped forward to claim a leadership role to deal with this crisis. The border coordinator is leaving after 3 months on the job, the Vice President has yet to visit the border, and Secretary Mayorkas continues to ignore legitimate information requests from this oversight body about the operational reality on the ground.

Last month, Customs and Border Protection encounters surpassed 172,000 at the Southwest Border. The administration continues to claim that single adults and family units are being expelled under Title 42 public health emergency authority. However, DHS's own statistics show that to be false. In March, only 60 percent were denied entry.

Border Patrol facilities and temporary processing centers—the same ones used during the Trump administration—remain over capacity. My colleagues on the other side of the aisle who slammed conditions in 2019 are now referring to the same exact facilities under the Biden administration as "more humane." This is just another example of the incredible things that happen in the bizarre realm of the District of Columbia.

The American people see through this. A new *Washington Post*-ABC News poll shows a majority of Americans disapprove of the administration's handling of the situation at the Southwest Border.

Based off publicly-available CBP data, only a small fraction of people crossing the border illegally are seeking asylum.

Less than 20 percent make a credible fear claim, which is the first step in the process for asylum at the land border. That doesn't mean more didn't seek it as a defense against removal later on, but let's be clear not to suggest that everyone at the border is seeking asylum.

Because of the Biden administration's decision to use prosecutorial discretion in the Rio Grande Valley Sector, most people not able to be immediately expelled are released en masse, some without ever being entered in removal proceedings. Border Patrol Agents on the ground told us that the Federal Government has become the largest facilitator of human smuggling at the border. That should be a wake-up call for this Congress to put an end to the madness and work together toward a solution.

Another persistent issue at our borders concerns the activities of transnational criminal organizations (TCOs), the cartels. Months-old babies and toddlers don't just appear at the Southwest Border on their own. They are smuggled to our border by TCOs who don't care about their safety or well-being, if they are hydrated and fed, or if the adult holding them is related to them. TCOs just care about cash. There have been reports of smugglers throwing toddlers into the Rio Grande River to distract Border Patrol and we have all seen the footage of smugglers dropping toddlers over the wall. The best practices of treating children at the border we will hear today doesn't matter to them. Every child they smuggle or use to distract from their loads of drugs, makes them more emboldened. Criminal cartels are profiting greatly from this administration's policies.

The decision not to expel unaccompanied minors is causing some parents to make the decision to self-separate.

We have heard from CBP that they've encountered "many" adults claiming to be children at the border in hopes of not being expelled. I don't have to explain the dangers of putting unrelated adults in facilities with children.

There are also at least 3 facilities that house unaccompanied minors with serious outstanding allegations of misconduct over the last month, with one shuttering overnight after reports of children being forced to use bags as toilets.

The administration's failure to properly address the border crisis endangers our Republic. Failure to take decisive action will have immeasurable and lasting consequences. Inaction in the name of political expediency is inexcusable.

Today's hearing is an opportunity to seek answers for the American people, examine how this administration's policies are impacting unaccompanied minors, understand the push and pull factors that resulted in 19,000 kids at the border in March, and discuss changes needed to address this situation.

I look forward to the witnesses' testimony and I thank them for appearing before us today. I yield back.

Ms. BARRAGÁN. Thank you, Ranking Member.

Members are reminded that the subcommittee will operate according to the guidelines set out by the Chairman and Ranking Member in the July 8 colloquy.

The Chair now recognizes the Chairman of the full committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Good afternoon. I thank Chairwoman Barragán for holding today's hearing on unaccompanied children at the Southern Border and for her leadership on this important issue.

Despite some of the rhetoric about the situation at the Southern Border, this challenge is not new. We have seen increased arrivals of unaccompanied children and others at the U.S.-Mexico border in 2014, 2018, 2019, and more in previous decades.

When there was a surge of families and children at the border in 2018, President Trump tore children from their parents. In 2019, President Trump instituted a series of anti-immigrant policies that failed to address the root causes of increased migration, caused thousands of children to languish in Government custody, and squandered millions on projects that failed to secure the border.

In 2020, when arrivals started trending upwards, rather than preparing to address the situation, the Trump administration continued dismantling our immigration infrastructure and began expelling unaccompanied children into Mexico alone instead of allowing them to seek protection provided for under the law.

Instead, the Biden administration is responding to the challenge by treating children humanely and working to fix the underlying

causes of this situation. Federal agencies are working closely with local communities to provide temporary shelter and COVID-19 testing for the vulnerable children.

The Biden administration is also working with non-Governmental organizations, like Kids in Need of Defense, to provide and connect unaccompanied children with legal services, essential medical care, and educational opportunities. All of these efforts are designed to get kids out of CBP facilities and quickly reunite them with their families.

The administration is also restarting the Central American Minors Program, to allow unaccompanied children to apply for protection in their home country and make a safe, orderly journey to the United States if they qualify. These are real actions taken to hopefully address one of the many factors pushing children to make the dangerous journey to our border.

Last week, former Trump adviser Stephen Miller's organization filed its first lawsuit to force the Biden administration to begin expelling vulnerable unaccompanied children to Mexico again. It is simply unconscionable that some would try to bring back the Trump administration's inhumane policy of returning vulnerable children back to the dangerous conditions they fled. Returning to inhumane policies toward children should be a nonstarter.

Border security is a priority for this committee and the Biden administration, but we also must not lose focus on other issues like domestic terrorism and critical infrastructure protection. We also do not have to sacrifice border security to treat vulnerable unaccompanied children with basic decency. We can do both.

Secretary Mayorkas and the men and women of DHS have made good progress in addressing the situation at the border, but we still have a long road to really and fully repair this system.

I am eager to hear from our witnesses today on possible ways Congress and the administration can help address this on-going challenge in the short and long term, while continuing to uphold our values as a Nation.

Thank you, Madam Chair, and I yield back.

[The statement of Chairman Thompson follows:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

APRIL 27, 2021

Good afternoon.

I thank Chairwoman Barragán for holding today's hearing on unaccompanied children at the Southern Border and for her leadership on this important issue.

Despite some of the rhetoric about the situation at the Southern Border, this challenge is not new.

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Instead, the Biden administration is responding to the challenge by treating children humanely and working to fix the underlying causes of this situation.

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The Biden administration is also working with non-Governmental organizations like Kids in Need of Defense to provide and connect unaccompanied children with legal services, essential medical care, and educational opportunities.

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It is simply unconscionable that some would try to bring back the Trump administration's inhumane policy of returning vulnerable children back to the dangerous conditions they fled.

Returning to inhumane policies toward children should be a non-starter.

Border security is a priority for this committee and the Biden administration, but we also must not lose focus on other issues like domestic terrorism and critical infrastructure protection.

We also do not have to sacrifice border security to treat vulnerable unaccompanied children with basic decency. We can have both.

Secretary Mayorkas and the men and women of DHS have made good progress in addressing the situation at the border, but we still have a long road to fully repair the system.

I am eager to hear from our witnesses today on possible ways Congress and the administration can help address this on-going challenge in the short and long term while continuing to uphold our values.

Thank you and I yield back.

Ms. BARRAGÁN. Thank you, Mr. Chairman.

Not seeing the Ranking Member of the full committee, we will proceed on to our witnesses.

[The statement of Ranking Member Katko follows:]

STATEMENT OF RANKING MEMBER JOHN KATKO

Thank you, Madam Chair. I am pleased that this subcommittee is holding a hearing today on a topic all of us care deeply about: The welfare of children crossing the Southwest Border.

Some of these children arrive alone and afraid, with nothing but the clothes on their backs. Others arrive with loved ones, hoping for a better life in the United States. Many children making the dangerous journey to the United States face tragic circumstances of abuse, illness, violence, and trafficking along the way. Often, drug cartels use children as pawns to distract Border Patrol agents as illicit drugs are smuggled across the border, as we recently saw in troubling footage of 2 young toddlers being dropped over a section of the border wall.

I recently returned from my second trip to the Southern Border in the span of a few weeks. The stories my colleagues and I are hearing from the front-line men and women of DHS about the dueling humanitarian, security, and public health crises are incredibly disturbing. With CBP encountering nearly 20,000 unaccompanied children at the Southwest Border in March 2021 alone—more than 6 times the number encountered during the same month last year—an already strained workforce continues to face a lack of capacity and resources to effectively manage this crisis.

Additionally, I am troubled that the Biden administration has removed important protections related to vetting the sponsors to whom unaccompanied children are released, while also waiving background check requirements for caregivers at migrant care facilities. These troubling changes in policy are doubly concerning amongst recent reports of abuse at these facilities.

I hope that this hearing today will be an honest examination of the conditions facing these children on the ground, as well as the challenges facing the front-line men and women of DHS working amidst dire circumstances. I thank our witnesses for appearing before the committee today, and I yield back the balance of my time.

Ms. BARRAGÁN. I now have the pleasure of welcoming our panel of witnesses. First, we have Mr. Aaron Reichlin-Melnick. He is policy counsel at the American Immigration Council, a nonprofit, nonpartisan organization that examines the American immigration system. Mr. Reichlin-Melnick works primarily on immigration court issues and the intersection of immigration law and policy.

Dr. Robert Garcia is an educator and the 28th mayor of Long Beach, California. He strongly supports comprehensive immigration reform and leads a community that welcomes immigrants. As mayor, he worked with the Long Beach City Council, HHS, FEMA, and local NGO's and advocates to lease the Long Beach Convention Center as an emergency intake site for migrant children.

Our next witness, Jennifer Podkul, is vice president for policy and advocacy from Kids in Need of Defense, or KIND, an NGO devoted to the protection of unaccompanied and separated children. Ms. Podkul is an international human rights lawyer and a National expert on issues affecting immigrant children.

Lora Ries, our next witness, is director of the Center for Technology Policy and senior research fellow at The Heritage Foundation. Prior to her current position, she served in various positions at the Department of Homeland Security during the Trump administration, as a lobbyist for Homeland Security contractors, and as counsel on the Judiciary Committee.

Without objection, the witnesses' full statements will be inserted in the record.

I now ask each witness to summarize his or her statement for 5 minutes, beginning with Mr. Reichlin-Melnick.

**STATEMENT OF AARON REICHLIN-MELNICK, POLICY  
COUNSEL, AMERICAN IMMIGRATION COUNCIL**

Mr. REICHLIN-MELNICK. Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the committee and subcommittee, my name is Aaron Reichlin-Melnick and I am policy counsel at the American Immigration Council, a nonpartisan organization dedicated to ensuring that the United States provides a fair process for all immigrants, including those seeking protection.

I am grateful for the opportunity to speak today to provide some perspective on unaccompanied children at the border and to emphasize that the challenge we face today is not about reducing numbers but about resolving long-standing deficiencies in our humanitarian processing system.

From the 1980's through the 2000's, the Border Patrol routinely apprehended upwards of 100,000 children a year. Concerns about their treatment led to protections for migrant children, which were expanded on a bipartisan basis in the Trafficking Victims Protection Reauthorization Act of 2008.

Congress declared that the goal of the TVPRA was: "Preventing the trafficking of unaccompanied children found in the United States by ensuring that they are not repatriated into the hands of traffickers or abusive families and are well-cared-for."

This goal of ensuring that children are not deported into abusive conditions got its first big test in 2014. Tens of thousands of unaccompanied children and families came to our borders and sought

protection, making headlines and revealing an ill-equipped and outdated humanitarian protection system.

So what happened to those children when the media spotlight went away? Well, recently-published Department of Homeland Security data reveals a key truth. Most won their cases. Since 2013, 57 percent of unaccompanied children with completed court cases have been granted the right to stay. This vital fact underscores the dire conditions from which children are fleeing.

That brings us to today. After the pandemic hit, the Trump administration began expelling all migrants under a policy known as Title 42. Regardless of whether they were asylum seekers or unaccompanied children and even if they had tested negative for COVID-19, CBP expelled them to Mexico or deported them to their home countries alone.

Despite Title 42, the number of people coming to the border has been rising steadily since last spring. By September of last year, border apprehensions were already at levels not seen in 15 years, driven primarily by large numbers of single adults being apprehended and expelled multiple times, as well as people's inability to obtain safety while waiting at the border.

The number of unaccompanied children also kept rising. In total, nearly 16,000 unaccompanied children were expelled under Title 42 before a judge blocked the practice last November as illegal. By December, shelters for unaccompanied children were already at 67 percent capacity.

So when the steady increases accelerated in January, all remaining bed space quickly filled up and a bottleneck formed at the border, leading to unacceptably high numbers of children locked in overcrowded Border Patrol cells for days or weeks at a time, just as we saw in 2014 and 2019.

In response, the Biden administration began standing up a network of emergency shelters to clear the bottleneck. Over the last month, this effort has paid off. The number of children in Border Patrol custody has dropped 80 percent since late March, and as of this morning, the average time in Border Patrol custody for unaccompanied children is below 48 hours.

However, unlicensed emergency influx shelters must not become the new norm. Migrant children belong in the care of family and loved ones, not the Government, which is why the focus now is on getting children out of shelters more quickly. Thankfully, here as well, the Biden administration's efforts have begun to pay off. Last Thursday, for the first time since reporting began, more children left U.S. custody than entered it.

Despite claims to the contrary, the U.S. border is not open. The ports of entry remain closed to those seeking asylum, and more than 40,000 families have been expelled back to Mexico since January. Some of those parents, faced with the dangers of waiting in Mexico and the impossibility of returning to the violence they fled, have made the agonizing decision to send their children across the border alone. These self-separations will undoubtedly continue until the Biden administration ends Title 42.

Today, we are seeing once again how decades of deterrence-based policies have not worked. The primary goal moving forward should not be reducing numbers. Instead, it should be to build a fair, effi-

cient, and, above all, safe system for those seeking our help, whether single adults, families, or unaccompanied children.

We have been here before and we will be here again unless we invest in a robust humanitarian protection system, one which can respond flexibly to extraordinary migration events. The American Immigration Council looks forward to helping work with the committee on these solutions, and thank you for your time.

[The prepared statement of Mr. Reichlin-Melnick follows:]

PREPARED STATEMENT OF AARON REICHLIN-MELNICK, POLICY COUNSEL, AMERICAN IMMIGRATION COUNCIL

APRIL 27, 2021

Chairman Thompson, Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the committee and subcommittee: My name is Aaron Reichlin-Melnick and I serve as the policy counsel for the American Immigration Council, a nonpartisan organization dedicated to the belief that immigrants are part of our National fabric and to ensuring that the United States provides a fair process for all immigrants, including those who are seeking protection at the border. The Council works to strengthen America by shaping how America thinks about and acts toward immigrants and immigration and by working toward a more fair and just immigration system that opens its doors to those in need of protection and unleashes the energy and skills that immigrants bring.

The Council has long brought attention to ways in which the Department of Homeland Security (“DHS”) has responded to migrants at the border—including children—through research, advocacy, and litigation. In 2015, we helped bring a successful lawsuit against the Border Patrol’s Tucson Sector challenging unconstitutional conditions of confinement for adults and children,<sup>1</sup> and we are currently suing Customs and Border Protection (“CBP”) for its unlawful policy of turning away asylum seekers, including unaccompanied children, at ports of entry, in part through a practice known as “metering.”<sup>2</sup>

I am grateful for the opportunity to be here today to help provide some historical perspective on the current situation at the border and the ways in which we got here. I want to begin with the bipartisan Trafficking Victims Protection Reauthorization Act of 2008.

Included in that law was an amendment that increased protections for unaccompanied children—distinct from children apprehended with their legal guardians—from non-contiguous countries, providing among other things a right to a hearing in immigration court. The amendment was put forward by a bipartisan group of Senators and passed through the Senate Judiciary Committee on a 17–2 vote. Congress declared that the purpose of the provision was “Preventing the trafficking of unaccompanied [noncitizen] children found in the United States by ensuring that they are not repatriated into the hands of traffickers or abusive families and are well cared for.”<sup>3</sup> In making that change, the TVPRA recognized that our duty as a Nation was to ensure that we did not cause more harm to children through repatriation and deportation.

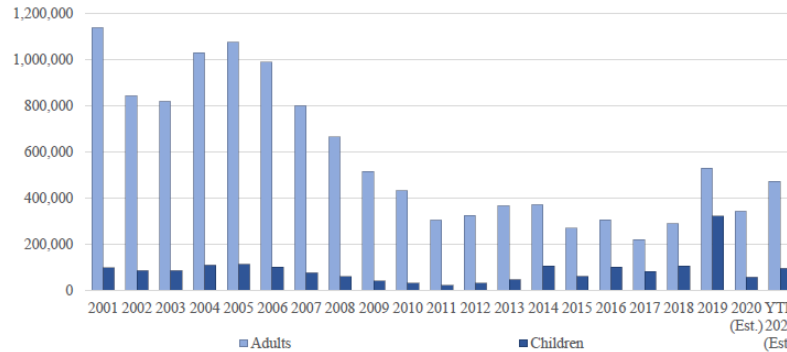
The TVPRA was not the first attempt to respond to the treatment of children at the border. In the 1990’s and through the early 2000’s, the Border Patrol routinely apprehended around 100,000 children a year, primarily from Mexico (see Figure 1). Concerns about their treatment led to the passage of the Trafficking Victims Protection Act of 2000, which first codified heightened protections for unaccompanied children, including access to Special Immigrant Juvenile Status. Similar concerns about the treatment of children in the custody of the former Immigration and Naturalization Service led Congress to define the term “unaccompanied alien child” in the Homeland Security Act of 2002 and transfer care of those children to the Department of Health and Human Services, Office of Refugee Resettlement (“ORR”).

<sup>1</sup>American Immigration Council, “Challenging Unconstitutional Conditions in CBP Detention Facilities,” <https://bit.ly/2PhdT0z>.

<sup>2</sup>American Immigration Council, “Challenging Customs and Border Protection’s Unlawful Practice of Turning Away Asylum Seekers,” <https://bit.ly/32Eo4z5>.

<sup>3</sup>House Report 101–430, “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007,” at 35.



FIGURE 1: APPREHENSIONS OF CHILDREN AND ADULTS, FISCAL YEAR 2001–2021<sup>4</sup>

In 2014, the United States first experienced a significant increase in unaccompanied children and asylum-seeking families at the border, with 68,541 unaccompanied children taken into Border Patrol custody that fiscal year. The Obama administration responded to this in ways we are familiar with today: Emergency influx shelters for unaccompanied children and crackdowns on asylum-seeking families.

Advocates documented severely inadequate conditions of confinement in Border Patrol facilities designed primarily for single adults from Mexico. These conditions included children and adults being forced to sleep on cold concrete benches in overcrowded jail cells.<sup>5</sup>

2014 revealed that the U.S. Government has severe deficiencies in its ability to process unaccompanied children safely and efficiently at the border. But despite the opportunity to use 2014 as a lesson, the Government instead doubled down on deterrence-based policies for asylum seekers and failed to adequately prepare for the arrival of more unaccompanied children.

This cycle has repeated itself several times since then, including in 2016 and 2019. More unaccompanied children and families come to the border, Border Patrol is caught off guard, ORR is forced to stand up emergency influx shelters, and politicians rattle sabers. Then inevitably the spike ends, apprehensions go back down, and we continue to avoid the difficult work of finding permanent solutions to the deficiencies in the U.S. humanitarian protection system.

But even when the media spotlight on unaccompanied children goes away, the children themselves continue to go through their immigration cases. Recent data from the DHS Office of Immigrant Statistics published in December revealed an incredibly important fact: Unaccompanied children generally win their cases. When considering all non-Mexican unaccompanied children who have arrived at the border since 2013, 57 percent of those whose cases were completed by mid-2020 were given permission to remain in the United States.<sup>6</sup> This vital fact underscores the dire conditions from which children are fleeing.

<sup>4</sup> Customs and Border Protection, Stats and Summaries, Sector Profiles fiscal year 2000 to 2019, available at <https://www.cbp.gov/newsroom/media-resources/stats?title=Border+Patrol>; Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>. Estimates of the number of children apprehended in fiscal years 2020 and 2021 are generated by first applying a .518 multiplier to family unit apprehensions (the multiplier for fiscal year 2019) and then adding unaccompanied children apprehensions.

Source.— U.S. Customs and Border Protection.

<sup>5</sup> See Human Rights Watch, “In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells,” February 28, 2018, <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

<sup>6</sup> Department of Homeland Security Office of Immigrant Statistics, “Enforcement Lifecycle Reports,” <https://www.dhs.gov/immigration-statistics/special-reports/enforcement-lifecycle>.

In 2020, after the COVID-19 pandemic hit, the Trump administration put in place what has become known as the Title 42 policy. Under Title 42, the Border Patrol began expelling all migrants arriving at the border asserting National security concerns based on public health, regardless of whether they were families seeking asylum or unaccompanied children—or indeed whether or not they were infected with COVID-19. Unaccompanied children could not be expelled to Mexico and were instead put on planes and deported to their home countries, often after they had tested negative for COVID-19, a prerequisite for deportation to some countries.<sup>7</sup>

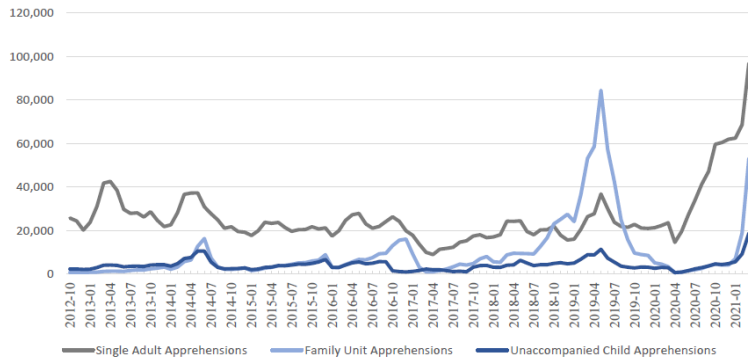
More than 13,000 unaccompanied children were expelled under Title 42 before November 18, 2020, when a Federal judge ruled that the practice was illegal.<sup>8</sup> On January 29, after a Federal appeals court briefly put that decision on hold, the Biden administration chose not to resume expelling unaccompanied children and the Centers for Disease Control and Prevention (“CDC”) issued an order formally exempting them from Title 42.

Despite Title 42, the number of people coming to the border, including unaccompanied children, began rising steadily after lockdowns lifted across Mexico and Central America in May 2020. This rise followed shocks to the region caused by severe economic instability due to the pandemic, escalating violence in places like the Mexican states of Michoacán and Guerrero, devastation caused by Hurricanes Eta and Iota, and long-term problems such as corruption, violence, impunity, and climate change.

Beginning in spring 2020, the number of single adults coming to the border seeking to enter the United States began rising rapidly, from a low of 14,754 in April 2020 to 62,041 in December 2020. Under Title 42, single adults would be rapidly processed at the border and sent right back to Mexico where they could try to cross again the same day. The rate at which people crossed the border multiple times rose from 7 percent in March 2020 to 40 percent by October 2020. This increase in repeat attempts was in part driven by people’s inability to obtain safety while waiting at the border for the United States to begin accepting asylum requests again, and the growing backlog of people waiting for months, if not years, for the resumption of humanitarian processing at the border.

By September 2020, border apprehensions had already reached levels for a September not seen since 2006 (see Figure 3). This trend continued through the fall, and October 2020, November 2020, and December 2020 were all the highest apprehension totals for those months since 2006.<sup>9</sup>

Figure 3: Border Patrol Apprehensions, by group, October 2012 – March 2021



<sup>7</sup> Dara Lind and Lomi Kriel, “ICE Is Making Sure Migrant Kids Don’t Have COVID-19—Then Expelling Them to ‘Prevent the Spread’ of COVID-19,” *ProPublica*, August 10, 2020, <https://www.propublica.org/article/ice-is-making-sure-migrant-kids-dont-have-covid-19-then-expelling-them-to-prevent-the-spread-of-covid-19>.

<sup>8</sup> Hamed Aleaziz, “Border Officials Turned Away Unaccompanied Immigrant Children More Than 13,000 Times Under Trump’s Pandemic Policy,” *Buzzfeed News*, October 28, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/border-officials-turned-away-unaccompanied-immigrants>.

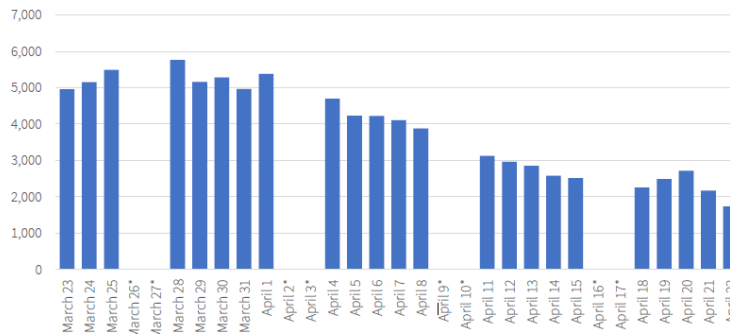
<sup>9</sup> Customs and Border Protection, “U.S. Border Patrol Monthly Apprehensions (Fiscal Year 2000—Fiscal Year 2019),” [https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Monthly%20Apprehensions%20%28FY%202000%20%20FY%202019%29\\_1.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Monthly%20Apprehensions%20%28FY%202000%20%20FY%202019%29_1.pdf)

By December 2020, apprehensions of unaccompanied children had hit levels last seen in fall 2019 and ORR was already at 67 percent capacity.<sup>10</sup> Despite the clear trends, the Trump administration made no effort to expand shelter capacity until January 15, just 5 days before President Biden took office.<sup>11</sup> When significantly more unaccompanied children and families began coming to the border in late January, insufficient bed space in ORR shelters led once again—as it did in 2014 and 2019—to high numbers of unaccompanied children stuck in Border Patrol custody.

The increase in unaccompanied children is also driven by policies kept in place by the Biden administration, including the closure of ports of entry to asylum seekers and the practice of expelling families back to Mexico under Title 42. Some families forced back to Mexico have made the agonizing decision to send their children across the border alone,<sup>12</sup> making the decision that Moses’ mother made thousands of years ago—better to send your child into the arms of a kind stranger than risk death by remaining where they are now.

Over the past 3 months, the Biden administration has begun standing up an extensive network of emergency influx shelters to reduce the bottleneck in CBP custody. This effort has proven successful in reducing the number of children held in CBP custody. Over the last month, the number of unaccompanied children in CBP custody has dropped from a high of 5,767 on March 28 to a low of 1,741 on April 22 (see Figure 4).

Figure 4: Unaccompanied Children in CBP Custody, March 23 to April 22



Source: Health and Human Services and Department of Homeland Security, Unaccompanied Children Daily Reports, March 24 to April 23. \*Data not reported on weekends.

While influx shelters are necessary given the current situation at the border, we must not accept them as a new norm. Emergency influx shelters are exempt from State licensing requirements and there have been prior reports of abuse carried out by insufficiently vetted influx shelter staff.<sup>13</sup> Given the concerns raised about conditions in these shelters, ORR should ensure that no child is held in an influx center for longer than the absolute minimum amount of time required to place the child with a sponsor.

Data also suggests that we have already hit at least a temporary peak in the arrival of unaccompanied children. Despite predictions that the number of unaccom-

<sup>10</sup>Dara Lind, “No Good Choices: HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities,” *ProPublica*, April 1, 2021, <https://www.propublica.org/article/no-good-choices-hhs-is-cutting-safety-corners-to-move-migrant-kids-out-of-overcrowded-facilities>.

<sup>11</sup>Julia Ainsley, Jacob Soboroff, and Laura Strickler, “Sitting on their hands: Biden transition officials say Trump officials delayed action on child migrant surge,” *NBC News*, March 24, 2021, <https://www.nbcnews.com/politics/immigration/sitting-their-hands-biden-transition-officials-say-trump-officials-delayed-n1261934>.

<sup>12</sup>Dianne Solis, “Parents face decision to send migrant children alone across border in rising numbers,” *Dallas Morning News*, April 9, 2021, <https://www.dallasnews.com/news/immigration/2021/04/09/parents-face-decision-to-send-migrant-children-alone-across-border-in-rising-numbers/>.

<sup>13</sup>Monique O. Madan, “Sex abuse claims revealed at Homestead shelter, where staff was not vetted for child abuse,” *Miami Herald*, July 15, 2020, <https://www.miamiherald.com/news/local/immigration/article244244402.html>.

panied children encountered at the border would continue rising in April,<sup>14</sup> current data suggests a drop in unaccompanied children of roughly 10–15 percent from March to April.<sup>15</sup> This will hopefully give the Biden administration breathing room to begin the long-overdue process of restoring access to humanitarian protections at the border for all, not just unaccompanied children, and ensuring that asylum seekers are treated in a safe, humane, and efficient manner.

Despite claims to the contrary, the U.S. border is not open. Even those seeking asylum at ports of entry are turned away nearly universally. Halfway through the fiscal year, just 945 unaccompanied children have been processed at ports of entry across the U.S.-Mexico border, compared to 4,614 in the entire fiscal year 2019 and 8,624 in the entire fiscal year 2018. CBP claims these restrictions on processing asylum seekers at ports of entry are necessary to protect the Nation from COVID-19. But while restrictions on non-essential travel remain in place at ports of entry, nearly 290,000 people cross the border every day from Mexico, with no testing requirements in place.<sup>16</sup>

Because asylum seekers waiting in Mexico cannot begin the asylum process at the ports of entry, some have become desperate and chosen to cross the border between ports of entry and hope they will be allowed to seek protection that way. The Department of Homeland Security has long been aware that its practice of choking off access to asylum at ports of entry will drive some to cross improperly between ports of entry,<sup>17</sup> yet it continues to keep restrictions in place with no apparent plan to process those who have been waiting according to current Government policies.

As we are seeing once again, a failure to make long-term investments in our humanitarian protection systems has led to repeated cycles of self-inflicted chaos. Decades of deterrence-based policies have not produced anything beyond short-term declines in the number of people seeking asylum, which reverse once push factors in people's home countries become too high. If there is one thing we can learn from our experience with asylum seekers and unaccompanied children in recent years, it is that the solution is not to turn families and children away and send them back to harm in their home countries.

Solutions to the current situation at the border should not have “reducing numbers” as their primary goal, but instead to ensure the creation of a unified humanitarian approach for all groups—whether single adults, families, or children—so that asylum seekers can access protection without falling into the hands of the cartels or being treated like security threats by CBP. Some steps toward that end include:

- Building a new border infrastructure that allows for the efficient and humane processing of children that is flexible enough to address extraordinary migration events.
- Stop blocking access to asylum at ports of entry through metering, which drives migrants, including unaccompanied children, into the hands of the cartels.
- Embed ORR staff into every step of the border processing system, allowing them to begin the sponsorship process for unaccompanied children immediately after apprehension and process non-parental relatives such as grandparents as sponsors immediately, avoiding family separations.
- Expand access to licensed child welfare workers at the border.
- Ensure that no child goes through the immigration court process without a lawyer.

The American Immigration Council looks forward to working with the committee on these solutions.

Ms. BARRAGÁN. Thank you for your testimony.

With that, I would now move to recognize Mayor Robert Garcia to summarize his statement for 5 minutes.

<sup>14</sup> Stef W. Knight, “Scoop: Kids’ border surge expected to last 7+ months,” *Axios*, March 28, 2021, <https://www.axios.com/border-crisis-record-number-migrant-kids-89cd0b23-a588-4f01-9547-d6f04b262542.html>.

<sup>15</sup> Nick Miroff, “Border crossings leveling off but remain near 20-year high, preliminary April data shows,” *Washington Post*, April 23, 2021, [https://www.washingtonpost.com/national/mexico-border-crossings-april/2021/04/23/31206e82-a459-11eb-8a6d-f1b55f463112\\_story.html](https://www.washingtonpost.com/national/mexico-border-crossings-april/2021/04/23/31206e82-a459-11eb-8a6d-f1b55f463112_story.html) (“About 550 teens and children have been crossing the border without parents each day in recent weeks, data show, down 10 to 15 percent from late March.”)

<sup>16</sup> Department of Transportation, Monthly Border Crossing Data, <https://www.bts.gov/browse-statistical-products-and-data/border-crossing-data/border-crossingentry-data>.

<sup>17</sup> See, e.g., Department of Homeland Security Office of Inspector General, “CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry,” October 27, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>.

**STATEMENT OF ROBERT GARCIA, MAYOR, CITY OF LONG  
BEACH, LONG BEACH, CALIFORNIA**

Mr. GARCIA. Good afternoon, Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the subcommittee. My name is Robert Garcia. I am the mayor of Long Beach, California, and I am here today to address the subcommittee about our city's support of what is really a humanitarian mission, and that is establishing a Federal migrant shelter here at the Long Beach Convention Center.

Now, Long Beach is approximately home to about half a million people of all backgrounds. We are in southern California, and we have a rich history of welcoming immigrants from around the world, in particular Cambodian refugees that fled persecution.

Now, my personal history is also one of an immigrant. I came to this country when I was 5 years old from Peru and under different circumstances, but still poor and without many services. I became a U.S. citizen when I was 21. It was the proudest day of my life. So I come to the subcommittee with the lived experience of an immigrant also seeking a better life.

Now, the Long Beach Convention Center is currently set up to host a total of a thousand migrant children at any time from 5 to 17. I want to be very clear, these facilities should be temporary and the goal should be quick family reunification.

Now, the city's role in this humanitarian effort is to provide the facility and to connect HHS with local service providers while HHS operates the site. The goal is quick family reunification and our temporary shelter is through August 2, 2021.

Now, every child that comes to the Long Beach facility is provided with the best of care. HHS is very dedicated to this. These children are welcomed. We are grateful that they are shown kindness, similar to other immigrants and even myself when I came to the United States, from many people around the community.

These children are provided 3 meals a day with snacks prepared by our convention center staff. Classrooms are set up. They get education for multiple hours a day from folks from around the community and the surrounding area.

Now, the Long Beach facility also offers outdoor space and activities for children to enjoy. There are indoor recreational activities and outdoor, including books, video games, and movies.

Important services are being provided by HHS and partner agencies to every child, most importantly medical service. UCLA Medical Center actually has a full-size clinic with diagnostic and immediate care that is provided. The utmost care to each child's needs is being met within the center.

In addition, there are other services: Social workers, mental health care, legal representation, and resources to manage their needs. We have tried to pair also our HHS partners with local organizations to help in this endeavor to make the Long Beach shelter as much of a success as possible.

Now, it is important enough that these children have come from the border. Most arrive alone without parents or family, and bringing them to shelters like ours is certainly more humane than leaving them at the border.

Now, HHS is focused on quick family reunification. It is important to note that temporary sites like the Long Beach Convention Center are necessitated by this humanitarian mission, but these sites should not replace immigration reforms.

Now, it breaks my heart that we have an immigration system that is broken. It has been decades since we have had any type of immigration reform, and strong immigration reform that is an investment to our neighbors, humanitarian missions, and diplomacy are needed to address current migration of children and others.

Now, central to any immigration reform effort, as we all know, must be a clear and fair pathway for citizenship for all those that are undocumented in this country. That includes support for Dreamers and those in the military. They should go to the front of the line. A strong guest worker program that must be developed with support of our neighboring countries. We must provide additional aid and support to Mexico and Central American countries.

Now, these reforms are not only necessary but would be transformational to our economy, National security, and millions of families. But we must also expand resources for asylum seekers, so the unaccompanied children at the border have access to legal counsel, interpretation, and other critical services.

We should be looking at rescinding Title 42 and fully restoring access to asylum at our borders. We must ensure that children are not held at border facilities, which, honestly, are no place for children. We need to care for children in facilities that are scaled to meet their needs, and we must partner with local agencies on the ground to help get resources as fast as possible to these children.

Now, our top priority should be to address the underlying reasons why these temporary facilities are needed in the first place. With additional resources and immigration reform efforts, we can prevent the need for these types of shelters, period.

Now, I want to thank you for welcoming me to address the subcommittee. We are grateful to be able to help in this humanitarian mission, and I look forward to any questions. Thank you.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF ROBERT GARCIA

APRIL 27, 2021

Good afternoon Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the subcommittee.

My name is Robert Garcia, and I am the mayor of Long Beach, California. I am here today to address the subcommittee about our city supporting what really is a humanitarian mission—helping to establish a Federal migrant children emergency shelter at the Long Beach Convention Center.

Long Beach is home to approximately half a million people of all backgrounds. Located in Southern Los Angeles County, our city has a rich history of welcoming immigrants and refugees from around the world. In particular, refugees from Cambodia that fled persecution are an important part of our community.

My personal history is also one of an immigrant. I came to this country from Peru when I was 5 years old. I came under different circumstances than the children we are hosting, but still poor and without many services. I became an American citizen when I was 21 years old, and it was the proudest day of my life. I come to this subcommittee hearing today with the lived experience of an immigrant seeking a better life and the American dream.

The Long Beach Convention Center is currently set up to host a total of 1,000 migrant children at any given time, ranging from ages 5 to 17. I want to be very clear that these facilities should be temporary and that the top goal needs to be

quick family reunification. This partnership with HHS was approved unanimously by the Long Beach City Council because our city believes it was the right and compassionate thing to do. The city's role in this humanitarian effort is to provide the facility and to connect HHS with local service providers, while HHS operates the site. The mission of the facility is quick family reunification, using the space temporarily through August 2, 2021.

Every child that comes to the Long Beach facility is provided with the best of care. It's very important to me that these children are welcomed and cared for in every way—much like those who showed my family and me kindness when we came to the United States.

They are provided with 3 meals a day and snacks prepared by our convention center catering staff. Multiple classrooms are set up, and every child is provided with hours of class time a day, with teachers from Long Beach and the surrounding area.

The Long Beach facility also offers outdoor space and activities for children to enjoy. In addition, there are indoor recreational activities, including books, video and board games, and movies.

Important services are being provided by HHS and partner agencies to every child—most importantly, medical service. In partnership with UCLA medical center, the Long Beach site has a full-size clinic where diagnostic and immediate care is provided. The utmost care is being taken to look after each child's medical needs to ensure their safety and the safety of those around them. This is in addition to other services, including social workers, mental health care, legal representation and resources to manage their needs.

We have paired the Federal Government in Long Beach with local organizations and providers to help in this endeavor. This is a whole-of-Long-Beach approach to make this shelter a success.

These children have come directly from the border. Most arrive alone without parents or family. Bringing them to shelters like ours is a more humane approach to caring for children than keeping them at the border. HHS is focused on quick family reunification. Temporary sites like the Long Beach Convention Center are necessitated by this humanitarian mission, but we must ensure that these sites do not replace lasting immigration reforms. These sites should not become the norm.

It breaks my heart that we have an immigration system today that is broken. It's been decades since we've had any kind of immigration reform. Strong immigration reform, investment in our neighbors, humanitarian missions, and diplomacy are needed to address the current migration of children and others.

Central to any immigration reform effort needs to be a clear and fair pathway to citizenship for those who are undocumented in our country.

DREAMERS and those who have served in the military should go to the front of the line. And a strong guest worker program must be developed with input and support from neighboring countries. We must also provide additional aid and support to Mexico and Central American countries. These reforms are not only necessary but would be transformational for our economy, National security, and millions of families.

We must also expand resources for asylum seekers, so that unaccompanied children arriving at the border have access to counsel, interpretation, and other critical services. We should be looking at rescinding Title 42 and fully restoring access to asylum at our borders. We must ensure children are not held at border facilities, which are no place for children. We need to care for children in facilities that are scaled to meet their needs. And we must work with HHS and local partners to identify sponsors and resources for these children as fast as possible.

Our top priority should be to address the underlying reasons why these temporary facilities are needed in the first place. With additional resources and immigration reform efforts, we can prevent the need for emergency intake sites period.

Thank you for welcoming me today to address this subcommittee. I look forward to your questions.

Ms. BARRAGÁN. Thank you for your testimony, Mayor Garcia. Much appreciated.

Now we will move on to our next witness. I would like to recognize Ms. Podkul to summarize her statement for 5 minutes.

**STATEMENT OF JENNIFER PODKUL, VICE PRESIDENT FOR POLICY AND ADVOCACY, KIDS IN NEED OF DEFENSE (KIND)**

Ms. PODKUL. Thank you, Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the subcommittee. My

name is Jennifer Podkul. I am the vice president of policy and advocacy at Kids in Need of Defense. KIND is a preeminent U.S.-based non-Governmental organization devoted to protection of unaccompanied and separated children.

KIND envisions a world in which every unaccompanied child on the move has access to legal counsel and has their rights and well-being protected as they migrate alone in search of safety. Since its inception, KIND has received referrals for more than 21,000 cases and now serves over 5,000 children annually.

I am grateful the subcommittee is holding today's hearing to explore the ways we can transform our protection system into one that fully upholds children's rights and well-being as they migrate alone in search of safety. There have been high numbers of children, both unaccompanied as well as those traveling with their parents or legal guardians, coming to our border asking for protection for almost a decade. This has been due to the perpetually high levels of violence, including sexual and gender-based violence, abuse, and impunity, that have devastated many countries in Central America. These dangers have only been exacerbated by the COVID pandemic and 2 recent devastating hurricanes.

Despite many attempts by prior administrations to deter kids from making the journey and seeking protection in the United States, they have continued to flee here. This is because you can't deter away a refugee situation.

Not only have the drivers of migration worsened, but the use of Title 42 authority against children, in violation of the Trafficking Victims Protection Reauthorization Act, created an artificial build-up of kids languishing in Northern Mexico, who had no choice but to request protection again. Thousands of children were simply told the United States was closed for business and then they were summarily dumped on the other side of the border, with no concern for their safety, exposing them to a heightened risk of trafficking or other grave harm.

For example, 3 children between the ages of 3 and 9 were traveling with their mother to the U.S.-Mexico border. Tragically, the mother died. When the children were orphaned, they were taken in by the taxi driver who drove the mother to the hospital. They lived with this stranger until they were finally allowed to present to U.S. officials.

Each child asking for protection at the border has a story. Too many have suffered this kind of unimaginable trauma which has brought them to our doorstep.

The Biden administration has already made important strides in restoring access to protection and due process for unaccompanied children. They have put policies in place to expedite reunification so children do not needlessly languish in Government custody, such as eliminating the information-sharing agreement between DHS and HHS and streamlining sponsor requirements. They are restarting the Central American Minors Program, to allow children to apply for protection closer to their country of origin so that some may not even have to make the dangerous journey. Finally, they have made a commitment to investing in sending countries to finally address the root causes of migration so that children never have to leave their homes.



These initial commitments will go a long way. However, we need systematic change that will ensure we are not here time and again having to scramble to put children in unlicensed, make-shift facilities, and to make sure children do not have to wait years for the resolution of their applications for humanitarian aid.

We need to establish a fundamentally humanitarian reception model at the border that includes CBP hiring child welfare professionals to screen and care for children, and have an HHS staff collocated at the reception centers to expedite the transfer of children to licensed facilities and expedite family reunifications.

ORR must move away from running influx facilities and instead expand capacity in family-based and small-scale shelters that can be more responsive to migration trends.

Finally, we need to ensure children's cases are considered fairly and efficiently and that a child always has an attorney to support them through the complex process. We all win when we do right by these kids.

Let me just close with a quote from a KIND client who joined the U.S. Marines after winning his asylum case. He said: I will always be deeply grateful for those who helped me along the way. I am only here now because of them, and I pledge to help others as this country has helped me. I will defend the values of freedom, liberty, and justice for all as only one who has been denied those fundamental rights can.

Thank you.

[The prepared statement of Ms. Podkul follows:]

PREPARED STATEMENT OF JENNIFER PODKUL

APRIL 27, 2021

Chairwoman Barragán, Ranking Member Higgins, and Members of the subcommittee, thank you for the opportunity to discuss the way forward to a humanitarian protection system that safeguards unaccompanied children throughout their migration journey.

My name is Jennifer Podkul, and I serve as vice president of policy and advocacy for Kids in Need of Defense (KIND). Kids in Need of Defense (KIND) is the pre-eminent U.S.-based non-Governmental organization devoted to protection of unaccompanied and separated children. KIND envisions a world in which every unaccompanied child on the move has access to legal counsel and has their rights and well-being protected as they migrate alone in search of safety. In 2008, KIND was founded by the Microsoft Corporation and UNHCR Special Envoy Angelina Jolie to address the gap in legal services for unaccompanied minors. KIND now has offices across the United States and in Mexico that provide unaccompanied children with holistic care that includes legal assistance and social services. Through strategic partnerships, we provide pro bono legal representation for refugee and migrant children across the country. Since its inception, KIND has received referrals for more than 21,000 cases and now serves over 5,000 children annually in partnership with nearly 700 law firm, corporate, law school, and bar association partners. In addition, through our comprehensive social services programming, KIND complements its legal efforts by bringing a truly holistic approach to protecting children after their arrival in the United States. We have connected thousands of children—and their caretakers—with essential medical care, mental health care, educational opportunities, and crisis intervention to ensure their safety and well-being.

Beyond U.S. borders, KIND's Mexico-based offices and its programming in Central America works with partners on the ground to address the root causes of migration, protect children during migration, and connect repatriated children to essential services. Through its European Initiative, KIND and partners in Belgium, France, Greece, Ireland, and the United Kingdom work to ensure access to high-quality pro bono legal assistance for unaccompanied children in Europe.

Each of these efforts informs KIND's robust State, National, and international advocacy and public education work to champion policies and laws that protect unac-

companied children on the move no matter where they are in their migration journey.

KIND's experience yields a unique vantage into the challenges facing the large numbers of unaccompanied children currently seeking protection in the United States. It is important to underscore that these children are one of the world's most vulnerable groups. Without a parent or legal guardian, they have fled hundreds or thousands of miles to the United States to escape dangers including severe violence, abuse, and human trafficking. KIND has observed how increases in arrivals of unaccompanied children during prior administrations brought into relief the need for fundamental reforms that would ensure—both during and outside of influx periods—the safety and well-being of those children along with the operational efficacy of the Government agencies charged with their fair and humane treatment. Unfortunately, many of those reforms have gone unadopted. Today's hearing presents an opportunity to address how the Biden administration and this Congress can chart a different course, and by doing so, transform our protection system into one that fully upholds children's rights and well-being as they migrate alone in search of safety.

RECENT INCREASE IN UNACCOMPANIED CHILDREN SEEKING PROTECTION AT THE U.S. SOUTHERN BORDER

Over the past decade, significantly increased numbers of unaccompanied children have fled to the United States in pursuit of humanitarian protection. In fiscal year 2014, CBP encountered 59,692 unaccompanied children at the U.S. Southern Border.<sup>1</sup> That figure climbed to 72,875 in fiscal year 2019<sup>2</sup>—a 1-year record. More recently, encounters of unaccompanied children began rising in April 2020, then continued into the current year.<sup>3</sup> In March 2021, over 18,500 unaccompanied children were encountered at the U.S. Southern Border—the highest total of any month.<sup>4</sup> At present, unaccompanied children continue to request protection at the U.S. Southern Border on a large scale, though in recent weeks arrivals have declined.<sup>5</sup>

As in the past, the high number of unaccompanied children currently seeking humanitarian protection reflects a host of intersecting factors. Chief among them is the on-going humanitarian crisis in the northern Central American nations of El Salvador, Guatemala, and Honduras: The countries of origin of most unaccompanied children arriving at the U.S.-Mexico border. Wide-spread gang violence; sexual- and gender-based violence; corruption; poverty; natural disasters; and other dangers plague the region.<sup>6</sup> In key respects, the COVID-19 pandemic and the devastation caused by Hurricanes Iota and Eta intensified these perils.<sup>7</sup> As a consequence, many children have no choice but to escape their countries of origin and seek safety abroad.

Rather than strengthen foreign assistance to the region to address these root causes of forced child migration, the Trump administration reduced that aid.<sup>8</sup> It also weakened or dismantled in-region protection mechanisms, like the Central American Minors Refugee/Parole (CAM) program,<sup>9</sup> that enabled certain vulnerable children to relocate to safety without a dangerous trek north. These and other actions

<sup>1</sup> See Congressional Research Service, "Unaccompanied Alien Children: An Overview" (Oct. 9, 2019); <https://fas.org/sgp/crs/homesec/R43599.pdf>.

<sup>2</sup> Id.

<sup>3</sup> American Immigration Council, "Facts About the Current Situation at the Border" (Mar. 23, 2021); <https://www.americanimmigrationcouncil.org/news/facts-about-current-situation-border>.

<sup>4</sup> Julia Ainsley "Record number of unaccompanied children crossed the border in March" *NBC News* (Apr. 2, 2021); <https://www.nbcnews.com/politics/immigration/record-number-unaccompanied-children-crossed-border-march-n1262901>.

<sup>5</sup> Nick Miroff, "Border crossings leveling off but remain near 20-year high, preliminary April data shows" *Washington Post* (Apr. 23, 2021); [https://www.washingtonpost.com/national/mexico-border-crossings-april/2021/04/23/31206e82-a459-11eb-8a6d-f1b55f463112\\_story.html](https://www.washingtonpost.com/national/mexico-border-crossings-april/2021/04/23/31206e82-a459-11eb-8a6d-f1b55f463112_story.html).

<sup>6</sup> See Paula Dupraz-Dobias, "No easy solutions for tackling the Central American roots of the migration crisis" *The New Humanitarian* (Apr. 21, 2021); <https://www.thenewhumanitarian.org/analysis/2021/4/21/tackling-root-causes-of-migration-crisis-in-central-america>.

<sup>7</sup> Nicole Narea, "Migrants are heading north because Central America never recovered from last year's hurricanes" *Vox* (Mar. 22, 2021); <https://www.vox.com/policy-and-politics/2021/3/22/22335816/border-crisis-migrant-hurricane-eta-iota>.

<sup>8</sup> Lesley Wroughton, Patricia Zengerle, "As promised, Trump slashes aid to Central America over migrants" *Reuters* (Jun. 17, 2019); <https://www.reuters.com/article/us-usa-immigration-trump/as-promised-trump-slashes-aid-to-central-america-over-migrants-idUSKCN1T2C7>.

<sup>9</sup> David Nakamura, "Trump administration ends Obama-era protection program for Central American minors" *Washington Post* (Aug. 16, 2017); [https://www.washingtonpost.com/politics/trump-administration-ends-obama-era-protection-program-for-central-american-minors/2017/08/16/8101507e-82b6-11e7-ab27-1a21a8e006ab\\_story.html](https://www.washingtonpost.com/politics/trump-administration-ends-obama-era-protection-program-for-central-american-minors/2017/08/16/8101507e-82b6-11e7-ab27-1a21a8e006ab_story.html).

only heightened the forces compelling children to flee to the United States for protection.

Additional Trump administration policies created an artificial bottleneck at the U.S.-Mexico border that has contributed to the increase in unaccompanied child arrivals this year. In March 2020, invoking a rarely used public health law under Title 42 of the U.S. Code, the administration issued an order broadly suspending the entry of protection seekers, including unaccompanied children, into the United States.<sup>10</sup> Though the Trump administration characterized this “Title 42” policy as a necessary public health response to the COVID-19 pandemic, independent public health experts have made clear that it lacks a valid public health rationale and that the U.S. Government is fully capable of upholding our humanitarian laws and values while also protecting public health and safety.<sup>11</sup> Pursuant to Title 42, the Trump administration “expelled” over 15,000 unaccompanied children<sup>12</sup>—swiftly returning them to Mexico, Central America, and other countries—and to the very dangers they fled.

These expulsions violated the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) by stripping children of vital legal safeguards and ultimately any meaningful opportunity to seek humanitarian relief.<sup>13</sup> As a result, expelled children faced a heightened risk of human trafficking, persecution, and other grave harm—precisely the outcomes that the TVPRA was intended to prevent. For instance, by eliminating screenings of these children at the border for trafficking concerns, Title 42 meant that CBP failed to observe and respond to any evidence that children were trafficked into the United States for commercial sex or forced labor or would have faced return into trafficking situations.<sup>14</sup> Moreover, by abandoning the legal definition of “unaccompanied alien child” provided for in the Homeland Security Act<sup>15</sup> in the course of expulsions, the Trump administration incentivized the rapid return of children to Mexico together with unscreened adults who could have posed a danger to them. Expelled children were also deprived of intakes and assessments by attorneys and social workers specially trained to identify protection needs among this vulnerable population following their transfer to ORR custody and release to sponsors. Far from deterring or disrupting human trafficking, Title 42 increased the risk that children would face exploitation and harm by unlawfully and callously disregarding anti-trafficking safeguards codified by Congress.<sup>16</sup>

In the process, thousands of children expelled at the border were left with no viable means of obtaining protection amid perilous conditions exacerbated by the pandemic and natural disasters in the region. Facing the same or worse dangers that initially compelled their flight to the United States in search of safety, many of these children had no other option but to request protection at the border once more when the Biden administration exempted unaccompanied children from Title 42,<sup>17</sup> helping ensure that policies governing the treatment of these children complied with Federal law.

#### CURRENT CHALLENGES AT THE U.S. SOUTHERN BORDER AND IN THE ORR SHELTER SYSTEM

Despite the 2014 and 2019 upturns in unaccompanied children seeking protection at the U.S. Southern Border, previous administrations failed to introduce changes necessary to ensure that the border and shelter systems for unaccompanied children met those children’s safety needs and maintained operational efficacy, whether during or outside of emergency situations. The large numbers of recently arrived children, combined with a border model and ORR network long in need of fundamental

<sup>10</sup> Centers for Disease Control and Prevention, 85 Fed. Reg. 17060 (March 20, 2020).

<sup>11</sup> Priscilla Alvarez, “Health experts slam Trump administration’s use of public health law to close border” *CNN* (May 18, 2021); <https://www.cnn.com/2020/05/18/politics/border-closure-public-health/index.html>.

<sup>12</sup> Camilo-Montoya-Galvez, Adam Verdugo, “Nearly 19,000 unaccompanied children entered U.S. border custody in March—an all-time high” *CBS News* (Apr. 2, 2021); <https://www.cbsnews.com/news/immigration-unaccompanied-children-border-custody-record-19k/>.

<sup>13</sup> KIND Policy Brief, “Sending Children Back to Danger,” (Oct. 8, 2020); <https://supportkind.org/wp-content/uploads/2020/10/Updated-Expulsions-at-US-MX-border-10.8.-20.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> Pub. L. 107-296.

<sup>16</sup> KIND Policy Brief, “Border Closure Exposing Children to Heightened Risk of Trafficking and Exploitation” (Apr. 28, 2020); <https://supportkind.org/wp-content/uploads/2020/05/UC-Expulsion-and-Trafficking-5.19.pdf>.

<sup>17</sup> Camilo Montoya-Galvez, “U.S. will not expel unaccompanied migrant children under Trump-era policy now being reviewed” *CBS News* (Feb. 3, 2021); <https://www.cbsnews.com/news/migrant-children-biden-administration-will-not-expel-trump-policy/>.

reform, have therefore presented significant challenges to the welfare of those children and the functionality of those systems.

Over multiple administrations, for example, DHS has persisted in upholding a predominantly “law enforcement” framework at the border—rooted in policies of deterrence instead of protection—that neglects the vulnerabilities of children, jeopardizes their safety, and violates, rather than enforces, long-standing laws. Reflecting this approach, DHS vests CBP law enforcement personnel, rather than child welfare professionals, with responsibility for overseeing children’s care in CBP detention facilities and conducting sensitive protection screenings of traumatized children, despite these personnel’s lack of expertise in trauma-informed interviewing and children’s emotional, physical, and developmental needs. This model has spawned perennial violations of TVPRA requirements. In 2015, for example, the Government Accountability Office documented extensive noncompliance by CBP agents and officers with TVPRA screening protocols for unaccompanied children from Mexico.<sup>18</sup> Despite these systemic problems, DHS has failed to fulfill Congress’s directive in fiscal year 2021 appropriations report language<sup>19</sup> to hire specially-trained child welfare professionals at all southern land CBP facilities who would perform children’s protection screenings and oversee their care.

Nor has the Federal Government adopted reforms that would allow HHS personnel with child welfare expertise to co-locate in CBP facilities. Under this arrangement, those HHS staff could accelerate the sponsor vetting process for unaccompanied children who arrive with trusted caregivers. And for many years CBP has detained children in manifestly unfit facilities characterized by substandard conditions that damage their physical and psychological health and limit access to counsel.<sup>20</sup>

Prior administrations also failed to take up essential ORR reforms. ORR has long relied on large-scale congregate care settings unsuitable for vulnerable children, without sufficiently expanding capacity in smaller-scale shelters and family-based care settings better aligned with domestic child welfare laws, such as the bipartisan Families First Prevention Services Act of 2018,<sup>21</sup> and that serve children’s best interests. Not only that, but many ORR facilities have failed to maintain proper conditions. On-going facility problems include the incidence of sexual abuse of children by facility staff, inadequate and/or misguided mental health treatment, and a lack of suitable accommodations for particularly vulnerable children. Additionally, under the Trump administration, ORR entered into an information-sharing agreement with DHS<sup>22</sup> that discouraged potential sponsors from coming forward, delaying the release of unaccompanied children from ORR and their reunification with loved ones.

Consequently, DHS and ORR were poorly positioned to manage the recent rise in arrivals of unaccompanied children at the U.S. Southern Border. On March 27, CBP held 5,767 unaccompanied children in its custody—the highest recorded total in the agency’s history.<sup>23</sup> Despite the TVPRA’s requirement that DHS transfer unaccompanied children into ORR custody within 72 hours, many of these children languished in CBP detention facilities for well over 100 hours.<sup>24</sup> CBP law enforcement personnel, rather than child welfare professionals trained in children’s unique needs and challenges, have directed their care and conducted their protection screenings.

Children in ORR custody have also faced substantial challenges, as has ORR itself. The capacity of ORR’s network of licensed children’s shelters was already limited due to COVID-19 based occupancy restrictions that many of these congregate care facilities have operated under during the pandemic.<sup>25</sup> The large numbers of arriving children further strained that capacity. In response, ORR activated an “influx

<sup>18</sup> GAO, “Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody” (Jul. 14, 2015); <https://www.gao.gov/assets/680/671393.pdf>.

<sup>19</sup> H.R. Report 116–458.

<sup>20</sup> See, e.g., University of Chicago Law School—Global Human Rights Clinic, et al, “Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection” (May 2018); <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1001&context=ihrc>.

<sup>21</sup> Enacted as part of Public Law (Pub. L.) 115–123.

<sup>22</sup> KIND, A Timeline: How the Trump Administration is Rolling Back Protections for Children (Jul. 2020); [https://supportkind.org/wp-content/uploads/2020/07/A-Timeline\\_Updated-July-2020-1.pdf](https://supportkind.org/wp-content/uploads/2020/07/A-Timeline_Updated-July-2020-1.pdf).

<sup>23</sup> Priscilla Alvarez, “Number of unaccompanied migrant children in Customs and Border Protection custody falls 45 percent” CNN (Apr. 12, 2021); <https://www.cnn.com/2021/04/12/politics/border-migrant-children/index.html>.

<sup>24</sup> Id.

<sup>25</sup> Priscilla Alvarez, “Biden administration tells facilities for migrant children to reopen to pre-pandemic levels” (Mar. 5, 2021); <https://www.cnn.com/2021/03/05/politics/immigration-border-crowding-covid/index.html>.

facility” in Carrizo Springs, Texas.<sup>26</sup> ORR’s on-line Policy Guide defines an influx facility as “a type of care provider facility that opens temporarily to provide emergency shelter and services for UAC during an influx or emergency” and sets forth standards governing such facilities’ operations.<sup>27</sup> Due partly to challenges in rapidly standing up new infrastructure, ORR has since established a number of emergency intake sites (EISs) where it is temporarily housing unaccompanied children.<sup>28</sup> The Policy Guide does not define EISs, distinguish them from influx facilities, or identify minimum standards or other policies associated with these sites. However, an April 2, 2021 Department of Health and Human Services (HHS) Fact Sheet delineates program responsibilities relating to EISs, states that these sites “must provide basic standards of care to ensure the child’s physical safety, access to legal services information, and access to emergency clinical services” and acknowledges that, “[d]ue to their emergency nature, EIS may not be able to provide a full range of services to UC . . . .”<sup>29</sup>

As the administration works to expedite children’s release from emergency and licensed facilities, it will become even more critical that ORR provides children with post-release services, include legal representation and social services, to ensure due process, children’s awareness of immigration court processes and responsibilities, and the safety and well-being of children in their sponsorship settings.

#### THE WAY FORWARD: IMPROVING CARE AND TREATMENT OF UNACCOMPANIED CHILDREN

In recent years, the Trump administration sought to address the forced migration of unaccompanied children to the United States through policies centered on cruelty, punishment, and deterrence. From turnbacks at the border to the expulsion under Title 42 of more than 15,000 unaccompanied children<sup>30</sup> without due process or required protection screenings, this failed approach has only heightened the vulnerability of children to trafficking and other harm. The way forward will not be found in backward steps such as these that erode critical safeguards developed through decades-long bipartisan collaboration, but instead must be guided by the best interests, safety, and protection of children.

The Biden administration has already made important strides in restoring access to protection and due process for unaccompanied children. In February, the administration exempted unaccompanied children from Title 42 expulsions while the policy is under review.<sup>31</sup> This important policy change ensures that children will no longer be rapidly expelled to the very dangers they fled and instead will be processed consistent with vital anti-trafficking protections in the TVPRA.

The administration has also implemented a number of measures to safely expedite the reunification of children with family members and other sponsors who can care for them during their immigration proceedings. These efforts include the important rescission of a 2018 information-sharing agreement between DHS and ORR that led to the use of sponsors’ information for immigration enforcement and deterred family members from coming forward to care for unaccompanied children.<sup>32</sup>

Ample opportunities remain to improve the care and safety of children in Government custody while simultaneously ensuring their safe and prompt reunification with sponsors who can care for them throughout their immigration proceedings. While many of these reforms can be undertaken and bear results in the immediate term, others reflect systemic changes that will require sustained commitment and cross-agency collaboration to truly transform our immigration system into one that prioritizes the best interests of children at every step of the process. We include

<sup>26</sup> Department of Health and Human Services, “Carrizo Springs Influx Care Facility” (Apr. 12, 2021); <https://www.hhs.gov/programs/social-services/unaccompanied-children/carrizo-springs-temporary-influx-facility-update.html>.

<sup>27</sup> ORR, Children Entering the United States Unaccompanied: Section 7; <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-7#7.2>.

<sup>28</sup> Joel Rose, “Fewer Migrant Children Held In Border Detention Facilities, But Challenges Remain” (Apr. 15, 2021); NPR; <https://www.npr.org/2021/04/15/987615232/fewer-migrant-children-held-in-border-detention-facilities-but-challenges-remain>.

<sup>29</sup> HHS, “Fact Sheet: Unaccompanied Children (UC) Program” (Apr. 2, 2021); <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.

<sup>30</sup> Camilo Montoya-Galvez, Adam Verdugo, “Nearly 19,000 unaccompanied children entered U.S. border custody in March—an all-time high” CBS News (Apr. 2, 2021); <https://www.cbsnews.com/news/immigration-unaccompanied-children-border-custody-record-19k/>.

<sup>31</sup> Camilo Montoya-Galvez, U.S. will not expel unaccompanied migrant children under Trump-era policy now being reviewed” CBS News (Feb. 3, 2021); <https://www.cbsnews.com/news/migrant-children-biden-administration-will-not-expel-trump-policy/>.

<sup>32</sup> DHS, “HHS and DHS Joint Statement on Termination of 2018 Agreement” (Mar. 12, 2021); <https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement>.

here recommendations for both immediate- and longer-term measures, and stand ready to assist Congress and the administration in efforts to advance the fair and appropriate treatment of unaccompanied children.

#### *A. Immediate-term reform measures*

##### *1. Hire child welfare professionals to oversee care of children in CBP custody*

For decades, children have been held at the border in CBP facilities initially designed for single adults. These facilities are wholly unsuited to children's needs and appropriate care and are staffed by professionals trained in law enforcement, rather than the development, welfare, and care of children. While broader reforms are critical to ensure the humanitarian reception of children in child-appropriate spaces, DHS can take immediate steps toward improving care of children in Government custody by hiring licensed child welfare professionals to oversee the care and screening of children in all CBP facilities along the border. These professionals, who should be licensed in social work and have requisite training and experience in children's needs and development, cannot only make sure that children's basic needs are provided for, but can also conduct screenings for protection needs as required by the TVPRA. By assuming responsibility for child care functions currently being performed by CBP officers, child welfare professionals cannot only improve conditions for children but ensure that CBP officers are able to dedicate their time to the law enforcement functions for which they have received specialized training.

Congress directed DHS to hire child welfare professionals at all points along the Southern Border as part of both fiscal year 2020 and fiscal year 2021 appropriations legislation.<sup>33</sup> Yet DHS has failed to implement this vital safeguard, sidelining both the well-being of children and Congressional intent to improve conditions for them at the Southern Border. Noncompliance with this directive directly undermines DHS's ability to safely process the thousands of children currently in CBP custody and must be immediately remedied through the hiring and placement of appropriate child welfare staff.

##### *2. Co-locate DHS and HHS professionals in border facilities*

Among the high numbers of unaccompanied children arriving at the border are many children who traveled to the United States with family members or caregivers such as aunt/uncles, grandparents, or adult siblings who are not their parents or legal guardians. These children meet the legal definition of an "unaccompanied alien child,"<sup>35</sup> as defined by the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008.<sup>34</sup> Accordingly, they must be afforded all the procedural protections accompanying this status through the conclusion of their immigration proceedings. At the same time, however, DHS and ORR can ensure that children do not face prolonged custody in CBP or ORR facilities or unnecessary separation from loving caregivers by immediately commencing the family reunification process in CBP custody. Through the placement of HHS Federal field specialists in CBP facilities, ORR could even consider caregivers traveling with a child as potential sponsors and facilitate the simultaneous release of the child and caregiver together. HHS staff can also rapidly identify children with known vulnerabilities or special needs and ensure their initial placement in facilities best suited for their needs and similarly ensure that the process of identifying potential sponsors for all unaccompanied children begins as soon as possible.

##### *3. Ensure children's appropriate care in and prompt and safe release from ORR facilities*

Through a series of policies, the Biden administration has worked to address bottlenecks and barriers to swiftly and safely reunifying unaccompanied children in ORR custody with their families. These efforts are beginning to demonstrate progress in achieving the safe release of children from ORR as steadily high numbers of unaccompanied children arrive from CBP custody. Additional efforts can help ensure that reunifications continue apace and that ORR maintains sufficient capacity to house and provide required services to unaccompanied children.

#### *A. Ramp up hiring of ORR case managers*

ORR has recently streamlined sponsor vetting procedures to eliminate requirements that delay release without a benefit to child safety.<sup>35</sup> While critical, these ef-

<sup>33</sup> H.R. Report 116–180; H.R. Report 116–458.

<sup>34</sup> Pub. L. 107–296; William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110–457, 122 Stat. 5044 (2008) (TVPRA).

<sup>35</sup> See Nick Miroff, "Biden administration spending \$60 million per week to shelter unaccompanied minors" (Apr. 8, 2021); [https://www.washingtonpost.com/national/border-shelters-cost/2021/04/08/c54ecc3a-97bd-11eb-8e42-3906c09073f9\\_story.html](https://www.washingtonpost.com/national/border-shelters-cost/2021/04/08/c54ecc3a-97bd-11eb-8e42-3906c09073f9_story.html).

forts will not be fully realized without sufficient staff to ensure the implementation of policies on the ground at ORR facilities. It is vital that ORR ensure it has sufficient case managers throughout its network of facilities, including at emergency intake and influx facilities to ensure expeditious reunifications.

*B. Establish standards and robust oversight and monitoring of emergency intake facilities*

Recently, ORR has created a host of “emergency intake facilities” for unaccompanied children amid high numbers of children arriving to the United States.<sup>36</sup> These facilities, which appear to differ from ORR’s licensed programs and influx facilities, must be held to standards that ensure the safety and well-being of all children in their care. We recommend that ORR establish and make transparent standards for these facilities and conduct routine monitoring and oversight to ensure compliance with them, while taking all measures to ensure children can quickly be moved to licensed facilities.

*C. Expand ORR’s capacity of licensed placements*

In tandem with efforts to expedite the release of children, ORR must continue to prioritize the creation of capacity to care for children in licensed, small-scale placements, rather than large, congregate facilities. To date, ORR maintains licensed foster care beds that are not currently in use due to criteria that limit placement of children to those who have been determined to be eligible for legal relief to remain in the United States. ORR should consider broadening eligibility criteria for these licensed beds to maximize its ability to care for children in the least restrictive and most appropriate settings for them until they can be released to a sponsor.

Additionally, ORR must work with its existing network of foster care providers to identify and activate additional beds that they may have available for use, as well as conduct outreach to new foster care providers with experience caring for children who may be interested in serving unaccompanied children in ORR custody.

Naturally, the COVID–19 pandemic presents important considerations for ORR as it manages facilities and works to implement public health precautions to prevent transmission of the coronavirus. It is critical that these measures, and any reductions in available bedspace, be based on the latest and best public health information and guidance and that they be developed in coordination with public health experts. ORR should ensure that all licensed shelters ensure their compliance with relevant public health precautions and continually reevaluate any COVID-based occupancy restrictions if and as information changes.

*D. Provide post-release services to all children released from ORR*

As ORR facilitates expedited releases of children from ORR custody it will become increasingly important to ensure that all children are provided with post-release legal and social services. Many unaccompanied children have survived grave violence, abuse, or trauma, and are uniquely vulnerable in the immigration system. This vulnerability continues even after a child is released from ORR custody and reunified with a sponsor, as children must navigate transitions in living arrangements, language barriers, prior trauma, and immigration proceedings in which they must present their legal case to remain in the United States.

Post-release legal services can provide children with critical information about their legal rights in the immigration system and their responsibility to attend all court hearings, and also connect children with screenings to evaluate their eligibility for legal protection. These services are indispensable in orienting children to the immigration system and are particularly important in the context of expedited releases from ORR, as children may leave Government custody before they have received legal orientation presentations, intakes, or screenings. Post-release services also serve a protective function by linking children with legal and social services professionals who can assist them with needs and refer them to support services and resources, from enrolling in school to working through trauma. Through regular contact with children, post-release providers are able to observe and interact with children, and in doing so, help ensure the safety of a child’s sponsor placement.

*4. Rescind the Title 42 policy and ensure processing of all unaccompanied children pursuant to the TVPRA*

The Biden administration’s exemption of unaccompanied children from the unlawful Title 42 policy represents an important step forward in ensuring that these children are afforded the legal protections Congress created for them in the TVPRA to

<sup>36</sup>Joel Rose, “Fewer Migrant Children Held In Border Detention Facilities, But Challenges Remain” (Apr. 15, 2021); NPR; <https://www.npr.org/2021/04/15/987615232/fewer-migrant-children-held-in-border-detention-facilities-but-challenges-remain>.

prevent their return to trafficking or other harm. Currently, however, many unaccompanied children are unable to avail themselves of these legally-required safeguards as a result of COVID-related travel restrictions at ports of entry.<sup>37</sup>

Far from a mere administrative inconvenience, the denial of access to ports of entry can result in turnbacks or expulsions of children who have suffered life-threatening harm or force children to undertake more dangerous routes to seek protection. In one tragic case, a mother reached out to KIND for help in locating her child, who had gone missing because the child believed they could only access protection between ports of entry. The child was later found dead.

The safety of children and compliance with the TVPRA demand that all unaccompanied children be afforded the opportunity to safely access protection between and at ports of entry.

The administration must also immediately rescind the Title 42 policy in its entirety to ensure the safe processing of all protection seekers at the U.S. border. Thousands of adults and families have been expelled to countries in which their lives and safety are at risk under Title 42 in recent months, with Black asylum seekers being disproportionately affected by this unlawful policy.<sup>38</sup> U.S. and international asylum law do not permit the refoulement of protection seekers, and public health experts have underscored that the Title 42 policy lacks a valid basis in public health.<sup>39</sup> The Biden administration must respond with due urgency to abandon and terminate this unlawful measure and uphold the United States' long-standing commitment to due process and to extending refuge to those fleeing harm.

#### *Longer-term measures*

For decades, thousands of unaccompanied children have sought protection at the U.S. Southern Border, fleeing persecution, abuse, and other harms from which their countries cannot or would not protect them. While critical progress has been made in advancing basic protections for children through the TVPRA and the *Flores* Settlement Agreement, broader policy efforts have long focused largely on measures to deter the flight of children rather than addressing their protection needs at their root. Border facilities similarly have failed to adapt to the specific vulnerabilities and needs of the children, and instead reflect law enforcement strategies and infrastructure designed principally for adult populations. While immediately ensuring the safety and well-being of all children currently in Government custody is paramount, the administration must simultaneously prioritize broad-based reforms that overhaul this outmoded policy and infrastructure framework to usher in a system with child protection and welfare at its very core. This includes not only providing for child-appropriate care and access to protection for unaccompanied children in the United States, but also fortifying protection systems and pathways for children still in their countries of origin and on the move. We outline here several recommendations for meaningfully transforming the current system. While these changes will not happen overnight, efforts must begin today.

##### *A. Establish a fundamentally humanitarian reception model for all children*

Ushering a shift away from a law enforcement model to one that treats migrant and refugee children as children first and foremost will require dramatic changes to CBP facilities to create child-friendly reception. It is critical that all facilities receiving children provide for children's safety, be tailored to their emotional, developmental, and physical needs, and treat children with humanity and dignity. Appropriate staffing, including child welfare professionals, pediatric-trained medical professionals, and co-located HHS specialists are vitally important to oversee care that accords with standards, relevant laws, and trauma-informed practices. Over the longer-term, transforming the current system will require thinking in new ways about how to deliver services and care to children.

##### *B. Dramatically scale up ORR's capacity of family-based and small-scale placements*

Although ORR maintains a network of nearly 180 programs and facilities, these placements are disproportionately in larger-scale shelters. Best practices from the

<sup>37</sup>David Bier, "Amid Crisis, Biden Admits 0.2 percent of Central American Families & Kids Legally" Cato Institute (Apr. 13, 2021); <https://www.cato.org/blog/amid-crisis-biden-admits-02-central-american-families-kids-legally>.

<sup>38</sup>Melita Seibel, "Title 42: The Cruel Trump Policy Continuing Under Biden" Human Rights First (Mar. 31, 2021); <https://www.humanrightsfirst.org/blog/title-42-cruel-trump-policy-continuing-under-biden>.

<sup>39</sup>"Letter to Acting HHS Secretary Cochran and CDC Director Walensky" (Jan. 28, 2021); <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>.



domestic child welfare system, as reflected in the Federal Family First Prevention Services Act,<sup>40</sup> underscore that family-based settings are most appropriate for children, with facilities of 25 beds at the upper limit. To ensure alignment with the domestic child welfare system and the best interests of children, ORR must strategically plan for and rapidly expand its capacity of licensed foster care placements. In addition to better providing for children's unique needs, smaller-scale capacity can enable ORR's nimble response to unexpected emergencies and influx situations, reducing the need for reliance on institutional settings that are both costly and ill-suited to the care of vulnerable children. Through consistent and continuous outreach to and communication with new families and providers, ORR can bring on-board new bedspace and services and calibrate its capacity as needed.

*C. Address root causes and expand pathways to protection in the region*

Recognizing that deterrence measures are insufficient and inappropriate to address the flight of children from harm, the Biden administration has announced efforts to target the root causes of child migration and requested significant funding to support this work.<sup>41</sup> These efforts must involve the creation and expansion of refugee processing and resettlement opportunities in the region as well as targeted foreign aid and development assistance to civil society organizations working with children and families. From KIND's work with unaccompanied children throughout the region and in the United States, we know that many children flee northern Central American countries in search of protection from extreme gang violence and recruitment, sexual- and gender-based violence, abuse, and other threats to their lives and well-being. Aid must target these drivers of migration through increased violence prevention programming, including programming on gender-based violence, while strengthening the capacity of National child welfare and protection systems throughout the region to extend protection to children in need.

Additional measures must restore and create opportunities for children and families to apply for refugee status and protection without having to take dangerous journeys north. Recently, the Biden administration announced the reopening of the Central American Minors (CAM) program, which the Trump administration ended in 2017.<sup>42</sup> CAM enabled children from El Salvador, Guatemala, and Honduras with a parent lawfully present in the United States to apply for refugee resettlement while still in their country of origin. The previous version of the program extended life-saving protection to many children, but due to limited eligibility could not be accessed by many children in search of safety. We applaud the Biden administration's decision to restore the CAM program, and look forward to working with the administration to improve CAM to ensure the greatest reach and effectiveness.<sup>43</sup>

To this end, we recommend that the program be broadened to invite applications from children with trusted relatives such as aunts, uncles, or grandparents who can care for them, without regard to their immigration status. Timely review and adjudication of applications is similarly critical to ensure that children need not remain indefinitely in dangerous conditions to secure U.S. protection. To maximize participation in the program and outcomes for children, Federal agencies should coordinate to make available a range of support services for children applying for protection—from legal services and language access to safe housing while they await consideration of their applications.

Additional efforts should be undertaken to provide families with opportunities to access refugee resettlement while still in-country. The Protection Transfer Agreement (PTA), which has enabled the resettlement of children and families at immediate risk, provides a model for potential expansion.

*D. Ensure that all unaccompanied children have attorneys*

Despite their unique vulnerability in the immigration system and legal provisions in the TVPRA providing for their access to counsel, more than half of unaccompanied children lack an attorney to assist them in navigating immigration pro-

<sup>40</sup> Enacted as part of Public Law (Pub. L.) 115–123.

<sup>41</sup> See, e.g., Carrie Kahn, Franco Ordóñez, “Biden Aims to Tackle Root Cause of Migrants Massing at U.S. Border” NPR (Mar. 18, 2021); <https://www.npr.org/2021/03/18/978496031/biden-aims-to-tackle-root-cause-of-migrants-massing-at-u-s-border>.

<sup>42</sup> Department of State, “Restarting the Central American Minors Program” (Mar. 10, 2021); <https://www.state.gov/restarting-the-central-american-minors-program/>.

<sup>43</sup> For additional recommendations, please see KIND, “Thwarted Potential: The Need to Revive and Expand the Central American Minors (CAM) Program As a Key Path to Protection for At-Risk Unaccompanied Children,” [https://supportkind.org/wpcontent/uploads/2020/11/Thwarted-Potential\\_CAM-Report-FINAL-3.pdf](https://supportkind.org/wpcontent/uploads/2020/11/Thwarted-Potential_CAM-Report-FINAL-3.pdf).

ceedings with the highest of stakes for their lives and safety.<sup>44</sup> Government data illustrate the critical difference legal representation can make in a child's immigration case. From fiscal year 2018 through the first half of fiscal year 2019, unaccompanied children represented by counsel were 70 times more likely than unrepresented unaccompanied children to obtain legal relief.<sup>45</sup>

While ORR currently provides financial support to a network of nonprofit legal services providers to support legal representation for unaccompanied children, need far exceeds current funding and capacity. As numbers of unaccompanied children arriving to the United States reach historic levels, this due process crisis will only expand without sufficient support to ensure that no child faces immigration court alone. To ensure the provision of legal orientations, screenings, and legal assistance to the greatest number of children possible, it is critical that additional funding be appropriated for post-release legal services as part of fiscal year 2022 Labor, Health, and Human Services appropriations legislation.

Additionally, KIND strongly supports legislative proposals that would provide for Government-appointed counsel for all unaccompanied children and dramatically improve the fairness of the current system.

#### CONCLUSION

The challenges now facing unaccompanied children and the Government agencies that engage with them are significant. But with the proper resolve and policies, the United States can meet those challenges, and in the process, transform our National and regional protection system into one that fully upholds children's rights and well-being throughout their journey to safety. Proper planning and reimagined reception will ensure we are not having the same challenges every few years with the orderly and humane reception of this vulnerable population. The recommendations set forth in this statement light the way forward—KIND urges the administration and Congress to seize it.

Ms. BARRAGÁN. Thank you, Ms. Podkul, for your testimony today, and it is great to hear those stories.

I would now like to recognize our next witness, Ms. Ries, to summarize her statement for 5 minutes.

#### **STATEMENT OF LORA RIES, DIRECTOR OF THE CENTER FOR TECHNOLOGY POLICY, SENIOR RESEARCH FELLOW FOR HOMELAND SECURITY, THE HERITAGE FOUNDATION**

Ms. RIES. Thank you, Chairwoman Barragán and Ranking Member Higgins, for the opportunity to speak to you today about the current border crisis. My name is Lora Ries, and I am a senior research fellow for homeland security at The Heritage Foundation. The views expressed here are my own and do not reflect an institutional position for The Heritage Foundation or its board of trustees.

We are witnessing record numbers of unaccompanied alien children, or UACs, at our Southern Border. In March, nearly 19,000 UACs were encountered by CBP. In contrast, CBP encountered only 741 UACs in April 2020. This staggering increase has been driven by messaging and policy choices that have endangered lives and knowingly enriched traffickers and smugglers.

In February, border traffickers reportedly were making \$14 million a day. Instead, the United States should have policies that prevent illegal immigration and encourage lawful immigration.

How did we get here? The 2000 Unaccompanied Alien Child Protection Act. Its purpose was the permanent protection of UACs. It offered them easier and expanded immigration benefits, including

<sup>44</sup> KIND Fact Sheet; <https://supportkind.org/wp-content/uploads/2019/12/KIND-Fact-Sheet-January-2020.pdf>.

<sup>45</sup> KIND calculated this figure based on Executive Office of Immigration Refugee (EOIR) data published by the Congressional Research Service in its report titled "Unaccompanied Alien Children: An Overview," p. 15 (Oct. 9, 2019); <https://fas.org/sgp/crs/homsec/R43599.pdf>.

prompt parole into the United States, taxpayer-funded guardians ad litem and attorneys, Special Immigrant Juvenile visas, an easier adjustment of status process, and exemption from expedited removal. It was easy to predict that more parents would send their children unaccompanied to the border to take advantage of these benefits.

The bill ultimately passed in the 2008 Trafficking Victims Protection Reauthorization Act, or TVPRA. That bill states: To prevent trafficking in persons, the United States shall ensure that UACs in the United States are safely repatriated to their country of nationality or last habitual residence.

But the law then distinguishes between processing UACs from contiguous countries, who are generally returned to their country, and those from elsewhere. For UACs from noncontiguous countries, the law requires they be placed into U.S. removal proceedings and receive the benefits described above.

Predictably, the number of UACs steadily increased in the years that followed. In 2010, CBP encountered 18,400 UACs. That number grew to 24,400 in 2012. After DACA was started, UACs soon spiked to over 68,500 in 2014.

The makeup of contiguous nationals as compared to noncontiguous nationals also changed. In 2009, children from Mexico accounted for 82 percent of the UAC apprehensions at the border, while those from Northern Triangle countries accounted for 17 percent. By 2019, those proportions had flipped.

Another important pull factor for illegal immigration is limited immigration detention and mandatory release into the United States. *Flores*, a settlement agreement on detention standards for unaccompanied minors, has been expanded and when a single district judge ruled that unaccompanied and accompanied children must be released from detention within 20 days. Because removal proceedings are not completed within 20 days, ICE releases UACs and family units into American communities to comply with *Flores*.

We experienced a border crisis in 2019 when CBP encountered over 76,000 UACs and 527 family units. The Trump administration implored Congress to close its TVPRA, UAC, and *Flores* loopholes to stop the flow of UACs and family units, but Congress refused to do so.

With the Migrant Protection Protocols and negotiated Asylum Cooperative Agreements with the Northern Triangle countries, the numbers of illegal immigrants decreased, because would-be migrants learned that they would not get into the United States and would be sent back.

With campaign promises to end such enforcement measures and to provide amnesty, smugglers encouraged more immigrants to make the journey north, in anticipation of Joe Biden's election. The new administration then quickly ended the Trump administration's enforcement measures and agreements, resulting in a more rapid increase in illegal immigration to now historic numbers.

If leaders want to prevent smuggling and trafficking of children and restore order to our border and immigration system, Congress and the administration should prevent illegal immigration by enforcing current laws and removing incentives to come here unlawfully.

This includes resuming MPP, returning to the terms of the Asylum Cooperative Agreements, completing the planned border wall construction, treating all noncontiguous nationals the same as contiguous nationals, removing benefits based on being a UAC, returning to the 1997 terms of the *Flores* settlement agreement, rescinding the February 2021 ICE priorities memo, ending catch-and-release, rejecting amnesty for those who broke our immigration laws, and applying the proper definition of UAC as defined in the Homeland Security Act.

This concludes my statement, and I will respond to your questions. Thank you.

[The prepared statement of Ms. Ries follows:]

PREPARED STATEMENT OF LORA RIES

APRIL 27, 2021

My name is Lora Ries. I am the senior research fellow for homeland security at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

We are witnessing record numbers of unaccompanied alien children (UAC) at our Southern Border. In March, nearly 19,000 UACs were encountered by the Customs and Border Protection (CBP).<sup>1</sup> In contrast, the CBP encountered only 741 UACs in April 2020.<sup>2</sup> This staggering increase has been driven by messaging and policy choices. These statements and policies sadly endanger the lives of those migrating here illegally, and knowingly enrich traffickers and smugglers. In February, border traffickers made \$14 million a day.<sup>3</sup> Meanwhile, traffickers and smugglers have no regard for life as they endanger, rape, exploit, recycle, and leave for dead children and other migrants.<sup>4</sup> Instead, the United States should have policies that run such operations out of business by preventing illegal immigration and encouraging migrants to use lawful immigration programs.

To identify the way forward, it is important to understand how we got here. In 2000, Senator Dianne Feinstein (D–CA) and Representative Zoe Lofgren (D–CA) each introduced the Unaccompanied Alien Child Protection Act (UACPA), which had the stated purpose to strengthen policies for the permanent protection of UACs. It offered UACs easier and expanded immigration benefits, including “prompt parole” into the United States, taxpayer-funded guardians ad litem and attorneys, the rarely used Special Immigrant Juvenile visa, an easier adjustment of status process, and exemption from expedited removal. The bill clearly incentivized UACs to cross the border, which meant more parents would hand their children over to dangerous smugglers to enter the United States in the hopes to gain a family foothold here. The bill would endanger more children.

The UACPA repeatedly failed to pass Congress, but the sponsors introduced the bill 5 Congresses in a row, until Representative Howard Berman (D–CA) folded the benefits of the UACPA into a bill that would be easier to pass: the Trafficking Victims Protection Reauthorization Act of 2008 (TVPROA).

Under the heading of “Enhancing Efforts to Combat the Trafficking of Children,” section 235 of the TVPROA has the stated purpose “to prevent trafficking in persons, the [U.S. Government] shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.” However, the legislation then distinguishes between processing UACs from contiguous countries (they are generally returned to their home country) and those from elsewhere. For UACs from non-contig-

<sup>1</sup>U.S. Customs and Border Protection, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (accessed April 26, 2021).

<sup>2</sup>Ibid.

<sup>3</sup>Emma Colton, “Human Trafficking Business Is Booming at the Border, with Cartels Raking in over \$14M a Day in February: Report,” *Washington Examiner*, March 22, 2021, <https://www.washingtonexaminer.com/news/criminal-organizations-trafficking-border-14-million-a-day> (accessed April 26, 2021).

<sup>4</sup>Jillian Kay Melchior, “Biden’s Border Crisis, Up Close,” *The Wall Street Journal*, March 29, 2021, <https://www.wsj.com/articles/bidens-border-crisis-up-close-11617057522> (accessed April 26, 2021).

uous countries, the law requires they be placed into U.S. removal proceedings and be given the generous benefits described above.

Predictably, the number of UACs encountered by the CBP steadily increased in the years that followed. In fiscal year 2010, the CBP encountered 18,400 UACs.<sup>5</sup> That number grew to 24,400 UACs in fiscal year 2012.<sup>6</sup> The pull factor of benefits for UACs grew stronger with the 2012 Deferred Action for Childhood Arrivals (DACA) program. Unsurprisingly, the number of UACs soon spiked to over 68,500 in 2014.<sup>7</sup>

In addition to the increasing number of UACs, the make-up of contiguous nationals as compared to non-contiguous nationals changed. In fiscal year 2009, children from Mexico accounted for 82 percent of the UAC apprehensions at the Southwest Border, while those from the “Northern Triangle” countries of El Salvador, Guatemala, and Honduras accounted for 17 percent.<sup>8</sup> By fiscal year 2019, the proportions had reversed, with Mexican nationals comprising 14 percent of the UAC apprehensions at the border and the 3 Central American countries comprising over 85 percent.<sup>9</sup>

Another important pull factor for illegal immigration by UACs and family units is limited immigration detention and mandatory release into the United States. *Reno v. Flores*,<sup>10</sup> a court case that started in the early 1980’s about detention standards for an unaccompanied illegal alien minor turned into a 1985 class action lawsuit that launched more than a 3-decade court process, resulting in a far more expansive policy regarding when a minor alien must be released from detention. After a 1993 U.S. Supreme Court ruling in favor of the Immigration and Naturalization Service (INS), then-INS Commissioner Doris Meissner signed the *Flores* settlement agreement in 1997, expanding the standards the INS would follow. Under the agreement, the Government must release minor aliens “without unnecessary delay” to the minor’s parents, legal guardians, other adult relatives, or other individual designated by the parent/guardian, who is in the United States. A Federal district judge further expanded the *Flores* requirements in 2015, ordering the Department of Homeland Security to release detained minors and their mothers. This added accompanied minors for mandatory release in addition to unaccompanied minors. The judge went further, interpreting the *Flores* settlement language “without unnecessary delay” to mean no more than 20 days of immigration detention.

Because removal proceedings are not completed within 20 days, Immigration and Customs Enforcement released UACs and family units into American communities to comply with the new *Flores* order, resulting in a “catch-and-release” posture. Smugglers successfully market “catch-and-release” to future unlawful migrants.

These pull factors caused a border crisis in fiscal year 2019, when the CBP encountered over 76,000 UACs and 527,000 family units.<sup>11</sup> The Trump administration implored Congress to close its TVPRA UAC and *Flores* loopholes to stop the flow of UACs and family units, but Congress refused to do so. By standing up the Migrant Protection Protocols (MPP) and negotiating asylum cooperative agreements with the Northern Triangle countries, the Trump administration significantly decreased the number of UAC and family unit encounters by 2020.

With campaign promises to end the Trump administration’s immigration enforcement measures, and to provide amnesty, smugglers encouraged more immigrants to make the journey north in anticipation of Joe Biden’s election. The new administration then quickly ended the Trump administration’s enforcement measures and agreements, resulting in a more rapid increase in illegal immigration to now historic numbers.

#### THE WAY FORWARD

If leaders want to prevent the smuggling and trafficking of children and restore order to our border and immigration system, Congress and the Biden administration should prevent illegal immigration by enforcing current laws and removing incentives to come here unlawfully. This includes:

- Resuming MPP;

<sup>5</sup> United States Border Patrol, BP Total Monthly UACs by Sector, fiscal year 2010–fiscal year 2017, <https://www.cbp.gov/sites/default/files/assets/documents/2018-Jul/BP%20Total%20Monthly%20UACs%20by%20Sector%2C%20FY10-FY17.pdf> (accessed April 26, 2021).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> William A. Kandel, “Unaccompanied Alien Children: An Overview,” Congressional Research Service, October 9, 2019.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Reno v. Flores*, 507 U.S. 292 (1993).

<sup>11</sup> U.S. Customs and Border Protection, Southwest Land Border Encounters.

- Returning to the terms of the asylum cooperative agreements made under the Trump administration;
- Completing planned border wall construction;
- Treating all non-contiguous nationals the same as contiguous nationals—with expedited removal;
- Removing benefits based on UAC status;
- Returning to the 1997 terms of the *Flores* Settlement Agreement;
- Rescinding the February 2021 ICE Priorities Memo;
- Ending catch-and-release;
- Rejecting amnesty for those who broke our immigration laws; and
- Applying the proper definition of UAC, as defined by section 462(g) of the Homeland Security Act of 2002, which is “a child who—
  - (A) has no lawful immigration status in the United States;
  - (B) has not attained 18 years of age; and
  - (C) with respect to whom—
    - (i) there is no parent or legal guardian in the United States; or
    - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”

Ms. BARRAGÁN. Thank you to the witness for her testimony.

I want to thank every witness for their testimony.

I will remind the subcommittee that we will have 5 minutes each to ask questions of the panel.

I will start by recognizing myself for 5 minutes, and then we will alternate between sides until we get through everybody. If there is an opportunity, maybe we will have a second round, depending on our time.

So, with that, I will start by recognizing myself for 5 minutes.

Mr. Reichlin-Melnick, I want to start with you. As an approach to deter irregular migration, President Trump created and implemented the family separation policy, tearing thousands of families apart. After rescinding this awful practice, he implemented more harmful policies, such as the Migrant Protection Protocols, Title 42, and metering, to deny access to asylum.

How would you describe the effect of the Trump-era border policies in slowing migration at the Southern Border?

Mr. REICHLIN-MELNICK. I think what we saw with the Trump administration policies, such as MPP, or Remain in Mexico, and the so-called Asylum Cooperative Agreements, is that those programs fundamentally did not work. They sent tens of thousands of people into danger, sending them to a kidnappers’ paradise in Mexico.

It is possible that as many as 1 in 10 people sent back to Mexico under MPP were subject to kidnappings, assaults, or other violent acts by the cartels. So, in effect, under MPP and as well under Title 42, families are being turned over into the hands of the cartels and pushed into desperation.

I also want to make clear that the Asylum Cooperative Agreements have been suspended since last year, and fewer than a thousand people were ever sent to Guatemala under those agreements. The Biden administration terminating those agreements had absolutely no effect on the border. Similarly, terminating MPP had very little effect, as just 1.2 percent of people have been subject to MPP since Title 42 began.

Ms. BARRAGÁN. Thank you.

Mayor Garcia, I am so proud that our community is stepping forward to help care for some of the vulnerable children arriving at the Southwest Border. As you know, these are children—they are

scared and they are alone—who fled unthinkable dangers and shocking conditions.

Last Thursday, the Long Beach Convention Center opened its doors to young girls and boys seeking safety in the United States. Can you tell us more about the process for establishing an emergency intake site at the Long Beach Convention Center?

Mr. GARCIA. Sure thing. We, of course, were reached out by the Biden administration to see if we would be interested in hosting this emergency shelter. Long Beach, with its history of kind-of compassionate, you know, viewpoint with refugees and with immigrants, brought it forward to the Long Beach City Council, which voted unanimously to move it forward.

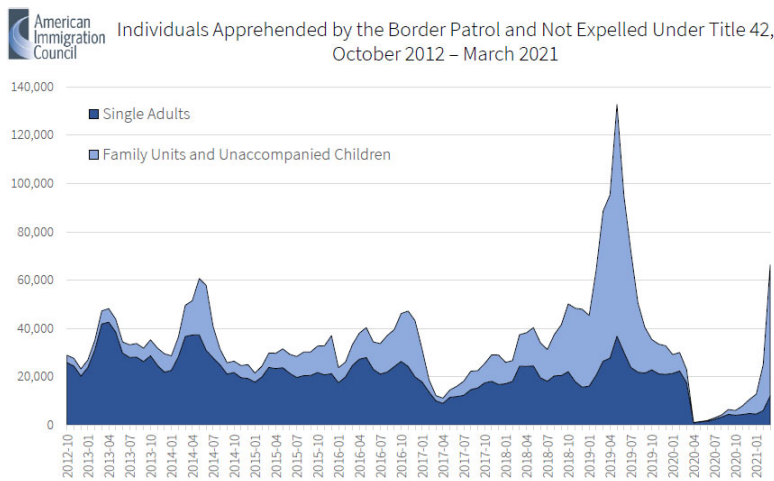
Then, of course, our city team got into many meetings with our partners over at HHS as well as FEMA. They toured the site before the children came multiple times. They brought in a full medical team and doctors to ensure the site was safe, and they brought also a bunch of social services on-site.

One thing that was really, I think, important for us in the community as we talked to folks that this would be a temporary site, because we believe in family reunification and how that must be the goal, was that every child that arrives also has legal counsel. So there is actually an organization called Immigrant Defenders, who are well-respected, you know, here in the state and the country, providing each child with advice and legal counsel through that process as well. So HHS has really done a great job of bringing resources in on the ground.

Ms. BARRAGÁN. Fantastic.

I would like to have the clerk post chart A, a chart that was provided by our witness Reichlin-Melnick.

[The information follows:]



Ms. BARRAGÁN. This question is for you, Mr. Reichlin-Melnick. I apologize. I have 5 minutes and we are trying to get to what we

can here. I thought this was a really helpful and informative chart that you provided the committee.

When I look at the data, I see that more migrants were processed into the United States in 2019 than what we are seeing now. We keep hearing from folks on the other side of the aisle that there is an open border policy, anybody can come.

Can you please tell us if this chart helps debunk the narrative that President Biden has an open border policy, and what other key takeaways can we take from this data in your chart?

Mr. REICHLIN-MELNICK. Thank you. I think this chart makes clear that fewer people are getting into the border today than were in 2019 under the Trump administration.

The Biden administration has expelled tens of thousands of families back to Mexico, so even though there are fewer families coming to the border today than there are under President Trump in 2019. So as a result, because about a third of all families right now are being sent back to Mexico, significantly fewer families are being allowed to access asylum under the Biden administration than were allowed to access the asylum process under the Trump administration.

Ms. BARRAGÁN. Fantastic.

If the clerk can remove the chart here, I can also take a look at the timer. I see that my time is expiring. So, hopefully, we can get into this in the second round of questions so that we can definitely hear from more of our witnesses.

With that, I am going to turn it over to the Ranking Member for his 5 minutes of questions.

Mr. Higgins.

Mr. HIGGINS. Thank you, Madam Chair.

Regarding legal immigration, legal residency, and the pathway to citizenship in America, let me say that our Nation is a compassionate and generous country, with arguably the most receptive and accessible immigration policies of any prominent sovereign nation anywhere in the world.

Myself and my conservative colleagues, we encourage legal immigration, and we refer to the simple fact that America is a very generous Nation. I challenge you to find another that is a prosperous world power with an immigration policy as receptive as our own.

Ms. Ries, let's talk about some of the policy issues you have articulated in your statement regarding immigration loopholes and policies that have led to the unprecedented volume of unaccompanied minors we are seeing at the Southwest Border right now.

The Biden administration has announced plans to spend \$4 billion of American treasure on foreign aid to address "root causes" but that still leaves us with the legal and policy gaps that you have laid out.

In your opinion, what do we do first? I believe we should secure the border and end these policies that are pull factors, but what do you advise Congress should be working on right now to address *Flores* and TVPRA loopholes?

Ms. RIES. Thank you. So the first thing that needs to be done is to stop the pull factors and stop putting children into the arms of smugglers and traffickers. That comes about a few different ways. One is in TVPRA, treating nationals from Mexico and Canada dif-



ferent than other countries. Even President Obama himself had asked that this loophole be fixed during the 2014 crisis that he and then-Vice President Biden had faced.

In addition, changing the *Flores* ruling by a single U.S. district court judge, where she declared that not only would accompanied children in addition to unaccompanied children be released, but they be released within 20 days.

Everyone agrees that removal proceedings should happen more quickly. DHS has also shown that when aliens are detained during those removal proceedings, that a high percentage, 98 percent of those folks are removed if they are not eligible for relief.

So the Homeland Security Advisory Committee in 2019 had concluded that there was a gross inadequate amount of detention space for family units, and so that needs to be changed as well.

Mr. HIGGINS. Yes, ma'am. Thank you for that. I look forward to speaking with you further about it.

I introduced legislation last week to finish the sections of the wall system that were already appropriated for or obligated prior to the Biden administration's suspension of construction.

Would you share with America if you recognize that the legitimate deterrence of a 21st-Century wall system and the completion of those sections, how important they are? These sections have been requested by Customs and Border Protection and Border Patrol. Do you support that legislation and do you recognize a wall as a deterrent?

Ms. RIES. The planned wall construction should be completed. Border Patrol agents have long said they need 3 things: They need personnel, they need technology, and they need infrastructure. The wall system—it is not just the wall, it is the access road, it is cameras, the sensors, et cetera—is a key part of that. It buys them time. It gives them awareness of what is happening on the border. Congress has appropriated that money, and so it should be completed as planned.

Mr. HIGGINS. I agree.

Madam Chair, I can't see the clock right now, how much time I have remaining.

Ms. BARRAGÁN. Twenty-three seconds.

Mr. HIGGINS. I have one further question for Ms. Ries.

Ms. BARRAGÁN. Twenty-three seconds.

Mr. HIGGINS. Thank you, ma'am.

Ms. Ries, would you address the accusations that the Trump administration essentially dismantled the asylum system? I don't believe that is accurate.

Ms. RIES. It is incorrect. I mean, if you measure asylum in terms of grants, the Trump administration granted more asylum cases in its first 3 years than the highest 4 years during the Obama administration of an 8-year term, 2 terms.

What the Trump administration went after was fraud in asylum and fraudulently using the generous program of asylum to come to the United States and to remain here indefinitely.

Mr. HIGGINS. Exactly. Thank you for that clarification.

Madam Chair, thank you for your consideration. I yield.

Ms. BARRAGÁN. Thank you. TVPRA and *Flores* aren't gaps. They are protections that Congress and the courts have put in place to

protect vulnerable children. So I am looking forward to continuing this conversation.

With that, I would like to recognize for 5 minutes—well, let me back up for a quick second. I am getting ahead of myself.

The Chair will recognize other Members for questions that they may wish to ask the witnesses. As previously outlined, I will recognize Members in order of seniority, alternating between Majority and Minority. Members are reminded to unmute themselves when recognized for questioning.

With that, I now have the pleasure and the honor of recognizing the Chairman of the full committee, Mr. Thompson from Mississippi.

Mr. Chairman, I believe you are still on mute.

We still have a hard time hearing you.

OK, Mr. Thompson, we still can't hear you. Maybe we can have somebody take a look at your technical issues, and we will move to our next Democratic colleague for the moment. I see that we have Representative Correa.

Mr. Correa, you are recognized for 5 minutes.

Mr. CORREA. Thank you, Madam Chair. Can you hear me OK?

Ms. BARRAGÁN. We hear you loud and clear.

Mr. CORREA. Yes? Thank you very much.

First, I want to thank you, Madam Chair, for holding this most important hearing.

Having children, unaccompanied children in harm's way is never something to be taken lightly. I, like you, have gone to El Paso, Texas. I have had the opportunity to speak to those children in their language. I also had the opportunity to meet Yareli and Yasmina, the 3-year-old and the 5-year-old girls that were thrown over the border by the smugglers. If wasn't for the Border Patrol that actually saw them, those young ladies would have perished in the middle of the desert.

I have also had the opportunity to visit deported families in Tijuana, Mexico, deported under Title 42 of the health code. As I was sitting there looking at these families, looking at these children, I am reminded that this is nothing new. In 2008, I also had the opportunity to visit similar places with children, similar faces, similar circumstances in California.

This issue is nothing new. It has been going on for 30 to 40 years. If we don't do something to address the root causes, it will continue for the next 20 or 30 years. It is just not correct for us to ignore the root causes.

It doesn't matter how dangerous the trip is from Central America. It doesn't matter how expensive the trip is. A lot of those families are telling me they paid \$15,000 to the smugglers. It doesn't matter how hard it is to cross the border. These families, if they are hungry, if they fear for their lives, they will take the trip north. Of course, our efforts cannot be day-to-day, month-to-month, but, rather, consistent.

We are concluding our efforts in Afghanistan, our involvement in that war, 20 years. Iraq, dozens of years. Yet this is our backyard. We need a Marshall Plan. We need to stabilize Central America. That is long-term. That is where we need to go.

But for today, Madam Chair, if I can, I would like to ask some of our witnesses, Ms. Podkul, some questions.

Ms. Podkul, how feasible would it be to provide legal services to these migrant families in Central America?

Ms. PODKUL. To provide services for them once they are here and they are asking for protection?

Mr. CORREA. While they are still in Central America.

Ms. PODKUL. Yes. So, you know, the Biden administration has just committed to restarting the Central American Minors Program so that unaccompanied children can ask for refugee status while they are there. We think it is imperative for those children to understand the process and understand how they tell the story so our refugee officers can decide whether or not that person qualifies.

So it is very important for them to make sure that they are able to get know your rights information and have an attorney explain to them how they should tell their story in a way that will make sense to an adjudicator.

There are lots of law firms who are willing to provide services pro bono for free who want to work and help people so that they can apply for protection closer to home. We want to make sure that we do that and we still allow people to come to the border and ask for protection, in compliance with U.S. law.

Mr. CORREA. I ask this question of you because I saw in those faces of those children that have had a long trip, a very treacherous and dangerous trip. I saw a young lady 14 years old that had gotten raped a number of times by a number of men on that trip. I, as a father, as a human being, want to figure out what is the best way to provide asylum to these refugee seekers so they don't have to make this treacherous trip through Mexico and Central America.

In your opinion, can we come up with a system that we can provide the rights, protect the rights of asylum seekers while they are still at home?

Ms. PODKUL. Yes, absolutely. I think expanding the Central American Minors Program to allow children to ask for refugee status closer to their country of origin, closer to home, I think we can do that for families.

We already have regional protection mechanisms, and we can expand those so that we can do refugee processing for people while they are still closer to home. They can make decisions. It will alleviate the burden, some of the pressure at the border. It will ensure safety, so people don't always have to make a journey to ask for help.

Mr. CORREA. So, ma'am, what can we do as Congress to make sure that we implement this new Biden policy immediately of providing legal access to legal services to refugees in Central America? What can we do?

Ms. PODKUL. Sure. So I think appropriating funds to ensure that counsel can be provided and that information can be provided. I think funding information campaigns, like DHS and HHS have done in the past. I think being supportive of a Presidential request for refugees, so that when people make those applications, we have the numbers and we are able to support the resettlement to those who are approved.

Mr. CORREA. Would you say—

Ms. BARRAGÁN. Mr. Correa, your time has expired.

Mr. CORREA. Thank you, Madam Chair. I yield.

Ms. BARRAGÁN. Thank you. The gentleman yields.

Now I will recognize Representative Guest for his 5 minutes.

Mr. GUEST. Thank you, Madam Chairman.

To all of our witnesses here today, I want to thank you for joining us to be part of this discussion on a very important topic for our entire country.

I had the chance, along with other the Members of the Homeland Security Committee, roughly 2 weeks ago to visit the Southwest Border. We visited the processing center there in Donna, Texas, where we saw, at that time, 4,000-plus children in a facility that was only designated to hold 250. So I understand that this is an issue that Congress must address. This is not something that we can turn a blind eye to, and we must begin to address the root causes, how we are going to address this long-term, but also how we are going address this in the immediate future.

Ms. Ries, in your written testimony, you speak of the fact that in March, there were 19,000 unaccompanied minor children which were taken in there at the border, that this was the largest number ever seen in recorded history. You go on in your report also to talk a little bit about the border crisis of 2019.

So what I want to ask you to do is to contrast the response of the administration, the previous administration, in dealing with the surge that we saw in 2019 versus the response that the current administration is taking to rectify or to intervene in the surge that we are seeing here today.

Ms. Ries, I think you are on mute for me.

Ms. RIES. Sorry about that.

The border crisis in 2019, as well as now, involves not only a lot of unaccompanied alien children, but family units. So after the Trump administration asked Congress to close the loopholes that led to those types of flows, the Trump administration implemented the Migrant Protection Protocols, or Remain in Mexico program. This is something that Congress had passed in the 1996 law that said you can come and apply for asylum, but you can wait for those proceedings in Mexico.

When future migrants learned that they could not abuse the asylum system to get into the United States and then disappear into the interior, they stopped coming. Those with valid asylum applications obviously then could apply. But it greatly decreased the number, again, preventing fraud.

The other key aspect of it was the asylum agreements made with the governments of El Salvador, Guatemala, and Honduras, and instituting what was called the notion of safe third country, which is, if you are truly fleeing for your life, you should seek protection in the first safe country in which you arrive, not traverse 2, 3 countries just to apply for asylum in the United States. So it prevented forum shopping. It helped those countries build up their respective asylum systems, which everybody should be for, and enforcing their respective borders.

Mr. GUEST. Ms. Ries, you are entirely correct; much of the surge we are seeing today is coming from our Northern Triangle coun-

tries, and those immigrants are coming through Mexico. They are not requesting asylum in Mexico. They are being allowed for safe passage through Mexico and then they are coming in the United States and there they are requesting asylum. So you are exactly right; that is something that we are not addressing, that the public is not talking about is that Mexico is allowing these individuals to pass through and they are not even attempting to apply for asylum there.

You also talked about the Remain in Mexico policy, and I think it is your testimony that you believe this was an effective policy. We have heard from other witnesses that they believe that this policy had no or very little impact.

Would you please talk, as far as your opinion, how big of an impact the Remain in Mexico policy had once it was put in place by the administration, and now that that policy has since been withdrawn, what we are seeing as far as the increase in numbers along the Southwest Border?

Ms. RIES. Well, [inaudible] is a very visual sign of the flows of illegal immigrants that were coming here in 2018, 2019. Also, the numbers; whereas in March of this year, 19,000 unaccompanied alien children, in April 2020, there were 741, so a significant difference in numbers.

But it is also not just about the numbers. It is how are the people—what does the U.S. Government do with them when they come here? Are they simply being processed more quickly into the United States and released, which is a catch-and-release posture, and it is an extremely strong pull factor for more future illegal immigration? Or are they quickly given an opportunity to seek relief from removal, and they are either granted or, if they are denied, then removed.

Mr. GUEST. Thank you.

Madam Chair, I believe my time is up, so I yield back.

Ms. BARRAGÁN. Thank you, Mr. Guest.

The gentleman yields back.

Just for clarification, when we say Remain in Mexico, it is the same as the MPP program that we are referencing. When we talk about concerns about cartels, it is exactly that. It put families into the hands of cartels.

With that, we will go back to the Chairman of the full committee and see if our audio is OK. Chairman Thompson, the gentleman is recognized for 5 minutes.

Mr. THOMPSON. Thank you very much.

Can you hear me now, Madam Chair Lady?

Ms. BARRAGÁN. We can hear you loud and clear, Mr. Chairman.

Mr. THOMPSON. Thank you very much.

Mayor, one of the concerns some communities have had about accepting unaccompanied minors in their area, can you kind-of describe for the committee your experience with the unaccompanied minors that have come to Long Beach from the standpoint of are they on drugs or are there criminal elements? So just describe to the committee what you have found.

Mr. GARCIA. Absolutely. I think what we have found is that the kids that are arriving are just like any other children that you would see in our country or anywhere else. Obviously, when they

arrive at the border, many of them are frightened. Some, of course, have been through trauma, but they are immediately cared for, and they have the same smiles, the same love, the same needs that any other kid would have. There is no criminal activity. They are actually being treated. We ensure that they are all healthy.

Most importantly, they are kids. I mean, right now, as this hearing is going on, we have children that are receiving care. They are receiving a hot meal. They are able to read books. They are playing with each other and, most importantly, they are being—the focus is on reuniting with their family. So these are children, regardless of where they are from, and I think it is important for us to take care of them as best possible.

Mr. THOMPSON. Thank you very much.

Now, again, say thanks to you and the people of Long Beach for reaching out and understanding that.

Ms. Podkul, can you explain some of the misguided and perhaps unlawful policies that were created during the previous administration that have been done away with by the Biden administration?

Ms. PODKUL. Sure. I can start off with talking about Title 42 which, you know, eviscerated the ability for children to even ask for help from the United States, right? That was really the most devastating when the United States just slammed the door in the faces of these kids. So having the Biden administration, first the courts and then the Biden administration say we are going to go back to complying with the law, complying with the Trafficking Victim Protection Act, and allowing children to ask for protection has been most important so that children are even able to ask for safety right now.

You know, then there is other things that they have done that have been really helpful. So as I mentioned before, allowing for children to ask for protection closer to home to apply for refugee status is incredibly important. They have also put into place many procedures and expedited procedures to screen and identify the sponsors to get the kids out of Government custody so that when they are going through the very complex court process, they are able to do so while living in a home of a family member or a sponsor, so that when they start that very arduous process of going through the court system that we have, they are able to do so outside of Government custody.

Mr. THOMPSON. I am glad you mentioned that. Can you explain the importance of having access to counsel while this process is going on?

Ms. PODKUL. Yes, I mean, it is hard to overstate the importance of counsel, especially for a child. I mean, these are children, very, very young in some cases, many of whom do not speak English. The burden is on them to prove to the Government that they have a case, that they have a claim for protection. It is not the Government's burden. So you have a kid, alone. They have the right to bring an attorney with them, but they are not always given an attorney or given a free attorney.

So it is almost impossible for a kid to go through this system without counsel. In some instances, you have a child who has to go to immigration court. They have to apply for their visa or protection with USCIS. They might need to go to a State court for part

of it. So we are talking about 3 different adjudication bodies, and expecting a child to navigate that complex system is next to impossible.

So it is crucial kids have it. It is also crucial for our system. Right? We want to get it right. We want to get to the bottom of the kids' story and figure out which are the ones that really do need protection and need to stay here. We can only do that if the child has an attorney.

Mr. THOMPSON. Thank you very much.

I yield back, Madam Chair.

Ms. BARRAGÁN. Thank you, Mr. Chairman.

With that, seeing no other Republicans at the moment, we will move to the gentleman from Missouri, Mr. Cleaver, for—you are recognized for your 5 minutes.

Mr. CLEAVER. Thank you, Madam Chair.

Let me raise a couple of issues based on what is going on. I would like one of our witnesses, any of the witnesses to describe what the administration is doing right now in terms of a long-term solution. Maybe I asked the wrong question.

Unless—I think and I have heard here in the committee today that the Vice President had not been down to the border and so she is not working on the issues. I just wanted to make sure that we all are operating from the same facts, which is that she was not appointed to work at the border. She is working with the heads of a number of the Central American states—the Triangle that was brought up earlier.

But what I would like for all of the witnesses to do is, what can you do—what do you think we can do right now as a major step toward dealing with the kids at the border that is both legal and effective?

Ms. PODKUL. I am happy to start. Thanks for that question. I mean, I think this is a really crucial question because we don't want to be here, having the same conversation year after year, having to stand up influx facilities.

I think there are 2 major things. One is really thinking about how we are receiving them. What happens in that moment when the U.S. Government first comes into contact with the child, right? Making sure that we are doing it in a humanitarian way, right, so that we have child welfare professionals who are trained experts in talking to children, interviewing children in the trauma-informed way, making sure that we are doing appropriate screenings for them, and that we are quickly handing them off to the agency that is tasked with child welfare, ORR.

Then ORR has to make sure that they are not caught in the cycle of having to stand up emergency facilities over and over. Right? We want children in smaller facilities, in home-based facilities, and in licensed care to make sure there is adequate standards and adequate oversight only until the child can be reunified. Right? Then we have to make sure our justice system can support efficient and quick adjudications so that the children's cases are resolved. We don't want a child to have to wait for years to find out what is going to happen to them.

So I think if we are able to really think about this system, re-imagine the reception, make sure we have a more agile ORR sys-

tem and Government care until the kids can get into the system, and then adequately resource our judicial system so that we can decide the kids' cases, it will be much more efficient. It will be much more fair. We won't be here again in the long term.

Mr. CLEAVER. Thank you very much.

I appreciate very much your response. I spoke to a judge here who was a State judge in State court here in Missouri, and then after he retired, he became one of the judges down at the border. I don't think we call them judges but, anyway, that is essentially what he was. So he requested a meeting with me to tell me what he thought was needed.

He said that he believed that right now, that there was a need for approximately another 100 to 200 judges, so that when people come the system, that judge has time to listen to their story. He said because what is happening is that it is an assembly line, judicial assembly line. Because they don't have the time and they have so many people and they know that they have to get individual after individual in and out, that he said he is absolutely certain that they make mistakes.

Do you see that as one of the top 5 moves that we should make?

Ms. PODKUL. I think an adequately-resourced judicial system is very important. Now, for unaccompanied children, when they are making applications for relief, those actually go to USCIS. So we also need to make sure that the Department of Justice is allowing immigration judges to manage their dockets in a way where they say this child doesn't need to keep coming before me because I am waiting for my colleagues over here at DHS to decide on the visa application. So I am just going to put this child's case on hold until DHS can do it. That way judges can conserve the resources, so that even though we do need to hire more, if they can manage their own dockets and have a little bit more flexibility than they did before the Trump administration, I think we will see a lot of efficiencies realized that way as well.

Mr. CLEAVER. All right. Thank you.

Thanks, Madam Chair.

Ms. BARRAGÁN. Thank you for the questions. The gentleman yields back.

The gentleman from Texas, Mr. Green, is recognized for your 5 minutes.

Mr. GREEN. Thank you very much, Madam Chair.

Madam Chair, I sincerely believe that there are some people who see the solution as just keep the problem on the other side of the border. As long as they are over there, doesn't matter what the circumstances happens to be in the city that they are in; just keep it on the other side of the border. I am not one of them.

We have a humanitarian crisis in the Triangle, as we are calling it, but in Central America, and we have to do something about it. I just don't believe that the solution is fence them out. Someone drops a baby over the border, I don't think they will say toss the baby back. But there seems to be a belief that the baby shouldn't have fallen over. I am not one of those people. I want to help the people in Central America.

My belief is that President Biden has a good idea to fund a plan to help stabilize Central America, and possibly to help other coun-



tries as well. Mexico should be helped. They have taken on a huge amount of responsibility when persons were just getting to the wall, stacking up. Mexico doesn't have a better economic order than we have, but we were perfectly content to just let them stay on the other side of the wall in Mexico. I am not one of those people.

So now, regardless of what happens to me, I believe the good samaritan asked the question, what is going to happen to that person if I don't help, not what is going to happen to me if I try to help.

So let me just ask you this, Ms. Podkul. Ma'am, these mothers, fathers, they know that what they are paying to have their children come, thousands of dollars, is too much. They know they shouldn't put their children in the hand of a stranger. Yet they do it. They know of the dangers along the way. Yet they send them.

My assumption is that you have talked to some of these children. What do the children tell you that parents tell them when they embrace them for the last time and say, "Be on your way? I will come and get you at some point, but you need to go now." What do they tell their children?

Ms. PODKUL. Thank you for that question. I am a parent myself, and so being in that position is completely unimaginable, having to make those kinds of decisions.

I think what is remarkable is that we think about, you know, we are sometimes sitting in a place of judgment and really trying to put ourselves in their shoes, how difficult that must be. You know, a parent would only ever, ever do that if they felt that, even though they know it is so dangerous and there is so many things that could happen to their child, that what is happening to them in that moment is worse, right, than the risks that they would send their child on. So no parent makes that decision lightly.

I will also say, talking to these children, a lot of times children are making the decision on their own to protect their families. Right? I spoke to an 11-year-old once who the gangs started to recruit him, and he was worried that they were going to harm his younger siblings because to try to convince him to join the gang. So he left without even telling his mother, and that is what broke his heart the most is that he didn't get to say goodbye to her, but he did it to protect her and to protect his younger siblings and he was only 11.

Mr. GREEN. Well, I was at the border. I think the child was 5 years old, screaming for her older brother that traversed this distance with her. When the brother arrived, the brother was 8 years old, a 5-year-old and an 8-year-old. This is not just about numbers, thousands of children showing up at the border. This is about children and about decency and about who we are as a country.

So either we are going have a heart and say to people, we will help because we know you need help. It is not as though they don't need it. They are not thinking it. Our intelligence tells us that they need it.

I thank you for your answer.

I will yield back the balance of my time.

Ms. BARRAGÁN. I thank the gentleman.

The gentleman yields back.

Now we will recognize the gentlewoman from New York, Ms. Clarke. You are recognized for 5 minutes.

Ms. CLARKE. First of all, thank you, Chairwoman Barragán and Ranking Member Higgins, for holding this timely hearing today and to address the issue of unaccompanied minors at the border.

I thank all of our witnesses for appearing before us, albeit virtually today.

We are in a critical moment to address the impact of what I believe was a cruel and ineffective immigration policy of the Trump administration, policies that ripped thousands of kids from their parents, leaving many still not yet reunited with their loved ones. It is time that we assess the current state of U.S. immigration policies and support the Biden administration's efforts to increase capacity to shelter these unaccompanied children in a humane way.

With that, I will now move on to my questions.

Ms. Podkul, migration trends at the Southern Border have changed dramatically over the last decade. Yet it still appears that our border policies are outdated, as they are originally developed with single adults in mind instead of unaccompanied minors.

What immediate actions should DHS, HHS, and Congress take to resolve the gaps that exist between our border policies and our recent migration trends?

Ms. PODKUL. Thank you for that question, Congresswoman. I think there is a few things that could be done immediately. I think ensuring that Customs and Border Protection hires child welfare professionals, right, to care for and screen the children that they are encountering. Right? We want to make sure we have trained professionals engaging with them and so we can get our law enforcement agents back out, doing law enforcement work and not taking care of children.

We also think that there would be a lot of efficiencies realized if Health and Human Services could be co-located in Customs and Border facilities where children are being held and screened, because right immediately then HHS officials could be starting to consider extended family members as potential sponsors so that children may even not even have to go to ORR custody. They could really identify what is going to be the best placing if they do have to send a child to Government custody, where would that be, so that they can get the child to a sponsor right away and that you are not losing any time when you are starting to identify and screen the sponsor.

I think the other thing too is ensuring that Government is funding counsel for children. As I said before, that is going to—we are going to see a lot of efficiencies in the judicial system if kids are represented, because they will understand how to go through the process and we can make sure they know how to comply with the entire court process and we can get to the bottom of their story.

Ms. CLARKE. These were great suggestions. I think they are common-sense suggestions. But what should be done over the longer term, in your estimation?

Ms. PODKUL. You know, so I think, you know, a lot of people have talked about how do we address these root causes, right? That is a long-term solution. Right? I think these are going to take time, but it is important to start the investments now and show these countries that we are serious, and really focus our fiscal support and training support and educational support to these countries on

really addressing issues of child adversity. Right? What is it that is making these kids leave in the first place? Really focus our aid and support to those kinds of solutions.

Then I think also ORR, you know, they are struggling right now with the numbers of kids being referred to them by CBP. So there is kind-of the short-term trying to open up the facilities like the mayor is running, but what they need to do is really pivot in the long term and think about how can we make sure that we don't have to rely on these kinds of facilities. So making sure that they are matching what Congress has already said for the domestic child welfare system is appropriate, not large, congregate care. Put kids in homes. Put them in smaller group homes. Make sure that ORR is mimicking that for this population of kids so that we are treating all children the same and we are getting kids to family members and sponsors as quickly as possible.

Ms. CLARKE. Would you talk to the sort-of the plight of the Black migrant that is seeking asylum? Can you speak to how Trump-era border policies, such as family separation and Title 42 disproportionately affect Black migrants and their children, and what should be done to address this problem?

Ms. PODKUL. Yes, absolutely. I mean, first of all, I think we are spending a lot of time talking about Central American children. Right? We are serving kids who are coming from Africa, that are coming from Caribbean countries, from all over the world. Right? So there are a lot of Black migrants who are being disproportionately affected, both because it is the reason—it is because of their race that they are being targeted and felt like they had to leave in the first place, but then also, for example, Title 42, right, the way it affected Haitian asylum seekers and Haitian families has been terrible. They weren't able to be put in MPP, right, so they weren't part of the unwinding of MPP, but then also deportation flights were continuing at a time when there was incredible instability in Haiti.

So I think we really need to take a close look at that and think about how do we make sure that our policies are not discriminatory and that we are also taking into account discrimination based on race, and how can we make sure that we are protecting those individuals.

Ms. CLARKE. Thank you, Madam Chair. I yield back the balance of my time.

Ms. BARRAGÁN. Thank you.

The gentlewoman yields back.

We will have a second round of questioning, and I will recognize myself for questions.

Mr. Reichlin-Melnick, we have heard today during today's testimony a number of arguments that are being made about the TVPRA causing increase in migration, being these pull factors. We are hearing about these arguments that the *Flores* agreement is the cause for an increase and there has been expansion. What is your response to those arguments?

Mr. REICHLIN-MELNICK. I think you hear a lot about push factors and pull factors. It is important to note that the push factors are the why people are leaving, whereas the pull factors are often why now.

For people in emergency situations, they have to leave immediately. We saw for years that Central American minors in particular were affected by the violence in those countries. Honduras and El Salvador were 2 of the most violent countries in the world and, in fact, we have seen when violence is dropped in El Salvador over the last few years, fewer unaccompanied children are coming to our borders, making clear this is a direct result of instability in people's home countries.

As for *Flores*, there is no evidence whatsoever that the *Flores* settlement agreement's change had any impact on unaccompanied children.

Similarly, unaccompanied children were exempt from their Remain in Mexico, or MPP, program. Title 42 was the first and only program at the border specifically targeting unaccompanied children, and yet the number of unaccompanied children coming to our borders rose every single month while Title 42 was in place, even as the Trump administration was expelling thousands of children back to their home countries.

Ms. BARRAGÁN. Thank you.

Mayor Garcia, it has been really amazing to kind-of see the reception from our community in the accepting these children that are fleeing violence. Can you talk a little bit about how you have received—let me back up a little.

Have you received much outreach from nonprofits or community organizations that want to help? Can you also help describe what the community's reception has been to establishing this emergency facility in Long Beach?

Mr. GARCIA. Yes, I mean, the overwhelming response has been really positive. Obviously, there is a huge amount of overwhelming support as it relates to assisting the children. I think for most folks in our community this is not a political issue; this is about helping kids, about being compassionate, about being kind. We have already in just a few days have received thousands of books and toys that have been donated by the community. We have community groups that have assisted to volunteer. We have had a lot of folks just come in and just really want to help.

Obviously, there is also a lot of conversation, like any effort. There is a conversation about the future of immigration policy. There is a lot of folks in our community that want immigration reform done now and that our shelter is not a substitute for strong immigration policy. That is something that we have heard and that I support. But the support has been really strong and, it is evident in both the council's unanimous vote but also vast majority of the messages we have received have been overwhelmingly positive.

Ms. BARRAGÁN. Well, thank you.

Mr. Reichlin-Melnick, one of the things that really struck me in your testimony, which I went through and starred when I was reading it, was this concept that unaccompanied children generally win their cases in immigration court or they are allowed to stay in the United States.

I represented a child from Guatemala and, while asylum may be hard, there are things that were withholding of removal and that child got to stay here. Can you—is there anything that you—else that you want to share with this committee or, you know, combat

some of the myths out there that we keep hearing, drowning out what is really happening and the dire conditions that these children that are coming legally to seek refuge here and asylum here for protections?

Mr. REICHLIN-MELNICK. Thank you for the opportunity. So I think that the first thing I want to make clear is that seeking asylum is legal. Right now, the only way for families and unaccompanied children to seek asylum is to cross between ports of entry, because the ports of entry remain closed to all those seeking asylum, even at a time when 340,000 people cross at legal ports of entry every day going from Mexico into the United States for traffic, shopping, or whatever.

Importantly, when you actually look at long-term outcomes of unaccompanied children's cases, over the last few years since 2013, most children did end up winning their cases or being granted the right to stay. When we talk about families and other asylum seekers, the previous administration often made false claims that those people wouldn't show up in court. But a study done by the American Immigration Council that looked at 2.8 million hearings from 2008 to 2018 found immigrants appear overwhelmingly [inaudible] 83 percent of the case. Those few that missed their hearings usually missed their hearings because of Government error and not because they are intentionally failing to appear.

So that is why we need to access case management services that help people go through a confusing court process and not simply say that those few who do miss court are somehow bad actors. People know that if they want to have a chance at staying in the United States legally, they have to go through a process. We should make sure that process is easier to go through so that people don't fall through the cracks through no fault of their own.

Ms. BARRAGÁN. Thank you.

My time has expired. I will now move on to Mr. Guest.

Mr. Guest, you are recognized for 5 minutes.

Mr. GUEST. Thank you, Madam Chairman.

To any of the witnesses in particular, just one question I had deals with reunification. I know we have talked about reunification being a goal of the unaccompanied minors who come into the country. For those individuals that do not have family members in the United States, what should our long-term policy be as far as placement of these children?

Ms. PODKUL. I can start. So for about—traditionally, about 10 percent of the unaccompanied children don't have anyone, any family member, anyone who is able to sponsor them when they arrive. So what happens is they stay in Government custody through the duration of their case. So at the end of their case, they either win their case. If they win legal status, they are eligible for the Unaccompanied Refugee Minor Program, which is a Federal foster care program where they can stay until they are 21 because they have their green card and they will be on their path to citizenship. If they lose their case, then they are removed by the Government just like anyone else would be removed by ICE.

Mr. GUEST. Let me ask you, Jennifer. I think maybe you told the story about the 11-year-old child who came to the United States without even consulting with his family. Assuming that he had

family in his home country who wanted him back, who wanted to care for him and love for him and allow him to live in their home, should that be taken into consideration as to where the best placement for the child is?

I am thinking of many times, as we deal with minor children here in United States and we are looking at things such as custody and what parent should get custody and where the best place for the children to grow up, and I often hear and in our chancery or family law court we talk about reunification, placing them back with parents, grandparents, with aunts and uncles.

Are those matters taken into consideration? If not, should they not be taken into consideration as to where there are close family members where these children can reside and live in those homes?

Ms. PODKUL. That is a great question. You know, we don't have the consideration of the best interests of the child in U.S. law. Right? So there is different elements. You know, in some forms of relief, in some considerations, you can talk about what might be in that child's best interest. But there really isn't a legal standard here that we are applying in our U.S. immigration system for these children. Right? We think it is very important, right, just like you do, that we are taking into account all the considerations about this child's life and what is really going to be in their best interest.

I also think it is important, when we are talking about why aren't people asking for protection in Mexico, right, Mexico has a law in which they are required to consider the best interest of the child. Right? It is important for the Mexican government to be able to talk to the U.S. Government and say, hey, for example, we have a child here in Mexico who is considering applying for asylum but their mom lives in Chicago. Right? Should we—if they have support there, is the child eventually going to wind up—want to end up with her? Does it make more sense for the United States to adjudicate this application for asylum?

So I think it is really important not just for the United States to consider the best interest of the child, but for us to be talking about it in a regional way with countries in the region to make sure that we are doing right by these kids and families.

Mr. GUEST. Would you agree that that should be—I know it is not but it should be one of the things the courts should look at as the best interest of the child, whether that child remain in the United States, whether that child live in Mexico with family members, or return back to their country of origin? Should that not be at least one of the factors that the court addresses as we are dealing with, you know, unaccompanied minors who in some cases would have to go into some sort of foster care family or foster care system here versus being able to return to family members who would like them to be in their homes in other countries?

Ms. PODKUL. Yes. So many factors need to be taken into account and, most important, is where that child would be the safest. Right? So it is who can care for them, where does the family live, and where would they be most safe. Those should all certainly be things that the Government considers.

Mr. GUEST. So you would say that that should be a factor we should consider?

Ms. PODKUL. Where they have family? Yes, where they have family, where they have support system, absolutely, but the priority also has to be, which is already under U.S. law, where they are going to be safe. Right? So we can't just—

Mr. GUEST. Can people be safe outside the United States? I understand we may not return them to their country of origin. But if they had family in Mexico or they had family somewhere else and those family members wanted those children, should that not be taken into consideration?

It seems to me the argument has been that everyone who comes into the United States, regardless of where they are going to be placed, should remain here. I believe that many should, but I also believe that there are certain circumstances where you have family members, particularly the 11-year-old boy who left his family, I think those parents should have some say.

If my child left at 11, as a parent, I have legal rights in the United States that my child can't make that decision. As a parent, I get to be involved. It seems to me that that should be something that we should have in our court system, and it seems to me to be something that is lacking and has not been part of the conversation.

Madam Chair, I know I am out of time, so at this time I yield back.

Ms. BARRAGÁN. Thank you, Mr. Guest.

You raised an interesting point that, frankly, I have been to the border many, many times, I have spoken to family members, and I don't generally see this situation. It is quite opposite. It is where the parents are sending the kids because of the violence, because they have already lost a kid, or because they are trying to protect them. Also, the number of family members that we have that actually have come and sponsored a child, that number is very high of kids who have family in the United States.

But thanks so much for your questioning and for the points that you have made.

I will now recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Madam Chair.

Madam Chair, I have been to the border, and I have also been across the border. I had a constituent, Mr. Escobar. He was reporting to ICE. He reported pursuant to agreements, and he had his American-born wife and American-born child with him. He was removed from his family without the kind of notice that we would like to have, and he was sent to El Salvador—San Salvador with the clothes on his back and about \$20 in his pocket. It took us more than 2 years, I believe, to get him home.

But in the process, I went there to see him, and I went to San Salvador and I went to a repatriation center. One of the things that concerned him greatly was when people are brought back into the country, they are literally people who will wait for them, waylay them, harm them. It is really not a pretty picture when you have an opportunity to see it up close and how these people are fearful of leaving the repatriation center.

I believe one of our speakers, Mr. Reichlin-Melnick, sir, you talked about the harm. I want you to just revisit that. There are

some things that bear repeating. Tell us about what could happen to people when we send them back to harm's way.

Mr. REICHLIN-MELNICK. Thank you very much for that question. We saw the problems that this caused in particular under the Remain in Mexico program and continue to occur under Title 42, when people were sent back to Mexico, multiple people, hundreds if not thousands of people were kidnapped within minutes or hours after they were sent back to Mexico, sometimes right after their court hearings.

When Congress held a hearing on MPP 2 years ago, we submitted a statement for the record about one mother who had crossed the border for a court hearing with her 7-year-old, non-verbal, disabled child. After asking not to be sent back to Mexico because of the danger, the previous administration ignored her pleas and sent her back to Mexico, and within 5 minutes she was kidnapped at knifepoint, held, assaulted with her and her daughter, and ultimately ended up ordered deported for missing a court hearing because she was in the hands of her kidnappers when that court hearing was scheduled to occur.

Even today, the cartel station people outside the ports of entry, waiting for the United States to send people back. As you said, this occurs in San Salvador as well, but it is most particularly egregious in Mexico right at the border. The State Department says that the Mexican State of Tamaulipas where many people are returned is a Level 4 security risk, comparable to Yemen, Syria, and Afghanistan, where no one should go. Yet we are still sending families back there every single day.

We have to keep those risks in mind when we talk about sending people back and making them wait in Mexico, because, as we know, those situation are not safe, especially for migrants and especially for Black migrants who are particularly at risk in Mexico where there is often frequent discrimination against them.

Mr. GREEN. With reference to the gentleman that I mentioned earlier, sir, Mr. Escobar, he had to stay at home most of the time. He was accosted when he left. Mind you, he was dropped off at the airport. Hadn't been to El Salvador in 15 years. Dropped off at the airport. Just a few dollars in his pocket. He and some others had to get together, pool their resources, and try to get a vehicle to get them outside of the city to a safe place before it got too dark. They had to literally try to escape from the airport to avoid harm.

This is not a pretty picture. You have to actually see the people and how they fear for their lives to appreciate what is happening to them. There is a lot of fear, and my hope is that what you have said will have some meaning to us about just sending people back to harm's way. I appreciate your commentary.

Madam Chair, I thank you for the second opportunity. I just pray that this will have a better ending than it seems that we are headed for.

I yield back.

Ms. BARRAGÁN. Thank you, Mr. Green, for sharing with us and for yielding back.

That is all we—that is all we have for questions for Members.

I want to thank the witnesses for their valuable testimony and the Members for their questions.



The Members of the subcommittee may have additional questions for the witnesses, and we ask that you respond in writing. Without objection, the committee record shall be kept open for 10 days.

I also want to ask unanimous consent to submit for the record letters from CHIRLA, the Lutheran Immigration and Refugee Service, Catholic Charities, Amnesty International, First Focus on Children, and Young Center for Immigrant Children's Rights, their submitted testimony.

Hearing no objection, we will include those as well.  
[The information follows:]

LETTER FROM THE COALITION FOR HUMANE IMMIGRANT RIGHTS (CHIRLA)

*April 27, 2021.*

Chair NANETTE DIAZ BARRAGÁN,  
*Committee on Homeland Security, Subcommittee on Border Security, Facilitation,  
and Operations, Washington, DC 20515.*

Ranking Member CLAY HIGGINS,  
*Committee on Homeland Security, Subcommittee on Border Security, Facilitation,  
and Operations, Washington, DC 20515.*

Chair BENNIE THOMPSON,  
Ranking Member JOHN KATKO,  
*Committee on Homeland Security, Washington, DC 20515.*

Re: Hearing "Unaccompanied Children At The Border: Stakeholder Perspectives On The Way Forward"

DEAR CHAIRS BARRAGÁN & THOMPSON & RANKING MEMBERS HIGGINS & KATKO: On behalf of the Coalition for Humane Immigrant Rights (CHIRLA), the largest State-wide immigrant rights organization in California, I submit this statement for the record for today's hearing entitled "Unaccompanied Children At The Border: Stakeholder Perspectives On The Way Forward." CHIRLA is such a stakeholder, both as a steadfast advocate for the immigrant community at large as well as for the children who have recently arrived in southern California and for their families with whom they must be reunited without delay. Below is our perspective on what we as an organization are doing to help with this process and what can be done more generally.

#### CHIRLA'S ROLE IN SOUTHERN CALIFORNIA

As an organization serving the immigrant community for the past 35 years, we have worked to gain and maintain both trust and credibility as a reliable source of accurate information. To that effect, we field numerous inquiries from both our own members and the broader community every single day.

For the unaccompanied minors and their families, we therefore opened up our toll-free National hotline specifically to family members seeking information about their children's whereabouts. We did so as soon as the first buses starting arriving to the Long Beach Convention Center—the second Emergency Intake Site (EIS) opened under the auspices of the Federal Department of Health and Human Services (HHS) in California after the one in San Diego—and we expect to continue doing so when the Pomona Fairplex opens up its doors and if other cities do so as well.

California in 2021 is now a pro-immigrant State, and we are grateful to the city of Long Beach, the County of Los Angeles and Pomona as well as non-profit partners like Immigrant Defenders (who will be providing legal services to the children) for rising to this occasion. Beyond the children's physical and mental health and the immediate search for their family members, this has, for example, extended to the current on-going book and toys drive organized by the city of Long Beach, which we are supporting.

Last Thursday April 22, I toured the Long Beach Convention Center with Mayor Robert Garcia, Representative Lowenthal, Chair Barragán's office and others. I saw how this all-hands-on-deck approach from California assists HHS and helps ensure that the well-being of the children is front and center of this essential mission. CHIRLA commits to continuing its partnership with all other stakeholders at the local, State, and Federal levels to help reunite these children with their families.

## CHIRLA'S PERSPECTIVE ON POLICY SOLUTIONS

Aside from the on-going multi-year process, led by the Biden administration and Vice President Kamala Harris, of dealing with the root causes that compel the children and their families to migrate, we believe there are immediate actions that the Federal Government can take to improve the situation. These include:

1. *End the Use of Title 42 to Expel Immigrants Arriving at the Border.*—While this has been ended for children, it has not for families arriving together or for single adults. For families, this is particularly harmful and risk leading to unnecessary family separation, where a family member is faced with a Hobson's Choice of allowing a minor to face danger while waiting in Mexico or seeing that minor enter the United States alone.

2. *HHS Personnel Must be Co-Located at All CBP Facilities.*—When the Title 42 is ended, this is essential so that children who arrive with non-parental caregivers can be quickly reunited with each other following processing by HHS and CBP.

3. *Increase the Use of Intensive Case Management and Assist Children, including with transportation costs, so they can be reunited with their families once located.*

Finally, from addressing root causes to modernizing our broken immigration system including the asylum processing destroyed by the previous administration, CHIRLA believes that the U.S. Citizenship Act (H.R. 1177 and S. 348) as well as other immigration legislation that offers permanent relief need to be passed by Congress and sent to President Biden's desk forthwith.

Thank you for considering CHIRLA's statement. Please contact our policy counsel, Carl Bergquist, at [cbergquist@chirla.org](mailto:cbergquist@chirla.org), should you have any questions.

Sincerely,

ANGELICA SALAS,

*Executive Director, Coalition for Humane Immigrant Rights (CHIRLA).*

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STATEMENT OF SUSANNAH CUNNINGHAM, ADVOCACY MANAGER, LUTHERAN  
IMMIGRATION AND REFUGEE SERVICE

APRIL 27, 2021

CBP DATA SHOWS THE RISE OF UNACCOMPANIED CHILDREN UNDER TITLE 42

LIRS has decades of experience in policy and programming with children who come into the immigration enforcement system in the United States. We are a solutions-oriented organization that works closely with our Federal partners and a National network of local affiliates to ensure every child who enters the United States is treated with the dignity and care that we would wish for our own children.

#### INTRODUCTION

Mounting evidence indicates that the historic number of arrivals of unaccompanied children at the Southern Border is the result of a specious “public health order,” Title 42—a Trump-era U.S. policy that can and should be reversed.

Evoked in March 2020, the regulation halted asylum access for families and individuals presenting themselves at southern ports of entry, while the border remained open to hundreds of thousands of people crossing daily for non-essential travel. When legal challenges arose, Federal courts found reason to make exception for unaccompanied children and President Biden chose to keep the carve-out in place—making unaccompanied children among the select few individuals permitted access to life-saving refuge. This policy functionally forced families to decide to stay together amid unsafe conditions in Mexico or to separate in the hopes of safeguarding their children.<sup>1</sup>

While the impact of 2 devastating hurricanes and regional instability have pushed migrants out of the Northern Triangle in Central America, many of these asylum seekers and migrants are also pulled by the hope of safe haven, the assurances of seasonal work (i.e. agriculture), and annual weather patterns that make the route to the border more survivable. These colliding factors, timed with pent-up demand from delayed travel during the 2020 pandemic, have driven a cyclical migration influx that we have seen in previous years, including each year of the 1980's and as

<sup>1</sup>David Bier, “Immediate Solutions for Migrant Children,” Cato Institute, March 17, 2021, <https://www.cato.org/publications/immediate-solutions-migrant-children#release-children-non-parental-adult-family>.

recently as 2014 and 2019.<sup>2</sup> As many have noted, what is unusual this year is the historic number of arrivals of unaccompanied children at the border, which could be decreased if the Biden administration were to end Title 42.

#### WHAT IS TITLE 42?

On March 20, 2020, the Trump White House—in collaboration with then-Acting Secretary Chad Wolf—directed a new order, stipulating that those “introducing” themselves at Southern ports-of-entry to apply for asylum should be turned away and “expelled” back to Mexico or their home countries.<sup>3</sup> This directive functionally suspended the long-guaranteed right to seek asylum for individuals who arrive at our Southern Border and ask for protection. The expulsions were carried out by Customs and Border Protection (CBP) under the evocation of a little-known provision of U.S. health law, section 265 of U.S. Code Title 42. Despite being billed as a public health order at the time, the Center for Disease Control’s (CDC) own scientists disputed the public health merit of the order while the United States still permitted robust commerce and non-essential travel across the border, and CDC officials refused to sign it.<sup>4</sup> Originating from the West Wing and then-Acting Secretary Chad Wolf’s agency, the order would remain in effect despite wide-spread criticism by leading public health officials.<sup>5</sup>

CBP would subsequently report that 90 percent of expulsions in May 2020 were under the Title 42 Order.<sup>6</sup> Subsequent investigations found that CBP had controversially and possibly illegally expanded the jurisdiction of the original Title 42 order to apply beyond those “introducing” themselves to the United States, deciding that the order extended authorization to also expel those who had already crossed into the United States.<sup>7</sup>

#### WHO IS CROSSING THE BORDER UNDER TITLE 42?

Hundreds of thousands of people cross the U.S.-Mexico border on a daily basis, mostly for commerce and non-essential travel.<sup>8</sup> Sixteen million individuals crossed the U.S.-Mexico border in March 2021 alone.<sup>9</sup> However, a combination of the previous administration’s Remain in Mexico program as well as the Title 42 order has ensured that shamefully few of those millions of individuals crossing monthly are those seeking life-saving asylum.

Recent analysis by the American Immigration Council indicates, “last month, 72 percent of all people encountered at the border were sent back to Mexico or expelled to their home countries. And while unaccompanied children and some families at the border have been allowed to come into the country and challenge their deportation in immigration court, they represent a fraction of overall entrants.”<sup>10</sup>

<sup>2</sup>Refugee Council USA “No Justification: The Administration’s Crusade to Ban All Refugees,” July 19, 2019, <https://rcusa.org/resources/strongno-justification-the-administrationsnbspcrusade-to-ban-all-refugeesnbspstrong/>.

<sup>3</sup>Dara Lind, “Democratic Senators Demand Answers on Trump’s Secretive Border Expulsions,” *ProPublica*, April 8, 2020, <https://www.propublica.org/article/democratic-senators-demand-answers-on-trumps-secretive-border-expulsions>. And “Acting DHS Secretary Wolf Speaks to Reporters,” C-SPAN, March 20, 2020, <https://www.c-span.org/video/?470541-101/dhs-secretary-wolf-limiting-cross-border-travel-coronavirus-crisis>.

<sup>4</sup>James Bandler et al, “Inside the Fall of the CDC,” *Pro Publica*, October 15, 2020, <https://www.propublica.org/article/inside-the-fall-of-the-cdc>.

<sup>5</sup>“Public Health Experts Urge U.S. Officials to Withdraw Order Enabling Mass Expulsion of Asylum Seekers,” Columbia University Mailman School of Public Health, May 18, 2020, <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>.

<sup>6</sup>Rafael Bernal, “90 percent of People Apprehended at Border Expelled under New Coronavirus Order,” *The Hill*, May 7, 2020, <https://thehill.com/latino/496632-90-percent-of-people-apprehended-at-border-expelled-under-new-coronavirus-order?rl=1>.

<sup>7</sup>United States District Court for the District of Columbia, “PjES v. Chad Wolf, Case 1:20-cv-02245-EGS-GM U.S. District Court for the District of Columbia,” November 18, 2020, <https://www.dropbox.com/s/plbuw0knoth1623/PjES%20opinion.pdf?dl=0>.

<sup>8</sup>“Border Crossing/Entry Data,” Bureau of Transportation Statistics, April 26, 2021, <https://www.bts.gov/browse-statistical-products-and-data/border-crossing-data/border-crossingentry-data>.

<sup>9</sup>“Border Crossing/Entry Data,” Bureau of Transportation Statistics, April 26, 2021, <https://www.bts.gov/browse-statistical-products-and-data/border-crossing-data/border-crossingentry-data>.

<sup>10</sup>“Facts About the Current Situation at the Border,” American Immigration Council, March 23, 2021, <https://www.americanimmigrationcouncil.org/news/facts-about-current-situation-border>.

## WHAT EVIDENCE IS THERE THAT TITLE 42 IS CREATING THE INFLUX OF UNACCOMPANIED CHILDREN?

CBP officials have reported the phenomenon publicly. Brian Hastings, who leads the busiest Border Patrol sector in the United States reported, “what we are seeing, more and more, is the families are self-separating in Mexico.”<sup>11</sup> From February 24 to March 23, 2021, Border Patrol documented 435 incidents in just one sector (in the south Texas region) where children were apprehended crossing the border alone after previously being expelled with their family under the Title 42 order. When the unaccompanied children arrive at ports of entry or are found alone by Border Patrol, they are first placed in the custody of CBP—most of them held in in-take facilities that we have seen images of in the news, with children laying in overpacked pods, wrapped in mylar blankets behind plastic screens. The children are then transferred to the custody of Health and Human Services—most after spending an average of 122 hours in CBP custody, despite mandates that they be transferred within 72 hours.<sup>12</sup>

In March, Border Patrol apprehended 18,656 unaccompanied minors at the Southwest Border, a record since at least October 2009. This is about twice as many apprehensions as in February and continues an upward trend dating back to last fall, according to the agency’s data.<sup>13</sup>

## WE HAVE SEEN THIS BEFORE

In January 2020, under the Trump administration’s Remain in Mexico program, which forced asylum applicants to wait in Mexico pending their asylum hearings, we saw record numbers of unaccompanied minors arriving after Border Patrol officials had initially encountered them with family members and deported them.<sup>14</sup> How they separated from their family members varies, but reports suggest both concerning disappearances of family members as well as self-separation of families that decided that the squalid and unsafe conditions in Mexico were too dangerous for their children.<sup>15</sup>

## OTHER IMPORTANT IMPLICATIONS

An additional implication of Title 42 is its unjustified and immoral use to deport Black Haitian immigrants to Mexico or back to Haiti without asylum proceedings or access to legal representation, violating codified U.S. law forbidding *refoulement*.<sup>16</sup> Given that many of the expulsions and deportations of immigrants back to Mexico were based on agreements with the Mexican government related to Central American asylum seekers, its use to violate American law and deport Haitian asylum seekers back to Haiti is unconscionable. As Tom Ricker, policy director with the Quixote Center, points out, “the entire justification for the Title 42 policy is the claim that the United States lacks the capacity to safely detain people. Yet, the United States is holding people for weeks . . . How do you deny someone asylum who has been placed in detention—with no legal representation at all—based on the argument that there is no capacity to detain them?”

## RESCINDING TITLE 42

For the reasons stated above, Lutheran Immigration and Refugees Service joins UndocuBlack Network, Southern Border Communities Coalition, the National Council of Churches, the CATO Institute, and 186 other groups and leaders in calling

<sup>11</sup> Geneva Sands, “Families are ‘self-separating’ in Mexico after being expelled from the US, Border Patrol says,” *CNN*, April 6, 2021 <https://www.cnn.com/2021/04/06/politics/families-self-separating-mexico-border-patrol/index.html>.

<sup>12</sup> Priscilla Alvarez, “How the Biden Administration is Responding to a Record Number of Unaccompanied Children at the US-Mexico Border,” *CNN*, April 23, 2021, <https://www.cnn.com/interactive/2021/04/politics/biden-administration-border-crisis/>.

<sup>13</sup> Priscilla Alvarez, “How the Biden administration is responding to a record number of unaccompanied children at the US-Mexico border,” *CNN*, April 23, 2021, <https://www.cnn.com/interactive/2021/04/politics/biden-administration-border-crisis/>.

<sup>14</sup> Priscilla Alvarez, “At least 350 children of migrant families forced to remain in Mexico have crossed over alone to US,” *CNN*, January 24, 2020, <https://www.cnn.com/2020/01/24/politics/migrant-children-remain-in-mexico/index.html>.

<sup>15</sup> Priscilla Alvarez, “At least 350 children of migrant families forced to remain in Mexico have crossed over alone to US,” *CNN*, January 24, 2020, <https://www.cnn.com/2020/01/24/politics/migrant-children-remain-in-mexico/index.html>.

<sup>16</sup> Dara Lind, “Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately—Ignoring Asylum Law,” *Pro Publica*, April 2, 2020, <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>.

for the end of the meritless Title 42 policy.<sup>17</sup> Rescinding Title 42 would create a path forward for families who wish to remain together as they seek safety, one that is consistent with our values as a Nation and would end the continuance of a deeply shameful policy of family separation under the Trump administration.

#### LUTHERAN IMMIGRATION AND REFUGEE SERVICES

For 80 years, Lutheran Immigration and Refugee Service has assisted forcibly uprooted people from round the globe. As the largest faith-based organization focused on serving migrants and refugees, we seek to provide assistance and protection to vulnerable populations when they can no longer safely remain in their home countries. Informed by a Lutheran legacy of welcoming the stranger, the sanctity of family, and decades of experience with migrants and refugees, we have empowered more than 500,000 families and individuals fleeing conflict, persecution, and war. We provide a host of services, which include:

##### *Migrant Services*

LIRS coordinates services for asylum seekers at the Southern Border, departing immigration detention, and at their final destinations, including the provision of necessities such as food, clothing, and hygiene supplies, medical triage and basic care, Know Your Rights counseling, emergency housing, and case management services.

##### *Safe Release Support Services*

Safe Release Support sites perform background checks on potential guardians to ensure that children are reunited into safe and secure homes. Safe Release staff identify various needs of the family such as pro bono legal counsel, food banks, counseling services, English classes, job training, and medical care, and connect them to these services. During the 2018 family separation crisis, LIRS was 1 of only 2 agencies working to reunite families.

##### *Transitional Foster Care for Unaccompanied Children*

The Transitional Foster Care program provides safe and caring foster homes to particularly vulnerable children who will be reunified with their families. The program specializes in serving minors under the age of 12, pregnant/parenting youth, youth with disabilities, and sibling groups while their families are located. All children in transitional care receive individualized assessments, acculturation and adaptation services, case management, education, weekly group and individual counseling, legal support, mental and medical health care, and access to religious services.

##### *Long-Term Foster Care for Unaccompanied Children*

Unaccompanied children without family reunification options but who have the possibility of receiving legal immigration protections are placed in Long-Term Foster Care where they receive on-going case management support as they integrate into their new communities. Children in Long-Term Foster Care are placed with loving foster families until their immigration case is resolved and typically will transition into the Unaccompanied Refugee Minors program.

##### *Home Study and Post-Release Services*

For particularly vulnerable unaccompanied children, LIRS offers community-based case management services. These include inspection of home environments once the child and the caregiver are together in the home, connecting families to community resources, and empowering families with the resources and knowledge they need to make informed decisions about schooling, legal representation, medical health, mental health, and recreational and religious services.

<sup>17</sup>David Bier, "Immediate Solutions for Migrant Children," Cato Institute, March 17, 2021, <https://www.cato.org/publications/immediate-solutions-migrant-children#release-children-non-parental-adult-family>.

## LETTER FROM CATHOLIC CHARITIES USA (CCUSA)

April 27, 2021.

The Hon. NANETTE BARRAGÁN,  
*Chairwoman, U.S House of Representatives, Subcommittee on Border Security, Facilitation, and Operations, 2246 Rayburn House Office Building, Washington, DC 20515.*

The Hon. CLAY HIGGINS,  
*Ranking Member, U.S House of Representatives, Subcommittee on Border Security, Facilitation, and Operations, 572 Cannon House Office Building, Washington, DC 20515.*

DEAR CHAIRWOMAN BARRAGÁN AND RANKING MEMBER HIGGINS: I write on behalf of Catholic Charities USA (CCUSA), the national office for 167 Catholic Charities agencies across the country and the U.S. territories, to express our appreciation for the opportunity to submit our written statement for the record about unaccompanied children along the Southern Border.

Our border agencies are actively working to assist all migrants along the Southern Border, including families and unaccompanied children. We are in regular communication with Federal agencies to identify services our network of agencies can provide to meet the needs of these children. Last year, Catholic Charities agencies provided over 160,000 migrants with shelter and respite care. We have over 100 years of experience serving and responding to the needs of newcomers. Each day Catholic Charities agencies witness first-hand both the unique hardships faced by migrant communities and the incredible contributions they continue to make to our country.

We are encouraged to hear policy discussions and a renewed focus on the root causes of migration. Our agencies hear incredible stories of struggles from the migrants we serve. They have been forced to leave their homelands due to a range of perilous issues: Devastating hurricanes that destroyed entire villages, caused crop failures and washed away homes; gang violence that is a constant threat to daily life; and high levels of poverty. Many arrive at our border as a means of survival. Hearing of the root causes that compel families to make the difficult decision of sending their children to our country in the hope that they may reunite with family members simply to survive should cause all Americans to pause and contemplate such a decision. Their situation could not be more dire. CCUSA urges Congress, the administration, and Homeland Security agencies to treat all migrants humanely when arriving in the United States and along our borders. We also encourage serious debate on comprehensive immigration reform for a more just and humane immigration system.

CCUSA stands ready to work with Congress in support of just immigration policies and will continue in our ministry of assisting those in need.

Sincerely,

SISTER DONNA MARKHAM,  
*OP, PhD, President & CEO.*

## LETTER FROM AMNESTY INTERNATIONAL USA

April 26, 2021.

Representative NANETTE BARRAGÁN,  
*Chair, Homeland Security Subcommittee on Border Security, Facilitation, & Operations.*

Representative CLAY HIGGINS,  
*Ranking Member, Homeland Security Subcommittee on Border Security, Facilitation, & Operations.*

Re: Amnesty International USA Statement for Hearing: Unaccompanied Children at the Border: Stakeholder Perspectives on the Way Forward

DEAR CHAIRPERSON BARRAGÁN, RANKING MEMBER HIGGINS, AND MEMBERS OF THE SUBCOMMITTEE: On behalf of Amnesty International USA and our members and supporters in the United States, we submit this statement for the record on the treatment of unaccompanied children at the U.S. Southern Border.<sup>1</sup>

As the Biden administration continues to welcome children seeking safety at the U.S. Southern Border, we call on the Government to take bold action to transform

<sup>1</sup> Amnesty International is an independent, Nobel Peace Prize-winning, global human rights movement of more than 10 million people. Amnesty International USA is the movement's U.S.-based section.

how it welcomes children—and all people—into this country and ensure their human rights.

The Biden administration has inherited a chaotic, punitive system that does not prioritize the well-being of people seeking safety in the United States—including unaccompanied children. The consequences are playing out now on the U.S. Southern Border, where the gross negligence from the previous administration—a lack of planning and resources invested in facilities to welcome children seeking safety—is creating challenges for processing. COVID-19 precautions have also constrained capacity.

In 2018 and 2019, Amnesty International USA visited the temporary influx facilities for unaccompanied children at Tornillo and Carrizo Springs in Texas, and the notorious Homestead facility in Florida, as well as permanent facilities for children in Florida and Texas.<sup>2</sup> Advocacy groups such as ours sounded the alarm, calling for accountability for human rights violations at Homestead in particular. We demanded an end to the cruel policies that had necessitated the use of these facilities at all—forcibly separating families and using children as bait to deport their potential sponsors through the Department of Homeland Security (“DHS”) and the Office of Refugee Resettlement (“ORR”).<sup>3</sup>

While the immediate context necessitating the use of temporary influx facilities is different, the Biden administration is still obligated to hold children in conditions that meet international human right standards and U.S. standards that support their best interests. No matter the situation or who is heading the administration, the Government must uphold its human rights obligations.

The Government is taking responsive steps and a holistic approach to move children from Customs and Border Protection (“CBP”) facilities to Office of Refugee Resettlement (“ORR”) facilities quickly, but it needs to do more and faster. Children must be held in conditions that meet their best interests and safely reunified with families and sponsors much more quickly.

Now is the time for transformation. As the administration adapts to current challenges, it must concurrently set in motion the systemic changes needed for reforming the border reception and ORR systems for unaccompanied children, so children are held in CBP facilities for minimal time; the need for influx facilities in the future is eliminated; the use of detention is not assumed; and children’s safe and speedy release and reunification with parents, caregivers, and other sponsor is prioritized, as both U.S. and international human rights law require.

#### HUMAN RIGHTS STANDARDS GOVERNING THE DETENTION OF IMMIGRANT CHILDREN

Under international human rights standards, all actions concerning children should be guided by the best interests of the child.<sup>4</sup> Under that “best interests” principle, the U.N. Committee on the Rights of the Child has underscored that “protection and care” should be provided that ensures “the child’s ‘well-being’ and development. Children’s well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.”<sup>5</sup> The United States has incorporated this principle at the Federal and State levels. Congress has incorporated the best interests of the child standard into multiple immigration law provisions respecting children.<sup>6</sup> All 50 States, the District of Columbia,

<sup>2</sup>Amnesty International USA, *No Home for Children: The Homestead ‘Temporary Emergency’ Facility* (July 2019), available at [www.amnestyusa.org/reports/no-home-for-children-us-government-detention-of-children-at-homestead-facility-cruel-and-unlawful/](http://www.amnestyusa.org/reports/no-home-for-children-us-government-detention-of-children-at-homestead-facility-cruel-and-unlawful/).

<sup>3</sup>Women’s Refugee Commission and National Immigrant Justice Center, *Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement* (March 2019), available at <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2019-03/Children-as-Bait.pdf>.

<sup>4</sup>U.N. Convention on the Rights of the Child (“CRC”), Art. 3(1) (November 20, 1989), available at [www2.ohchr.org/english/law/pdf/crc.pdf](http://www2.ohchr.org/english/law/pdf/crc.pdf). The United States signed the CRC in 1995, though it is the only country that has yet to ratify it. As a signatory to the CRC, the United States is prohibited under customary international law from acts that would defeat its object and purpose.

<sup>5</sup>Committee on the Rights of the Children, *General Comment No. 14*, ¶71 (2013), available at [www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf).

<sup>6</sup>See, e.g., 8 U.S.C. § 1101(a)(27)(J); Immigration and Naturalization Service, *Guidelines for Children’s Asylum Claims* (December 10, 1998), at 2, 6, 9. Federal agencies that take unaccompanied children into custody must place them in the least restrictive setting that is in their best interests. 8 U.S.C. § 1232(c)(2).

and U.S. territories require consideration of a child's best interests in decisions about the child's custody.<sup>7</sup>

Children should not be detained, whether unaccompanied or accompanied, as it is not in their best interests.<sup>8</sup> If children are detained, they must only be detained as a last resort for the shortest possible time and in the least restrictive setting possible, in a facility that is appropriate to the child's needs and complies with both international and U.S. standards.<sup>9</sup> Whenever a child is detained, they should be treated "in a manner that takes into account the needs of persons of his or her age."<sup>10</sup>

The *Flores* Settlement Agreement ("*Flores* Agreement") lays out standards for the detention, release, and treatment of immigrant children—whether unaccompanied or accompanied.<sup>11</sup> The *Flores* Agreement is based on 2 principles: The best interests of the child and family unity. It requires the Government to release immigrant children as quickly as possible, and to hold them in the least restrictive setting possible—generally, in a non-secure facility licensed by a State child welfare entity. It provides for exemptions to the care and oversight of children "in the event of an emergency or influx of minors into the United States."<sup>12</sup> The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") similarly requires that children be placed in the "least restrictive setting that is in the best interest of the child," and notes that children "shall not be placed in a secure facility absent a determination that the child poses a danger to self or to others."<sup>13</sup>

#### RESPONSE AT THE BORDER AND A WAY FORWARD

The administration is taking a whole-of-Government approach to welcome children more in line with its obligations. It has revoked the dangerous agreement between DHS and ORR that endangered children and their sponsors—which advocacy groups like ours fought for years.<sup>14</sup>

Mobilizing FEMA for emergency intake sites is helping to swiftly and humanely address children's welfare by moving them out of border facilities. CBP facilities are no places for families or children to stay a moment longer than absolutely necessary.

Putting creative processes into place to get children out of ORR shelters faster right now—from reducing quarantine time to paying for transportation of children and sponsors—will not only release children more quickly and create more capacity, but it also charts a path for reform.

Nonetheless, the administration must move faster to get children out of CBP stations more quickly, while taking immediate steps that will lead to long-term reforms, so the Government is not here in the same situation in another year.

At the border, ORR should start the sponsor-vetting process rather than at a later stage. This would potentially allow for release of children to their parents, families, and other sponsors from the border. Additionally, ORR and CBP should test not only children but also their sponsors for COVID-19 to enable quicker release and even potentially allow children to quarantine with their sponsors, who are often parents and family members.

Beyond the border, the administration must start right now to expand its network of ORR facilities. The facilities should be permanent, licensed, and small scale. Children should not be warehoused in facilities with 500 beds as if they are in a processing plant. Detention should not be assumed as the model, and foster care options must be expanded.

<sup>7</sup>See Child Welfare Information Gateway, *Determining the Best Interests of the Child* (2012), available at [www.childwelfare.gov/pubPDFs/best\\_interest.pdf](http://www.childwelfare.gov/pubPDFs/best_interest.pdf).

<sup>8</sup>See International Covenant on Civil and Political Rights ("ICCPR"), Art. 9(3); U.N. High Commissioner for Refugees ("UNHCR"), *UNHCR's Position Regarding the Detention of Refugee and Migrant Children in the Migration Context*, January 2017, at 2, available at <http://www.refworld.org/docid/5885c2434.html>.

<sup>9</sup>See CRC, Art. 37; see also General Comment from UNHCR on ICCPR Art. 9; Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, Art. 32(f) (November 16, 2017).

<sup>10</sup>CRC, Art. 37(c)129.

<sup>11</sup>*Flores v. Lynch*, No. CV 85–04544 DMG (Ex), Central District of California (August 21, 2015), available at [www.aila.org/File/Related/14111359p.pdf](http://www.aila.org/File/Related/14111359p.pdf) [hereinafter *Flores* Agreement].

<sup>12</sup>*Flores* Agreement.

<sup>13</sup>William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) § 235(c)(2); 8 U.S.C. § 1232(c)(2), Pub. L. No. 110–457, 122 Stat. 5044 (2008).

<sup>14</sup>[www.cnn.com/2021/03/12/politics/biden-rescinds-trump-immigration-migrants-minors/index.html](http://www.cnn.com/2021/03/12/politics/biden-rescinds-trump-immigration-migrants-minors/index.html).



This expansion process will take time, and that is why the administration must act urgently. The United States must not continue using temporary influx facilities because of a lack of planning or investment in the infrastructure to care for unaccompanied children. In emergency situations, influx facilities are an imperfect stop-gap measure. The Government must move away from their use.

While these facilities are in use, the Biden administration must ensure stringent safeguards are in place to care for children. Unlike before, the use temporary facilities should have the same services and standards of care as permanent ones. Children's rights should not be short-changed because of where they are held; the Government is obligated to uphold their rights equally. Children be released as quickly as possible from them to parents and other sponsors. The Government must also ensure regular access to these facilities for independent monitors, child welfare experts, and attorneys to ensure children's welfare and oversight and accountability. Influx facilities are not appropriate for prolonged use, and they should be de-activated as quickly as possible.

In addition to expanding system capacity, the sponsor-vetting process must be streamlined and case management services immediately and heavily invested in so children can have a place to call home. Efficiencies do not mean compromising thoroughness; the well-being of the child is always paramount. There must need immediate investment in processing sponsorship applications much more quickly as well as increasing post-release services to ensure children's welfare. Most unaccompanied children have families and sponsors waiting to welcome them, and that's where they belong—the Government is not a parent.

Challenges bring opportunities for change, and systemic reform must begin now to stop this cycle of urgent response at the border for the reception of unaccompanied children and release to their parents, caregivers, and other sponsors. The United States has the capacity, and must marshal the political will, to act.

#### STOP THE MISUSE OF TITLE 42

The exemption of unaccompanied children from Title 42 is welcome and was long overdue, as it conflicts with the TVPRA and human rights obligations.

However, continuing to apply Title 42 to adults and families is unlawful, not based on science, and perpetuates the systemic racism permeating the United States' punitive immigration enforcement system. It also creates family separation and endangers children when parents expelled under Title 42 and placed in a desperate situation, allow their children to travel to the United States alone to ask for protection.

The misuse of Title 42 violates the United States' obligations under international and domestic law to uphold the right to seek asylum and not forcibly return individuals to a place where they would face persecution. Since Title 42 it has resulted in the summary expulsion of over 500,000 immigrants and asylum seekers.<sup>15</sup> Title 42 has particularly affected Black immigrants and asylum seekers, who have been summarily returned to the countries they fled because the Mexican government is largely only receiving immigrants and asylum seekers from the northern countries of Central America who are expelled under Title 42.<sup>16</sup> Over the course of Black History Month in February 2021 and then in March 2021, the Biden administration expelled over 1,200 Haitians to danger in Haiti, including children, infants, and families.<sup>17</sup>

The United States' public health laws should not be used to evade U.S. obligations under human rights and refugee law. The U.N. High Commissioner for Refugees has made clear that blanket measures restricting access to asylum on health grounds, without safeguards to protect against refoulement, is discriminatory, does not meet international standards for protection, and cannot be justified.<sup>18</sup> As President Biden assumed office, UNHCR yet again reminded governments: "The right to seek asylum is a fundamental human right. The COVID-19 pandemic provides no

<sup>15</sup> U.S. Department of Homeland Security, Customs and Border Protection, *Nation-wide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions* (April 7, 2021), available at [www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics](http://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics).

<sup>16</sup> [www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandra-n-mayorkas-regarding-situation](http://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandra-n-mayorkas-regarding-situation).

<sup>17</sup> Haitian Bridge Alliance, The UndocuBlack Network, and The Quixote Center, *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (March 2020), available at [www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf](http://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf).

<sup>18</sup> UNHCR, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response* (March 16, 2020), available at [www.refworld.org/docid/5e7132834.html](http://www.refworld.org/docid/5e7132834.html).

exception.<sup>19</sup> Yet, the Biden administration continues to use Title 42 to expel people seeing safety under the pretext of public health, violating their right to seek asylum and protection against refoulement—bedrock principles of refugee protection.

Furthermore, the use of Title 42 does not advance the public health justifications on which it is purportedly based. The use of Title 42 contradicts public health experts, who have clearly assessed and confirmed that there is no public health rationale for denying people their right to claim asylum at the U.S. border.<sup>20</sup> Despite experts at the Centers for Disease Control and Prevention (CDC) determining there was no public health rationale to close the border, the order invoking the use of Title 42 was still issued over their objections.<sup>21</sup>

Simply put: There is no public health rationale to treat immigrants and asylum seekers differently, but it is causing irreparable harm to them. Public health experts have published a series of recommendations on how to restart the asylum process safely by using common-sense measures.<sup>22</sup>

The welcoming of children at the border—while continuing the expulsion of families with children as well as adults—demonstrates that the use of Title 42 is arbitrary and serves as a cruel and unlawful form of border management. UNHCR has warned that “[m]easures restricting access to asylum must not be allowed to become entrenched under the guise of public health.”<sup>23</sup> We urge the administration to heed that warning and stop the misuse of Title 42 and the practice of summarily expelling immigrants and people seeking safety—including families with children.

#### CONCLUSION AND RECOMMENDATIONS

In the midst of National debates urging the Biden administration to close the border and framing children as a threat to National security and the immigration system, the focus must remain on our collective humanity. These are children who are seeking safety. Their well-being, safety, and security must be the north star. The United States must take urgent steps to improve conditions at the border and ensure the safe, expedited release of children to their families and other sponsors. The alternative is unacceptable and unlawful: Children must not be expelled under Title 42. Children—and all people—seeking safety can and must be welcomed. It is the United States’ legal and moral obligation, and it is their human right to ask for safety.

*Amnesty International USA recommends:*

- Unaccompanied children should not be detained. However, if detention is necessary, children should be placed for the shortest period of time possible in foster care facilities or small-size, State-licensed, permanent facilities while they are reunified with their families or matched with other appropriate sponsors.
- ORR should fully utilize existing transitional foster care (TFC) beds and long-term foster care (LTFC) beds and expand available TFC and LTFC capacity so that more children can be placed in foster care rather than congregate care facilities.
- ORR should immediately begin efforts to expand placement capacity for permanent, licensed, small-scale facilities containing under 25 beds.
- Decisions regarding the release of unaccompanied children to sponsors must always be made in a child’s best interests, supported by adequate staffing and resources to ensure that children are placed with appropriate sponsors as quickly as possible, and not based on the sponsor’s immigration status or used for immigration enforcement. Whenever possible, all effort should be made to place unaccompanied children in ORR facilities as close to their potential sponsors as possible.
- HHS should fully adopt co-location of HHS personnel at CBP facilities to initiate the release of children arriving with trusted caregivers at the border to

<sup>19</sup> UNHCR, *UNHCR warns asylum under attack at Europe’s borders, urges end to pushbacks and violence against refugees* (January 28, 2021), available at [www.unhcr.org/en-us/news/press/2021/1/601121344/unhcr-warns-asylum-under-attack-europes-borders-urges-end-pushbacks-violence.html](http://www.unhcr.org/en-us/news/press/2021/1/601121344/unhcr-warns-asylum-under-attack-europes-borders-urges-end-pushbacks-violence.html).

<sup>20</sup> See [www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky](http://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky).

<sup>21</sup> See [www.cbsnews.com/news/trump-administration-closed-borders-migrant-children-covid-19/](http://www.cbsnews.com/news/trump-administration-closed-borders-migrant-children-covid-19/); <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>.

<sup>22</sup> See [www.publichealth.columbia.edu/public-health-now/news/public-health-experts-issue-recommendations-protect-public-health-and-lives-asylum-seekers](http://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-issue-recommendations-protect-public-health-and-lives-asylum-seekers).

<sup>23</sup> UNHCR, *Inclusion key to protecting refugees and their hosts amid COVID-19 pandemic* (November 4, 2020), available at [www.unhcr.org/news/press/2020/11/5fa2f16b4/inclusion-key-protecting-refugees-hosts-amid-covid-19-pandemic.html](http://www.unhcr.org/news/press/2020/11/5fa2f16b4/inclusion-key-protecting-refugees-hosts-amid-covid-19-pandemic.html).

facilitate expedited, safe release of children. For children arriving with trusted caregivers who are not their parents or legal guardian, HHS personnel should be provided with a separate space to initiate an evaluation of these caregivers as potential sponsors while they are in CBP custody and, if approved, release the child and caregiver together when possible. This would avoid the need to separate children from their caregivers, transfer them to ORR custody, and only then begin the sponsorship process. Children who arrive and are released with trusted caregivers meet the legal definition of unaccompanied child and should be afforded all protections for unaccompanied children provided by the TVPRA. For children arriving alone, HHS personnel should interview these children to identify any special needs the child may have as well as any potential sponsor(s), which should be shared immediately with the child's case manager to speed up the sponsor vetting process. All unaccompanied children whose family reunifications are expedited, whether through direct release at co-located CBP facilities or other means, should be ensured legal counsel and post-release services.

- ORR should implement intensive case management as standard practice to safely expedite children's release.
- ORR should increase post-release services to ensure children's welfare.
- ORR should continue the practice of paying for the child's transportation to their sponsor once the release process is approved. ORR should also pay for the care provider staff member's transportation costs if necessary, to escort the child to their sponsor.
- ORR should not re-enter into any information-sharing agreement regarding an unaccompanied child for use or reference during removal proceedings or for immigration enforcement.
- Policies and practices regarding the care of unaccompanied children conform to the best interests of the child standard as outlined in domestic and international human rights standards, no matter the type or location of ORR facility.
- ORR should ensure that temporary influx facilities follow State licensing requirements as well as the *Flores* standards for permanent ORR shelters and international human rights standards.
- ORR should ensure that temporary influx facilities have the same services and standards of care as permanent facilities. The Government must also ensure regular access to these facilities for independent monitors, child welfare experts, and attorneys to ensure children's welfare and oversight and accountability.
- Access to counsel should be guaranteed.
  - Guarantee all children in Government custody legal counsel to conduct "Know Your Rights" presentations, interview children, conduct legal assessments, and establish contact with representation in the community where the child will be released.
  - Establish a right to counsel for children and ensure children are guaranteed legal counsel in all immigration court proceedings.
- A far-sighted planning process should be developed that has the elasticity and responsiveness necessary to accommodate variations in unaccompanied children populations while complying with domestic and international human rights standards.
- Congress should allocate funds for the above, and ensure appropriate oversight.
- Congress should place limitations on funding for contracts with for-profit corporations, as they will not be properly incentivized to care for children. The detention of children should not be a business. Congress should place strict limits on ORR's ability to contract with for-profit corporations to ensure that corporations are not wrongly incentivized to cut corners and prolong child detention, particularly detention in influx facilities ill-suited to children's care.

We urge the Biden administration to take critically-needed steps to uphold its rights obligations to meet the best interests of children through immediate and systemic change, as it works to welcome children with humanity, compassion, and care. We call on the Biden administration to approach this issue with the urgency, accountability, and transparency it deserves—the United States cannot be back here in another year. Children's futures depend on it.

For more information, please contact Denise Bell at [] and dbell@aiusa.org.

Sincerely,

JOANNE LIN,  
*National Director, Advocacy and Government Affairs.*  
DENISE BELL,  
*Researcher, Refugee and Migrant Rights.*

## STATEMENT OF FIRST FOCUS ON CHILDREN

APRIL 27, 2021

Chairman Thompson, Ranking Member Katko, and Members of House Committee on Homeland Security, we thank you for the opportunity to submit this statement for the record. First Focus on Children is a bipartisan child 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, we have long urged both Congress and various administrations to uphold the best interests of the child in all immigration policy. Approaching policy with this principle would lead to clear solutions for foreign policy, border policy, and care of children within the Office of Refugee Resettlement (ORR), ensuring that children are adequately cared for and have a fair opportunity to seek protection in the United States.

It is imperative that we treat the current situation as one that originates in children's countries of origin. For many years, children have fled violence, abuse, and persecution in Central America and other countries of origin to seek protection in the United States.<sup>1</sup> In 2020, not only were these on-going safety crises continuing, but also the whole world was hit with a deadly pandemic that led to loss of life and livelihoods, putting children and families in even more dire situations.<sup>2</sup> Additionally, in late 2020 Guatemala, El Salvador, and Honduras were hit by 2 hurricanes—Hurricanes Eta and Iota—which further exacerbated conditions in the region.<sup>3</sup> With little protection from traffickers, gangs, and gender-based violence in the region and with no other channels to safely resettle, children and families are fleeing to seek safety at our borders.

Once children arrive, they face a complex immigration system set up for adults, with few but vital protections that take into account their status as children and their unique needs. Under the 2008 Trafficking Victims Protection Reauthorization Act (TVPR), 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.<sup>4</sup> The TVPRA echoes protections in the *Flores* Settlement Agreement, which sets minimum standards for the care of children in Government custody.<sup>5</sup> 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 1-year filing deadline bars for asylum.<sup>6</sup>

Other than these protections, unaccompanied children generally face the same complex immigration system as adults. They must still appear for adversarial proceedings before an immigration judge, without the guarantee of legal representation and often in some form of detention. Without a focus on their liberty and without legal representation, unaccompanied children are often deprived of a fair opportunity to make their claim in a manner that takes their status as children into account, which may likely result in their return to the very trafficking, abuse, or persecution situations that they fled.<sup>7</sup>

We strongly opposed the previous administration's deterrent-focused approach to unaccompanied children arriving at our border, from family separation to children's prolonged detention in ORR custody, to expediting children's cases in a manner that denied them due process. We commend the Biden administration's commitment to build a more fair and humane immigration system, which includes the preservation of vital protections in the TVPRA and the *Flores* Settlement Agreement. However,

<sup>1</sup> *Central American Migration: Root Causes and U.S. Policy*, Congressional Research Services (Apr. 22, 2021), <https://s3.amazonaws.com/fn-document-service/file-by-sha384/67af38233d69-4a1d8d7781e777d6b472dea23629425105dcacbb646e31d4fec58c4a8a98611d1f2b1aac4cc98a88-1abb>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 8 U.S.C. § 1232(b-c).

<sup>5</sup> Stipulated Settlement Agreement, *Flores v. Reno*, No. CV85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997).

<sup>6</sup> 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C).

<sup>7</sup> As of August 2018, over half of children with pending cases did not have legal representation. Children with legal representation are granted relief 70 percent of the time, while children without representation are granted relief only 9 percent of the time. Karen Berberich & Nina Siule, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, Vera Institute of Justice (November 2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf>.

we are concerned with continued policies that separate children from their families and deny children the family and community-based placements that are best for their healthy development.

In particular, while the administration has exempted unaccompanied children from the misuse of Title 42 of the U.S. Code (otherwise known as the Title 42 policy), we note that the continued use of the policy has serious impacts for unaccompanied children and children in families.<sup>8</sup> Despite unaccompanied children's exemption from this policy, a Human Rights First report found that unaccompanied children have been denied access to protection at ports of entry, forcing them back into danger in Mexico.<sup>9</sup> Reports have also confirmed that because of Title 42, families who are returned to dire harm in Mexico have made the impossible choice to send their children to safety in the United States.<sup>10</sup> Customs and Border Protection (CBP) officials have stated that over 400 children who arrive unaccompanied were previously expelled when they tried to seek safety with their parents.<sup>11</sup> Separation from parents, particularly for children who have already experienced trauma, leads to additional toxic stress and negative impacts for children's mental, physical, and emotional health that could be life-long.<sup>12</sup>

For a long time, the Government has interpreted the TVPRA to require children's separation from adult caregivers with whom children arrive who are not children's parents or legal guardians, including extended family members like older siblings, grandparents, aunts, and uncles. It is important that children arriving without a legal guardian retain the protections of unaccompanied status. However, evidence shows that children's separation from loving caregivers that they know and trust has the same impact as separation from a parent.<sup>13</sup> Additionally, the Government's failure to track family relationships means this practice results in children's prolonged stay in ORR custody. Now is the time for the administration and ORR to think creatively about how to ensure that children retain their unaccompanied status while also preventing the prolonged separation of children from loving caregivers at the border and making better, more efficient use of Government resources. One solution is to co-locate HHS child welfare experts at the border to evaluate family relationships and expedite children's release to these caregivers as sponsors. Such a policy would also support better use of Government resources, focusing on providing children with legal, child advocate, and post-release services in the community rather than unnecessarily having children in ORR custody. HHS officials at the border could also jumpstart placement in custody and reunification services so that children are safely and promptly reunited with family.

Given the increasing numbers of unaccompanied children either newly arriving or returning to the border after being expelled, the Biden administration has sought to keep children out of inappropriate CBP facilities and transferred to the care of ORR by expanding capacity through the use of unlicensed influx facilities and large emergency intake sites (EIS).<sup>14</sup> While we recognize that the previous administration failed to increase ORR capacity during the COVID-19 pandemic when there were fewer children in care, the use of these facilities must be temporary. Social science shows that large, institutionalized settings are inherently inappropriate for chil-

<sup>8</sup>Letter to President Biden on Title 42, First Focus on Children (Apr. 12, 2021), <https://firstfocus.org/wp-content/uploads/2021/04/First-Focus-on-Children-Title42-2.pdf>.

<sup>9</sup>*Failure to Protection: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*, Human Rights First, Haitian Bridge Alliance, Al Otro Lado (April 2021), <https://www.humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf>.

<sup>10</sup>Id.

<sup>11</sup>Rosa Flores, Sara Weisfeldt, & Catherine E. Schoichet, *Her Son Held Hands, Cried, and Cross the Border Alone*, CNN (April 14, 2021), <https://www.cnn.com/2021/04/14/us/border-family-separation/index.html>.

<sup>12</sup>Hajar Habbach, Kathryn Hampton, & Ranit Mishori, *You Will Never See Your Child Again: The Persistent Psychological Effects of Family Separation, Physicians for Human Rights* (February 25, 2020), <https://phr.org/our-work/resources/you-will-never-see-your-child-again-the-persistent-psychological-effects-of-family-separation/>.

<sup>13</sup>*Key Points: Traumatic Separation and Refugee & Immigrant Children*, The National Child Traumatic Stress Network, [https://www.nctsn.org/sites/default/files/resources/tip-sheet/key\\_points\\_traumatic\\_separation\\_and\\_refugee\\_immigrant\\_children.pdf](https://www.nctsn.org/sites/default/files/resources/tip-sheet/key_points_traumatic_separation_and_refugee_immigrant_children.pdf) (last visited Apr. 23, 2021) (noting that a child's relationships with a primary caregiver is critical to a child's ability to thrive, and that separation is one of the most potent stressors a child can experience).

<sup>14</sup>Press Release, U.S. Department of Health and Human Services, Long Beach Emergency Intake Site for Unaccompanied Children Opens Today, (April 22, 2021), <https://www.hhs.gov/about/news/2021/04/22/long-beach-emergency-intake-site-unaccompanied-children-opens-today.html>.

dren.<sup>15</sup> In the immediate term, the Biden administration should ensure that these facilities meet State licensing standards for the care of children and have clear and consistent monitoring and oversight. They should also increase services, particularly case management and legal services, in these facilities to facilitate children's safe and quick release to sponsors. At the same time, the Biden administration must work to ensure that institutionalized settings are a thing in the past for the care of unaccompanied children. Rather, ORR's primary model of care—whether for a short period of time before release to a sponsor or for a longer period for children without a sponsor—should be family-based settings like foster care or small-scale group homes and shelters that allow individualized care for children.<sup>16</sup>

In addition to the recommendations above, we believe more can be done to consider the best interests of unaccompanied children, from the communities they and their families come from through to the end of their immigration case here in the United States. The American people agree that providing safe treatment for unaccompanied children at the border should be a high priority for the Federal Government.<sup>17</sup> We encourage Congress and the administration to implement the following recommendations:

1. *Support children's well-being in their countries of origin and through safe pathways to the United States.*—U.S. foreign assistance to Central America and other parts of the world should prioritize outcomes that are in the best interests of children, such as addressing child poverty, improving child protection systems, better access to education, nutrition, medical and mental health care, and support for whole families. We applaud the administration for restarting the Central American Minors Program and urge the expansion of that program and the beginning of other programs that run parallel to the asylum process.

2. *Preserve and build upon protections in the TVPRA and Flores Settlement Agreement.*—These laws represent the only consideration of children's specific needs in our immigration system. They should be championed and built upon so that our immigration system keeps children safe and grants them a truly fair opportunity to seek legal protection in the United States.

3. *Keep families together.*—In addition to ensuring children are not separated from their parents, the Government must ensure that children are kept with their loving caregivers through HHS-facilitated expedited release at the border. ORR should also support family unity by streamlining the sponsor reunification process to ensure safe and prompt release of children to sponsors, acknowledging that parents have a unique and Constitutional right to the care and custody of their children.

4. *Establish a best interest standard for all immigration decisions.*—All Federal agencies that deal with unaccompanied children should adopt a best interest of the child standard to consistently guide all decisions made regarding their care and their eligibility for humanitarian relief.<sup>18</sup>

We thank you again for this opportunity to submit this written testimony. We look forward to working with you to implement common-sense policies that help children and families thrive, both in the United States and in their countries of origin. Should you have any further questions please contact Miriam Abaya, Senior Director for Immigration and Children's Rights at [miriama@firstfocus.org](mailto:miriama@firstfocus.org).

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STATEMENT OF THE YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS

APRIL 27, 2021

As the Biden-Harris administration re-opens the border to people seeking protection, it must develop new strategies for caring for immigrant children who arrive

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<sup>15</sup> *What are Outcomes for Youth Placed in Congregate Care Settings*, Case Family Programs (February 5, 2018), <https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/>.

<sup>16</sup> Mary Dozier, et al., *Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association*, American Orthopsychiatric Association (2014), <https://www.apa.org/pubs/journals/features/ort-0000005.pdf>.

<sup>17</sup> Erin Snodgrass, *New Poll Shows Majority of Americans Care More About Prioritizing the Safety of Children At the Border than Increased Security*, Business Insider (April 6, 2021), <https://www.businessinsider.in/politics/world/news/new-poll-shows-majority-of-americans-care-more-about-prioritizing-the-safety-of-children-at-the-border-than-increased-security/articleshow/81922861.cms>.

<sup>18</sup> 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>.

at the border with non-parent family members. Because of the pandemic, it must prioritize opportunities to keep children out of congregate care settings, including unlicensed facilities.

Many children arrive with trusted, loving caregivers with whom they can be safely released. At present, they are separated, and the children placed in ORR care. At that point, HHS begins the process of identifying family with whom the child can be reunified, including the same adult with whom the child arrived. To ensure children's rights to health, safety, and family unity are protected, we propose a model for expediting the release of children who arrive with non-parent family members directly from the border, using the existing expertise of ORR staff to evaluate family relationships in real time. We propose that the Government co-locate DHS and HHS staff at the border so that HHS can staff can assess the relationship, and if the relationship is confirmed and determined to be safe, approve the child's release to the adult family member while the child retains the legal designation of "unaccompanied," which preserves the legal protections for children who arrive without a legal guardian. This would avert some family separations, minimize health risks to both children and adults, preserve ORR's resources, and ensure children remain with their adult caregivers, avoiding the months needed to reunify them under the current process in which they are separated.

This model can be implemented now by creating designated space for HHS within CBP facilities while the Government can work to establish new, integrated reception centers.

#### PARAMETERS FOR EXPEDITED BORDER REUNIFICATION (CO-LOCATION) MODEL

- CBP immediately transfers any unaccompanied child apprehended with a non-parent, adult family member to a designated reception center (ideally located within 4–6 hours of CBP field stations or POEs, for prompt transport and to maximize time for HHS screening).
- HHS–ORR staff detailed to the reception centers work to verify the relationship and screen the child for trafficking and safety concerns; ORR staff use the same tools utilized in ORR custody, including document review, observations, and interviews of the child and family.
- If ORR determines the accompanying family member to be a safe sponsor using its existing expertise, CBP approves the sponsor for release (absent exigent circumstances) and transfers physical custody of the child from CBP to ORR in a designated space within the reception center so that ORR can promptly release the child directly to the adult sponsor.
- The child will retain the "UC" designation and accompanying legal protections as a child who lacks a parent or legal guardian.
- Reception centers must be staffed with NGO legal services providers to provide KYR screenings to children and families being considered for direct release.
- ORR must make a reunification decision within 72 hours of CBP's UC designation; children whose safe release cannot be approved in that time will be transferred to ORR custody.

#### *1. Release unaccompanied children with family members directly from the border*

Children who arrive at the border with relatives or trusted caregivers who are not their parent or legal guardian must be designated as "unaccompanied" by CBP and transferred to the custody of HHS within 72 hours.<sup>1</sup> To prevent separation of these families, HHS could conduct its evaluation of accompanying family members as sponsors for the child's care while they are in CBP custody, and release them jointly at the border. This would avoid a traumatic separation of the child from their adult caregiver, and reduce the number of children waiting for reunification in ORR placements. ORR staff would normally make these same evaluations after a child's traumatic separation, while the child is in ORR custody. Under a new model, if ORR staff determines that the relationship is legitimate and that the accompanying adult does not pose a risk to the child—work ORR already does after children are referred to its facilities—the child should be released into the family member's custody directly from the border. These adults are not legal guardians and therefore the child will maintain the "unaccompanied" designation and the legal protections provided for children without a parent or legal guardian. In cases where ORR has concerns about the accompanying adults' legitimate relationship with the child or the child's safety it could decline to approve reunification and the child would be transferred to ORR.

<sup>1</sup>Trafficking Victims Protection Reauthorization Act § 235(c)(2), 8 U.S.C. § 1232(c)(2)(A) (2008).

2. *Child protection agencies evaluate kinship relationships in this time frame*

This can be done. Outside of the immigration context, child welfare experts evaluate the suitability of “kinship” care sponsors in similar time frames.<sup>2</sup> Across the country, child protection agencies have developed a number of strategies to find safe placements for children in short time frames, to minimize children’s time in Government custody. Many States have a process for placing children with relatives or even fictive kin in 48 hours.<sup>3</sup> Federal law and HHS-ACF policies (outside of ORR) increasingly prioritize keeping children with trusted family members as research shows that “removing children from their families is disruptive and traumatic and can have long-lasting, negative effects.”<sup>4</sup>

In select cases, there is no need to put immigrant children through the additional trauma of separating them from family members. Instituting a new procedure in which ORR staff evaluate family relationships at the point of arrival would not only kickstart the reunification process at the earliest stage, but also would avert some family separations, minimize health risks, and preserve ORR’s resources and ensure children remain with the adults critical to their legal case.

3. *Utilize CBP or integrated reception centers where ORR staff can evaluate family caregivers; or in the alternative, release to shelters while HHS completes its evaluation*

Over time, adapting larger CBP facilities into reception centers for evaluating the most vulnerable migrants—including unaccompanied children—would create an organized setting for authorities from CBP to complete their required tasks while qualified ORR experts provide child-appropriate and trauma-informed care for immigrant children, consistent with international standards.<sup>5</sup>

But right now, before making these modifications, the Federal Government can quickly adapt existing CBP facilities to provide space for ORR staff to work with families—allowing conversations with children and family members apart from CBP officials and using HHS-owned technology to review documents (computers, printers, scanners). The agencies must demarcate CBP functions from those of ORR; this could be as simple as separate rooms in which ORR can have confidential conversations with children and family outside of an enforcement context. In the longer-term, the 2 agencies could share a building or campus, allowing CBP to process families on arrival and providing a place for them to stay while ORR verifies family relationships and vets sponsors.

Alternatively, CBP could release family units to non-governmental shelters at the border, where families could stay and receive emergency services while HHS evaluates the relationship and the ability of the adult family member to care for the child.

4. *HHS expertise with unaccompanied children and sponsors could prevent many separations*

This model capitalizes on HHS’s existing expertise and will decrease the demand for placement in ORR facilities. Co-locating HHS staff in CBP facilities for the specific purposes of screening unaccompanied children for direct release to trusted caregivers would not require altering agency roles under existing law. CBP would continue to be responsible for designating a child who arrives without a parent or legal guardian as “unaccompanied.” As soon as CBP encounters an unaccompanied child—a child not with a parent or legal guardian—the agency would transfer the child, with any accompanying adult family members, to the nearest CBP reception center where ORR field staff would be on-site. These reception centers should be spaced out across the border, so that CBP officials could transport a child and family member(s) there within roughly 4 to 6 hours of apprehension.

<sup>2</sup>Ana Beltran and Heidi Redlich Epstein, *Improving Foster Care Licensing Standards around the United States: Using Research Findings to Effect Change 18-19* (2013), <https://grandfamilies.org/Portals/0/Improving%20Foster%20Care%20Licensing%20Standards.pdf> (noting several States including Idaho, Illinois, and New York that provide for expedited approvals for relatives).

<sup>3</sup>Casey Family Programs, *How Can We Ensure a Child’s First Placement is With a Family?*, [https://caseyfamilypro-upengine.netdna-ssl.com/media/SF\\_First-placement-family-placement.pdf](https://caseyfamilypro-upengine.netdna-ssl.com/media/SF_First-placement-family-placement.pdf) (last modified August 2018).

<sup>4</sup>Child Welfare Information Gateway, *Placement of Children with Relatives*, <https://www.childwelfare.gov/pubPDFs/placement.pdf> (last modified Jan. 2018).

<sup>5</sup>U.N. High Comm’r for Refugees, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action 104* (Jan. 1, 2007), <https://www.unhcr.org/50a4c0e79.pdf> (citing “reception center” models used throughout the world that offer a range of services addressing the “basic material and psychosocial needs of all arrivals (e.g., accommodation, food, clothing, and medical services),” and provide for processing).



ORR would work with any unaccompanied child who arrived with an adult, non-parent family member for the remaining window in the 72 hours before the child would be transferred to an ORR facility. During that time, ORR staff would screen the accompanying family member for: (a) Validity of the relationship; (b) ability to care for child; and (c) risk of trafficking or abuse. HHS field staff should be detailed to these facilities for brief periods—perhaps weeks—to do this work. This would allow for a speedier launch of the program and would help ensure the independence of the ORR field staff, allowing them to maintain their separate mandate and functions from those of CBP.

*a. ORR staff can and does evaluate relationships and ability to care for the child*

ORR staff will be able to evaluate relationships and complete sponsorship applications in short order for many families, using the same procedures ORR and facility staff undertake when a child is in its physical custody at an ORR shelter. Family members can be interviewed on the spot and can complete any necessary paperwork on-site. ORR will seek proof of the adult's relationship to the child, which would require evaluation of the same types of evidence ORR uses to vet potential sponsors for children in its custody, including interviews with the child, accompanying adult(s), or family members elsewhere (conducted by phone or video). Adults traveling with children may have photographs, signatures on school forms or hospital records, letters of designation or powers of attorney or can help to facilitate phone calls with the child's parents. If needed, ORR can run criminal background checks and take fingerprints on-site; but the biometrics and information obtained by ORR through this process must not be shared with ICE or CBP.

ORR staff will interview the child both together and separately from the adult and ask the child questions about how long they have known the adult and in what capacity. For young children and infants, qualified social workers should spend time observing the interactions between adults and children in addition to evaluating the documentary evidence of relationship provided. Any case raising concerns, for example, a child who doesn't appear to know their relative, would be then be treated under existing processes: Referral to an ORR facility to identify and evaluate an appropriate sponsor.

*b. ORR staff can and does screen for trafficking and abuse*

Some may worry that an expedited reunification process will not provide the time or procedures required to adequately screen children who are at risk of being trafficked or harmed in some way by the adults with whom they are traveling. But there is no reason to believe that screenings for signs of trafficking or abuse at the border need to be any less robust than those performed in the sponsor verification process while a child is in an ORR shelter. ORR staff at reception centers can apply the same kinds of screening tools that facility staff rely on when working with children in ORR custody. If there are any red flags, ORR can decide not to reunify the child with the adult at the border.

Qualified ORR staff conducting trafficking and abuse screenings at the border would also have the opportunity to observe family interactions before children are released—a benefit ORR does not currently have when deciding whether to release children to sponsors when children are in ORR care. ORR already employs staff trained to identify and support children who are victims of trafficking as well as children who are at greater risk for future victimization. By bringing these resources to families at the point of arrival, ORR can release children to relatives directly without the harms associated with congregate care.

*5. Value of detailing HHS officials to the border*

ORR staff already make reunification decisions for immigrant children and their sponsors. While they typically rely on information gathered by staff at ORR-contracted facilities, they have the professional training and expertise to speak with children and family members (and often do so), and review documents showing family relationships and a history of safe care. They engage with legal service providers and refer vulnerable children for the appointment of child advocates. They have a mandate to act in children's best interests—not in the interests of law enforcement. They understand that immigrant children and their families arrive from all parts of the world, from a range of cultures, languages, and norms around family life, and they can help children connect with family and services across the country. Additionally, bringing ORR staff into CBP facilities will increase transparency and could even avert situations of deprivation or harm in CBP custody that create additional challenges for ORR staff when children who have experienced those situations are transferred into ORR custody.

*6. Access to Legal, Child Advocate, Post-Release Services*

The *Flores* Settlement Agreement and TVPRA require the Government to provide all unaccompanied children with Know Your Rights (KYR) presentations and screenings for immigration relief. HHS could work with stakeholders to ensure that legal staff are detailed to these sites to provide KYRs and screenings to unaccompanied children who stay in CBP custody while their non-parent family member is evaluated by ORR; ORR must ensure the family is linked to funded LSP services at the immigration court where their case will be filed. Any children approved by ORR for release with their family sponsor should also be referred to a legal services provider who would be funded to represent the child post-release. By co-locating ORR staff at the border and providing KYRs, children would benefit from the expertise of Federal officials expert in child welfare concerns and trained lawyers who could connect them to programs to help them with their legal claims upon release. Children denied release under this model would be appointed independent child advocates upon arriving in ORR custody.

*7. Cost savings*

Keeping children in Government custody is detrimental to their health and well-being and expensive; all the more so when the Government is relying on influx facilities. Many children arrive with trusted, loving caregivers with whom they can be safely released, and then access community-based services tailored to their needs. Funds saved from lower numbers of children in the physical custody of ORR should be reinvested into community-based legal, child advocate, and post-release services while children live at home with their family or sponsors. This would allow ORR to focus its resources, developing high-quality foster care beds for children without sponsors and increasing post-release services for those living with family, all while decreasing the need for unlicensed influx facilities. CBP would also save the costs of transporting children to ORR facilities away from the border.

For more information, please contact Jennifer Nagda ([jnagda@theyoungcenter.org](mailto:jnagda@theyoungcenter.org)) and Mary Miller Flowers ([mmillerflowers@theyoungcenter.org](mailto:mmillerflowers@theyoungcenter.org)).

Ms. BARRAGÁN. Hearing no further business, the subcommittee stands adjourned. Thank you all.

[Whereupon, at 3:47 p.m., the subcommittee was adjourned.]

