

THE PATH FORWARD

Ensuring Humane and Orderly Processing of Unaccompanied Children at the U.S.-Mexico Border

As the Biden Administration prepares to end the use of Title 42 expulsions, it must refrain from any actions that restrict access to humanitarian protection in the United States. In preparation for the end of the policy, the Administration can and should adopt the below recommendations on an immediate and long-term basis to ensure operational efficiency, due process, and individual safety in the reception of unaccompanied children and other migrants at the border.

Ensure that unaccompanied children and other migrants have unfettered access to humanitarian protection at ports of entry.

The Department of Homeland Security (DHS) must lift the ongoing restrictions that prevent unaccompanied children and those seeking protection from spontaneously requesting humanitarian relief at ports of entry—restrictions that are distinct from the Title 42 policy. Restricting unaccompanied children from ports of entry often compels those children to pursue more hazardous routes between official crossings or outright denies them an opportunity to seek humanitarian relief, even as DHS allows access to those same ports for shopping and tourism. In his April 26, 2022 “DHS Plan for Southwest Border Security and Preparedness,” Secretary of Homeland Security Alejandro Mayorkas emphasized that “returning to robust POE [point of entry] processing is an essential part of DHS border security efforts.”¹ DHS must now meet this commitment in full.

Expediently hire child welfare professionals to administer screenings and care of children in Customs and Border Protection (CBP) custody.

Children are held at the U.S.-Mexico border in CBP facilities originally designed for single adults and fundamentally unsuited to children’s unique needs. CBP agents and officers trained in law enforcement, together with other personnel who lack child welfare expertise, administer these children’s protection screenings and care. While broader reforms are critical to ensure the humanitarian reception of children in child-appropriate spaces, DHS can take immediate steps toward improved treatment of children in CBP custody by hiring state-licensed child welfare professionals to administer screenings and care of children in CBP facilities along the border.

By assuming child welfare functions currently being performed by CBP agents and officers, child welfare professionals would not only improve conditions for migrant children but also ensure that CBP agents and officers are able to dedicate their time to the law enforcement functions for which they are specially trained.

¹ Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, “DHS Plan for Southwest Border Security and Preparedness,” April 26, 2022.

Fiscal Year (FY) 2022 omnibus legislation provided \$14.55 million to DHS to hire licensed child welfare professionals at border facilities. Senators Rosen (D-NV) and Hirono (D-HI) have emphasized “Congress’s directive to use this money specifically for those purposes” as well as the “vital importance of a timely and effective deployment of child welfare professionals at CBP border facilities.”²

Co-locate specialists from the Department of Health and Human Services (HHS)’s Office of Refugee Resettlement (ORR) in CBP border facilities.

Some unaccompanied children arrive at the U.S.-Mexico border with family members such as aunts, uncles, grandparents, or adult siblings who are trusted caregivers but not their parents or legal guardians. These children meet the legal definition of an “unaccompanied alien child,” as defined by the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), under which they are afforded certain procedural protections.³ Though under current practice, these children are separated from their non-parent family members, CBP and ORR can avoid unnecessary separation from loving caregivers by immediately commencing the family reunification process in CBP custody. Through the placement of ORR federal field specialists in CBP facilities, ORR can consider caregivers traveling with a child as potential sponsors and help facilitate the simultaneous release of the child and caregiver together. ORR 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. This reform would also reduce children’s length of stay in CBP or ORR facilities.

The federal government recently demonstrated its capacity to deploy a coordinated co-location model through two small-scale programs. In the summer and fall of 2021, the agencies successfully worked together to receive unaccompanied Afghan children at airports and military bases.⁴ Another pilot program is underway in Texas, where HHS child welfare experts have co-located with CBP officials to expeditiously and safely release unaccompanied children from ORR custody to the trusted caregiver with whom they travelled.⁵ As of July, these unaccompanied children were being reunited with caregivers after an average of only about 10 days in ORR custody⁶ – a far more efficient timetable than the ORR-wide average of 28 days that unaccompanied children spent in the agency’s custody as of April 28, 2022,⁷ and one that limits children’s separation from family members as well as strain on ORR shelter capacity. The agency should identify improvements needed to refine and scale this approach and to adopt the model across the southern border at the earliest date possible.

Undertake broader reforms to create a humanitarian reception model.

Through engagement of a nongovernmental humanitarian actor, DHS and HHS can help ensure the appropriate reception, screening, and care of children who arrive in the United States at or between ports of entry. DHS’ engagement with the American Red Cross to assist with reception during a period of significant border arrivals in 2021 was an important step. Efforts to formalize a humanitarian reception model over the long-term should continue beyond the current response and involve outreach to and engagement with nongovernmental humanitarian organizations.

Modification of border facilities is also critical to ensure the availability of child-friendly spaces for temporary processing, designated areas in which children can be screened by child welfare professionals in a confidential and child-appropriate manner, basic hygiene accommodations, and meeting spaces for in-person “Know Your Rights” presentations and other legal assistance by nongovernmental organizations. In addition, DHS should work to improve accountability and oversight of CBP’s compliance with legal requirements in the TVPRA, the Flores Settlement

2 Letter from Senator Jacky Rosen and Senator Mazie Hirono to Alejandro Mayorkas, Secretary of Homeland Security, Pritesh Gandhi, MD, MPH, Chief Medical Officer of DHS, and Chris Magnus, Commissioner of Customs and Border Patrol, September 9, 2022.

3 P.L. 107-296; William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008) (TVPRA).

4 Statement by January Contreras, Assistant Secretary of the Administration for Children and Families, U.S. Department of Health and Human Services, before the Committee on Homeland Security and Governmental Affairs, United States Senate, May 5, 2022.

5 Hamed Aleaziz, “Children separated from relatives at the border could be reunited under new Biden program,” Los Angeles Times, July 8, 2022.

6 Aleaziz, “Children separated from relatives at the border could be reunited under new Biden program.”

7 “Fact Sheet: Unaccompanied Children (UC) Program,” Administration for Children and Families, August 2, 2022

Agreement, and the Transport, Escort, Detention, and Search (TEDS) standards by allowing access to CBP facilities and monitoring by independent third parties, including nongovernmental organizations. The emphasis must be on ensuring the welfare, best interests, and rights of children, minimizing detention, and ensuring the safe and swift reunification of children with sponsors.

Continue to expand licensed, small-scale ORR shelter capacity.

ORR should continue its efforts to stand up new licensed, small-scale shelters positioned to provide appropriate care and services to unaccompanied children. Expanded capacity in ORR's licensed shelter network will help ensure that under all circumstances DHS can swiftly transfer unaccompanied children from border facilities to ORR custody consistent with the TVPRA and the Flores Settlement Agreement. Historically, insufficient ORR shelter capacity has constrained DHS's ability to move unaccompanied children out of CBP custody, contributing to CBP facility overcrowding and government violations of law and policy at the border. Additionally, more ORR shelters will help minimize ORR's continued reliance on "influx" facilities that are fundamentally unsuited to upholding unaccompanied children's safety and well-being.

Increase legal representation of unaccompanied children.

Congress and the Biden Administration should prioritize the provision of legal representation to unaccompanied children in immigration proceedings before the Executive Office for Immigration Review (EOIR). Despite their unique vulnerabilities in the immigration system, many if not most unaccompanied children lack an attorney to assist them in navigating immigration proceedings with the highest of stakes for their lives and safety. Government data illustrate that unaccompanied children without an attorney have virtually no chance of receiving a fair day in court: EOIR statistics on completed immigration court cases from FY 2018 through the first half of FY 2021 show that immigration judges were almost one hundred times more likely to grant legal relief to unaccompanied children with counsel than unaccompanied children without legal counsel.⁸

Though ORR currently provides some financial support to a network of nonprofit legal services providers to enable legal representation of unaccompanied children, current needs far exceed existing funding and allocation. Amid continuing high numbers of unaccompanied children arriving to the United States, this due process crisis will only expand unless Congress and the Administration prioritize measures to ensure that no child faces immigration court alone.

Enhance bilateral coordination between U.S. and Mexican officials to ensure safe transfer of unaccompanied children to the United States when it is in their best interests.

At times, Mexican child welfare authorities encounter migrant children who are in Mexico but wish to reunite with family members in the United States and apply for protection there. When these authorities determine that it is in the child's best interest to do so, children should be safely transferred to the United States and reunified with U.S.-based family, where they can seek legal protection. The U.S. and Mexican governments must develop and implement formal mechanisms for the safe transfer of unaccompanied migrant children in these circumstances.

⁸ KIND calculated this figure based on Executive Office for Immigration Review (EOIR) data published by the Congressional Research Service in its report titled "Unaccompanied Alien Children: An Overview, p. 16 (September 1, 2021); <https://sgp.fas.org/crs/homesecc/R43599.pdf>.

