

Biden Administration Must Act Now to Implement Key Protections for Unaccompanied Children as End of Title 42 Draws Near

With the end of Title 42 less than one month away, the Biden Administration can and must act now to implement countermeasures that will both restore orderly processing at the border and help ensure the U.S. government's humane reception and care of migrant children.

Unaccompanied children and those with families continue to arrive in record numbers; this will not change when Title 42 is lifted or if the new asylum rule is implemented. It is more important than ever to ensure that all possible efficiencies and orderly procedures are put in place before any new border policies are enacted. This will reduce pressure on the overall system. While these children are largely exempt from Title 42, the family separations resulting from the policy and dangerous waiting conditions in Mexico often render children unaccompanied.

There are measures that the Biden Administration has the resources and authority to do now to prepare for the lifting of Title 42 and to ensure the protection of unaccompanied children. They include:

Hire child welfare professionals to administer screenings and care for children in Customs and Border Protection (CBP) custody.

Any increase in arrivals upon Title 42 ending will place strain on CBP. It is possible that up to 50 percent of those in CBP custody will be children. By deploying state-licensed child welfare professionals to the border to administer screenings and care for children in CBP facilities – as Congress has funded the Department of Homeland Security (DHS) to do – DHS can strengthen those children's safety and welfare while enabling CBP agents and officers to better dedicate their time to vital law enforcement functions.

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

Children who are separated from non-parental family members at the border fall under the care of the Office of Refugee Resettlement (ORR) until a decision is made whether to grant those relatives custody. By expanding the co-location of ORR specialists who can immediately commence the family reunification process in CBP custody, the Administration can reduce the need for children to stay for long periods of time in ORR custody, while at the same time ensuring that such releases are in the best interests of the child.

Expand legal representation of unaccompanied children.

In recent years, Congress has increased funding for the Office of Refugee Resettlement's provision of legal representation to unaccompanied children. It is vital that the Administration allocate this funding as Congress intended. Legal counsel enhances the immigration court system's efficiency while helping ensure due process for vulnerable children. Moreover, counsel provides protection for children from labor exploitation and human trafficking.

Create courts for unaccompanied children.

The creation of a court to adjudicate children's cases will ensure more just, efficient processing of children's cases. The court would be overseen by a specially trained corps of judges who have experience working with children. By removing children's cases from regular dockets, the Department of Justice's Executive Office for Immigration Review can focus on reducing the backlog of adult cases while managing children's humanitarian applications that are predominately adjudicated by U.S. Citizenship and Immigration Services.

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

U.S. and Mexican government officials must expand formal mechanisms to assist migrant children in Mexico looking to reunite with family members in the United States in cases when it is in the best interests of the child to do so. Such procedures have been implemented on a limited basis in recent years and have proven successful in efficiently processing at-risk children. By expanding the Ports of Entry in which a child can present, as well as working with Mexican child welfare officials throughout Mexico, especially in southern Mexico, the U.S. government can improve management of ports by coordinating transfer in an orderly way.

Expand the Central American Minors Program (CAM) and allow counsel for applicants.

The CAM program provides for in-country refugee processing that can improve access to protection for certain vulnerable children while also averting the need for them to undertake dangerous journeys alone. Yet many children with meritorious claims are unable to meaningfully access this program, understand the applicable legal procedures and standards, or articulate their cases during interviews while alone and without an attorney to assist them. Allowing for counsel to be present during CAM interviews is a practical measure that can enhance the efficiency of adjudications and ensure that meritorious refugee claims are recognized.

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