



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 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

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

<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/).

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 UN 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

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<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> UN 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 U.S. signed the CRC in 1995, though it is the only country that has yet to ratify it. As a signatory to the CRC, the U.S. is prohibited under customary international law from acts that would defeat its object and purpose.

safety.”<sup>5</sup> The U.S. 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, and US 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 two 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>

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<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).

<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); UN 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).

## **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.

This expansion process will take time, and that is why the administration must act urgently. The U.S. 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 stopgap measure. The government must move away from their use.

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

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 shortchanged 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 U.S. 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 U.S.'s 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 U.S. alone to ask for protection.

The misuse of Title 42 violates the U.S.'s 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 U.S.'s public health laws should not be used to evade U.S. obligations under human rights and refugee law. The UN 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 exception."<sup>19</sup> Yet, the Biden administration continues to use Title 42 to expel people seeking 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>

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<sup>15</sup> U.S. Department of Homeland Security, Customs and Border Protection, *Nationwide 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-alejandro-n-mayorkas-regarding-situation](http://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-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).

<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>.

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 U.S. 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 U.S.’s 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.

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<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).

- 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 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 farsighted 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 U.S. cannot be back here in another year. Children’s futures depend on it.

For more information, please contact Denise Bell at 917/583-8584 and [dbell@aiusa.org](mailto:dbell@aiusa.org).

Sincerely,



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National Director  
Advocacy and Government Affairs



Denise Bell  
Researcher  
Refugee and Migrant Rights