



**Statement of Jennifer Podkul  
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**Before the House Committee on Homeland Security's  
Subcommittee on Border Security, Facilitation, and Operations**

**“Unaccompanied Children at the Border: Stakeholder Perspectives on the Way Forward”  
April 27, 2021**

Chairwoman Barragan, 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 preeminent U.S.-based nongovernmental 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 unaccompanied 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 FY 2014, CBP encountered 59,692 unaccompanied children at the U.S. southern border.<sup>1</sup> That figure climbed to 72,875 in FY 2019<sup>2</sup>—a one-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 ongoing 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. Widespread 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.

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

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 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

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<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-idUSKCN1TI2C7>.

<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).

<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> P.L. 107-296.

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 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, longstanding 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 FY 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.

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<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/>.

<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.

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. Ongoing 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 facility” in Carrizo Springs, Texas.<sup>26</sup> ORR’s online Policy Guide defines an influx facility as “a type of care provider facility that opens temporarily to provide emergency

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<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 (P.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%” 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>.

<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>.



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.

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<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/>.

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 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, can not 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 can not 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 FY2020 and FY2021 appropriations legislation.<sup>33</sup> Yet DHS has failed to implement this vital safeguard, sidelining both the wellbeing of children and congressional intent to improve conditions for them at the southern border. Noncompliance with this directive directly undermines DHS' 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 U.S. with family members or caregivers such as aunt/uncles, grandparents, or adult

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<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>.

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

siblings who are 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.<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 efforts 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 U.S.<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

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<sup>34</sup> P.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).

<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>.



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 U.S. 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 U.S.

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 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 U.S.' longstanding commitment to due process and to extending refuge to those fleeing harm.

### *B. 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 U.S., but also fortifying protection systems and pathways for children still in their countries of origin and on the move. We outline here several

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<sup>37</sup> David Bier, "Amid Crisis, Biden Admits 0.2% 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>.

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 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 onboard 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 U.S., 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.

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

<sup>41</sup> *See, e.g.*, Carrie Kahn, Franco Ordonez, "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>.

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 U.S. to apply for refugee resettlement while still in their country of origin. The previous version of the program extended lifesaving 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 proceedings 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 FY18 through the first half of FY19, 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 U.S. 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

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<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).

<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/homesecc/R43599.pdf>.

assistance to the greatest number of children possible, it is critical that additional funding be appropriated for post-release legal services as part of FY22 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.