Dear President Biden, Secretary Mayorkas, Amb. Rice and Advisor Sullivan:

As organizations that represent and advocate for migrants, refugees, and immigrant children as well as organizations committed to science-based governmental decision-making, we write to express our grave concern about reports that Department of Homeland Security (DHS) officials are considering using the Trump-era Title 42 policy to illegally and inhumanely expel 16- and 17-year-old unaccompanied children at the Southern border. We are aware that the Administration is working around the clock to receive, shelter and protect unaccompanied children, and that appropriate space is limited, but the law does not permit a policy that turns away unaccompanied children at the border or that redefines protections clearly set forth in federal law.

As Vice-President Harris explained in her August 2020 letter while serving as a U.S. Senator, the Trafficking Victims Protection Reauthorization Act (TVPRA):

...requires CBP to screen all arriving unaccompanied children from contiguous countries to determine, in key part, whether they are victims of human trafficking, at risk of trafficking, or fear return to their home countries. Such children who meet the TVPRA screening criteria must be transferred into the custody of the Department of Health and Human Services Office of Refugee Resettlement (ORR) and placed into full immigration court proceedings—thereby affording them the opportunity to pursue protection from the dangers those screenings helped identify. Similarly, the TVPRA mandates that CBP transfer all arriving unaccompanied children from noncontiguous countries into ORR custody and place them into full court proceedings, whereupon social workers and attorneys may screen them for protection concerns. Taken together, these TVPRA-mandated protocols are vital to uncovering, preventing, and combating the trafficking, persecution, and other forms of exploitation perpetrated upon children.
These TVPRA-mandated protocols are vital to uncovering, preventing, and combating the trafficking, persecution, and other forms of exploitation perpetrated upon children - regardless of whether they are toddlers, tweens, 16 or 17-year-olds. Indeed, the legal definition of an unaccompanied child set forth in the Homeland Security Act of 2002 and on which the TVPRA’s protections rely makes clear that such protections apply to children who are under 18 years of age.

Last year, the ACLU, Center for Gender and Refugee Studies, Texas Civil Rights Project and Oxfam filed a class-action lawsuit challenging the application of Title 42 to unaccompanied children seeking protection at the border. In November 2020, a federal court blocked the Trump administration’s “Title 42” order as an illegal departure from the TVPRA, although on appeal by the Trump Administration, a federal appeals court allowed the Trump rule to temporarily go into effect as the case was litigated. On February 17, 2021, the Biden Administration issued a notice that it was exercising its discretion to temporarily exempt from expulsion unaccompanied noncitizen children encountered in the United States pending the outcome of its forthcoming public health reassessment.

We acknowledge that the former administration’s cruelty and incompetence has profoundly impacted the capability to receive unaccompanied children at the border, and we urge the administration to expand appropriate and safe housing capacity for unaccompanied children as expeditiously as possible. We are ready and willing to support the Biden Administration’s efforts to ensure that all these children have access to safe shelter and care until their parents or another trusted adult can be identified.

We will oppose any efforts to enact policies that do not comply with the TVPRA and result in the expulsion of unaccompanied children without any opportunity to seek protection.

Respectfully,

Adelante Pro Bono Project
African Communities Together
Al Otro Lado
Aldea - The People's Justice Center
Alianza Americas
American Friends Service Committee
Asian Americans Advancing Justice | AAJC
Asylum Seeker Advocacy Project (ASAP)
Asylum Seeker Network of Support
Black Male Voter Project
Bridges Faith Initiative
Center for Victims of Torture
Church World Service
Coalition for Humane Immigrant Rights (CHIRLA)
Cooperative Baptist Fellowship
Fellowship Southwest
Fordham Law School Feerick Center for Social Justice
Freedom for Immigrants
Freedom Network USA
Haitian Bridge Alliance
Hope Border Institute
Human Rights First
Human Rights Initiative of North Texas
Immigration Hub
Justice Action Center
Kids in Need of Defense
Law Office of Daniela Hernandez Chong Cuy
LAWYER'S FOR GOOD GOVERNMENT, PROJECT CORAZON MATAMOROS
Migrant Center for Human Rights
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)
National Network for Immigrant & Refugee Rights
NETWORK Lobby for Catholic Social Justice
Oxfam America
Public Counsel

RAICES

Refugees International

Save the Children Action Network

The Sidewalk School for Children Asylum Seekers

The Young Center for Immigrant Children's Rights

U.S. Committee for Refugees and Immigrants

UndocuBlack Network

Washington Office on Latin America

Wind of the Spirit Immigrant Resource Center

Witness at the Border

Women's Refugee Commission

Young Center for Immigrant Children's Rights