

The Honorable Joseph Biden
President of the United States

Secretary Alejandro Mayorkas
Department of Homeland Security

Amb. Susan Rice
Domestic Policy Council

Jake Sullivan
National Security Advisor

cc:

Amb. Roberta Jacobson
Special Assistant to the President
& Coordinator for the Southern Border

Katie Tobin
Senior Director for Transborder Security
National Security Council

Director Rochelle Walensky, MD, MPH
Centers for Disease Control and Prevention

Norris Cochran
Acting Secretary
Department of Health and Human Services

Submitted via email March 12, 2021

Re: Joint Letter to President Biden, DHS, DPC and NSA on Possible Policy Change to Expel UACs Under Title 42

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