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Committee on Homeland Security
Subcommittee on Border Security, Facilitation, and Operations

“Unaccompanied Children at the Border: Stakeholder Perspectives on the Way Forward”

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Testimony of Aaron Reichlin-Melnick
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Chairman Thompson, Chairwoman Barragán, Ranking Member Higgins, and distinguished members of the Committee and Subcommittee:

My name is Aaron Reichlin-Melnick and I serve as the policy counsel for the American Immigration Council, a nonpartisan organization dedicated to the belief that immigrants are part of our national fabric and to ensuring that the United States provides a fair process for all immigrants, including those who are seeking protection at the border. The Council works to strengthen America by shaping how America thinks about and acts toward immigrants and immigration and by working toward a more fair and just immigration system that opens its doors to those in need of protection and unleashes the energy and skills that immigrants bring.

The Council has long brought attention to ways in which the Department of Homeland Security (“DHS”) has responded to migrants at the border—including children—through research, advocacy, and litigation. In 2015, we helped bring a successful lawsuit against the Border Patrol’s Tucson Sector challenging unconstitutional conditions of confinement for adults and children,¹ and we are currently suing Customs and Border Protection (“CBP”) for its unlawful policy of turning away asylum seekers, including unaccompanied children, at ports of entry, in part through a practice known as “metering.”²

I am grateful for the opportunity to be here today to help provide some historical perspective on the current situation at the border and the ways in which we got here. I want to begin with the bipartisan Trafficking Victims Protection Reauthorization Act of 2008.

Included in that law was an amendment that increased protections for unaccompanied children—distinct from children apprehended with their legal guardians—from non-contiguous countries, providing among other things a right to a hearing in immigration court. The amendment was put forward by a bipartisan group of senators and passed through the Senate Judiciary Committee on a 17-2 vote. Congress declared that the purpose of the provision was “Preventing the trafficking of unaccompanied [noncitizen] children found in the United States by ensuring that they are not repatriated into the hands of traffickers or

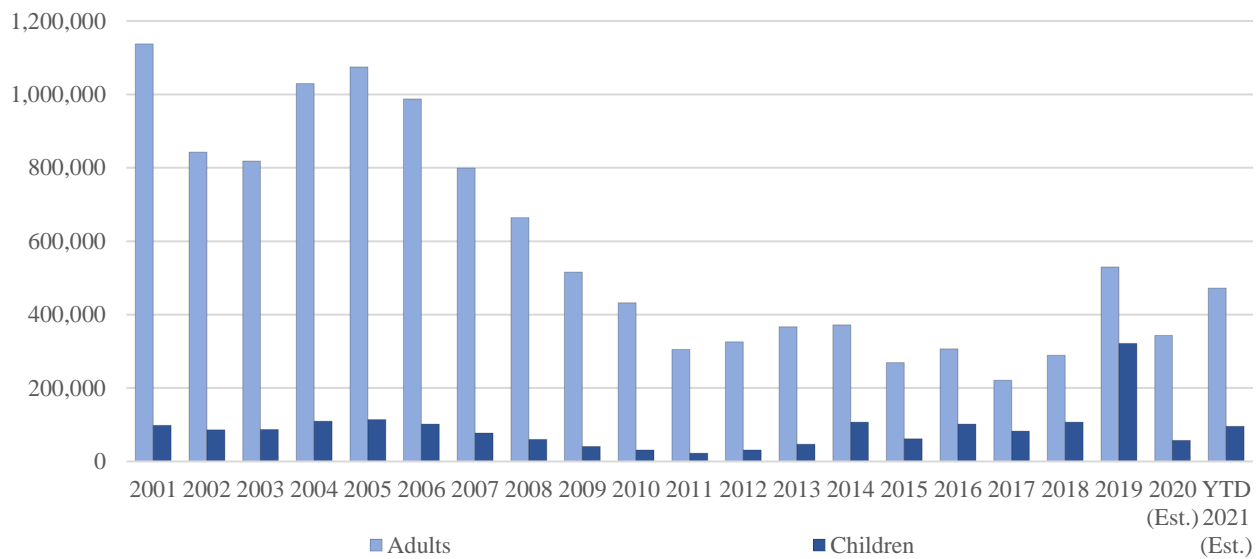
¹ American Immigration Council, “Challenging Unconstitutional Conditions in CBP Detention Facilities,” <https://bit.ly/2PhdT0z>.

² American Immigration Council, “Challenging Customs and Border Protection’s Unlawful Practice of Turning Away Asylum Seekers,” <https://bit.ly/32Eo4z5>.

abusive families and are well cared for.”³ In making that change, the TVPRA recognized that our duty as a nation was to ensure that we did not cause *more* harm to children through repatriation and deportation.

The TVPRA was not the first attempt to respond to the treatment of children at the border. In the 1990s and through the early 2000s, the Border Patrol routinely apprehended around 100,000 children a year, primarily from Mexico (see Figure 1). Concerns about their treatment led to the passage of the Trafficking Victims Protection Act of 2000, which first codified heightened protections for unaccompanied children, including access to Special Immigrant Juvenile Status. Similar concerns about the treatment of children in the custody of the former Immigration and Naturalization Service led Congress to define the term “unaccompanied alien child” in the Homeland Security Act of 2002 and transfer care of those children to the Department of Health and Human Services, Office of Refugee Resettlement (“ORR”).

Figure 1: Apprehensions of Children and Adults, FY 2001-2021



Source: U.S. Customs and Border Protection⁴

In 2014, the United States first experienced a significant increase in unaccompanied children and asylum-seeking families at the border, with 68,541 unaccompanied children taken into Border Patrol custody that fiscal year. The Obama administration responded to this in ways we are familiar with today: emergency influx shelters for unaccompanied children and crackdowns on asylum-seeking families.

Advocates documented severely inadequate conditions of confinement in Border Patrol facilities designed primarily for single adults from Mexico. These conditions included children and adults being forced to sleep on cold concrete benches in overcrowded jail cells.⁵

³ House Report 101-430, “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007,” at 35.

⁴ Customs and Border Protection, Stats and Summaries, Sector Profiles FY 2000 to 2019, available at <https://www.cbp.gov/newsroom/media-resources/stats?title=Border+Patrol>; Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>. Estimates of the number of children apprehended in fiscal years 2020 and 2021 are generated by first applying a .518 multiplier to family unit apprehensions (the multiplier for Fiscal Year 2019) and then adding unaccompanied children apprehensions.

⁵ See Human Rights Watch, “In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells,” February 28, 2018, <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

2014 revealed that the U.S. government has severe deficiencies in its ability to process unaccompanied children safely and efficiently at the border. But despite the opportunity to use 2014 as a lesson, the government instead doubled down on deterrence-based policies for asylum seekers and failed to adequately prepare for the arrival of more unaccompanied children.

This cycle has repeated itself several times since then, including in 2016 and 2019. More unaccompanied children and families come to the border, Border Patrol is caught off guard, ORR is forced to stand up emergency influx shelters, and politicians rattle sabers. Then inevitably the spike ends, apprehensions go back down, and we continue to avoid the difficult work of finding permanent solutions to the deficiencies in the U.S. humanitarian protection system.

But even when the media spotlight on unaccompanied children goes away, the children themselves continue to go through their immigration cases. Recent data from the DHS Office of Immigrant Statistics published in December revealed an incredibly important fact: unaccompanied children generally win their cases. When considering all non-Mexican unaccompanied children who have arrived at the border since 2013, 57% of those whose cases were completed by mid-2020 were given permission to remain in the United States.⁶ This vital fact underscores the dire conditions from which children are fleeing.

In 2020, after the COVID-19 pandemic hit, the Trump administration put in place what has become known as the Title 42 policy. Under Title 42, the Border Patrol began expelling all migrants arriving at the border asserting national security concerns based on public health, regardless of whether they were families seeking asylum or unaccompanied children—or indeed whether or not they were infected with COVID-19. Unaccompanied children could not be expelled to Mexico and were instead put on planes and deported to their home countries, often after they had tested negative for COVID-19, a prerequisite for deportation to some countries.⁷

More than 13,000 unaccompanied children were expelled under Title 42 before November 18, 2020, when a federal judge ruled that the practice was illegal.⁸ On January 29, after a federal appeals court briefly put that decision on hold, the Biden administration chose not to resume expelling unaccompanied children and the Centers for Disease Control and Prevention (“CDC”) issued an order formally exempting them from Title 42.

Despite Title 42, the number of people coming to the border, including unaccompanied children, began rising steadily after lockdowns lifted across Mexico and Central America in May 2020. This rise followed shocks to the region caused by severe economic instability due to the pandemic, escalating violence in places like the Mexican states of Michoacán and Guerrero, devastation caused by hurricanes Eta and Iota, and long-term problems such as corruption, violence, impunity, and climate change.

⁶ Department of Homeland Security Office of Immigration Statistics, “Enforcement Lifecycle Reports,” <https://www.dhs.gov/immigration-statistics/special-reports/enforcement-lifecycle>.

⁷ Dara Lind and Lomi Kriel, “ICE Is Making Sure Migrant Kids Don’t Have COVID-19 — Then Expelling Them to “Prevent the Spread” of COVID-19,” *ProPublica*, August 10, 2020, <https://www.propublica.org/article/ice-is-making-sure-migrant-kids-dont-have-covid-19-then-expelling-them-to-prevent-the-spread-of-covid-19>

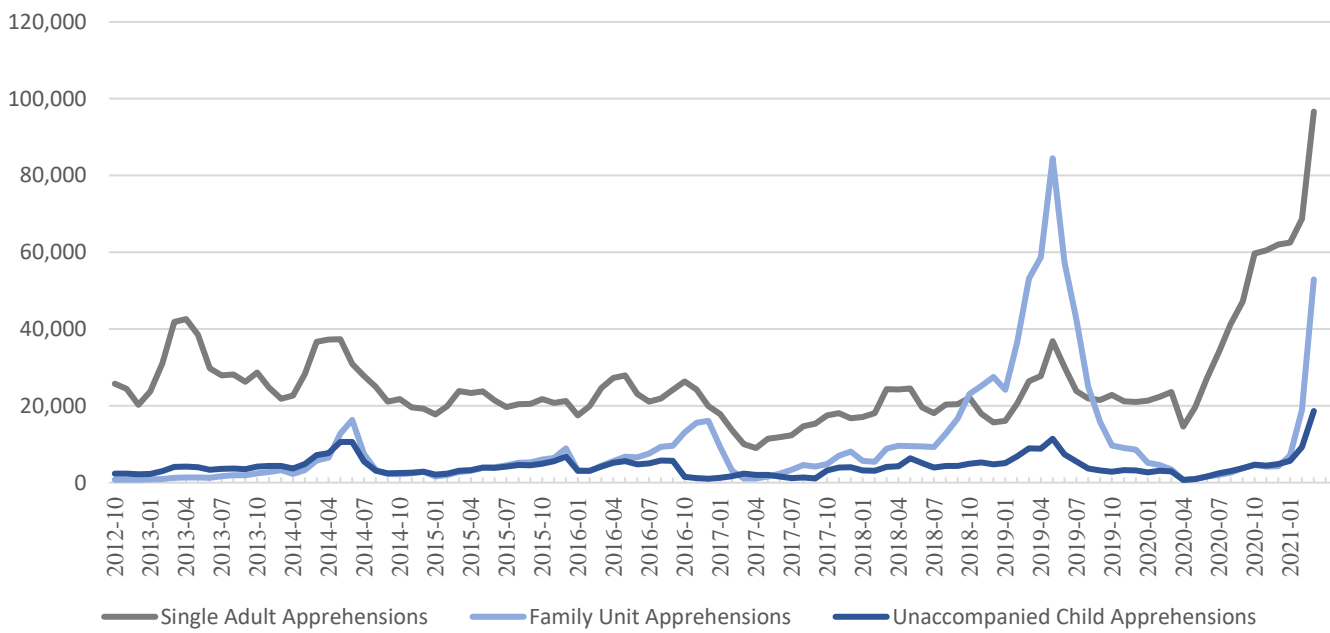
⁸ Hamed Aleaziz, “Border Officials Turned Away Unaccompanied Immigrant Children More Than 13,000 Times Under Trump’s Pandemic Policy,” *Buzzfeed News*, October 28, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/border-officials-turned-away-unaccompanied-immigrants>.

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Beginning in spring 2020, the number of single adults coming to the border seeking to enter the United States began rising rapidly, from a low of 14,754 in April 2020 to 62,041 in December 2020. Under Title 42, single adults would be rapidly processed at the border and sent right back to Mexico where they could try to cross again the same day. The rate at which people crossed the border multiple times rose from 7% in March 2020 to 40% by October 2020. This increase in repeat attempts was in part driven by people’s inability to obtain safety while waiting at the border for the United States to begin accepting asylum requests again, and the growing backlog of people waiting for months, if not years, for the resumption of humanitarian processing at the border.

By September 2020, border apprehensions had already reached levels for a September not seen since 2006 (see Figure 3). This trend continued through the fall, and October 2020, November 2020, and December 2020 were all the highest apprehension totals for those months since 2006.⁹

Figure 3: Border Patrol Apprehensions, by group, October 2012 – March 2021



By December 2020, apprehensions of unaccompanied children had hit levels last seen in fall 2019 and ORR was already at 67% capacity.¹⁰ Despite the clear trends, the Trump administration made no effort to expand shelter capacity until January 15, just five days before President Biden took office.¹¹ When significantly more unaccompanied children and families began coming to the border in late January, insufficient bed space in ORR shelters led once again—as it did in 2014 and 2019—to high numbers of unaccompanied children stuck in Border Patrol custody.

⁹ Customs and Border Protection, “U.S. Border Patrol Monthly Apprehensions (FY 2000 - FY 2019),” https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Monthly%20Apprehensions%20%28FY%202000%20-%20FY%202019%29_1.pdf

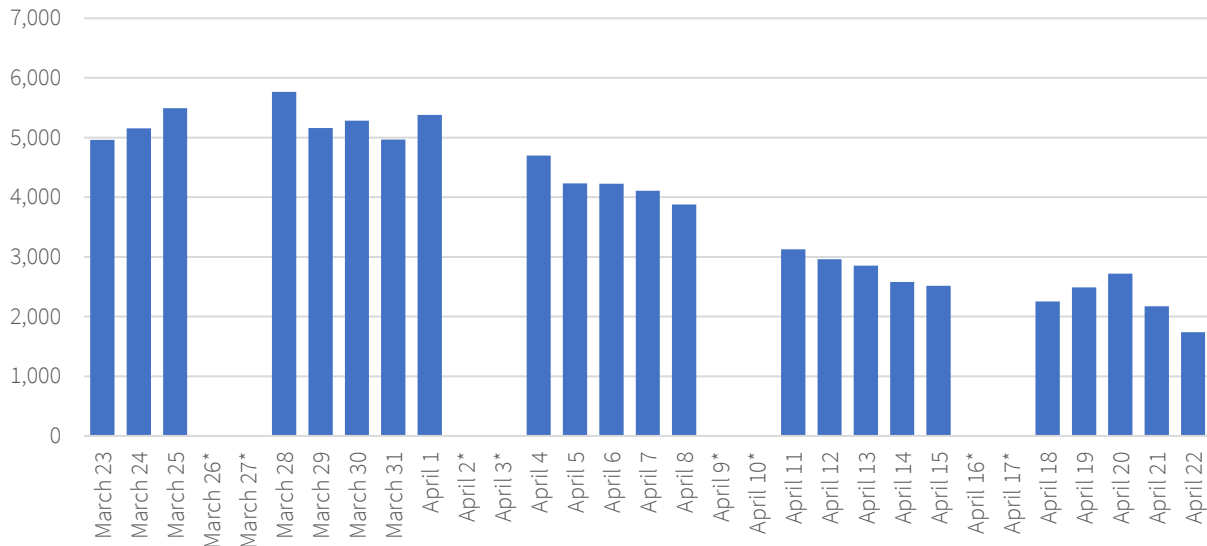
¹⁰ Dara Lind, “No Good Choices’: HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities,” *ProPublica*, April 1, 2021, <https://www.propublica.org/article/no-good-choices-hhs-is-cutting-safety-corners-to-move-migrant-kids-out-of-overcrowded-facilities>.

¹¹ Julia Ainsley, Jacob Soboroff, and Laura Strickler, “Sitting on their hands’: Biden transition officials say Trump officials delayed action on child migrant surge,” *NBC News*, March 24, 2021, <https://www.nbcnews.com/politics/immigration/sitting-their-hands-biden-transition-officials-say-trump-officials-delayed-n1261934>

The increase in unaccompanied children is also driven by policies kept in place by the Biden administration, including the closure of ports of entry to asylum seekers and the practice of expelling families back to Mexico under Title 42. Some families forced back to Mexico have made the agonizing decision to send their children across the border alone,¹² making the decision that Moses’ mother made thousands of years ago—better to send your child into the arms of a kind stranger than risk death by remaining where they are now.

Over the past three months, the Biden administration has begun standing up an extensive network of emergency influx shelters to reduce the bottleneck in CBP custody. This effort has proven successful in reducing the number of children held in CBP custody. Over the last month, the number of unaccompanied children in CBP custody has dropped from a high of 5,767 on March 28 to a low of 1,741 on April 22 (see Figure 4).

Figure 4: Unaccompanied Children in CBP Custody, March 23 to April 22



Source: Health and Human Services and Department of Homeland Security, Unaccompanied Children Daily Reports, March 24 to April 23. *Data not reported on weekends.

While influx shelters are necessary given the current situation at the border, we must not accept them as a new norm. Emergency influx shelters are exempt from state licensing requirements and there have been prior reports of abuse carried out by insufficiently vetted influx shelter staff.¹³ Given the concerns raised about conditions in these shelters, ORR should ensure that no child is held in an influx center for longer than the absolute minimum amount of time required to place the child with a sponsor.

Data also suggests that we have already hit at least a temporary peak in the arrival of unaccompanied children. Despite predictions that the number of unaccompanied children encountered at the border

¹² Dianne Solis, “Parents face decision to send migrant children alone across border in rising numbers,” *Dallas Morning News*, April 9, 2021, <https://www.dallasnews.com/news/immigration/2021/04/09/parents-face-decision-to-send-migrant-children-alone-across-border-in-rising-numbers/>.

¹³ Monique O. Madan, “Sex abuse claims revealed at Homestead shelter, where staff was not vetted for child abuse,” *Miami Herald*, July 15, 2020, <https://www.miamiherald.com/news/local/immigration/article244244402.html>

would continue rising in April,¹⁴ current data suggests a drop in unaccompanied children of roughly 10-15% from March to April.¹⁵ This will hopefully give the Biden administration breathing room to begin the long-overdue process of restoring access to humanitarian protections at the border for all, not just unaccompanied children, and ensuring that asylum seekers are treated in a safe, humane, and efficient manner.

Despite claims to the contrary, the U.S. border is not open. Even those seeking asylum at ports of entry are turned away nearly universally. Halfway through the fiscal year, just 945 unaccompanied children have been processed at ports of entry across the U.S.-Mexico border, compared to 4,614 in the entire fiscal year 2019 and 8,624 in the entire fiscal year 2018. CBP claims these restrictions on processing asylum seekers at ports of entry are necessary to protect the nation from COVID-19. But while restrictions on non-essential travel remain in place at ports of entry, nearly 290,000 people cross the border every day from Mexico, with no testing requirements in place.¹⁶

Because asylum seekers waiting in Mexico cannot begin the asylum process at the ports of entry, some have become desperate and chosen to cross the border between ports of entry and hope they will be allowed to seek protection that way. The Department of Homeland Security has long been aware that its practice of choking off access to asylum at ports of entry will drive some to cross improperly between ports of entry,¹⁷ yet it continues to keep restrictions in place with no apparent plan to process those who have been waiting according to current government policies.

As we are seeing once again, a failure to make long-term investments in our humanitarian protection systems has led to repeated cycles of self-inflicted chaos. Decades of deterrence-based policies have not produced anything beyond short-term declines in the number of people seeking asylum, which reverse once push factors in people’s home countries become too high. If there is one thing we can learn from our experience with asylum seekers and unaccompanied children in recent years, it is that the solution is not to turn families and children away and send them back to harm in their home countries.

Solutions to the current situation at the border should not have “reducing numbers” as their primary goal, but instead to ensure the creation of a unified humanitarian approach for all groups—whether single adults, families or children—so that asylum seekers can access protection without falling into the hands of the cartels or being treated like security threats by CBP. Some steps toward that end include:

- Building a new border infrastructure that allows for the efficient and humane processing of children that is flexible enough to address extraordinary migration events.
- Stop blocking access to asylum at ports of entry through metering, which drives migrants, including unaccompanied children, into the hands of the cartels.

¹⁴ Stef W. Knight, “Scoop: Kids’ border surge expected to last 7+ months,” *Axios*, March 28, 2021, <https://www.axios.com/border-crisis-record-number-migrant-kids-89cd0b23-a588-4f01-9547-d6f04b262542.html>.

¹⁵ Nick Miroff, “Border crossings leveling off but remain near 20-year high, preliminary April data shows,” *Washington Post*, April 23, 2021, https://www.washingtonpost.com/national/mexico-border-crossings-april/2021/04/23/31206e82-a459-11eb-8a6d-f1b55f463112_story.html (“About 550 teens and children have been crossing the border without parents each day in recent weeks, data show, down 10 to 15 percent from late March.”)

¹⁶ Department of Transportation, Monthly Border Crossing Data, <https://www.bts.gov/browse-statistical-products-and-data/border-crossing-data/border-crossing-data>.

¹⁷ See, e.g., Department of Homeland Office of Inspector General, “CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry,” October 27, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>.

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- Embed ORR staff into every step of the border processing system, allowing them to begin the sponsorship process for unaccompanied children immediately after apprehension and process non-parental relatives such as grandparents as sponsors immediately, avoiding family separations.
- Expand access to licensed child welfare workers at the border.
- Ensure that no child goes through the immigration court process without a lawyer.

The American Immigration Council looks forward to working with the Committee on these solutions.

Sincerely,

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