

IMMEDIATE PRIORITIES FOR THE PROTECTION OF IMMIGRANT CHILDREN

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American Academy of Pediatrics · Amnesty International USA · Center for Victims of Torture · Children's Defense Fund · Detention Watch Network · First Focus on Children · HIAS · Human Rights First · Kids in Need of Defense · National Center for Youth Law · Refugee and Immigrant Center for Education and Legal Services (RAICES) · Refugees International · Save the Children Action Network · UNICEF-USA · Women's Refugee Commission · Young Center for Immigrant Children's Rights

The next administration must quickly outline its commitment to protecting the safety and well-being of immigrant children. As a coalition of organizations dedicated to children's rights, safety, health and development, we recommend immediate action on the following issues. We also call on the next administration to mandate that government actors consider the best interests of the child—including their expressed wishes, safety, family integrity, liberty, development, and identity—and support legislation to create such a mandate in federal law.

1. End Title 42 Expulsions

Under the guise of public health, the Department of Homeland Security (DHS) is actively subverting the rights of immigrant children and their families to seek legal protection under U.S. law, returning them to their home countries or even to other countries, without providing access to asylum procedures or determining to whom the children will return. This practice must end immediately, and the border be reopened for children and all others seeking safety.

2. End the "Migrant Protection Protocols" and Metering

The Migrant Protection Protocols (MPP) have created a humanitarian crisis, leaving tens of thousands stranded in dangerous conditions and in some cases, forcing parents to separate from children so that children can seek safety. Families trapped in MPP are denied due process in the sham tent courts on the border, receiving removal orders that never considered children's experiences. MPP must end immediately and existing removal orders from tent courts should be expunged. The policy of metering asylum seekers at points of entry must also end. The administration should favorably resolve the pending challenge to MPP, which is currently before the Supreme Court, and should cease defending policies or pursuing lines of argument that erode asylum-seekers' rights.

3. End "rocket dockets" and video-teleconferences for children's hearings, and reverse attempts to weaken procedural protections in immigration court

Policies which deny due process to children in immigration court must be reversed. The Department of Justice must end the use of "rocket dockets" which rush through immigrant families' cases, often without the benefit of an attorney. It must also remove completion quotas for immigration judges and end the denial of continuances or requests to administratively close proceedings. Hearings by video-teleconferences (VTCs) also weaken due process, limiting children's ability to communicate with their attorneys, child advocates, and the judge. While we must ensure safe hearings during the pandemic, VTCs should only be used in children's cases in exceptional circumstances. Children must have time to seek protection from United States Citizenship and Immigration Services (USCIS) as required by law, without facing removal orders while awaiting adjudication of those claims.

4. Restore and expand access to legal services, direct representation, and independent child advocates

Children should have access to counsel when they appear in immigration court. The administration should restore and then expand funding for legal services and direct representation for children, both detained and released. The government should expand access to independent child advocates wherever children are detained or appear in immigration court.

5. Restore access to asylum and refugee resettlement

The myriad agency decisions and rules put in place to restrict asylum access must be rescinded and an asylum system that is based on due process and that meets our international commitments and domestic laws be restored. Decisions by the Attorney General which weaken asylum and access to other forms of protection for unaccompanied children must be rescinded. The government must also coordinate with transit countries and the Mexican government to provide protection and support services to unaccompanied children and families, including for those who wish to seek protection in the United States. The administration should cease placing asylum-seekers (including children accompanied by family members) in expedited proceedings. Finally, the administration should restore refugee resettlement numbers and repair the U.S.'s reputation as a welcoming nation.

6. End all information-sharing practices between HHS and DHS in which children's information is used against them or to apprehend family members

The administration must rescind the May 2018 Memorandum of Agreement between the Department of Health and Human Services (HHS) and DHS in its entirety and ensure that Immigration and Customs Enforcement (ICE) does not have access to children's information to pursue enforcement actions against families or children. It must further prohibit DHS's access to the Office of Refugee Resettlement (ORR) significant incident reports and create firewalls to limit the disclosure of children's personal information outside of HHS except to the child's counsel and the child advocate, absent the child's fully informed consent.

7. End the use of large congregate care settings for unaccompanied children that fail to meet domestic child welfare standards

In the domestic child welfare system, federally funded congregate care settings are capped at 25 beds and all facilities are licensed by the state. Prolonged detention in large facilities, including unlicensed emergency "influx" placements with lower standards of care, is inherently inappropriate for children. All children should be placed in small, community-based settings that provide the support they need and to facilitate their prompt release to family. ORR must increase its permanent capacity so that influx placements and large facilities are unnecessary.

8. End the use of Family Residential Centers and prioritize community-based alternatives to detention

The government must immediately end its widespread use of detention to control immigrant populations, and particularly the prolonged detention of immigrant families. Family case management programs run by non-profit organizations are proven to work, preserving family integrity and ensuring that families have access to critical services during their immigration proceedings. Parents should never be put in the position to have to "choose" between keeping their child detained to preserve family unity or separating so that the child can be released.

Family separation in any of its forms—at the border or in the interior—should never again be used as a tool for enforcement or deterrence. The next administration must cease prosecutions of parents for improper entry or reentry (8 U.S.C. § 1325(a)/ 1326) and rescind the DHS/HHS final rule that seeks to undo the Flores Settlement Agreement.

9. Minimize interior enforcement actions against parents, legal guardians, and caregivers while preserving parental rights

ICE must end interior enforcement actions that separate families and traumatize children. Firewalls must be created to prohibit organizations that collect children’s information from sharing it with ICE. ICE should ensure that parents, legal guardians and adults who are children’s traditional caregivers are eligible for release and should update its procedures for the apprehension, detention, and removal of parents and legal guardians. The government must fully restore the “Parental Interests Directive” of 2013 and the office responsible for its implementation.

10. Rescind the Public Charge rule and expand access to vital services for families

The government must immediately rescind the Public Charge rule, which serves no legitimate policy objective, and which instead spreads fear in immigrant communities, causing families to avoid health care and other essential services for themselves and their children. This is particularly dangerous during a pandemic. Instead of restricting benefits, the government should expand access to health care, childcare, and education for immigrant and citizen children in immigrant families. This includes advocating for a comprehensive COVID-19 relief bill that includes access to treatment, testing, vaccines, and economic support regardless of immigration status.