
CONGRESSIONAL TESTIMONY

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

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We are witnessing record numbers of unaccompanied alien children (UAC) at our southern border. In March, nearly 19,000 UACs were encountered by the Customs and Border Protection (CBP).¹ In contrast, the CBP encountered only 741 UACs in April 2020.² This staggering increase has been driven by messaging and policy choices. These statements and policies sadly endanger the lives of those migrating here illegally, and knowingly enrich traffickers and smugglers. In February, border traffickers made \$14 million a day.³ Meanwhile, traffickers and smugglers have no regard for life as they endanger, rape, exploit, recycle, and leave for dead children and other migrants.⁴ Instead, the U.S. should have policies that run such operations out of business by preventing illegal immigration and encouraging migrants to use lawful immigration programs.

To identify the way forward, it is important to understand how we got here. In 2000, Senator Dianne Feinstein (D–CA) and Representative Zoe Lofgren (D–CA) each introduced the Unaccompanied

¹U.S. Customs and Border Protection, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (accessed April 26, 2021).

²Ibid.

³Emma Colton, “Human Trafficking Business Is Booming at the Border, with Cartels Raking in over \$14M a Day in February: Report,” *Washington Examiner*, March 22, 2021, <https://www.washingtonexaminer.com/news/criminal-organizations-trafficking-border-14-million-a-day> (accessed April 26, 2021).

⁴Jillian Kay Melchior, “Biden’s Border Crisis, Up Close,” *The Wall Street Journal*, March 29, 2021, <https://www.wsj.com/articles/bidens-border-crisis-up-close-11617057522> (accessed April 26, 2021).

Alien Child Protection Act (UACPA), which had the stated purpose to strengthen policies for the permanent protection of UACs. It offered UACs easier and expanded immigration benefits, including “prompt parole” into the U.S., taxpayer-funded guardians *ad litem* and attorneys, the rarely used Special Immigrant Juvenile visa, an easier adjustment of status process, and exemption from expedited removal. The bill clearly incentivized UACs to cross the border, which meant more parents would hand their children over to dangerous smugglers to enter the U.S. in the hopes to gain a family foothold here. The bill would endanger more children.

The UACPA repeatedly failed to pass Congress, but the sponsors introduced the bill five Congresses in a row, until Representative Howard Berman (D–CA) folded the benefits of the UACPA into a bill that would be easier to pass: the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

Under the heading of “Enhancing Efforts to Combat the Trafficking of Children,” section 235 of the TVPRA has the stated purpose “to prevent trafficking in persons, the [U.S. Government] shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.” However, the legislation then distinguishes between processing UACs from contiguous countries (they are generally returned to their home country) and those from elsewhere. For UACs from non-contiguous countries, the law requires they be placed into U.S. removal proceedings and be given the generous benefits described above.

Predictably, the number of UACs encountered by the CBP steadily increased in the years that followed. In fiscal year (FY) 2010, the CBP encountered 18,400 UACs.⁵ That number grew to 24,400 UACs in FY 2012.⁶ The pull factor of benefits for UACs grew stronger with the 2012 Deferred Action for Childhood Arrivals (DACA) program. Unsurprisingly, the number of UACs soon spiked to over 68,500 in 2014.⁷

In addition to the increasing number of UACs, the make-up of contiguous nationals as compared to non-contiguous nationals changed. In FY 2009, children from Mexico accounted for 82 percent of the UAC apprehensions at the southwest border, while those from the “Northern Triangle” countries of El Salvador, Guatemala, and Honduras accounted for 17 percent.⁸ By FY 2019, the proportions had reversed, with Mexican nationals comprising 14 percent of the UAC apprehensions at the border and the three Central American countries comprising over 85 percent.⁹

Another important pull factor for illegal immigration by UACs and family units is limited immigration detention and mandatory release into the U.S. *Reno v. Flores*,¹⁰ a court case that started in the early 1980s about detention standards for an unaccompanied illegal alien minor turned into a 1985 class action lawsuit that launched more than a three-decade court process, resulting in a far

⁵United States Border Patrol, BP Total Monthly UACs by Sector, FY10-FY17, <https://www.cbp.gov/sites/default/files/assets/documents/2018-Jul/BP%20Total%20Monthly%20UACs%20by%20Sector%2C%20FY10-FY17.pdf> (accessed April 26, 2021).

⁶Ibid.

⁷Ibid.

⁸William A. Kandel, “Unaccompanied Alien Children: An Overview,” Congressional Research Service, October 9, 2019.

⁹Ibid.

¹⁰*Reno v. Flores*, 507 U.S. 292 (1993).

more expansive policy regarding when a minor alien must be released from detention. After a 1993 U.S. Supreme Court ruling in favor of the Immigration and Naturalization Service (INS), then-INS Commissioner Doris Meissner signed the *Flores* settlement agreement in 1997, expanding the standards the INS would follow. Under the agreement, the government must release minor aliens “without unnecessary delay” to the minor’s parents, legal guardians, other adult relatives, or other individual designated by the parent/guardian, who is in the United States. A federal district judge further expanded the *Flores* requirements in 2015, ordering the Department of Homeland Security to release detained minors and their mothers. This added accompanied minors for mandatory release in addition to unaccompanied minors. The judge went further, interpreting the *Flores* settlement language “without unnecessary delay” to mean no more than 20 days of immigration detention.

Because removal proceedings are not completed within 20 days, Immigration and Customs Enforcement released UACs and family units into American communities to comply with the new *Flores* order, resulting in a “catch and release” posture. Smugglers successfully market “catch and release” to future unlawful migrants.

These pull factors caused a border crisis in FY 2019, when the CBP encountered over 76,000 UACs and 527,000 family units.¹¹ The Trump Administration implored Congress to close its TVPRA UAC and *Flores* loopholes to stop the flow of UACs and family units, but Congress refused to do so. By standing up the Migrant Protection Protocols (MPP) and negotiating asylum cooperative agreements with the Northern Triangle countries, the Trump Administration significantly decreased the number of UAC and family unit encounters by 2020.

With campaign promises to end the Trump Administration’s immigration enforcement measures, and to provide amnesty, smugglers encouraged more immigrants to make the journey north in anticipation of Joe Biden’s election. The new administration then quickly ended the Trump Administration’s enforcement measures and agreements, resulting in a more rapid increase in illegal immigration to now historic numbers.

The Way Forward

If leaders want to prevent the smuggling and trafficking of children and restore order to our border and immigration system, Congress and the Biden Administration should prevent illegal immigration by enforcing current laws and removing incentives to come here unlawfully. This includes:

- Resuming MPP;
- Returning to the terms of the asylum cooperative agreements made under the Trump Administration;
- Completing planned border wall construction;
- Treating all non-contiguous nationals the same as contiguous nationals—with expedited removal;
- Removing benefits based on UAC status;
- Returning to the 1997 terms of the *Flores* Settlement Agreement;
- Rescinding the February 2021 ICE Priorities Memo;
- Ending catch and release;
- Rejecting amnesty for those who broke our immigration laws; and

¹¹U.S. Customs and Border Protection, Southwest Land Border Encounters.

- Applying the proper definition of UAC, as defined by section 462(g) of the Homeland Security Act of 2002, which is “a child who—
 - (A) has no lawful immigration status in the United States;
 - (B) has not attained 18 years of age; and
 - (C) with respect to whom—
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”

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