

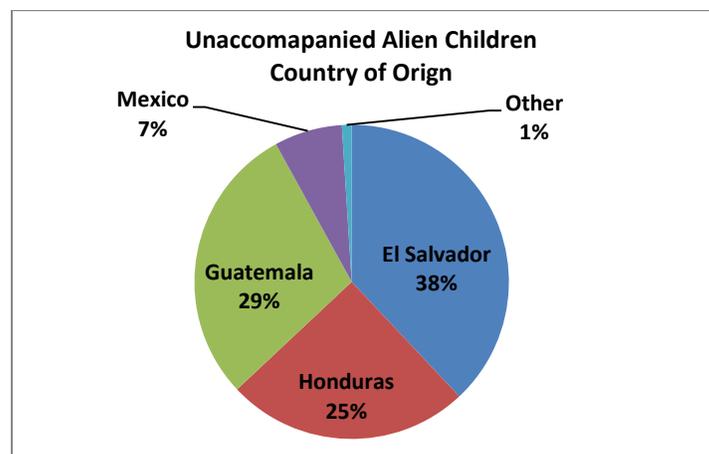


RECENT SURGE OF UNACCOMPANIED ALIEN CHILDREN

Background:

Over the last few weeks, various media outlets have been reporting on the recent surge of Unaccompanied Alien Children crossing the southwest border. While the recent influx is significant, this problem has been growing for years. As the name implies, these children are crossing the border without a parent or guardian. Many are coming at the behest of a parent or other family living illegally in the United States.

More than 92% of all these children come from just three countries – El Salvador, Guatemala and Honduras. Their primary point of entry into the United States is the Rio Grande Valley in South Texas. This is largely because transportation links make it easier to enter south Texas rather than Arizona or California.

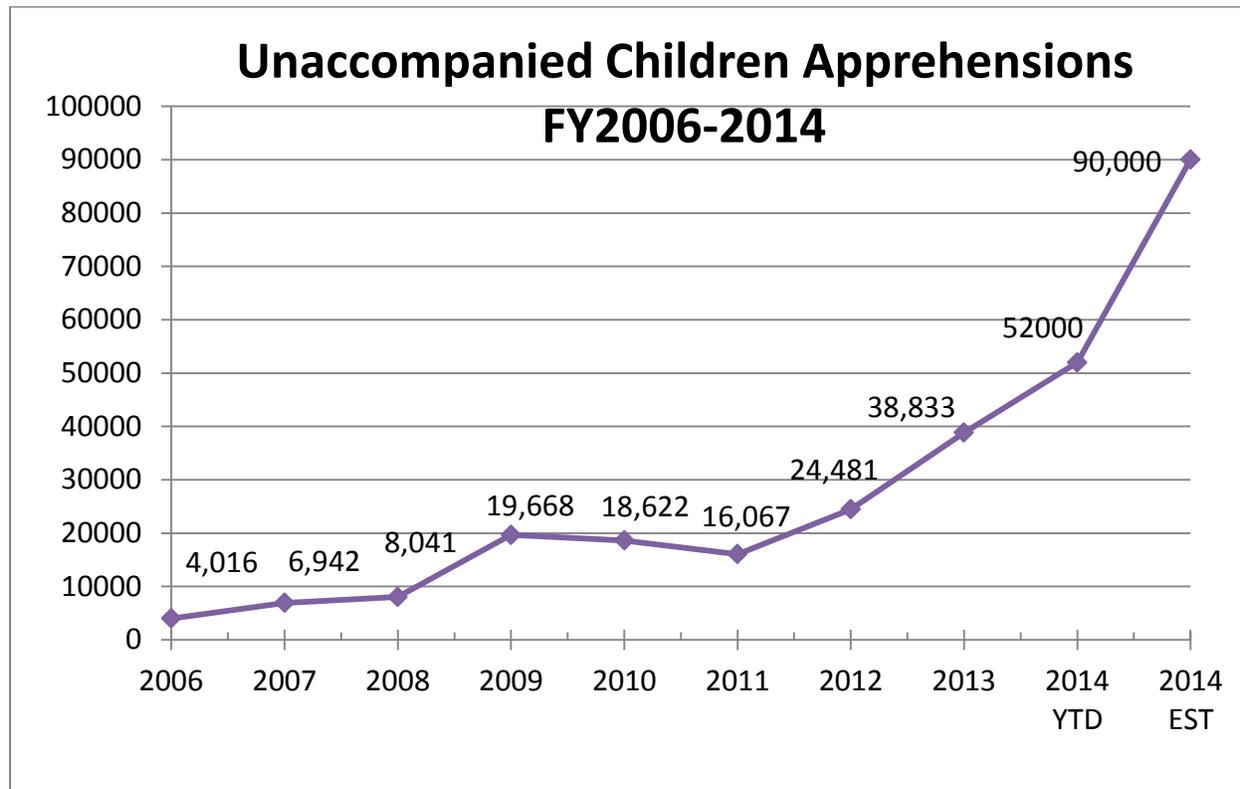


There are several drivers believed to be causing the recent surge: First, Central American economic conditions have been poor for quite some time. Second, the level of violence in the region is very high. For example, Honduras has the highest level of homicides in the world per capita, with neighboring El Salvador coming in second. However, those conditions have not significantly changed in the last few years.

Lastly, and most importantly, perceptions of a lenient enforcement environment in America due to the Administration's Executive Orders and the comprehensive immigration reform narrative lead many to believe that if they make it to the United States they will not be deported. In recent interviews conducted by DHS, more than 72% of these children expect they will stay in the United States.

Before 2009, the flow of unaccompanied children attempting to cross the border was less than 10,000 per year. These numbers have increased dramatically over the last few years and are now projected to exceed 90,000 children for FY 14.

Below are the annual numbers of Unaccompanied Alien Children apprehended by the U.S. Border Patrol:



Legal Rational

To understand how Unaccompanied Alien Children are able to cross the border into the United States and, for the most part, stay in the country, you must look to one statute, one settlement agreement, and one legal memorandum. All are briefly discussed below.

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)

Section 235 of the TVPRA provides safeguards for Unaccompanied Alien Children. Specifically, under the TVPRA, once CBP apprehends an unaccompanied alien child and makes the proper determination that he or she meets the legal definition, they then have 72 hours to transfer the child into the custody of Health and Human Services (HHS). Once in HHS custody, they are required under TVPRA to “promptly [place the child] in the least restrictive setting that is in the best interest of the child.”

The Flores Settlement Agreement (1997)

For guidance on what “least restrictive setting” would be in the child’s “best interest,” HHS turns to the *Flores* Settlement Agreement. Throughout the 1980s and 1990s, the Immigration and Naturalization Service was frequently sued over the treatment of alien children. As a result, the Federal government entered into a legal settlement that governed how Unaccompanied Alien Children were treated. This became known as the “*Flores* Settlement Agreement.” In the agreement, the government listed six entities that a child may be placed with, in order of

preference. They are: 1. a parent; 2. a legal guardian; 3. an adult relative (brother, sister, aunt, uncle, or grandparent); 4. an individual designated by the parent (subject to INS approval); 5. a licensed program willing to accept legal custody; and 6. an adult seeking custody (e.g, a foster parent).

HHS uses this prioritized list to place the Unaccompanied Alien Child. It is important to note that even after the UAC is placed with one of the above entities, they are still subject to removal. However, very few are being removed.

The June 17, 2011 ICE Memo on Prosecutorial Discretion (The Morton Memo)

On June 17, 2011, ICE Director John Morton issued a memo to provide “guidance on the exercise of prosecutorial discretion to ensure that the agency’s immigration enforcement resources are focused on the agency’s enforcement priorities.” In the memo, ICE Director Morton listed a number of factors that will be taken into account when determining which aliens are prioritized for removal. Among these factors is “the person’s age, with particular consideration given to minors and the elderly.” Therefore, the low priority minors receive for removal under the Morton Memo is leading to the practical consequence that a vast majority of the tens of thousands of children that have crossed the border will remain in the country. In addition, according to Congressional testimony received from ICE, it takes 2-5 years to adjudicate a unaccompanied alien child’s case. These two factors taken together bring about the practical reality that many of these children will remain in the United States for many years to come.

The President’s “Deferred Action for Childhood Arrivals” (DACA)

It is important to note that DACA does not apply to the new wave of children coming across the border. While DACA may be contributing to the false belief that many of these children are operating under, none will be able to take advantage of the program. This is because DACA requires, among other qualifications, that the individual must have “continually resided in the United States since June 15, 2007, up to present time.”

Process

Once unaccompanied children cross the border they willingly turn themselves into Border Patrol. Upon apprehension, Border Patrol agents process these minors at the nearest Border Patrol station, normally separating minor aliens by sex/age. They are provided three meals a day, checked on frequently and provided basic medical screening.

Attempts are then made to make contact with family stateside with children often having phone numbers attached to their clothing. As mentioned above, according to the Trafficking Victims Protection Reauthorization Act of 2008, minor children must be transferred to Health and Human Services’ custody within 72 hours. However, this is not often happening due to bed space/transportation issues. Border Patrol agents are required to care for these children instead of patrolling the border.

After a period of time, normally within 35 days, these children are reunited with a parent/legal guardian at tax payer's expense. No enforcement action is taken against illegal parents/legal guardians.

The chart below explains the general process:

