



Statement for the Record

U.S. House of Representatives Committee on Judiciary

“An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors”

June 25, 2014

The National Immigration Forum works to uphold America’s tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

Introduction

The National Immigration Forum (the Forum) appreciates that the Committee is holding this hearing to discuss the recent increase in unaccompanied alien children (UAC) at the Southwest Border. Over the past three years the number of unaccompanied children arriving at the Southwest Border has reached beyond the capacity of the system crafted in the preceding decade to handle the inflow of unaccompanied child migrants. The reports of the deplorable conditions in which the children have been held demand that our nation address the situation with compassion and commonsense solutions.

This problem will not be fully addressed through focusing only on improving security and enforcement of the nation’s borders. As the Committee examines this issue, the Forum urges members to view the solution to this problem holistically and to find a permanent long-term solution. The Forum believes a critical part of the solution to the current humanitarian crisis is legislation to reform our broken immigration system, and we urge the Committee to hasten its work on broad immigration reform that includes border security, as well as an earned path to citizenship for those currently residing in the United States.

The Forum is particularly concerned about reports that criminal cartels are increasingly using unaccompanied children from Central America to augment their earnings. Further, it seems that drug cartels are replacing coyotes in the human smuggling business and using migrants as bait to distract law enforcement from drug smuggling and other criminal activities. Clearly, this puts those already vulnerable to exploitation and human trafficking at even great risk. We must find a long term solution to the problem of unaccompanied children coming from Central America to ensure their safety and our country’s safety.



The current immigration system is supporting a lucrative business for cartels and other criminal organizations rather than protecting our communities. The lack of legal avenues for family members to be reunited with their loved ones in the U.S. is leading immigrants to the hands of criminal organizations.

Passing a clear immigration process would quickly dispel any misinformation about current or future immigration policy that might further encourage children to make the perilous trek to the United States. The longer it takes to fix our broken immigration system, the more rumors and deception drive desperate people into desperate situations. A functioning immigration system is a long term solution to this problem because it would lessen the number of UAC entering the U.S. and would allow the authorities to determine, in a timely way, which children are eligible to remain in the U.S. and which are not.

This Committee can provide the leadership needed to pass immigration reform. We look forward to the Committee striking the right balance between addressing the current humanitarian crisis and border security. Our nation must not lose sight of our fundamental values and must first take care of the children arriving in the United States.

The influx of UAC has exacerbated structural and procedural problems within the immigration system.

The majority of the UAC are from Central American countries such as El Salvador, Guatemala, Honduras and Mexico. According to reports,¹ the majority of these children are escaping extreme poverty and violence in their native countries or seeking to reunite with family members in the United States. Honduras, El Salvador, and Guatemala are in the top five countries with the highest murder rates in the world.

Currently in FY 2014, there have been 52,193 apprehensions along the Southwest border;² this is almost twice as many children who arrived in FY 2012. The U.S. Department of Homeland Security (DHS) expects these numbers to continue to grow, with projections ranging from 10,000 to 60,000 additional children crossing in to the U.S. this year.

The current influx of UAC is not due to a lack of enforcement at our border, but rather, it is because the antiquated immigration system is not set up to deal with the humanitarian crisis in Central American and the unexpected influx of women and children seeking refuge.

¹ Women's Refugee Commission. "Forced from Home: the Lost Boys and Girls of Central America" Oct. 2012; UNHCR "Children on the Run – Unaccompanied children leaving Central America and Mexico and the Need for International Protection."

² FY 14 (Oct. 1, 2013 – June 15, 2014): U.S. Department of Homeland Security, U.S. Border Patrol, Juvenile and Adult apprehensions. <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.



Following allegations of UAC mistreatment in detention centers in the 1990, advocates filed a series of lawsuits that eventually lead to the *Flores Settlement Agreement of 1997* (Flores Agreement). The Flores Agreement established a nationwide policy for the detention, treatment, and release of UAC. It required detention centers, among other things, to provide basic needs and adequate supervision to protect minors from others. Five years later, during the George W. Bush Administration, and after the passage of the Homeland Security Act of 2002, the responsibility for processing UAC was divided between the DHS, and the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) while prosecution and adjudication was left to the Department of Justice's (DOJ) Executive Office of Immigration Review (EOIR).

Thus, an unaccompanied alien child apprehended by DHS Custom and Border Patrol (CBP) officers or by Immigration Custom Enforcement (ICE), must undergo a screening³ to classify the child as a UAC,⁴ and determine if there are any asylum or trafficking concerns. Once the child is deemed to be a UAC from a non-contiguous country⁵ they must be transferred to HHS-ORR custody within 72 hours.⁶ Once in HHS's custody, ORR's officer must place the child with relatives in the U.S., abroad or in foster care. EOIR has the responsibility adjudicate each case. Of these departments, EOIR in particular has been underfunded for many years, which has resulted in a backlog of 366,000 cases.

It is important to note that all of the children are placed in removal proceedings, whether they remain in detention or are united with their family members. Notices to Appear, or NTAs are not a free pass into the U.S. nor do they confer any status to a child migrant. Moreover, UAC are not eligible for the Deferred Action for Childhood Arrivals program (DACA). That program requires an individual to have continually resided in the U.S. since June 15, 2007. They also are not eligible for any of the current immigration reform proposals being debated in Congress.

Given the current system for ensuring UAC are not mistreated, simply filing and transferring paperwork between four agencies and three major departments takes significant time and resources. It is not surprising that UAC spend an average of 35 days in HHS custody.⁷

The number of unaccompanied minors rose from an average of between 7,000 to 8,000 children in FY2008 to 52,193 in FY2014 to date. Even at the maximum capacity, the current facilities

³ Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The TVPRA, set out special rules for UAC's from contiguous countries (i.e. Mexico or Canada), by requiring CBP officers within 48 hours to screen children for asylum, trafficking and that there is no credible evidence that the minor is at risk and if these are not present should return the children to their country of nationality. In addition, for children of non-contiguous countries, TVPRA required CBP officers to turn children over to ICE for transport to HHS-ORR within 72 hours.

⁴ UAC's are defined as unaccompanied children under the age of 18 who come to the United States without authorization or overstay their visa, and are here without a parent or legal guardian.

⁵ These are countries other than Mexico and Canada.

⁶ These are the time requirements established by TVPRA.

⁷ CRS Report: Unaccompanied Alien Children: An overview, June 2014, page 9.



cannot house all of the UAC. In addition, a majority of the UAC are coming through the Rio Grande Valley, which has seen a 168 percent increase in UAC apprehensions, straining resources beyond its ability. The influx of UAC is in addition to an overall increase in border apprehensions from non-contiguous countries that results in detentions, in the same geographic area, further, straining the system.

Recommendations

The National Immigration Forum recommends the following:

Fix our broken immigration system. A functioning immigration system would allow women and children to go through a process, not a river, to reunite with loved ones. And, more importantly, would allow the authorities to determine which of these children are eligible to reunite with family and remain in the U.S. and, which are not, in a timely way. A clear immigration system and process would quickly dispel any misinformation about current or future immigration policy that may drive these children to come to the United States.

Ensure that children are not ending up in the wrong hands and avoid trafficking. These children are especially vulnerable to falling victims of trafficking as they enter the United States. HHS must conduct proper background verifications of all adults in contact with children. Similar precautions should be taken with children who are deported by partnering with the native country to ensure children are being sent back to a safe environment.

Children should be guaranteed legal counsel in removal proceedings and subsequent appeals. Under the current regulations, children are allowed to have council but are not entitled to counsel at the government expense. We urge the Committee to pass the Vulnerable Immigrant Voice Act of 2014 (VIVA) to provide legal representation to unaccompanied minors and mentally disabled individuals during immigration proceedings. In addition to providing more funding for attorneys and judges, the DOJ could partner with service organizations, law firms, and other organizations to provide pro-bono legal services to children.

Incorporate the ‘best interest of the child’ standard in considering each case. Currently our legal system encourages this standard but does not mandate it, leading to undesirable consequences. We encourage Congress and the Obama Administration to not only codify the standard but also to consider appointing a guardian *ad litem* to ensure the standard is employed in each case.

Increase funding for the Executive Office of Immigration Review (EOIR). EOIR includes funding for our nation’s immigration courts and judges. For years, funding for EOIR has failed to keep pace with increases in immigration enforcement. This has created a backlog of



366,000 cases and an average wait time of more than 570 days. The recent influx of UACs only further underscores the need to adequately fund our immigration courts.

Seek public and private partnerships to provide alternatives to detentions. We encourage the Administration and Congress to seek partnerships with non-governmental agencies and organizations to provide temporary holding facilities and alternatives to detention. Dedicating more resources to building new facilities and hire new personnel would be inefficient and unworkable

Conclusion

The situation faced by unaccompanied children is a challenging and heart-breaking example of our broken immigration system. Certainly, we must ensure that we have secure borders. However, a functioning immigration system is the best long term solution to this problem. It would lessen the number of UAC entering the U.S. and would allow the authorities to determine, in a timely way, which children are eligible to remain in the U.S. and which are not. In addition, immigration reform would provide protections to this particularly vulnerable population from organized crime and trafficking as well as allow law enforcement and border officials to focus on the true criminal and terrorist threats rather than expending excessive resources on children fleeing violence.