

The Juvenile Justice Pipeline and the Road Back to Integration:
Lax Border and Immigration Enforcement Strains the System
U.S. House Judiciary Committee
Subcommittee on Crime, Terrorism and Homeland Security
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Thank you, Ms. Jackson Lee and Mr. Biggs, for the opportunity to testify today on the juvenile justice pipeline. My testimony will focus on a specific problem that is imposing a significant burden on all levels of government and specifically those institutions that are critical to an effective and successful juvenile justice system – namely, the uncontrolled influx of illegally arriving unaccompanied minors and families. This influx has significantly worsened since President Biden reversed an array of policies that had greatly reduced these arrivals. We know from past experience that this new surge of illegal arrivals is an enormous burden on many American communities. It is also likely to have specific consequences for our juvenile justice system. For instance, the uncontrolled entry of lightly vetted and vulnerable minors over the southern border exacerbates our criminal street gang problem and weakens the institutions that could otherwise be more effective in addressing juvenile delinquency and crime. The lack of interior enforcement, combined with the manipulation of immigration laws and the intervention of activist judges, ensures that virtually all of the juveniles now crossing our border illegally will end up staying here, even many of those who end up in the juvenile or adult criminal justice system after committing crimes.

Congress cannot fix all of the social and economic problems that set the stage for juvenile delinquency. But Congress can avoid exacerbating the problem by fixing our immigration laws to restore border security and interior immigration enforcement – for starters, by withdrawing what has become known in Central America as “la invitacion.”¹ In addition, Congress should scale back certain temporary work visa programs in order to protect job opportunities for youth, thus interrupting the “unemployment to justice” pipeline. The benefits of solving the border and immigration enforcement crisis extend far beyond the juvenile justice system and will help all American youth by preserving educational and job opportunities and relieving burdens on the institutions that help ensure future socio-economic success in our communities.

Lenient Border Policies Have Set Off A New Surge of Illegal Arrivals

Since January, Customs and Border Protection (CBP) has been dealing with an unprecedented spike in the number of illegal border crossers. In March alone, more than 172,000 illegal crossers were apprehended. In the first half of the fiscal year (October 2020-March 2021) about 570,000 illegal crossers were apprehended, which is more than were

¹ Todd Bensman, “Inside a Cartel Smuggling Operation Into West Texas,” Center for Immigration Studies, April 28, 2021, [Inside a Cartel Smuggling Operation Into West Texas \(cis.org\)](https://www.cis.org/inside-a-cartel-smuggling-operation-into-west-texas).

apprehended in the entire fiscal years in 2020 and 2018. The number of apprehensions was up about 70 percent from February to March of this year.²

This includes about 94,000 adults and children arriving in a family unit and 49,000 unaccompanied minors. According to government records, more than 70 percent of the unaccompanied minors are over the age of 14, and more than two-thirds are male. More than 90 percent are citizens of Guatemala, El Salvador, and Honduras.³ According to government records, about half of those arriving in a family unit are children, and the majority of these children are under age 12.⁴

Statistics from Customs and Border Protection (CBP) show that not only are there many more new illegal arrivals at the southern border, but that a much larger percentage are being allowed to enter the country rather than face expulsion or removal.⁵ Most of those allowed to enter are minors and families with minor children. About 143,000 new illegal arrivals were released to American communities since October, with the vast majority released since the beginning of the Biden administration.

In addition, Border Patrol agents estimate that for every illegal crosser that they apprehend, another one to three others are able to evade capture and gain entry to the interior. These crossers are of even greater concern than those who are caught, because we have no information on who they are, where they are going, or the purpose of their entry. According to the Border Patrol agents, these surreptitious crossers are often able to get through while agents are distracted dealing with groups of families and children.

It has been well established that certain policy changes are responsible for this influx, including the end to expulsions of families and unaccompanied minors under Title 42 public health emergency authorities, discontinuing the Migrant Protection Protocols, and canceling agreements with other countries in the region to enforce borders and offer safe haven where appropriate. As a result, more newly arriving families and minors are allowed to enter the United States, which motivates even more prospective migrants to hire smugglers and attempt illegal entry. In addition, as discussed further below, enforcement in the interior has been suspended except for all but the most serious criminals, meaning that prospective migrants know that if they can gain entry they will not be subject to enforcement for the foreseeable future, whether they abide by the terms of their entry, or file an asylum claim, or not.

Why is this a problem for the juvenile justice system? Of course most of the new arrivals are not already criminals, or doomed to become criminals. Nevertheless, the same lax policies also enable transnational gangs and other criminal enterprises to grow their ranks, enlarge the

² See Customs and Border Protection website at [Southwest Land Border Encounters | U.S. Customs and Border Protection \(cbp.gov\)](#).

³ Fact Sheet, HHS Administration for Children and Families, May 5, 2021, [uac-program-fact-sheet.pdf \(hhs.gov\)](#)

⁴ Rebecca S. Gambler, *Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS*, Government Accountability Office, GAO-20-245, February 19, 2020, [Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS \(gao.gov\)](#).

⁵ Customs and Border Protection, Custody and Transfer Statistics, 2021, [Custody and Transfer Statistics FY2021 | U.S. Customs and Border Protection \(cbp.gov\)](#).

pool of vulnerable youth from which they can recruit, and strain the institutions that otherwise might help prevent youth from entering the criminal justice system or assist their rehabilitation.

Screening of Minors and Sponsors Inadequate to Detect Risks

The policies that govern the placement of minors who arrive unaccompanied are inadequate to prevent these minors from being placed in inappropriate environments that include labor and sex trafficking situations and participation in or exposure to criminal gangs. These policies have always been inadequate, in part due to an unmanageable volume of cases, but have been loosened even more by the Biden administration. In addition to providing an opportunity for bad actors to exploit the system, these lenient policies offer an incentive for prospective migrants to try to gain entry, believing (correctly) that they likely will succeed with few questions asked from U.S. authorities, and gain access to an array of social, educational, medical, and legal services, not to mention employment, often with a work permit.

Many of the systemic deficiencies were revealed by a Senate investigation following the case of dozens of unaccompanied illegal alien minors who were trafficked for the purpose of working on an Ohio egg farm in 2014.⁶ The Trump administration adopted a number of policies recommended by the bipartisan investigators, including more thorough background checks and questioning of prospective sponsors.

Currently the Border Patrol has thousands of minors and others in its custody in short-term emergency shelters awaiting transfer to the custody of Health and Human Services (HHS). As of May 2, HHS had more than 22,000 minors in its custody, housed in contract residential facilities and other emergency facilities such as convention centers that are not set up for such a responsibility. In part to avoid public outrage over crowded conditions in the border facilities, the Biden administration has endeavored to move the new arrivals from processing facilities near the border to other facilities around the country.

In addition, Biden officials have relaxed child placement policies with the goal of releasing the minors as swiftly as possible to a family member, friend, or other sponsor, with few questions asked. These policies, which stray from well-established best practices for foster care, refugee, and similar child placements, greatly increase the risk of problems for the youth and increase the likelihood that some will end up in the juvenile justice pipeline.

According to HHS, the sponsors who come forward to take custody of these minors receive little meaningful vetting.⁷ They typically are subject to a biographical name check for criminal records, but are fingerprinted only if staff are able to articulate a reason why the placement might be a problem, not to discover information that might suggest a risk. Similarly, home studies to evaluate the environment to which the minor will be released or the sponsor's credibility or financial stability are done only in very rare cases, such as with child trafficking victims; very young (under 12 years), disabled or abused children; or if a sponsor has

⁶ Staff Report, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, U.S. Senate Permanent Subcommittee on Investigations, [Majority & Minority Staff Report - Protecting Unaccompanied Alien Children from Trafficking and Other Abuses 2016-01-282.pdf \(senate.gov\)](#).

⁷ Fact Sheet, HHS Administration for Children and Families, May 5, 2021, [uac-program-fact-sheet.pdf \(hhs.gov\)](#).

volunteered to take in multiple kids. Contrary to best practices, other adults in the sponsoring household are not routinely subject to fingerprinting or investigation.

While the minors are provided with a lawyer to help them gain legal status, there is no meaningful monitoring of their activities or well-being after they leave government custody and are placed with a sponsor. They are not required to accept post-release services, and in many cases the sponsors have blocked case workers from contact with the minors. In fact, the government usually loses track of the minors after release, either because the minors and their sponsors refuse to communicate, the youth moves to another household, drops out of school and services, and skips out on immigration hearings.

Lenient Border Policies Strain Critical Institutions Serving Juveniles and Preventing Delinquency

It is difficult to obtain a full count of the number of aliens who have been able to settle here after crossing the border illegally, but piecing together various sources of data, I estimate that since 2012, there have been close to one million new arrivals who entered as an unaccompanied minor or as part of a family unit. For a variety of reasons discussed below, only a tiny percentage of those allowed to enter have been removed.

This influx has severely strained schools, foster care systems, health care, and other social support systems in many communities that have had to accommodate them. For this reason, several states (South Carolina, Iowa, Nebraska, and South Dakota) have announced that they will not participate in the resettlement of unaccompanied minors.

Foster Care Resources. In the case of South Carolina, the state determined that the arrival of any large group of children needing foster care placement would be an unacceptable burden on the state's existing capacity for "timely and stable placements and other services and supports."⁸ The order further states that in light of a recent class action settlement agreement (*Michelle H. v Haley*) that requires the state to address numerous problems in its foster care placement system, including the number of foster homes, a case worker shortage, and the availability of health services, the governor determined that:

"...accepting placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina would unduly limit the availability of placements for children in South Carolina and would present a threat of harm to the children in such facilities and would constitute a failure of any such facility to keep the facility safe to care for children as contemplated by [SC law]."

The order further states that children arriving from abroad who were held in close quarters in federal government-run facilities would pose an unacceptable risk of transmission of COVID-19 to SC children in these facilities.

⁸ Governor Henry McMaster, Executive Order No. 2021-19, filed on April 12, 2021, [2021-04-12 FILED Executive Order No. 2021-19 - Prioritizing SC Children.pdf](#).

Ample research has concluded that foster care systems in America are a significant pipeline to juvenile delinquency. According to some credible accounts, the more than 400,000 children in foster care⁹ face a disproportionate risk of incarceration within two years of exiting foster care.¹⁰ Black children are especially at risk, according to experts, because they are twice as likely as white children to be placed in foster care. As South Carolina governor McMaster articulated, when the foster care system is unnecessarily strained every month due to an influx of thousands of newly arrived non-citizen children needing to be placed in facilities, group homes, or with foster families, then all of the children in the system lose. For the sake of these children, who are already facing enormous obstacles to finding success in life, it is imperative that Congress act to stem the flow of children into the system who are drawn or sent to this country specifically to take advantage of lenient immigration policies.

Education is the Most Significant Cost. Many school districts around the country have been scrambling to make room for the new youth arrivals, who settle all over the country, but tend to be concentrated in certain locations where friends and family have gone before.

The states receiving the most unaccompanied minors are Texas (especially Harris, Dallas, and Travis counties), Florida (especially Miami-Dade and Palm Beach counties), California (especially Los Angeles county), and New York (especially Kings, Queens and Suffolk counties). Other large settlements are in Prince Georges County in Maryland, Mecklenburg County in North Carolina, and Davidson County in Tennessee.¹¹

The problem for the school districts is not only the numbers and the lack of accompanying funding, but also that typically many of the new arrivals had only a few years of schooling in their home country, and arrive with what educators I have spoken with call “extreme disadvantages” compared even with other immigrant children. According to these educators, many of the new arrivals have not learned to read nor acquired other basic skills fundamental to education beyond elementary school, they often speak indigenous languages for which there are fewer interpreters available, and have been more likely to require individualized educational plans and tutoring support due to emotional trauma, learning disabilities, or other special needs.

Many of these communities are already very experienced in dealing with immigrant children; however, one Massachusetts school committee chair told me that the UAC arrivals were a “shock to the system” because most are older than the typical new immigrant children, who are more likely to enter elementary or middle school, not high school. Massachusetts had to assemble a state-wide working group of educators to design a new curriculum, known as the Students With Limited or Interrupted Formal Education (SLIFE) program, especially for the UAC arrivals. Some districts have had to create unique “newcomers” educational programs. However, the districts must be careful not to run afoul of federal oversight on “mainstreaming”

⁹ Fact Sheet, Department of Health and Human Services, Administration of Children and Families, May 2020, [Foster Care Statistics 2018 \(childwelfare.gov\)](#).

¹⁰ Juvenile Law Center, “What is the Foster-Care-to-Prison Pipeline?,” May 26, 2018, [What Is The Foster Care-to-Prison Pipeline? | Juvenile Law Center \(jlc.org\)](#).

¹¹ HHS, Administration of Children and Families, Unaccompanied Children Released to Sponsors by State - March 2021, [Unaccompanied Children Released to Sponsors by State - March 2021 | HHS.gov](#).

special needs children. The city of Lynn, Massachusetts was threatened with litigation by the U.S. Department of Justice when it attempted to launch a night school program designed to better meet the needs and interests of the large percentage of male UAC arrivals who wanted to drop out and work rather than attend a traditional day school program.

The schools know that these students will need a great deal of support to succeed, but the problem is how to pay for it. Over the years of the ebb and flow of unaccompanied minors, school districts have had to improvise to free up funds to support these students, often by cutting back in other areas, including public safety, fire departments, and salaries of local government employees.

For example, Louisiana's Jefferson Parish, which received 533 Unaccompanied Alien Children (UACs) for resettlement, said that at the start of the surge several years ago that it needed to hire 27 new ESL teachers, 20 new ESL para-educators, 19 regular teachers, and three special education teachers to accommodate the influx. The total cost was estimated to be \$4.6 million, split between the state and the parish. The state was not expecting any additional support from the federal government for the Limited English Proficiency students, because most of them arrived at the last minute.¹²

At the time, a number of other states disclosed the expenses they incurred for the education of a UAC student:

- Texas -- \$9,500 (source: Texas Legislative Budget Board)
- Florida -- \$8,900 per child + \$1,900 per UAC for special needs (source: Florida Department of Education) for a total cost of \$30-40 million per year.
- Fairfax County, Virginia -- \$14,755 per English Language Learner, for a total estimated cost per year for UACs of \$14 million. (source: Fairfax County Supervisor).
- National Average: \$11,153 to 12,608 (source: National Center on Educational Statistics).
- Total Cost Nationwide: \$580 million to \$670 million for the FY2014 UAC cohort per year (not counting children who arrived as part of family units).

Some schools have had difficulty assimilating unaccompanied minor students into their larger population, especially when the youths become involved in gangs or other forms of delinquency. For example, Rockville High School in Maryland, a suburb of Washington DC not far from the U.S. Capitol, has had severe problems with the behavior of older teen-agers who have been enrolled after resettlement as unaccompanied minors.¹³

Health Care Costs. Less has been reported on the health care costs for UACs, but they are inevitably a burden for state and local governments. "I think the biggest issue for us is the big handoff to local governments in terms of service costs and wraparound for these families and

¹² Letter from John White, Louisiana Superintendent of Education to Sen. David Vitter, September 12, 2014, <http://freebeacon.com/wp-content/uploads/2014/09/Sen.-David-Vitter-Response-ltr-9-12-14.pdf>.

¹³ "High School Rapists Entered U.S. as Unaccompanied Alien Children, Lived in Sanctuary County," Judicial Watch, March 24, 2017, [High School Rapists Entered U.S. as Unaccompanied Alien Children, Lived in Sanctuary County | Judicial Watch](http://www.judicialwatch.org/press-releases/high-school-rapists-entered-u.s.-as-unaccompanied-alien-children-lived-in-sanctuary-county/).

children. There's no getting around that," said Uma Ahluwalia, director of the Montgomery County, Maryland, Department of Health and Human Services. "In the meantime, the children are going to be attending local schools, they're going to have health and mental health needs . . . I think it will definitely strain our capacities."¹⁴

The Washington, DC-based Mary's Center, which provides health services to DC-area immigrants, reported costs of \$400,000 for services for UACs in 2014. The services to UACs cost more than double what routine services cost for most immigrants, because many of the newly arrived Central American youths had been injured or sexually molested on the journey.¹⁵

Mental health care for these individuals may be a long-term challenge. According to numerous studies, UACs are more likely to need counseling and other forms of care as a result of physical or emotional trauma suffered in their home countries, on the journey with smugglers, or after arrival in the United States. According to one report:

*Unaccompanied alien children's migration likely compounds significant levels of preflight trauma. The 2000-plus-mile journey to the United States traces routes controlled by drug cartels who beat, drown, drug, maim, murder, rob, molest, and starve undocumented migrants, with some UAC targeted for forced recruitment. Likewise, coyotes (guides [actually smugglers]) may offer UAC drugs or alcohol to stem their hunger or proposition them for hard labor or sex in return for survival. Combined, the high level of potential trauma before and during migration may lead to some of the highest levels of mental illness among children in the United States.*¹⁶

Typically this care will need to be provided through publicly-funded state, local or federal social service programs for children rather than private insurance, since most of the family members who are assuming custody of the youths are also in the country illegally and thus more likely to lack insurance (and are not required to carry it under federal rules).

Congress should act to stem the flow of new illegal arrivals in order to avoid expanding what some advocates refer to as the "school-to-prison pipeline."¹⁷

Border Policies Enable Transnational Gangs to Expand and Proliferate With Young New Members

A previous surge of illegal arrivals from Central America in the late 1990s that, like today, coincided with a time of minimal immigration enforcement and little attention to

¹⁴ Quoted in the International City/County Management Association newsletter, August 15, 2014: http://icma.org/en/Article/104850/Preparing_for_Costs_of_Unaccompanied_Children_Influx?pub=108&issue=8.19.2014.

¹⁵ Tina Reed, "This is what it's costing one DC health center to treat "influx of 'unaccompanied minors' from Central America," *Washington Business Journal*, August 15, 2014: <http://www.bizjournals.com/washington/blog/2014/08/this-is-how-much-it-s-costing-one-d-c-health.html>.

¹⁶ Elizabeth G. Kennedy, "Unnecessary Suffering: Potential Unmet Mental Health Needs of Unaccompanied Alien Children," *JAMA Pediatrics*, April 2013: <http://archpedi.jamanetwork.com/article.aspx?articleid=1569275>.

¹⁷ Matt Leistra, "Mental Health and the School to Prison Pipeline," *Shared Justice*, December 5, 2017, [Mental Health and The School to Prison Pipeline — Shared Justice](http://www.sharedjustice.com/2017/12/05/mental-health-and-the-school-to-prison-pipeline/)

suppressing gang activity had a disastrous consequence – a dramatic rise in violent criminal street gang activity in communities around the United States. The gangs that evolved then, which included MS-13 and 18th Street, were extremely vicious and unusually degenerate; in fact, my research shows that the gang members who are arrested for the most violent crimes are disproportionately members of the Central American-dominated gangs. These gangs spread across the nation before federal and local law enforcement agencies realized the extent of the threat, and now are well established and sometimes very well organized.¹⁸

About four years ago, the leadership of MS-13 in El Salvador issued a directive to the leaders of MS-13 cliques based in the United States to increase their membership in order to boost criminal activity and revenue. This was accomplished both by sending younger members into the United States taking advantage of lenient policies on illegal minors crossing, enabling them to settle here with sponsors and also by increasing recruitment of newly arrived Central American minors they encountered in the neighborhoods and schools they shared.

The result was a noticeable resurgence of crime and violence associated with these two rival gangs, which are made up largely of illegal aliens from Central America or the US-born sons and daughters of Central American migrants. Of course, not all child migrants from Central America are gang members, but many are targets for recruitment, and we know that a significant share of new MS-13 members arrived in the recent surge of minors and families.

I have been monitoring nationwide arrests of MS-13 members that are reported in open sources as part of my ongoing research on transnational gangs.¹⁹ My team and I have identified 499 publicly reported arrests of MS-13 members from 2016 to the present.

Out of these 499 MS-13 suspects and offenders, we have been able to determine that 143, or about 29 percent, were under the age of 21 at the time of their arrest. Their victims often were young, too; we identified 111 victims of MS-13 who were under the age of 21. Out of all the arrests, we could determine that 81 of the MS-13 suspects/offenders, or 16 percent, were reported to have entered as unaccompanied minors, or were judged likely to have entered as UACs, based on information in the report.

Statements by Immigration and Customs Enforcement (ICE) gang investigators indicate that this is an understatement of the number of crimes committed by MS-13 members who entered as unaccompanied minors. Some ICE agents have said that as many as 40 percent of the MS-13 members arrested in operations on Long Island, NY, which like Houston, Boston, and the suburbs of Washington DC has been one of the hot beds for both MS-13 activity and UAC resettlement, had arrived illegally as children.

Out of the 499 MS-13 members we identified, there were 181 who were charged with murder. Of these, 77, or 43 percent, of the MS-13 members arrested for murder were under the

¹⁸ See Jessica M. Vaughan and Jon D. Feere, *Taking Back the Streets*, Center for Immigration Studies, September, 2008: <http://cis.org/ImmigrantGangs>.

¹⁹ Jessica M. Vaughan, "MS-13 Resurgence: Immigration Enforcement Needed to Take Back Our Streets," Center for Immigration Studies, February 21, 2018, [MS-13 Resurgence: Immigration Enforcement Needed to Take Back Our Streets \(cis.org\)](https://www.cis.org/articles/MS-13-Resurgence-Immigration-Enforcement-Needed-to-Take-Back-Our-Streets). Statistics updated to April 2021 are forthcoming.

age of 21 at the time of arrest. Eighty of the victims were under the age of 21. We identified 41 of the MS-13 members arrested for murder, or 23 percent, who likely arrived as UACs.

Detailed reports of some of these cases have been published by my organization, including the murder of two high school girls in Brentwood, NY²⁰ and the murder of a young woman in Baltimore County, Md.²¹

While ICE once was making great strides in dismantling and disrupting transnational gang activity in the United States, in recent years the agency has made this less of a priority. Under Biden, ICE has de-emphasized working with local law enforcement agencies, such as by pro-actively taking illegal alien gang members off the street and removing them. A few successful ICE-local partnerships remain, but considering that the new nominee for ICE Director, Harris County Sheriff Ed Gonzalez, is an outspoken opponent of ICE-local partnerships, we can expect to see a shift in focus and resources to overseas operations and complex racketeering cases, at the expense of local initiatives.

It should go without saying that when our immigration policies attract and enable violent transnational gangs like MS-13 to import recruits into this country right under the noses of immigration officials and local authorities, thereby strengthening their organizations, especially when those gangs are known to focus their recruiting on youth who are living in the Central American diaspora communities, this will create new public safety problems that will have to be addressed through the juvenile justice system.

Biden Reductions in Immigration Enforcement Reduce Criminal, Juvenile Removals

As discussed, the resumption of catch and release policies at the border for minors and families is drawing thousands of new illegal settlers every week. Other Biden policies – especially the dramatic curtailment of immigration enforcement in the interior – will guarantee that the fraction of the new arrivals who end up in the juvenile and criminal justice systems will continue to sap these resources indefinitely, because only the most serious offenders will be deemed priorities for removal, if they can be located.

According to new Biden enforcement rules, implemented in the first days of his term and further defined in a February 18 memo from acting ICE director Tae Johnson²², immigration enforcement officers (which applies to both border officers and ICE) may seek to remove only those aliens who are a) a terrorist, spy or other national security threat; b) arrived illegally before November 1, 2020; or c) was over 16 and convicted of certain serious felonies, known as

²⁰ “Brentwood, NY - A Case Study of How Flawed Immigration Policy Begets Gang Violence,” teleconference by the Center for Immigration Studies, November 4, 2016, [Teleconference: Brentwood, NY - A Case Study of How Flawed Immigration Policy Begets Gang Violence \(cis.org\)](https://www.cis.org/teleconference-brentwood-ny-a-case-study-of-how-flawed-immigration-policy-begets-gang-violence).

²¹ Andrew R. Arthur, “Five MS-13 'Affiliates' Held in Rural Baltimore County Killing of 16-Year-Old Girl,” Center for Immigration Studies, October 30, 2020, [Five MS-13 'Affiliates' Held in Rural Baltimore County Killing of 16-Year-Old Girl \(cis.org\)](https://www.cis.org/five-ms-13-affiliates-held-in-rural-baltimore-county-killing-of-16-year-old-girl).

²² [Interim Guidance: Civil Immigration Enforcement and Removal Priorities \(ice.gov\)](https://www.ice.dhs.gov/interim-guidance-civil-immigration-enforcement-and-removal-priorities)

“aggravated felonies,” or gang crimes. Officers encountering aliens not meeting these definitions must seek the approval of senior ICE officials before making an arrest.

Under these rules, most juvenile offenders and offenders who started their criminal career as juveniles will not be subject to removal. The vast majority of ICE’s caseload—perhaps as much as 85% of those typically targeted by ICE²³ -- is no longer amenable to deportation under the Biden policies, even though they have been arrested for crimes, because they have not yet been convicted of aggravated felonies. Further, juvenile offenders under the age of 16 who are gang members will be exempt. Most of these offenders will have the opportunity to remain here, and staying under the purview of the juvenile justice system and perhaps graduating to the adult criminal justice system.

Most significantly here, any alien offender who has a pending immigration court case or who has applied for an immigration benefit is exempt from deportation until that case is adjudicated. Virtually all those arriving as unaccompanied minors and many who arrived with parents would fall into this category. That is because immigration law provides numerous opportunities for minors to seek residency, such as by applying for Special Immigrant Juvenile (SIJ) status²⁴, asylum, or as a dependent of someone with a lawful status.

The dramatic rise in the number of minors seeking residency under the SIJ program is especially impactful to the juvenile justice system. The number of applications has exploded since the early years of the influx of unaccompanied minors: in 2012, USCIS received about 3,000 SIJ applications, but by 2017 the number of annual receipts grew to nearly 21,000, and in the first quarter of this fiscal year, USCIS received nearly 12,000 applications.²⁵ The first step for all of these applicants is to petition a state family, juvenile or probate court for a finding of abuse, neglect or abandonment. These cases have tapped a significant portion of the resources of juvenile and family courts in many states.

Recommendations

To address the problem of juvenile delinquency in our communities and conserve resources in this system that are needed to handle its traditional caseload, Congress should start by fixing the parts of the immigration law that add to the problem by enticing citizens of other countries to hire smugglers to bring families and minors to cross our border illegally.

Such measures would include:

- 1) updating the Trafficking Victims Protection Act to clarify and reform how arriving minors shall be handled, with the primary emphasis on swiftly returning them to their families in their home countries;
- 2) overriding the unreasonable judicial rulings that prevent the government from promptly processing families with children who arrive illegally or at ports of entry and should be kept

²³ Jessica M. Vaughan, “Biden Freezes ICE; Suspends 85% of Criminal Alien Deportations,” Center for Immigration Studies, January 22, 2021, [Biden Freezes ICE; Suspends 85% of Criminal Alien Deportations \(cis.org\)](https://www.cis.org/biden-freezes-ice-suspends-85-of-criminal-alien-deportations).

²⁴ [Special Immigrant Juveniles | USCIS](https://www.uscis.gov/special-immigrant-juveniles)

²⁵ USCIS statistics: [Immigration and Citizenship Data | USCIS](https://www.uscis.gov/immigration-and-citizenship-data).

together in government custody as the law states, and to more easily and efficiently complete their due process;

3) require meaningful consultation and coordination between federal agencies and state and local governments on the number, locations, and expected needs of newly arriving migrants who are allowed to enter pending due process;

4) direct and fund HHS to better screen, place and monitor unaccompanied minors who are allowed to enter the country, and to disclose and share relevant information with government agencies and the public;

5) reform the SIJ program to reduce fraudulent and frivolous cases, enable USCIS to have sole discretion for determining eligibility under the law, and limit access to minors who are entirely lacking appropriate guardianship either here or in their home country;

6) reforming asylum laws to avoid encouraging fraudulent, frivolous, or unqualified applicants, share the responsibility of providing safe haven with other countries in the region, and reverse results of judicial intervention that has eroded the standards for eligibility that Congress established;

7) greatly curtail the discretion of federal agencies to implement catch and release policies at the border;

8) establish a baseline for a mandatory minimum level of interior immigration enforcement by clarifying categories of aliens who shall be subject to arrest and removal, with few exceptions;

9) eliminate the Temporary Protected Status program and authority;

10) clarify and narrow the executive branch's authority to issue work permits;

11) clarify ICE authority to secure the cooperation of other law enforcement agencies in identifying, arresting and removing criminal aliens;

12) establish consequences for state and local sanctuary policies;

13) establish a minimum mandatory baseline for worksite enforcement and reduce issuance of certain temporary work visas (especially H-2A, H-2B, and J-1) so as to preserve job opportunities for young offenders and those at risk of offending due to lack of stable and rewarding employment.

Respectfully Submitted,

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