**The Surge of Unaccompanied Minors at the U.S.-Mexico Border**

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**Introduction**

In the last recent years, the United States has faced many crises at the U.S.- Mexican border. Among them has been an unprecedented influx of unaccompanied children attempting to make the treacherous journey to the Southern border. While the surge of unaccompanied minors at the border continues to increase and projections paint a grim outlook, we must take a considerable look at the factors attributing to the record surge. This thesis attempts to answer the following questions to form a better understanding of why this is happening at our border: who are they, where are they coming from and why? What are the root causes of the influx of unaccompanied minors at the border. How does policy influence the number of unaccompanied minors’ crossings and what can we learn? What other aspects contribute to this? Is the current administration incentivizing children to cross? It’s important to recognize that nations have sovereign rights to define their citizenship, to control their borders, and to determine when and on what terms non-citizens may enter, however we can agree that children are entitled to special consideration and attention.

The number of unaccompanied minors (UM) apprehended at the Southwest border between U.S. ports of entry while attempting to enter the United States without authorization has increased substantially in the past decade.

An unaccompanied minor is a child under the age of 18 without the presence of a legal guardian or parent. A majority of these children are fleeing from the Northern Triangle countries of El Salvador, Guatemala and Honduras. Economic precariousness, government corruption, crime, violence and poverty are all driving migration from these Latin American countries. (Angelo 2021) High rates of domestic violence and gang recruitment of minors have contributed to a surge in unaccompanied children and families journeying to the U.S-Mexico border. (Angelo 2021)

A report conducted in El Salvador finds that children who are principally elementary and middle school students, are socialized about migration at a very young age (Chavez and Menjívar 2010) Children learn about migration not only through their family members, but also from classmates at school, friends from the street, and/or from those who have been deported and who have stories to share (Chavez and Menjivar 2010). These individuals play an important role in shaping the ideas and attitudes about migration and prompts the child to imagine what life is like in the North.

How are so many children making this journey to the Southern border? The journey prior to arriving at the border varies among many children. Some may take a plane from their sending communities and arrive thus at the border, others take ground transportation, such as a bus or train (Chavez and Menjivar 2010) However, the most enduring part of the journey involves crossing international borders. Smugglers often leave children en route when the children are physically unable to continue (Chavez and Menjivar 2010). Crossing several borders creates further difficulty and danger for these migrant children. During the 2000s, the number of apprehended unaccompanied children who were subsequently put into removal proceedings and referred to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) averaged 6,700 annually and ranged from a low of about 4,800 in FY2003 to a peak of about 8,200 in FY2007.

Starting in FY2011, UAC apprehensions at the Southwest border increased substantially. By FY2014, they reached a then-record of 68,541, leading some Members of Congress as well as the Obama Administration to characterize the issue as a humanitarian crisis. UM apprehensions have since remained relatively high while fluctuating considerably.

**UM Arrival Process and Placements**

After making the journey to the North to seek asylum, where do these children go and what do their futures look like? Several DHS (Department of Homeland Security) agencies handle the apprehension, processing, and repatriation, while the Office of Refugee Resettlement (ORR) handles the care and custody of UM. The Executive Office for Immigration Review (EOIR) in the U.S. department of Justice conducts immigration removal proceedings. CBP. (Customs and Border Protection) apprehends, processes, and temporarily holds UM along U.S. borders. DHS’s ICE physically transports UAC referred to ORR from CBP to ORR custody. ORR is responsible for sheltering UM while they await an immigration hearing. (Kandel 2021) DHS’s U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UM after the children have been placed in removal proceedings. EOIR conducts immigration proceedings that determine whether UM may be allowed to remain in the United States or must be deported to their home countries. ICE is responsible for repatriating UM who are ordered removed from the United States. (Kandel 2021) When CBP confirms that a foreign national under age 18 lacks U.S. lawful immigration status and is unaccompanied by a parent or legal guardian, the minor is classified as an unaccompanied alien child under the Immigration and Nationality Act (INA), and processed for immigration violations. (Kandel 2021) The consulate that represents the child’s country of citizenship is notified that DHS has detained him or her. CBP also collects and enters identifying information about the UM into DHS databases. The Trafficking Victims Protections Reauthorization Act (TVPRA) requires that USBP turn UAC over to ICE for transport to ORR within 72 hours of determining that the children meet the UAC definition. (Kandel 2021)

**Legal Foundation of Current Policy**

In order to find the root causes of the unprecedented number of unaccompanied children arriving at our border as of recently, we must be familiar and understand the current immigration laws, like The Central Americans Minors program and Title 42, to see if we can find insights. Many scholars on the right would argue that the historic surge at the border is a direct result of policy and lack of enforcement, while scholars on the left believe the rise in violence and poverty within Central American countries and along with the Covid-19 pandemic is the cause. We can acknowledge that these underlying factors have existed in Central America for many years and we can understand that migrants seek a better quality of life, but would it be too naïve to think the problem has nothing to do with policy? How did migrants make it living in their home countries prior to migrating?

A court settlement and two laws most directly guide U.S. policy on the treatment and administrative process of UM: *The Flores Settlement Agreement* of 1997, the Homeland Security Act of 2002, and the Trafficking Victims Protection Reauthorization Act of 2008. *The Flores Settlement* established a nationwide policy for the detention, treatment, and release of UM and recognized the particular vulnerable of UM as minors while detained without a parent or legal guardian (Kandel 2021) It required immigration officials detaining minors to provide (1) food and drinking water, (2) medical assistance in emergencies, (3) toilets and sinks, (4) adequate temperature control, (5) adequate supervision to protect minors from others, and (6) separation from unrelated adults whenever possible (Office of the Inspector General 2001). The TVPRA sets fourth special rules for UM from noncontagious countries, as well as UM from contagious countries apprehended at the border. This requires that they be screened for evidence of human trafficking within 48 hours of apprehension. It mandated that unaccompanied children determined to be human trafficking victims or to have fear of returning to their home country or country of last habitual residence, or who are apprehended away from the border, to be transferred to the care and custody of ORR and placed in standard removal proceedings. (Kandel 2021)

*Central American Minors Program*

In March 2021, the Center for Immigration Studies published a report for Biden’s plan for Central American migrants. The Biden Administration expanded the Obama Era Central American Minors Refugee/Parole program (CAM) launched in 2014 (and expanded in 2016) which then was terminated in 2017 by the Trump Administration. (Rush 2021) On February 2nd, 2021 President Biden issued an Executive Order that it would consider initiating appropriate actions to reinstitute and improve upon the CAM Parole Program. A little over a month later the Department of State announced on March 10th the reopening of the CAM program. It turns out, following its expansion in 2016, the Central American Minors program was no longer limited to “minor children”; but adult sons and daughters could also qualify. The program was not even restricted to the “children” (minors or adults) of U.S.- based parents; adult “caregivers” like grandparents, siblings, aunts and uncles were also able to join in. (Rush 2021) Unlike with the Obama Administrations previous CAM, no family member sponsorship will be needed to apply for refugee settlement in the United States Does no family sponsorship incentivize more unaccompanied minors to come to the border? Are we certain that these individuals are still in need of protection many years later, and furthermore how did they manage to get by for years if they were at risk in their own countries since 2017? On June 15th, 2021, The Department of Homeland Security’s U.S. Citizen and Immigration Services and Department of States Bureau of Population, Refugees, and Migration have been making progress towards reinstituting and improving the CAM program since their agencies launched the first phase of its reopening on March 10th 2021. The second phase of CAM will expand access to the program to a greater number of individuals, as mentioned earlier. Eligibility to petition will now be extended to include legal guardians who are in the United States pursuant to any of the following qualifying categories: lawful permanent residence; temporary protected status; parole; deferred action; deferred enforced departure; or withholding of removal. (United States Department of State 2021) In addition, this expansion of eligibility will now include U.S.-based parents or legal guardians who have pending asylum application or a pending U visa petition filed before May 2021. It will allow them to petition for access to the U.S. refugee Admissions program on behalf of their children who are nationals from Guatemala, or Honduras for potential resettlement in the United States. These new changes will dramatically expand the access to the CAM program. (United States Department of State 2021)

So, given that these programs are allocated towards migrants who simply want to join family members that are already in the United States, is the Biden Administration acknowledging that most of the border- crossers at the Southern border are not fleeing persecution, but using an asylum claim as their “family reunification” card? With the Biden Administration going back to the 2014 CAM “minors” guidelines- all other categories of applicants under the Refugee program and the Family Reunification Parole program would not fall under any age limitation. (Rush 2021) Unlike previous iterations of administrative CAM programs, eligibility criteria would not include parental sponsorship or DNA testing. (Rush 2021) As mentioned earlier, the so called “minors” following Obama’s 2016 expansion included not just “minors,” but family members as well. Also, those “minors” the Biden Administration plans on admitting now are those who claimed persecution four or more years ago. (Rush 2021)

*Title 42 Public Health Emergency*

Title 42 comes from a 1944 public health law to prevent the spread of a communicable disease. Title 42 was implemented in March 2020 by the U.S. Centers for Disease Control and Prevention, as a result of the Covid-19 pandemic. Under Title 42 of the U.S. Code that allowed Customs and Border Patrol to promptly expel unaccompanied minors at the border without considering asylum claims. The use of Title 42 sharply reduced the number of unaccompanied children that Customs and Borders referred to the ORR. In the first six months of FY2020, UM apprehensions by CBP and CBP referrals to the ORR totaled 18,096 and 13,339 respectively. (*Latest UC Data-FY2020* 2021) Following Title 42, those figures for the second half of FY2020 declined to 12,461 and 1,970 respectively. The decline occurred because UM apprehensions under Title 42 made up the large majority of enforcement actions and expulsions preclude referrals to the ORR. In November 2020, a federal judge halted the use of Title 42 for UM. In January 2021, an appeals court stayed that injunction. (Aquino 2021) Soon after taking office, the Biden Administration stopped expelling unaccompanied children under Title 42. That action and other circumstances have contributed to the record surge of UM arriving at the South West Border.

**In Contrast**

Biden officials have blamed the rising numbers and their struggle to keep pace at the border on a broken and inadequate system that they inherited. The termination of Trump Era immigration policies led to the surge of unaccompanied minors some argue. On May 7th, 2018 the DOJ implemented a Zero Tolerance policy toward illegal border crossing both to discourage illegal migration into the United States, but most notably, to reduce the burden of processing asylum claims that Trump Administration officials contend are often fraudulent (Kandel 2018). Under the Zero Tolerance policy, DOJ is prosecuting 100% of adult aliens apprehended crossing the border illegally, making no exceptions for whether they are asylum seekers or accompanied by minor children. Illegal border crossing is a misdemeanor for a first-time offender and a felony for anyone who has previously been “denied admission, excluded, deported, or removed, or has departed the United States while an order of exclusion, deportation or removal is outstanding and thereafter enters, attempts to enter or is found in the U.S.” Both such criminal offenses can be prosecuted by DOJ in federal criminal court (Kandel 2018). The Zero Tolerance policy is designed to disincentivize migrants from making the dangerous journey to the United States and to prevent clogging the immigration courts with fraudulent requests for asylum.

Child detention operated under different policies than that of adults. All children are detained according to broad guidelines established through a court settlement agreement (applicable to all alien children) and two statutes (applicable only to unaccompanied alien children) (Kandel 2018). As a result of a 2015 judicial interpretation of the Flores Settlement Agreement, children accompanying apprehended adults cannot be held in family immigration detention with their parents for more than 20 days, on average. If the parents cannot be released with them, such children are typically treated as UAC and referred to ORR. (Kandel 2018) The Department of Homeland Security and the Department of Justice contend that the policy enforces existing law and is needed to reduce illegal immigration.

While the Biden officials were late on messaging to urge migrants not to travel to the border, telling asylum seekers they need more time to rebuild the system, they already set a new record. A March 10th, 2021 report from *The Washington Post* explains how “more than 8,500 migrant teens and children who crossed the border without their parents are being housed in Department of Health and Human Services” and “nearly 3,500 more are stuck at Border Patrol stations waiting for beds in those shelters to open up” (Winters 2021). These numbers constitute “the highest figure ever”, according to internal data reviewed by *The Washington Post.* In contrast, under the Trump administration, the largest number of unaccompanied minors being detained was roughly 2,600: Held in grim steel-and-concrete cells built for adults, these young people are spending an average of 107 hours awaiting transfer to an HHS-run shelter, well over the 72-hour legal limit, the data shows. (Miroff 2021) The largest number of unaccompanied minors held this way during the Trump administration was about 2,600 in June 2019, according to [*congressional testimony*](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony%20-%20Modlin%20OI%2020190919.pdf) and two former Customs and Border Protection officials who were involved in handling that crisis. (Winters 2021)

**Unaccompanied Minors Numbers**

Relatively high numbers of UM apprehensions emerged 10 years ago, starting from 16,067 in FY 2011, to 24,481 in FY2012. (Kandel 2021) In fiscal year FY2014, almost 69,000 unaccompanied minors seeking entry into the United States were apprehended by the U.S. Border Patrol, from 39,000 in FY 2013, (Hipsman and Meissner 2015) Unlike in prior years, when Mexico was the top sending country, the majority (76 percent) of unaccompanied children in 2014 came from Central America’s Northern Triangle countries of El Salvador, Guatemala, and Honduras. The 2014 surge—concentrated from March through July—overwhelmed government capacity, sparking a political crisis for the Obama administration and a firestorm of public attention. (Hipsman and Meissner 2015) Many of these children would not be eligible under either the original or expanded CAM eligibility standards. While 44 percent of the unaccompanied children released from ORR are released to parents, most are released to relatives or other adults. Federal officials have indicated that 80 percent of sponsors and adults in their homes are unauthorized immigrants (Hipsman and Meissner 2015). The 2014 surge numbers are more than any of the previous six years and more than four times as many as in FY2011.

Unaccompanied children apprehensions at the Southwest border reached an all-time peak of 112,192 in the first 10 months of fiscal year 2021, representing 9% of the 1,276,194 USBP encounters at the Southwest border. (Kandel 2021) The UM encounters figure exceeds levels for all previous fiscal years, even while representing only five- sixths of the fiscal year. DHS expects UM apprehensions to continue at their current elevated levels for the remainder of FY2021. In FY2020 and FY2021, there were 142,749 combined UM encounters. Of these, 127,164 (89%) were Title 8 apprehensions and 15,585 (11%) were Title 42 expulsions. Most of the expulsions (10,939, or 70%) occurred during FY2020, and in both fiscal years, expulsions mainly affected children from Mexico (11,506, or 74%). (Kandel 2021) Within the first three months of 2021, an unprecedented 33,000 unaccompanied minors arrived at the Southern border. (Statz and Heidbrink 2021) Soon after taking office, the Biden Administration stopped expelling unaccompanied children under Title 42, as previously stated. Most of the children arriving at the U.S. Mexico border did not travel alone but were effectively made “unaccompanied” owing to Title 42, a policy that instructs U.S. Border Patrol to refuse entry to adults recently in a country where a communicable disease is present (Statz and Heidbrink 2021). So as families are turned away under Title 42, many parents send their children to the U.S. alone rather than remain in Mexico under dangerous conditions. How did we reach this point at such a fast rate?

It’s important to recognize that the surge at the border is not limited to unaccompanied minors. The U.S. Border Patrol reported more than 1.6 million encounters with migrants along the U.S.-Mexico border in the 2021 fiscal year, more than quadruple the number of the prior fiscal year and the highest annual total on record. (Gramlich 2021) The Border Patrol reported 1,659,206 encounters with migrants at the U.S.-Mexico border last fiscal year, narrowly exceeding the prior highs of 1,643,679 in 2000 and 1,615,844 in 1986. (Gramlich 2021)

**Push Factors**

With many explanations for the surge of unaccompanied minors, there are certain “push factors” that push people away from their homes and “pull factors” that pull people to a new home for better opportunity. Pull factors include: societal, household, and gang violence and recruitment; abandonment or neglect by caregivers; human trafficking; and the social exclusion of certain recognizable groups within home countries, such as homosexuals and marginalized religious groups. (Chen and Gill 2015) Local government and corruption in different countries can also be a push factor for many. In many countries, these problems are further exacerbated by the local governments inability or wiliness to address these problems. Flight from poverty is yet another common cause of migration. In addition to these and other condition in their home country, the lure of reunited with loved ones already in the United States and the potential economic opportunities attract UM and other migrants. (Chen and Gill 2015)

In 2013, the U.N. High Commissioner for Refugees conducted interviews with a representative group of about 400 unaccompanied minors from El Salvador, Guatemala, Honduras, and Mexico, all of whom had arrived in the United States since FY2012. Most of the unaccompanied minors provided multiple reasons for leaving their home countries. Many left to reunite with family or pursue opportunities in the United States. Out of those interviewed, it revealed that of those interviewed, 21% mentioned a family member, 51% mentioned economic opportunity, and 19% mentioned education. (Kandel, Bruno, Meyer, Taft-Morales, Wasem 2015) Violence also played a large role in their decisions to emigrate. Nearly half of the children (48%) said they had experienced serious harm, or one had been threatened by organized criminal groups or state actors, and more than 20% had been subject to domestic abuse. (Kandel, Bruno, Meyer, Taft-Morales, Wasem 2015) In addition, it appears endemic poverty is playing a role in the emigration of unaccompanied minors, as 16% of those interviewed mentioned economic deprivation as a motive. While there is some variation depending on country of origin, with Salvatorans being more likely to cite societal violence and Guatemalans being more likely to cite economic deprivation as motives for emigration. According to the U.N. Economic Commission for Latin America and the Caribbean, about 45% of Salvadorans, 55% of Guatemalans, and 67% of Hondurans live in Poverty. (Kandel, Bruno, Meyer, Taft-Morales, Wasem 2015)

El Salvador, Guatemala, and Honduras have long struggled to address high levels of crime and violence. Counternarcotic efforts in Columbia and Mexico have put pressure on drug traffickers in those countries, leading some to battle over territory in Central America- a region with fewer resources and weaker institutions dedicated to addressing criminal activity. (Kandel, Bruno, Meyer, Taft-Morales, Wasem 2015) Increasing flows of illicit narcotics have coincided with rising levels of violence and have contributed to the corruption of government officials. Such gangs as Mara Salvatrucha (MS-13) and the “18th Street” gang (MS-18) is also playing a major role in crime and violence in the northern triangle region. The 18th Street gang was formed by Mexican youth in the Rampart section of Los Angeles in the 1960s who were not accepted into existing Hispanic gangs. M-S13 was created during the 1980s by Salvadorans in Los Angeles who had fled the country’s civil conflict. (Kandel, Bruno, Meyer, Taft-Morales, Wasem 2015) Both gangs later expanded their operations to Central America. This process accelerated after the United States began deporting illegal immigrants, many with criminal convictions, back to the northern triangle region after the passage of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996. (Arana 2005) The MS-13 and 18th Street gangs engage in man activities, such as kidnapping, extortion, and forced recruitment. In October 2012, the Treasury Department designated MS-13 as a significant transnational criminal organization whose assets would be targeted for economic sanctions pursuant to the Executive Order 13581. State Department officials have estimated roughly 85,000 members of MS-13 and MS-18 reside in northern triangle countries, with the highest concentration in El Salvador. (Kandel, Bruno, Meyer, Taft-Morales, Wasem 2015)

**Pull Factors**

Recent analyses from the Congressional Research Service uncovered causes and “pull factors of Central American Migration to the United States. Many site lacks employment opportunity and employment instability, socioeconomic and security conditions, corruption and weak governance, natural disasters, and ensuing food and insecurity. (Kandel 2021) Some observers attribute the UM surge to a so-called Biden Effect stemming from a perception of the Administration’s less restrictive immigration enforcement policies relative to those of the Trump Administration. Such policies, they contend, have signaled to migrants that they should ignore the Administrations appeals to remain in their home countries. (Kandel 2021) As mentioned earlier, some suggest that the Biden Administration’s exemption of unaccompanied children from Title 42 and its continued use for family units may have inadvertently increased UM apprehensions by prompting some parents to self-separate from their minor children who could then migrate to the U.S. border and seek asylum as an unaccompanied child. (Kandel 2021) Other critics of the Biden Administration’s response to the surge characterize some of its policies toward unaccompanied children-particularity the CAM program and ORR covering air expenses to reunite some unaccompanied children with their sponsors- as effectively completing the smuggling loop initiated by children’s parents. (Kandel 2021) Other observers counter that the UM surge results pent-up demand for asylum by migrants living under precarious conditions in Mexico because of the Trump Administration’s policies, like the use of Title 42 for all migrants.

**Conclusion**

Given the numbers in the Washington Post report, it can conclude that Biden was off to a worse trajectory in his first two months, in comparison to the Obama and Trump Administrations. More than a year later and the disparity is still increasing. If the Biden Officials claim they inherited a “broken system”, why did they terminate almost every one of the policies from the prior “broken system” almost right away after gaining power? When in fact, the policies they terminated contributed to significantly less unaccompanied children and a relatively safe, secure border. While the policies they advanced and implemented, created an unsafe environment for this many children, from no parent sponsorship required and letting “care givers” along with anyone else cross the border under the pretense of “minor” under the CAM Program. This program suffers for its lack of limitation. There is no way to guarantee the safety of every unaccompanied child going to a “sponsor” in the United States, especially since they are not DNA testing any individuals as previously stated. This could incentivize traffickers in the U.S. to sponsor a child to potentially exploit them and have them driven or flown to their home. There is a lot unknown about the future of unaccompanied minors once released into the U.S. and little research to show their outcome once released from foster care. Though we can acknowledge many downfalls with immigration policy, we can note that many of the push factors mentioned above also contribute quite considerably to the surge in unaccompanied minors at the U.S. Southern Border.

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