



# Unaccompanied Alien Children and Family Units Are Flooding the Border Because of Catch and Release Loopholes

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Border security includes the ability to remove illegal aliens that the Department of Homeland Security (DHS) apprehends, otherwise we are stuck with a system that sanctions catch and release. Due to legal loopholes and court backlogs, even apprehended illegal aliens are released and become part of the temporary, illegal population of people that we cannot remove. This must end now.

## **Legal loopholes are exploited by minors, family units, and human smugglers, and are a magnet for illegal immigration**

- In 1997, the former Immigration and Naturalization Service entered into the ***Flores Settlement Agreement*** relating to the detention and release of unaccompanied alien children (UACs). The *Flores* settlement agreement has now been litigated for over twenty years, spawning multiple onerous court decisions that handicap the government's ability to detain and promptly remove UACs.
  - Under the Flores Agreement, DHS can only detain UACs for 20 days before releasing them to the Department of Health and Human Services which places the minors in foster or shelter situations until they locate a sponsor.
  - When these minors are released, they often fail to appear for court hearings or comply with removal orders.
  - These legal loopholes lead to “catch and release” policies that act as a “pull factor” for increased future illegal immigration.
  - This has incited smugglers to place children into the hands of adult strangers so they can pose as families and be released from immigration custody after

crossing the border, creating another safety issue for these children.

- The **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008** **limits** DHS's ability to promptly return UACs who have been apprehended at the border and creates additional loopholes.
  - Under TVPRA, UACs who are not from Mexico and Canada are exempt from prompt return to their home country. We must amend the TVPRA so that all UACs who are not victims of human trafficking, regardless of country of origin, can be safely and promptly returned to their home countries.
  - We must amend TVPRA to limit the period to file asylum claims for UACs to one year consistent with all other applicants for asylum and ensure that these asylum cases are heard only in immigration court (no second bite at the apple).
  - We must end abuse of the Special Immigrant Juvenile (SIJ) visa to ensure the applicant proves reunification with both parents is not viable due to abuse, neglect, or abandonment and that the applicant is a victim of trafficking. This is necessary as many UACs are able to obtain a Green Card through SIJ status even though they were smuggled here to reunify with one parent present in the United States.

**Once released into the interior of the United States, with few exceptions, UACs will generally remain in the country.**

- UACs frequently abscond and fail to appear for their removal hearings before an immigration judge—with **66% of all removal orders** for UACs from FY15 to FY17 resulting from a UAC's failure to appear for a hearing.
- **Only 3.5 percent** of unaccompanied minors apprehended are eventually removed from the United States.
- Over 100,000 UACs were released into the interior from FY16 to today.
- The 100,000+ UACs who were released are **in addition** to the more than 167,000 family units (i.e. alien children who are accompanied by an adult claiming to be a relative or guardian) that were apprehended by U.S. Customs and Border Protection from FY16 to date.
  - **Nearly all of these Family Units are released into the interior of the United States** because of judicially-imposed constraints on ICE's authority to detain the entire family units as a result of recent rulings in the *Flores* consent decree litigation.

**These loopholes create a pull factor that invites more illegal immigration and encourages parents to pay and entrust their children to criminal organizations that will smuggle them in—often while abusing and molesting those children along the way.**

- In recent months, there has been a staggering increase in the apprehension of UACs and Family Units from Central America crossing the southern border and being released into the United States.
- The number of family units crossing the border increased by **625% since last April**.
- In December, officials apprehended over 4,000 UACs and 8,000 Family Units—an increase of 30 percent and 68 percent respectively since October.
- Thousands of these unaccompanied children—particularly young teenage girls—are subjected to sexual abuse by smugglers, criminals, and even government officials along their journey to the United States. Many also never make it to the United States, instead pressed into service at brothels and bars in Mexico and Guatemala.

**The influx of unaccompanied alien minors also creates recruiting opportunities for brutal gangs such as MS-13**

- UACs provide fertile recruiting ground for violent gangs, such as MS-13. While there are no official statistics on the number of UACs involved with gangs, anecdotal evidence suggests this gang recruiting strategy is working. For example, a June 2017 review of UACs in the custody of the Department of Health and Human Service’s Office of Refugee Resettlement found that 39 of 138 UACs (28%) were involved with gangs, with the vast majority of those involved voluntarily.<sup>[1]</sup><sup>(#\_ftn1)</sup>
- Other enforcement examples suggest similar numbers. For example, Immigration and Customs Enforcement’s Operation Matador resulted in 39 MS-13 arrests in 30 days in the New York City area, 12 of whom had entered the country as unaccompanied minors. Fox News reported in November 2017 that, of 214 MS-13 members rounded up in the span of a few weeks, officials said at least a third would have been classified as UACs.<sup>[2]</sup><sup>(#\_ftn2)</sup>

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<sup>[1]</sup><sup>(#\_ftnref1)</sup> See Letter from Barbara Pisaro Clark, Acting Assistant Secretary for Legislation, Department of Health and Human Services, to the Honorable Ron Johnson, Chairman, Senate Committee on Homeland Security and Governmental Affairs (June 21, 2017), <https://www.hsgac.senate.gov/download/orr-response-to-sen-johnson> (<https://www.hsgac.senate.gov/download/orr-response-to-sen-johnson>).

[2].(#\_ftnref2) See Joseph J. Kolb, *Feds crack down on MS-13, but immigration policy lets new recruits in, figures show*, Fox News (Nov. 30, 2017), [http://www.foxnews.com/us/2017/11/30/as-raids-target-m-13-gang-fears-resurgent-ranks-linger.html \(/redirect?url=http%3A%2F%2Fwww.foxnews.com%2Fus%2F2017%2F11%2F30%2Fas-raids-target-m-13-gang-fears-resurgent-ranks-linger.html\)](http://www.foxnews.com/us/2017/11/30/as-raids-target-m-13-gang-fears-resurgent-ranks-linger.html (/redirect?url=http%3A%2F%2Fwww.foxnews.com%2Fus%2F2017%2F11%2F30%2Fas-raids-target-m-13-gang-fears-resurgent-ranks-linger.html)).

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