

---

# CONGRESSIONAL TESTIMONY

---

## Ensuring the Safety and Well-Being of Unaccompanied Children

### Testimony Before Committee on the Judiciary

United States Senate

**June 14, 2023**

Lora Ries  
Director, Border Security and Immigration Center  
The Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy  
The Heritage Foundation

My name is Lora Ries. I am the Director of the Border Security and Immigration Center at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

An effort to truly ensure the safety and well-being of unaccompanied children requires an understanding of how we arrived at the unaccompanied alien children (UAC) crisis we currently face—a historic 366,000 UACs encountered just on the southwest land border, so far, during the Biden Administration.<sup>1</sup> To do so, we must go back to the beginning of the *Flores* class-action lawsuit.

In the 1980s, an alien minor named Jenny Flores was being detained by the Immigration and Naturalization Service (INS) after she was caught illegally entering the U.S. to join her mother, who was also living here unlawfully.<sup>2</sup> Fearing deportation, the mother was unwilling to go to the INS facility to get her daughter released. Jenny Flores had a cousin who was lawfully in the U.S., but INS refused to release Flores to anyone who was not a legal guardian for the welfare of the minor.<sup>3</sup>

A number of organizations sued the government in 1985, demanding the INS screen other available adults and release children to them “if they appeared to be competent and not molesters and things of that nature.” They also sought to improve the detention conditions of facilities in which the INS held

---

<sup>1</sup>The CBP nationwide number of UACs encountered was 368,207. U.S. Customs and Border Protection, “Nationwide Encounters,” <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (accessed June 11, 2023).

<sup>2</sup>NPR, “The History of the *Flores* Settlement and Its Effects on Immigration,” June 22, 2018, <https://www.npr.org/2018/06/22/622678753/the-history-of-the-flores-settlement-and-its-effects-on-immigration?ft=nrml&f=622678753> (accessed June 12, 2023).

<sup>3</sup>*Ibid.*

minors to meet minimum child welfare standards.<sup>4</sup> The lawsuit eventually went to the U.S. Supreme Court, which held that the INS’s regulation was rationally connected to the government’s interest in preserving and promoting the welfare of detained juveniles and was not punitive.<sup>5</sup> The Court also stated that “the period of detention that may result is limited by the pending deportation hearing, which must be concluded with reasonable dispatch to avoid habeas corpus.”<sup>6</sup>

Despite the Supreme Court ruling in favor of the INS, then-INS Commissioner Doris Meissner signed the *Flores* settlement agreement in 1997, making concessions on behalf of the government. Under the agreement, the government must release minor aliens “without unnecessary delay” to the minor’s parent, legal guardian, other adult relative, other individual designated by the parent/guardian, or “an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.”<sup>7</sup>

In an attempt to codify provisions of the *Flores* agreement, companion bills were introduced in Congress, starting in 2000 with the Unaccompanied Alien Child Protection Act (UACPA). This bill went further than the *Flores* agreement, however.

The UACPA: (1) provided for the parole of UACs into the U.S.; (2) created a right to both a guardian ad litem and access to counsel; (3) expanded protections for alien minors, using the rarely used Special Immigrant Juvenile (SIJ) program; (4) waived statutory requirements to apply for a green card and asylum; and (5) created the category of UACs in “asylum and refugee-like circumstances.”<sup>8</sup>

The stated intent of the bill was to protect alien minors, but the bill significantly lowered the bar for UACs to receive immigration benefits and services—providing easily foreseeable consequences that parents would intentionally send their children unaccompanied across the border in the hopes of gaining a family foothold in the U.S. for later reunification in the U.S.

Meanwhile, in 2002, responsibility for UACs was transferred from the INS to another government bureaucracy, the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS), further fragmenting the immigration bureaucracy across federal agencies.<sup>9</sup> The Homeland Security Act transferred functions to the ORR, including making placement determinations for all UACs in federal immigration custody, implementing policies with respect to the care and placement of UACs, and ensuring that qualified and independent legal counsel is timely appointed to represent the interests of each child.<sup>10</sup>

---

<sup>4</sup>*Ibid.*, and Matt Sussis, “The History of the *Flores* Settlement: How a 1997 Agreement Cracked Open Our Detention Laws,” Center for Immigration Studies, February 11, 2019, <https://cis.org/Report/History-Flores-Settlement> (accessed June 12, 2023).

<sup>5</sup>*Reno v. Flores*, 507 U.S. 292 (1993).

<sup>6</sup>*Id.*

<sup>7</sup>*Flores v. Reno*, Stipulated Settlement Agreement, 1997, <https://www.aila.org/File/Related/14111359b.pdf> (accessed June 12, 2023).

<sup>8</sup>The Unaccompanied Alien Child Protection Act of 2000, S. 3117, 106th Cong., 2nd Sess., <https://www.congress.gov/bill/106th-congress/senate-bill/3117/text> (accessed June 12, 2023).

<sup>9</sup>Homeland Security Act of 2002, Public Law 107–296, § 462(b).

<sup>10</sup>*Ibid.*

After four failed attempts to pass the UACPA through both chambers of Congress, it was folded into the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),<sup>11</sup> which became law—and negatively changed the course of U.S. immigration.

Section 235 of the TVPRA, “Enhancing Efforts to Combat the Trafficking of Children,” begins by stating:

to enhance the efforts of the United States to prevent trafficking in persons, the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services, shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.<sup>12</sup>

However, the remainder of section 235, and the implementation of it, have had the opposite effect. Section 235(a)(2) distinguishes between UACs from contiguous and non-contiguous countries. For UACs from contiguous countries, the law provides they should be returned to their home countries of Canada or Mexico, but for those from everywhere else, the law requires they be transferred to HHS, placed in removal proceedings, provided access to counsel and child advocates, and be eligible for easier and expedited immigration benefits.

One such example is the Special Immigrant Juvenile (SIJ) visa. Section 235(d) of the TVPRA requires adjudication of an SIJ application within 180 days and waives several grounds of inadmissibility: public charge, labor certification, presence without admission or parole, misrepresentation, stowaways, immigrants without documentation, and unlawful presence in excess of 180 days. The law also provides assistance to SIJs, including federal reimbursement to states.

Predictably, the number of UACs coming to the U.S. skyrocketed after the TVPRA was enacted. In 2010, the U.S. Border Patrol apprehended less than 20,000 UACs. By 2013, the number doubled to nearly 40,000. In 2014, nearly 70,000 UACs were apprehended. In 2019, the number of UACs was approaching 80,000. The number rose to almost 147,000 in 2021 and over 152,000 in 2022.

Likewise, the number of SIJ applications also grew significantly after the TVPRA loosened the requirements. The SIJ classification was established by Congress in 1990 to provide a pathway to legal status for children in the U.S. foster care system who required court intervention to protect them from parental abuse, abandonment, or neglect. U.S. Citizenship and Immigration Services (USCIS) noted in 2019 that “the SIJ classification has increasingly been sought by juvenile and young adult immigrants solely for the purposes of obtaining lawful immigration status and not due to abuse, neglect or abandonment by their parents.”<sup>13</sup>

---

<sup>11</sup>William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457, § 235(a)(2).

<sup>12</sup>Ibid. at § 235(a)(1).

<sup>13</sup>News release, “USCIS Clarifies Special Immigrant Juvenile Classification to Better Ensure Victims of Abuse, Neglect and Abandonment Receive Protection,” U.S. Citizenship and Immigration Services, October 15, 2019, <https://www.uscis.gov/news/uscis-clarifies-special-immigrant-juvenile-classification-better-ensure-victims-abuse-neglect-and-abandonment-receive-protection> (accessed April 7, 2020).

In 2010, approximately 1,600 SIJ applications were filed with USCIS.<sup>14</sup> By 2014, the number of SIJ applications filed jumped to over 5,800. One year later, the number was over 11,000 applications. In 2016, the number approached 20,000 SIJ applications. With the exception of 2020, when the number of applications dropped to 18,000 due to COVID-19, the number has remained north of 20,000 and it jumped to almost 32,000 in 2022.

In addition to the TVPRA’s benefits for UACs, the *Flores* agreement has been revisited multiple times, including in 2015, when the Obama Administration sought to carve out an exception for minors who had arrived in the U.S. with their parents during a border surge from Central America. The Administration wanted to detain some of them for as long as it took to process their cases, but California federal judge Dolly Gee denied the request and instead ordered the Obama Administration to release detained minors and their mothers.<sup>15</sup> This expanded the scope of *Flores* by adding *accompanied* minors to operations that previously covered only unaccompanied minors. This meant that family units with a child would be ordered released from detention. Judge Gee went even further, interpreting the *Flores* settlement language “without unnecessary delay” to mean no more than 20 days of detention was allowed.<sup>16</sup>

Because removal proceedings are not completed within 20 days, U.S. Immigration and Customs Enforcement (ICE) began releasing UACs and family units from detention into American communities to comply with the new *Flores* order, resulting in “catch and release.” Not surprisingly, the number of family units—and *claimed* family units—coming to the southwest border soared. In 2015, the Border Patrol apprehended over 39,000 family units in the southwest sectors.<sup>17</sup> That number rose to over 107,000 in fiscal year 2018,<sup>18</sup> and with the exception of 2020 due to COVID-19, has been over 450,000 family units in each of fiscal years 2019, 2021, and 2022.<sup>19</sup>

After the Department of Homeland Security (DHS) learned that illegal aliens and smugglers were taking advantage of the *Flores* family unit expansion and posing as fake family units for release into the U.S., DHS began a family DNA testing pilot in 2019.<sup>20</sup> Family unit fraud can lead to, or stem from, other crimes, including immigration violations, identity and benefit fraud, human smuggling, human trafficking, and child exploitation. In the pilot, border agents would test the DNA if they

---

<sup>14</sup>U.S. Citizenship and Immigration Services, “Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year, Quarter, and Case Status Fiscal Years 2010-2023,” [https://www.uscis.gov/sites/default/files/document/data/I360\\_sij\\_performancedata\\_fy2023\\_qtr1.pdf](https://www.uscis.gov/sites/default/files/document/data/I360_sij_performancedata_fy2023_qtr1.pdf) (accessed June 11, 2023).

<sup>15</sup>*Flores v. Johnson*, 212 F. Supp. 3d 864, 871-73 (C.D. Cal. 2015). In 2016, a three-judge panel of the Ninth Circuit Court of Appeals reaffirmed that *Flores* applies to all children, regardless of whether they are accompanied. *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).

<sup>16</sup>*Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015).

<sup>17</sup>U.S. Customs and Border Protection, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016,” <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (accessed June 11, 2023).

<sup>18</sup>U.S. Customs and Border Protection, “U.S. Border Patrol Southwest Border Apprehensions by Sector FY2018,” <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions> (accessed June 11, 2023).

<sup>19</sup>U.S. Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (accessed June 11, 2023).

<sup>20</sup>U.S. Department of Homeland Security, “Privacy Impact Assessment for the Operational Use of Familial DNA,” September 10, 2021, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp071-operationaluseoffamilialdna-september2021.pdf> (accessed June 11, 2023).

suspected family fraud from unusual behavior or reasonably believed that they observed the same child(ren) on multiple occasions with different adults claiming a parent-child relationship.

Despite successfully identifying fraudulent families, the Biden Administration decided to end family DNA testing at the border when the contract ended on May 31, 2023.<sup>21</sup> This termination decision will knowingly result in the same conditions that existed before DHS began DNA testing—smuggling and recycling of children to appear in fraudulent families at the border and more child trafficking once inside the U.S.

Homeland Security Secretary Alejandro Mayorkas frequently labels his open-border policies and operations as “safe, orderly, and humane,” including his stated policy that UACs would be allowed entry to the U.S. and would not be returned. However, there is nothing safe or humane about enticing unaccompanied alien children to come to our border in the hands of cartels, which regularly rape girls and too often abandon toddlers near the border or drop them over the border wall.

Unfortunately, life does not improve for UACs once they enter the U.S. With the historic numbers of UACs released into the U.S., this Administration has lowered its standards for sponsors who may take the UACs into their homes. The results have been neither humane nor—in some cases—legal. *The New York Times* recently published a series of articles on UACs working overnight in slaughterhouses, replacing roofs, and operating machinery in factories, all in violation of child labor laws.<sup>22</sup> Furthermore, HHS has lost track of at least 85,000 UACs in the U.S.<sup>23</sup> An HHS whistleblower recently testified before the Subcommittee on Immigration Integrity, Security, and Enforcement of the House Judiciary Committee that “the U.S. Government has become the middleman in a large scale, multi-billion-dollar, child trafficking operation run by bad actors seeking to profit off the lives of children.”<sup>24</sup>

In addition to the actions of cartels and smugglers to exploit America’s wide-open door for UACs, gang members likewise enter among the UAC population. Whether teenagers themselves, or adults who falsely claim they are minors, this dangerous portion of UACs cannot be overlooked. Needless crime and death have resulted from the entry of such gang members into the country when they simply should not be here. For example, a 17-year-old MS-13 gang member sexually assaulted and strangled a 20-year-old autistic woman to death in Aberdeen, Maryland, in July 2022, three months after entering the U.S. illegally as a UAC.<sup>25</sup>

---

<sup>21</sup>U.S. Customs and Border Protection, “End of Contract for Deoxyribonucleic Acid (DNA) Testing for Suspected Family Unit Fraud,” May 2023, [https://justthenews.com/sites/default/files/2023-05/LEAKED%20MEMO\\_Redacted.pdf](https://justthenews.com/sites/default/files/2023-05/LEAKED%20MEMO_Redacted.pdf) (accessed June 11, 2023).

<sup>22</sup>Hannah Dreier, “As Migrant Children Were Put to Work, U.S. Ignored Warning,” *New York Times*, April 17, 2023, <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html> (accessed June 12, 2023).

<sup>23</sup>Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *New York Times*, February 25, 2023, <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html> (accessed June 12, 2023).

<sup>24</sup>Tara Lee Rodas, “The Biden Border Crisis: Exploitation of Unaccompanied Alien Children,” testimony before the Subcommittee on Immigration Integrity, Security, and Enforcement, Committee on the Judiciary, U.S. House of Representatives, April 26, 2023, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/rodas-testimony.pdf> (accessed June 12, 2023).

<sup>25</sup>U.S. House of Representatives Committee on the Judiciary, “House Judiciary Report Faults Biden Admin for Release of Alleged MS-13 Member Now Charged with Murder,” May 23, 2023, <https://judiciary.house.gov/media/in-the-news/house-judiciary-report-faults-biden-admin-release-alleged-ms-13-member-now> (accessed June 12, 2023).

The best way to ensure the safety and well-being of unaccompanied children is to remove the pull factors for UACs to come to the U.S. This means ending the offer of immigration benefits to someone because they are a UAC, including the benefits offered in the TVPRA, Judge Gee’s interpretation of *Flores* that both unaccompanied and accompanied alien children should be released within 20 days, and the various exceptions to rules and enforcement for UACs, including the latest “Circumvention of Lawful Pathways” rule finalized by the Biden Administration.<sup>26</sup>

Preventing UACs from coming to the U.S. means a child does not suffer at the hands of cartels and smugglers south of the border, and the child will not be turned over to a sponsor who may be unvetted or unknown to the minor. It also means preventing children from being forced into labor and sex trafficking once in the U.S. Instead of exploring ways to better accommodate the current UAC flow, Congress should accept that laws and judicial orders have resulted in terrible consequences and finally overturn them.

\*\*\*\*\*

The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2022, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2022 operating income came from the following sources:

- Individuals 78%
- Foundations 17%
- Corporations 2%
- Program revenue and other income 3%

The top five corporate givers provided The Heritage Foundation with 1% of its 2022 income. The Heritage Foundation’s books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

---

<sup>26</sup>Circumvention of Lawful Pathways, *Federal Register*, Vol. 88, p. 31314 (May 16, 2023), <https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways> (accessed June 12, 2023). This rule took effect on May 11, 2023.