



Unaccompanied minors and unintended consequences

By Alex Nowrasteh

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Government policies have unintended consequences that can play out far into the future. There is perhaps no better example of this than the complex legal changes that have impacted the current surge of unaccompanied immigrant children (UAC) coming across the border. American policies crafted in the 1990s likely unintentionally had a role in incentivizing some of the migration and the smugglers that carry many of the migrants.

Two unrelated border policies have hobbled the government's response to the surge in UAC. The first policy was about how the government should humanely treat apprehended UAC. Children used to be treated in the same way as adults were. That practice was challenged by a 15-year-old Salvadorian girl named Jenny Lisette Flores in a 1985 lawsuit that was finally settled in 1997

Under the Flores settlement, as it became known, UAC were exempted from "expedited removal" — a newly created process in 1996 that allowed for removal of non-asylum seekers without a court hearing. Instead, it required the government to "ensure the prompt release of children" and place them "in the least restrictive setting appropriate" pending a court hearing. Parents, legal guardians and adult relatives of the UAC were the preferred appropriate settings designated by the government.

In 2002 and again in 2008, this legal framework was codified and clarified with very little resistance in Congress. At that time, few unaccompanied children were crossing illegally despite these relatively lenient policies. In 2008, Congress actually liberalized the Flores agreement considerably by making releases much less discretionary and moving temporary detention to Health and Human Services prior to the children being settled with their families or in foster care.

When it came up for a vote, 183 Republicans voted for the 2008 law. In fact, even Rep. Bob Goodlatte (R-Va.), the tough chairman of the House Judiciary Committee who just held a hearing entitled "An Administration-Made Crisis: The Border Surge of Unaccompanied Alien Minors," voted for the current policy regime.

The 2008 bill was crafted by both the Republican and Democratic Judiciary Committee staff and was so uncontroversial that the final version passed by unanimous consent in the Senate and a voice vote in the House. It was then signed into law by a Republican president.

The second border policy unintentionally subsidized human smugglers who bring the UAC into the United States. This policy, too, can trace its roots back to the 1990s. Border enforcement was built up heavily during the 1990s and early 2000s — increasing the number of border patrol by about nine-fold and the number of hours spent patrolling the border up over 400 percent.

As a result of this increase in enforcement, many unlawful migrants began to use human smugglers instead of attempting to cross the border themselves. As a result, the cost of hiring a smuggler has steadily risen, from about \$700 in 1993 to between \$3,000 and \$7,500 today. The migrants who pay such high prices are those who very much want to come to the United States — like the unlawful immigrant parents who want to send their children from their violent home countries to be with them in the United States.

This intensive border enforcement policy has been magnified under the Obama administration. The administration has increased prosecution for illegal entry so much so that in 2012, 86 percent of all unauthorized immigrants apprehended at the border were charged with crimes, formally removed, or repatriated into remote areas of their home country. By comparison, only 23 percent faced such severe consequences in 2005.

Early evidence has shown this strategy of removing unlawful immigrants with severe consequences effectively deters some unlawful immigration. Recidivism — the likelihood of repeat attempts to enter the United States — has fallen under this new approach. But the side effect is that more unlawful immigrants are using smugglers, who have turned to transporting minors fleeing violence and seeking family reunification in the United States.

Since 2009, when the government first began to track it, the percentage of unaccompanied minors out of total border apprehensions has risen from less than 4 percent to almost 10 percent. "As the chances of getting an adult across have fallen because of tighter controls," write the editors of *The Economist*, "the odds of getting a child in (for the same \$3,000 payment) have stayed the same." Our immigration enforcement policy on the border has made human smuggling more pervasive.

There are many factors causing the current surge of UAC. Violence and poverty in their home countries, family reunification in the United States, fewer restrictive immigration laws in Mexico that allow passage for Central American immigrants, and changes in U.S. treatment of immigrants all play a role. What is also clear is that some American politicians who blame American law for the surge actually voted for that American law in the past. Thus, the law of unintended consequences combined with partisan politics has created a profoundly disturbing crisis at the border.

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