Increasing Numbers of Unaccompanied Alien Children at the Southwest Border

Updated August 5, 2021

The number of encounters (apprehensions or expulsions) of unaccompanied alien children (UAC, unaccompanied children) at the U.S.-Mexico border with the Department of Homeland Security’s (DHS’s) U.S. Customs and Border Protection (CBP) in the first nine months of FY2021 (93,512) already exceeds the previous apprehensions record from FY2019 (76,020). UAC encounters declined substantially from FY2019 to FY2020, largely because of the COVID-19 pandemic and related public-health border enforcement measures. Starting in June 2020, they increased consistently before almost doubling from January to February 2021 and again from February to March. They have since remained elevated. March 2021 UAC encounters (18,723) were the highest monthly total on record (Figure 1). U.S. officials say figures for July may exceed the March record number, and the figures for the rest of FY2021 are also expected to remain elevated.

Figure 1. UAC Encounters at Southwest Border by Month, FY2018-FY2021*

Notes: *FY2021 figures represent nine months (or three-quarters) of the fiscal year, from October 1, 2020, through June 30, 2021. Figures for FY2020 and FY2021 include Title 8 apprehensions and Title 42 expulsions; those for FY2018 and FY2019 include only apprehensions. Figure 1 does not present statistics on UAC deemed inadmissible.

The Department of Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC) exercises an authority under Title 42 of the U.S. Code (public health) that permits DHS to rapidly expel individuals who lack valid visas or are apprehended between U.S. ports of entry in order to prevent the spread of COVID-19 (expulsions). However, a federal judge halted UAC expulsions in November 2020, and the Biden Administration formally rescinded UAC expulsions in February 2021. CBP currently apprehends virtually all unaccompanied children under Title 8 of the U.S. Code (immigration), as in prior years.

Unaccompanied alien children are statutorily defined as minors under age 18 who lack both lawful U.S. immigration status and a parent or legal guardian in the United States who is available to provide care and physical custody. UAC treatment and processing are governed by several statutes and a legal settlement. These provisions require that arriving UAC from noncontiguous countries be transferred to the custody of HHS’s Office of Refugee Resettlement (ORR) and allowed to apply for asylum or other forms of immigration relief. In contrast, the law permits CBP to promptly repatriate Mexican and Canadian unaccompanied children who are not trafficking victims or who do not fear persecution in their countries.

UAC apprehensions have increased and fluctuated substantially in the past decade (Figure 2). FY2020 saw a decline to 30,557 encounters—which included 19,618 Title 8 apprehensions and 10,939 Title 42 expulsions that only occurred in the second half of the fiscal year—as the result of the pandemic. In the first nine months of FY2021, the 93,512 UAC encounters included 88,866 apprehensions and 4,646 expulsions, the latter occurring largely in October and November. Most apprehended UAC originate from Mexico and the Northern Triangle countries of El Salvador, Guatemala, and Mexico; these countries have reversed places in terms of dominating the UAC flow. Mexican children accounted for 73% of UAC apprehensions in FY2012, compared to 20% of UAC encounters in FY2021.
Several federal agencies handle the apprehension, processing, and repatriation or U.S. placement of UAC. CBP apprehends, processes, and initially detains UAC encountered along U.S. borders. DHS’s U.S. Immigration and Customs Enforcement (ICE) transports UAC from CBP to ORR custody. ORR shelters and places UAC with sponsors, usually family members, as they await an immigration hearing. Most UAC apply for asylum, and DHS’s U.S. Citizenship and Immigration Services adjudicates initial asylum petitions. The Department of Justice’s Executive Office of Immigration Review conducts immigration proceedings, during which an immigration judge determines whether a UAC is removable or qualifies for relief that allows him or her to remain in the United States. ICE repatriates UAC who are ordered removed.

Declining UAC apprehensions in FY2020 led ORR to reduce housing capacity within its network of state-licensed shelters. ORR also followed CDC public health guidelines and reduced the number of children allowed in its shelters. Consequently, when referrals significantly increased in early 2021, the agency lacked shelter capacity. Initially, many UAC were housed temporarily in CBP facilities (which were not designed to hold children), often for periods exceeding the 72-hour legal limit. CDC then directed ORR to accommodate children at full capacity, maintaining that relaxing COVID-19 guidelines at ORR shelters, despite potential health risks, was preferable to prolonged stays in CBP facilities.

To move UAC promptly out of CBP custody, ORR has also sought to open large temporary influx facilities and emergency intake sites to supplement its existing shelters. Such temporary facilities accommodate UAC surges, scale up relatively quickly, are often sited on federally owned or leased properties, and are typically not state licensed. Child advocates contend that
stays in these facilities can cause lasting emotional trauma for children, and that ORR should expedite reunifying children with sponsors.

Related Biden Administration initiatives include the following:

- rescinding a DHS-ORR information-sharing agreement that reportedly discouraged relatives lacking lawful immigration status from sponsoring children;
- authorizing ORR to pay for some children’s transportation costs; and
- restarting the Central American Minors (CAM) Refugee and Parole Program that allows children to apply for refugee status without traveling to the United States.

Author Information

William A. Kandel
Analyst in Immigration Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.