

Web of Bureaucratic Borders

Children Seeking Asylum in the United States

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A Typical Child's Path circa 2019

- ▶ 2016: Unaccompanied Minor age 14 surrenders at the U.S. southern border with Mexico or is apprehended upon crossing the Rio Grande River into Texas
- ▶ 2016: Held in a Border Patrol Station for up to 72 hours, Department of Homeland Services begins deportation or *Removal* hearing process in Department of Justice, “*Immigration Court*”
- ▶ 2016: Transferred to the Custody of Health and Human Services, “*Office of Refugee Resettlement*”
- ▶ 2016: 60 days to 6 months in custody; released to relative in New York
- ▶ 2017: First hearing in NY Immigration Court, No Counsel appointment
- ▶ 2017: Second hearing, perhaps appears with counsel who informs court child will seek asylum before the U.S. Citizenship and Immigration Service Asylum Office—case continued
- ▶ 2017: Child files for asylum and awaits interview
- ▶ 2018: Immigration court status hearing, still waiting for interview; case continued
- ▶ 2019: Child prepares for and attends interview. Asylum officer asks if child is living with a parent. Child answer yes. Asylum officer terminates interview and sends rejection of primary jurisdiction due to **new** Administration Process. If Child turns 18 same result.
- ▶ 2019: Case returns to Immigration Court, judge will schedule child for a full asylum adversarial trial most likely date 2021 or 2022.

Bureaucratic Borders



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Bureaucratic Borders

- ▶ Five separate federal agencies
- ▶ Minimum of two periods of detention—average length of detention now over 75 days.
- ▶ No right to free counsel or appointed law guardian in federal process
- ▶ Retroactive changes in procedure and substantive law
- ▶ No access to federal court until entire administrative process is complete
- ▶ Potential of involvement with state family or custodial courts
- ▶ Limited or no financial or health care support but access to free public education

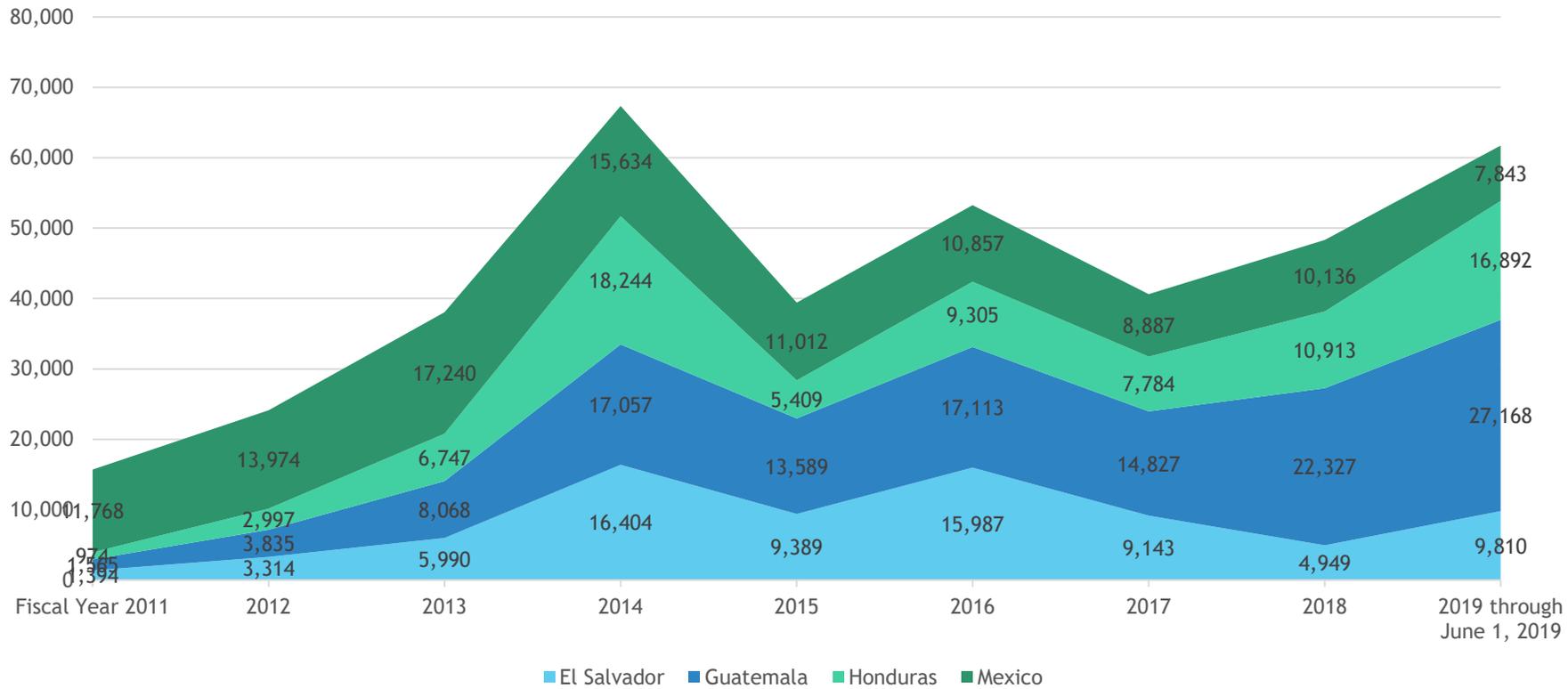


Arrivals--Unaccompanied Minor Children by Country

Country	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY partial 2019	TOTAL
El Salvador	5,990	16,404	9,389	15,987	9,143	4,949	9,810	71,672
Guatemala	8,068	17,057	13,589	17,113	14,827	22,327	27,168	120,149
Honduras	6,747	18,244	5,409	9,305	7,784	10,913	16,892	75,294
Mexico	17,240	15,634	11,012	10,857	8,887	10,136	7,843	107,351

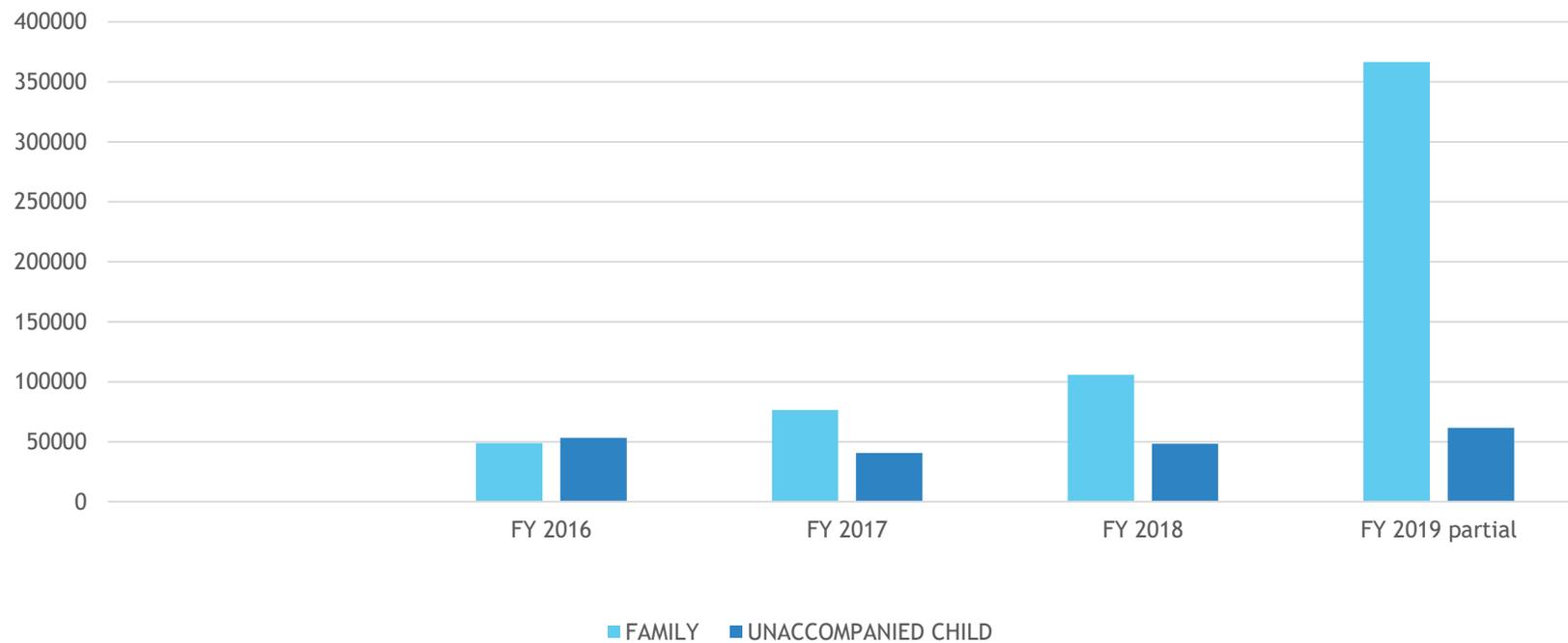
www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions

Totals Compared by Country

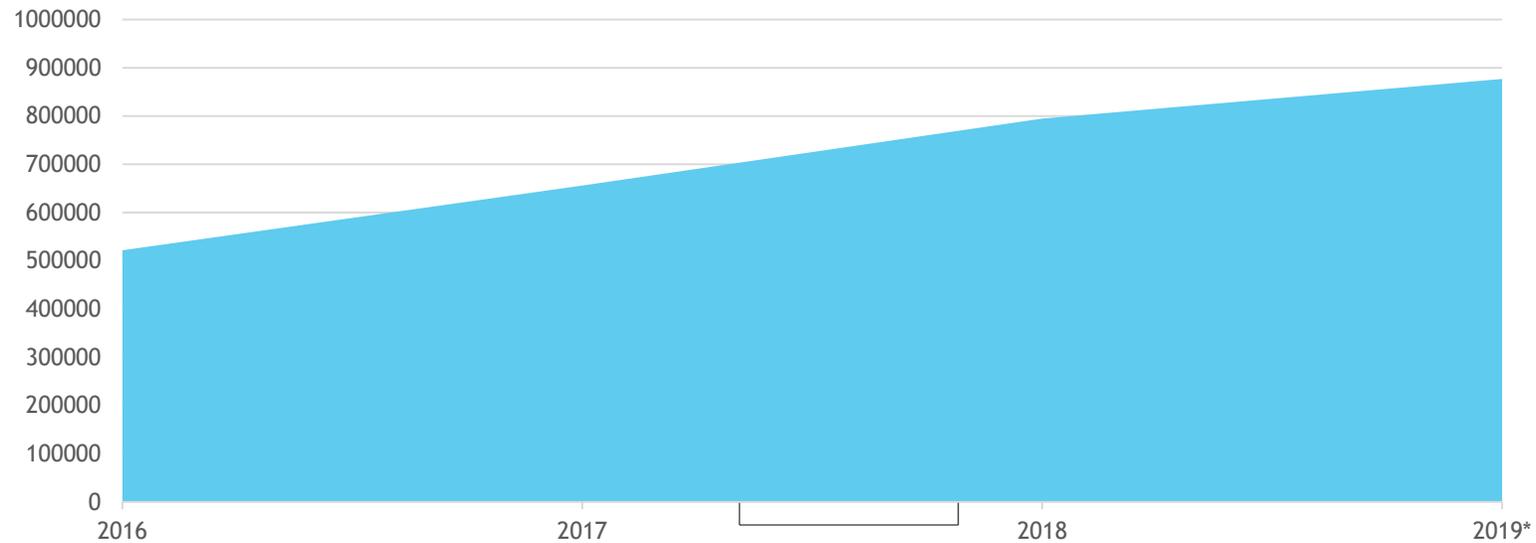


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Context Matters—Comparison to Arrivals by Family Units

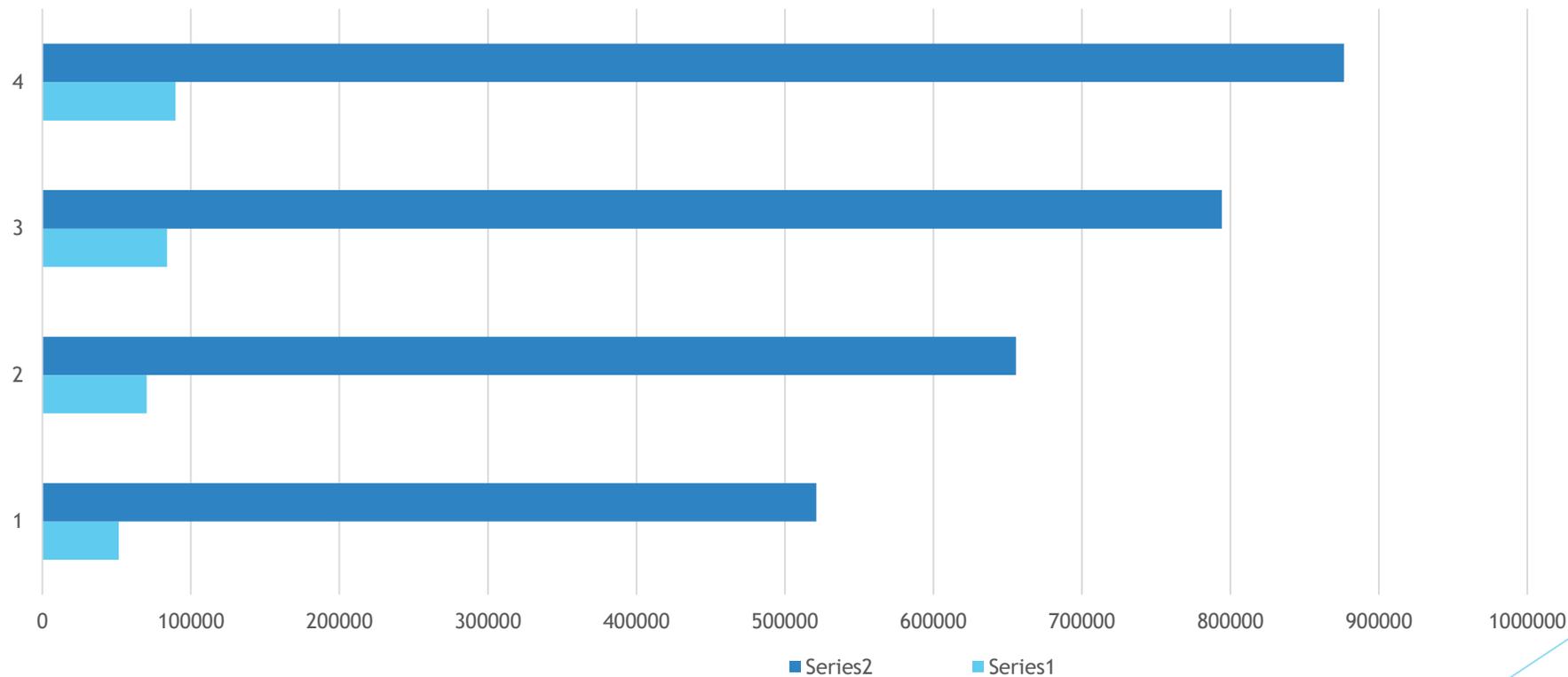


The Workload of the Immigration Court all cases



Pending Unaccompanied Child Cases

Now nearly 90,000 pending or close to 10% of the court workload



Trump Administration Recent Changes Summer of 2019

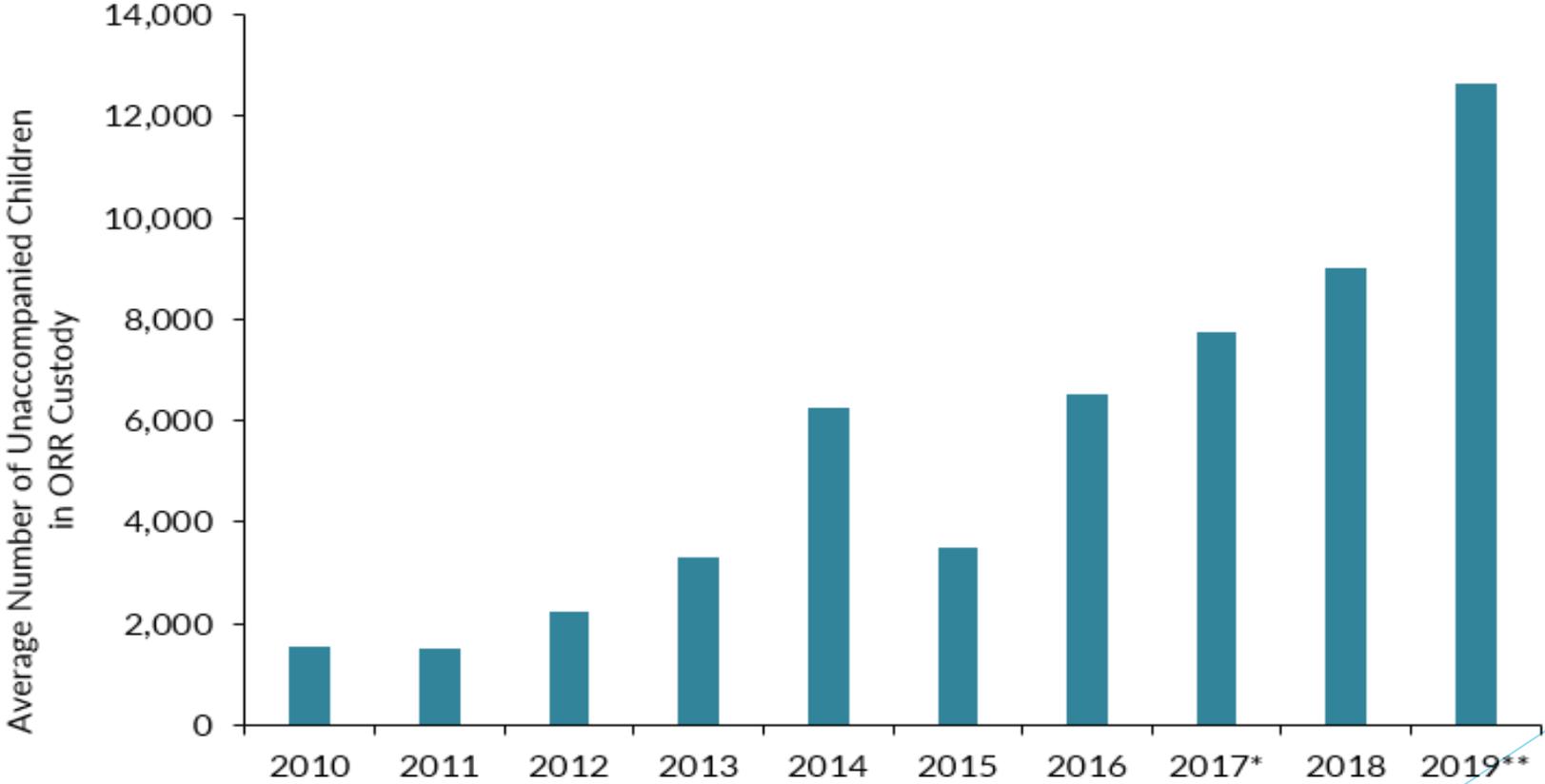
- ▶ “Migration Protection Protocol”
- ▶ Remain in Mexico
- ▶ Metering of Applications at SW border
- ▶ Refusal to process asylum for anyone who enters at other than inspection point
- ▶ Unclear if applies to Children
- ▶ In litigation but reports of children refused and deaths of at least two unaccompanied youth in Mexico
- ▶ Refusal of Asylum in Exercise of Discretion
- ▶ Must have sought asylum or refugee protection in transit nations
- ▶ Must have been refused
- ▶ No authority to consider request for asylum protection unless you prove application in transit company
- ▶ May apply to children
- ▶ In litigation.

The Big Picture

- ▶ Children being forced into adversarial model of adjudication
- ▶ Right to counsel still at Child Expense
- ▶ Judges under new performance quotas
- ▶ Attorney General of the U.S. narrowing eligibility grounds for asylum
- ▶ Next battlegrounds federal appellate courts



Average Number of Unaccompanied Minors in Office of Refugee Resettlement (ORR) Custody, FY 2010-19*



www.migrationpolicy.org/article/spike-unaccompanied-child-arrivals-proves-enduring-challenge

Federal Government Readying New Detention Regimes

- ▶ In September proposed new regulations to authorize longer periods of detention for minors.
- ▶ Goal of Invalidation 20 Year Old court settlement that limits detention of children with adults
- ▶ Ends Ability of Immigration Judges to review detention of minors
- ▶ Proposed Rules had over 200,000 comments almost all in opposition.
- ▶ More litigation very likely

Forms of Protection for Children Beyond Asylum Strained

- ▶ Unique U.S. statutory protection known as “Special Immigrant Juvenile Status”
- ▶ Unprecedented applications of protection
- ▶ Limited to less than 9,600 a year and each country capped at 7% of the total quota.
- ▶ Pressure on Immigration Court to go forward to removal order even if child is in process of qualifying
- ▶ Re-characterization of children’s cases despite arrival as unaccompanied, shifting work to busiest, most expensive, most adversarial forum
- ▶ Wasting years of filings and prior applications to asylum office
- ▶ Growing rates of detention of young people who have turned 18 putting greater pressure on court to adjudicate quickly

Chaos

Confusion

Compassion Fatigue

- ▶ Congress unclear how to address the phenomenon of unaccompanied and asylum seeking children
- ▶ New pressures sweeping unaccompanied children out of main focus due to growth in arrival of families seeking protection
- ▶ Pressures on Mexico and Guatemala may not result in reduction of arrivals at U.S. border

- ▶ Contextually, the United States is still receiving a very small percentage of the worlds refugee flows and the Administration uses the SW border crisis to refuse reinstating overseas processing of refugees.

Politics as Policy

- ▶ In 2016 less than 8% of the U.S. population considered immigration an important priority or concern.
- ▶ In 2019 more than 40% of U.S. voters now believe immigration is the most important issue.

Change is Unlikely

- ▶ Either U.S. Courts will strike down the irregular adoption of new administrative rules
- ▶ Finding the bureaucratic borders are illegitimate as either procedurally irregular or substantive violations of our statutory obligations
- ▶ Or change will have to await the 2020 election results both in Congress and the Executive Branch



Children Will be Walled Out by Bureaucratic Borders

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