



Unaccompanied Children at the Southern Border – FAQs

1. **Who are these children and where are they from?**
2. **Why is there a crisis now?**
3. **Why can't the U.S. just send them back to their home countries?**
4. **Will greater border enforcement solve the problem?**
5. **Do they carry diseases and threaten public health?**
6. **Are they gang members?**
7. **Are they refugees?**
8. **Do they have a legal right to stay in the U.S.?**
9. **Can they apply for the DACA (Deferred Action for Childhood Arrivals) program?**
10. **Does the government pay for lawyers for the children?**

Resources for further information

1. **Who are these children and where are they from?**

UACs – Unaccompanied Alien Children are under 18, don't have lawful immigration status in the United States, have no parent or legal guardian in the U.S., or no U.S. parent or legal guardian who can provide care and physical custody.

Almost all the recent children come from Mexico and the Central American countries of El Salvador, Guatemala, and Honduras.. In the past, most came from Mexico but the situation is reversed now. There are greater numbers of children under 12 and of girls than in the past. According to Customs and Border Protection (CBP aka Border Patrol), they apprehended 16,067 unaccompanied children in all of fiscal year 2011. During the first eight months of this fiscal year (ending September 30) CBP apprehended 47,000 children. The children are also seeking refuge in other including Mexico, Panama, Nicaragua, Costa Rica and Belize.

2. **Why is there a crisis now?**

Drug and gang-related violence in the home countries has increased; gangs threaten extreme harm, rape, or death to youths who do not join them, so many youths and families are trying to escape. The children are also pulled to the U.S. for economic opportunities and to be reunited with parents or other family members who live in the U.S.

It's important to remember that most of those drugs fueling these gangs and violence are headed to the U.S. Sonia Nazario, who wrote the highly-acclaimed book *Enrique's Journey*, writes: "As the United States and Colombia spent billions of dollars to disrupt the movement of drugs up the Caribbean corridor, traffickers rerouted inland through Honduras, and 79 percent of cocaine-smuggling flights bound for the United States now pass through there." Also, human smugglers or coyotes are spreading rumors that the children can stay in the U.S. if they get to

the border, and then profit from these rumors by luring the family members to pay thousands of dollars to get them through Mexico and to the U.S.

3. Why can't the U.S. just send them back to their home countries?

A 2008 law, signed by President Bush after bipartisan passage in Congress, applies. The Trafficking Victims Protection Reauthorization Act of 2008 or TVPRA says:

- For UACs from bordering countries, e.g. Mexico, CBP must screen the child within 48 hours to determine if s/he may be a victim of trafficking; has a fear of returning to her country of origin; and the ability to make an independent decision to withdraw her application for admission into the United States. If the answer to *any* of these questions is "no," or if the screening is inconclusive, then CBP **must** transfer the child to the custody of the Office of Refugee Resettlement (ORR), and cannot immediately return the child to Mexico.
- Children from non-bordering countries - unless there are "exceptional circumstances" - must be transferred to ORR custody within 72 hours. If the government wants to expel these children from the United States, they must initiate regular deportation proceedings before an immigration judge. The children must be offered a "full and fair hearing" of their claims, and can't be subject to streamlined removal procedures.

4. Will greater border enforcement solve the problem?

That's unlikely. The young people are approaching the border quite openly. See the above question for details on what U.S. law requires border officials to do.

5. Do they carry diseases and threaten public health?

Sadly, anti-immigrant Americans and media are spreading rumors that these minors have untreatable diseases and pose a health risk. The Office of Refugee Resettlement says they are given a well-child exam and vaccinations to protect against communicable diseases, are screened for tuberculosis, and receive a mental health exam. If the children have been exposed to any communicable disease, they're placed in a program or facility that can quarantine the children. If they have mental health problems, they are placed in a specialized facility and not in a temporary shelter.

6. Are they gang members?

On the contrary, many have fled their home countries to escape gangs who have threatened them with violence if they don't join the gangs. See ORR's statement <http://www.acf.hhs.gov/unaccompanied-children-frequently-asked-questions> on whether the children pose a safety threat.

7. Are they refugees?

Refugee law is complex and there's no easy answer. [Note – the term 'refugee' applies while abroad; an 'asylee' applies within the United States; both are subject to the same laws.] The United States has signed numerous international treaties – under both Republican and Democratic administrations - concerning refugees. The most important are the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. U.S. immigration officers, judges, and appellate bodies and courts interpret laws relating to refugees under those international obligations.

To qualify for refugee or asylee status, the person must show s/he is unable or unwilling to return to the home country "because of persecution or a well-founded fear or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." There are certain bars, for example the person cannot be a refugee if s/he committed certain serious crimes. Persecution can be physical or mental.

There is a great amount of case law on the above words and law. including numerous U.S. cases on gang-related claims. In general they have not been favorable to those escaping gang violence. However, these are not decisions that can be made in a 5-minute interview at the border with officers who lack experience interviewing children. U.S. and international laws stipulate a person who has a "credible fear of persecution" has a right to remain in the U.S. to apply for asylum and make her case in our legal system.

Unfortunately, because Congress has been underfunding immigration courts, there is already a severe backlog for hearings – 2-3 years in some courts.

8. Do they have a legal right to stay in the U.S.?

Some of the most likely claims the youths can make are:

- Refugee status – see Question 7 above;
- Special Immigrant Juvenile Status – this allows abused, abandoned, and neglected juvenile court dependents to become lawful permanent residents;
- T visa – applies to victims of sex, labor, and possibly drug trafficking
- Other relief from deportation including prosecutorial discretion, protection against torture

9. Can they apply for the DACA (Deferred Action for Childhood Arrivals) program?

No, definitely not. What's DACA? In 2012, the government announced a program to allow some young persons aka Dreamers. If they'd been in the U.S. on June 15, 2012, and for five years from June 15, 2007 to the present time, they could be allowed to stay for two years and get a work permit. This was recently renewed for another two years. New arrivals are clearly not eligible.

10. Does the government pay for lawyers for the children?

In general, there is no right to a government-paid lawyer in immigration court, although there is a right to have an attorney at the person's expense. Many immigration lawyers are offering their services for free to the youths and some groups are organizing legal assistance as there is a general recognition that these children cannot represent themselves well. These include Kids in Need of Defense (KIND), and the American Immigration Lawyers Association (AILA) www.aila.org

In July, President Obama requested **\$3.7 billion** from Congress to deal with the situation; of that, he asked for **\$15 million** for direct legal representation services for children. *In contrast, he asked for \$39.4 million to increase air surveillance and drones even though the children are not sneaking in; they're openly turning themselves into Border Patrol.*

A new AmericaCorps program, Justice AmeriCorps, will provide about 100 lawyers and paralegals to represent the most vulnerable children in deportation proceedings.

*Ida Keir Law
idakeirlaw.com
July 30, 2014*