

Q&A: The Border Crisis of Unaccompanied Alien Minors

1. How big is the border crisis?

The number of illegal alien minors apprehended at the border is growing exponentially and has more than doubled since President Obama announced his Deferred Action for Childhood Arrivals (DACA) program in 2012. The federal government estimates that more than 90,000 minors will illegally enter the U.S. in 2014 and as many as 150,000 could enter in 2015¹ with the hope that they will be allowed to stay.

2. What is an unaccompanied alien child?

According to U.S. law, an unaccompanied alien child (UAC) is a child who has no lawful immigration status in the U.S.; has not attained 18 years of age; and, has no parent or legal guardian in the U.S., or no parent or legal guardian in the U.S. available to provide care and physical custody.²

3. Why can't UACs be immediately deported?

Written in the U.S. Senate by now-Vice President Joe Biden and supported by Senator Dianne Feinstein (D-CA) the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)³ created the government's complicated legal process for processing and removing UACs.⁴ The TVPRA requires the government to place illegal alien minors from Central America in formal removal proceedings instead of quickly returning them to their home, as the law allows with respect to minors from Mexico. The process takes years, and more often results in the illegal alien minors staying in the U.S. rather than being removed to their home countries.⁵

4. What is the process after UACs illegally enter the U.S.?

Once the UAC teenagers or children are apprehended at a U.S. port of entry, they are screened, processed, and detained by U.S. Customs and Border Protection (CBP) under the Department of Homeland Security (DHS). Within 72 hours, they must be turned over to the Department of Health and Human Services (HHS) and then placed into a temporary immigration shelter.⁶ HHS contracts with a network of nonprofit organizations which operate state-licensed shelters and are required to provide classroom education, medical and mental health treatment, case management, socialization, and recreation. HHS also oversees placement with family, legal guardians, or foster care.

5. How are UACs placed with family members or guardians?

A UAC is primarily placed into the custody of a relative serving as a guardian until his or her case is resolved. HHS prioritizes placing the minor with a family member within the U.S. and reports that 85% of UACs are placed with family members or guardians, including those unlawfully in the country, after an average stay within the shelter system of 35 days.⁷

HHS is responsible to conduct a background check to verify the identity of the family member and ensuring there is no previous history of abusive behavior. Based on the *1997 Flores Agreement*,⁸ HHS follows a preference ranking for placing UAC minors with a family sponsor or foster home: 1) parent; 2) a legal guardian; 3) an adult relative; 4) an adult individual or entity designated by the child's parent or legal guardian; 5) a licensed program willing to accept legal custody; 6) an HHS-approved adult or entity.⁹

6. What legal services are required for UAC minors?

Under current law, UACs may be represented by counsel (at no government expense) and immigration judges routinely use pro bono legal services for hearings involving UACs. However, President Obama's supplemental border funding request seeks \$15 million in taxpayer funds to provide the illegal aliens attorneys.¹⁰ By comparison, the President only seeks \$1 million to assist government attorneys in adjudicating these cases.¹¹

The current border funding request is not the first instance of President Obama seeking taxpayer funds for attorneys for UACs. In June, the Obama Administration announced the creation of Justice AmeriCorps, an initiative under the Corporation for National and Community Service to provide legal services (at taxpayer expense) for UACs, who are not under the custody of HHS or DHS, have received a Notice to Appear in removal proceedings before an immigration court and have not had their cases consolidated with a parent or legal guardian.¹²

7. Why are minors from Mexico & Canada treated differently?

The TVPRA established special rules for returning minors from Mexico and Canada to their home countries. It requires the CBP to screen minors within 48 hours of apprehension and determine:

- The minor is not a victim of “a severe form of trafficking in persons” and there is no credible evidence that the minor is at risk should he/she be returned to home country.
- The minor does not have a possible claim to asylum.
- The minor is able to make an independent decision to voluntarily return to his or her home country.

Once it is determined that the UAC from Mexico/Canada does not meet the qualifications for remaining in the U.S., the minor is permitted to immediately return to his or her home country without any penalties.¹³ Immigration and Customs Enforcement (ICE) under DHS is responsible for the process of repatriating all UAC,¹⁴ including notifying the UAC’s home country, arranging travel documents and transportation, and traveling with the minor.

8. What does this mean for my tax dollars?

The massive influx of illegal alien minors entering the U.S. is creating an enormous strain on government resources, not to mention American taxpayers. The large volume of aliens is exceeding capacity at established detention facilities throughout Texas, California, Arizona, and Oklahoma. The result has been dozens of flights and busses transporting these children to military bases and other repurposed facilities throughout the country. Communities nationwide are feeling the financial strain as these children are required by HHS to receive medical and mental health treatment, recreation, and public education while they are awaiting hearings.

9. What can Congress do to humanely stop this crisis?

With immigration courts already facing a backlog of nearly 400,000 cases, the underlying policies that created this crisis must be addressed in order to solve it. Congress must:

- Change the process by amending the TVPRA to allow illegal alien minors from Central America to be treated the same way minors from Mexico are treated.
- Secure the border by deploying the National Guard so that Border Patrol and ICE agents can do their jobs and protect our country.
- End administrative amnesties such as DACA and significantly restrict the Obama Administration from using policies that shield illegal aliens from removal.

¹ Breitbart.com, Internal Memo: ‘DREAM Act’ Deluge ‘Compromising’ Border Security, June 6, 2014, available at <http://bit.ly/1mOG3br>.

² P.L. 107-296, § 462; 6 U.S.C. § 279(g)(2)

³ P.L. 110-457, § 235; 8 U.S.C. § 1232.

⁴ Congressional Research Service, *Unaccompanied Alien Children: An Overview*, June 23, 2014, available at <http://bit.ly/1mOGimO>.

⁵ *Ibid.*

⁶ *Ibid.*; 8 U.S.C. § 1232(a)(3) & (b)(3).

⁷ *Ibid.*

⁸ *Flores v. Reno*, Case No. CV 85-4544-RJK(Px), Stipulated Settlement Agreement (C.D. Cal., 1997)

⁹ Congressional Research Service, *Unaccompanied Alien Children: An Overview*, June 23, 2014, available at <http://bit.ly/1mOGimO>.

¹⁰ [White House Emergency Border Funding Request](#)

¹¹ *Ibid.*

¹² Corporation for National and Community Service, Announcement of Federal Funding Opportunity 2014 Justice AmeriCorps Legal Services for Unaccompanied Children, June 6, 2014, available at <http://1.usa.gov/SwnPIN>.

¹³ Congressional Research Service, *Unaccompanied Alien Children: An Overview*, June 23, 2014, available at <http://bit.ly/1mOGimO>.

¹⁴ *Ibid.*

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