

FREQUENTLY ASKED QUESTIONS: UNACCOMPANIED IMMIGRANT CHILDREN ON THE SOUTHERN U.S. BORDER

Q: Who are the children who comprise the “influx” of children coming to the U.S.?

A: The majority of unaccompanied children coming to the United States are from the “Northern Triangle” region of Central America: El Salvador, Guatemala and Honduras. In prior years, these children were primarily male, ages 15-17. This past year, we have seen an increase in children 14 years old and younger, and an increase in the number of girls, including teenage mothers with infants.

Q: Why are they coming?

A: There is no simple answer to this question, but the number of children fleeing El Salvador, Guatemala and Honduras has a correlation with the homicide rates in those countries.¹ Although children often have multiple reasons for deciding to come to the United States – a majority of these children state that fear of harm and death is the primary reason they left their home countries.²

Q: Are these children considered refugees? Why or why not?

A: The United Nations High Commissioner for Refugees has found that at least 60 percent of these children present claims that could qualify them as refugees. The U.S. interpretation of refugee law must be consistent with international law. We have always recognized that people who have been persecuted because of characteristics they cannot change deserve asylum protection. This includes children fleeing persecution because they refuse to join a gang or who fear gender violence. Additionally, U.S. law provides protection for children who have been abused, abandoned or neglected and for victims of human trafficking.

Q: Why are they coming now?

A: The factors compelling children from Central America to travel to the United States have coalesced into a perfect storm. The threat of harm in their home countries has increased, causing children to fear for their lives while further diminishing opportunities to safely pursue education and employment. Meanwhile, parents living in the United States who have been separated from their children for years have lost faith that legal channels to reunite their families will emerge. They are desperate to get their children out of harm’s way. As the number of children migrating north has grown, momentum has led many children to determine that now is the time to flee; parents believe that now is the time to save their children. The United States is not the only country experiencing a dramatic increase in individuals seeking asylum. Countries in Central America

¹ Tom K. Wong, “Statistical Analysis Shows that Violence, Not Deferred Action, Is Behind the Surge of Unaccompanied Children Crossing the Border,” Center for American Progress, July 8, 2014. <http://bit.ly/1mwg2gW>.

² “Unaccompanied Immigrant Children: Vulnerable Children Face Insurmountable Obstacles,” National Immigrant Justice Center, January 2014. <http://ow.ly/z0Ztw>.

“Children on the Run: Unaccompanied Immigrant Children Leaving Central America and Mexico and the Need for International Protection,” United Nations High Commissioner for Refugees, March 2014. <http://ow.ly/z12Jf>.

neighboring the Northern Triangle have seen a 712 percent increase in asylum applications from 2008 to 2013.³

Q: What kind of harm are they fleeing?

A: The children flee community, domestic and gender violence. The rule of law is greatly compromised and sometimes non-existent. Gangs, drug cartels and other organized criminal groups have immense, transnational power throughout Central America. These groups attempt to recruit and extort children. Those who refuse to comply receive threats, often forcing them to stop attending school and hide in their homes to avoid harm. Girls regularly report significant levels of domestic violence and sexual abuse from family and partners, as well as threats of rape and sexual assault by organized criminal groups.

Q: How do they get here?

A: Children travel through the most dangerous migration corridor in the world. They take buses, travel on top of trains and walk for miles, often through areas controlled by organized criminal groups. Most travel with smugglers who may exploit or abuse them during the trip.

Q: What legal process do they go through upon arrival at the U.S. border?

A: The process depends on the child's country of citizenship. Children from contiguous countries (Mexico and Canada) are screened by Customs and Border Protection (CBP). If CBP determines that the child is not a potential trafficking victim, does not have an asylum claim and accepts voluntary return, the child is returned immediately. Children from non-contiguous countries follow a very different process. Once these children are determined to be under age 18, they must be transferred to the custody of the Office of Refugee Resettlement within 72 hours of apprehension. The treatment of children who travel with their families and are not "unaccompanied" is not clearly established under the law, but is generally very different from the treatment of unaccompanied children.

Q: What is the Trafficking Victims Protection and Reauthorization Act of 2008 (TVPPRA) and how does it impact unaccompanied immigrant children?

A: The TVPPRA, which passed the Senate and House by unanimous consent and was signed into law by President George W. Bush in December 2008, provides critical protections for immigrant children and child refugees. The TVPPRA requires that unaccompanied children from non-contiguous countries be placed in removal proceedings before an immigration court rather than subjected to a hurried screening and repatriation process. This due process protection is critical to ensure that children who have been, or fear being, abused, tortured and/or persecuted are not sent back to places where they face harm.

Q: Do any of the children qualify for legal status? If yes, how long does it take to achieve legal status and where do the children wait in the meantime?

A: Some of these children qualify for legal status. Many reports⁴ found that the majority of children may qualify for asylum. Many other children are eligible for Special Immigrant

³ United Nations High Commissioner for Refugees, March 2014. <http://ow.ly/z12TG>.

⁴ "Children on the Run: Unaccompanied Immigrant Children Leaving Central America and Mexico and the Need for International Protection," United Nations High Commissioner for Refugees, March 2014. <http://ow.ly/z12Jf>.

Juvenile Status (SIJS) or T visas for survivors of trafficking. Others may qualify for other forms of relief or qualify as derivatives on their parents' applications for status. The length of time that it takes to resolve a child's case varies depending on the type of relief the child seeks. Currently, due to the high volume of cases and lack of resources in the immigration court system, an individual may have to wait several years for a court hearing. While waiting for their cases to be resolved, many children reside with a family member in the United States.

Q: How many children are allowed to stay in the United States?

A: Due to current backlogs in the immigration court system, most of the children who have recently entered are still in the process of fighting their cases and have not received a case determination. Many of the children NIJC has represented, including children from Central America, have been approved for immigration relief; others who have been determined to not qualify for relief after having undergone full legal assessments have chosen to return to their home countries. In those cases, NIJC has worked with the U.S. government and organizations in the home countries to ensure the children are safely repatriated.

Q: How should the United States respond to this challenge?

A: We need a multi-faceted response. This current emergency requires a short- and long-term response. On a short-term basis, it's crucial that these children have access to full and fair hearings with an attorney. For a fair, effective and timely adjudication of their claims, the immigration courts and asylum offices need adequate resources. Unfortunately, the current amount of funds requested by the administration is insufficient to meet this need. On a long-term basis, the United States must work with the countries to address the root causes of children coming to the United States. Until it is safe for these children to remain in Guatemala, El Salvador and Honduras, children will continue to flee.

With offices in Chicago, Indiana and Washington, D.C., Heartland Alliance's National Immigrant Justice Center is a nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education. For more information visit www.immigrantjustice.org.

"Mission to Central America: The Flight of Unaccompanied Children to the United States," United States Conference of Catholic Bishops, November 2013. <http://ow.ly/z16lK>.

"Unaccompanied Immigrant Children: Vulnerable Children Face Insurmountable Obstacles," National Immigrant Justice Center, January 2014. <http://ow.ly/z0Ztw>.