



Children at the Border: What You Need to Know

Updated June 25, 2019

1. What just happened at the border? News broke out that [nearly 350 children](#) were being held in a Customs and Border Protection Facility in Clint, Texas. Attorneys on the ground reported that children were being held in deplorable conditions, “flu and lice outbreaks were going untreated, and children were filthy, sleeping on cold floors, and taking care of one another because of the lack of attention from guards.” [News accounts](#) suggest that some children in Clint, Texas came to the border unaccompanied, while others were separated from their parents. Said [Holly Cooper](#), a law professor at University of California-Davis, “In my 22 years of doing visits with children in detention, I have never heard of this level of inhumanity.” On June 24, 2019, following public outrage, [250 of these children](#) were moved out of the Clint, Texas facility, but it is unclear where they have been transferred.

2. What is Customs and Border Protection? Can they legally hold children? Customs and Border Protection or CBP is an arm of the Department of Homeland Security and was created in 2003 by Congress following the demise of the Immigration and Naturalization Service. CBP plays a role in apprehending and detaining immigrants, including children. However, CBP facilities are not equipped to hold immigrants for long periods of time. By law, “unaccompanied alien children” must be transferred to the Department of Health and Human Services within 72 hours. Under the statute, a UAC is [defined](#) as someone who is under the age of 18, without legal status, and without a parent or legal guardian in the United States able to provide care and custody.

3. What role does the Department of Health and Human Services play? The Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS) is responsible for the care and custody of unaccompanied children. However, some children have been referred to ORR and placed in ORR custody [after being separated](#) from a parent. [ORR must arrange](#) housing for the child or arrange for the child to be released to a family member.

4. What are the legal concerns with detaining children? Do children have to be detained? When the government holds children for prolonged periods, this may violate the [Flores](#). *Flores* is a historic settlement that sets national standards for the detention, release and treatment of all children in immigration detention- accompanied and unaccompanied. Under the agreement, children who are not released from the government’s custody must be held in non-secure, state licensed facilities. The government’s decision to detain children is a choice, not a legal requirement.

5. What are the alternatives to detaining children and families? The United States government [spends over \\$2 billion each year](#) detaining immigrants. However, there are alternatives to detention and family separation that result in a net financial and humanitarian gain for the United States. For example, the [Community Assessment and Placement \(CAP\) model](#) begins with a presumption against detention. The CAP provides for procedural protections for children and implements case management tools to ensure that detention is used only as a last resort.

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6. What is the family separation policy? In April 2018, the Trump Administration implemented a “zero tolerance” policy against those who irregularly cross the border. The result of this zero tolerance policy was the forced separation of immigrant families. Then Attorney General Jeff Sessions issued a [Memorandum for Federal Prosecutors Along the Southwest Border](#) calling for a “zero tolerance policy,” and instructing United States Attorney’s Offices along the border to criminally prosecute anyone who enters unlawfully. When parents were federally prosecuted for crossing the border without authorization, they were separated from their children and jailed.

7. Is family separation required by law? No. Speaking about family separation, [President Trump said](#), “I hate the children being taken away. The Democrats have to change their law—that’s their law.” There is, however, no law by Congress or any other body which requires family separation. The systematic separation of children from their parents is a policy choice by this administration. Even though the family separation policy was blocked by the courts, the [separations continue](#).

8. What is asylum? [Asylum](#) is a legal protection available to any noncitizen on U.S. soil. Immigration and Nationality Act (INA) § 208(a)(1) states: “any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival) . . . irrespective of such alien's status, may apply for asylum.” Those seeking asylum must show they have suffered past persecution or have a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion. Noncitizens may seek asylum at the border – regardless of how or where they enter.

9. Which policies at the border affect asylum seekers? Through the “Remain in Mexico” policy, also known as the “Migrant Protection Protocols,” the Trump administration [returns certain asylum seekers](#) to Mexico pending their cases in court. Some policy concerns with the “Remain in Mexico” policy include the detrimental impact it has on access to counsel and the dangerous conditions faced by asylum seekers while waiting in Mexico. The administration also announced a policy coined the “[asylum ban](#)” which disqualifies those who appear at a place other than a port of entry from asylum. This policy was blocked by the courts. Finally, detention itself can be a deterrent to seeking asylum because it is harder to access counsel or gather the necessary evidence needed to prove one’s claim and also impacts the [mental health](#) of asylum seekers. Only 14% of detained immigrants have a lawyer. Taken together, this collection of policies has made it exceptionally difficult for bona fide asylum seekers to get protection.

10. What can I do to help children at the border? There are several organizations you can donate to that provide legal services to families impacted by family separation, or that advocate for changes to law and policy that will protect children at the border. [Dahlia Lithwick and Margo Schlanger](#) have put together a rich list of organizations you can donate to. As many detention facilities will not accept donated items for children and families, donating directly to one of these organizations is more effective. Below are additional organizations helping vulnerable immigrants seeking protection or relief from removal.

- [ALDEA](#) – People Justice Center
- American Immigration Council, [Immigrant Justice Campaign](#)
- [PIRC](#), Pennsylvania Immigration Resource Center
- [CIRC](#), Penn State Law Center for Immigrants’ Rights Clinic

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