

Alone and Vulnerable: Unaccompanied Minors in the United States and Mexico

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INTRODUCTION

Unaccompanied alien child (UAC)¹ is a U.S. legal term for a child who does not have lawful immigration status in the United States; is under the age of 18; and who lacks an available parent or legal guardian to provide care or physical custody.² In Mexico, such children are known as a *Niña, Niño, o Adolescente Migrante (NNA) No Acompañado*.³ The increase in unaccompanied minors in both countries has garnered much attention in recent years, but it is not a new phenomenon and is part of a global trend.⁴ Lately, however, both Mexico and the U.S. have come under severe criticism for the detention and treatment of these unaccompanied minors.

This report provides an overview on unaccompanied minors arriving to Mexico and the United States and discusses the main reasons why these children and adolescents flee their home countries, their perilous journeys, the conditions of their detention, and the treatment they experience in detention centers—including alleged abuse, inhumane conditions, and denial of their basic rights. It also argues that both countries need a child-centric approach to better understand and address the needs of these minors to ensure their best interests and well-being.

UNACCOMPANIED CHILDREN: A GROWING CRISIS IN THE UNITED STATES

Prior to the 1980s, the U.S. response to unaccompanied children was “ad hoc and situation specific,” with the country admitting approximately 33,000 unaccompanied children, mostly from Europe, Asia, and Cuba, through 12 programs.⁵ In the 1980s, the majority of unaccompanied children came to the U.S. from Central America, where they were fleeing civil conflict and widespread violence.⁶ In the 1990s, Mexican minors were the largest percentage of unaccompanied children entering the country. In the last decade, the majority of unaccompanied minors have once again been from Central America. Prior to 2003, the now-defunct Immigration and Naturalization Service (INS), under the Department of Justice, was the agency responsible for the custody and care of unaccompanied minors. However, INS was also the country’s primary immigration law enforcement agency, prosecuting these undocumented unaccompanied minors for unlawful entry. These two responsibilities—caregiver and prosecutor—were “two irreconcilable and competing functions.”⁷ Consequently, data on unaccompanied minors prior to March 2003 is “a virtual black hole.”⁸ Allegations of mistreatment

As of fiscal year-to-date 2018 (October 1, 2017–August 31, 2018), 45,704 unaccompanied minors on the Southwest border have been apprehended.

The overwhelming majority of unaccompanied children apprehended in Mexico or at the U.S.–Mexico border are from Guatemala, Honduras, and El Salvador—countries consistently ranked as some of the most violent nations in Latin America.

of unaccompanied minors in INS care led to a series of lawsuits that resulted in the Flores Agreement of 1997, which set standards of care and treatment for minors in INS detention.⁹ In addition, several laws, regulations, court orders, and policies were established to regulate the care and custody of unaccompanied minors, including the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA); Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities; Customs and Border Protection National Standards on Transport, Escort, Detention, and Search; and the Border Patrol Policy on Hold Rooms and Short-Term Custody.¹⁰ The Flores Agreement set a “nationwide policy for the detention, release, and treatment of minors in the custody of INS,” including placing minors in the least restrictive settings appropriate to their age and needs, as opposed to jail-like conditions, and stipulating that facilities would provide access to drinking water, food, toilets and sinks, medical assistance, adequate temperature and ventilation, contact with family members who were arrested with the minor, and segregation from unrelated adults.¹¹ Yet criticism over the agency’s compliance with the Flores Agreement continued; in 2001, an Office of Inspector General (OIG) report found “deficiencies with the implementation of policies and procedures developed in response to Flores in INS districts, Border Patrol sectors, and at headquarters,” and stated that these problems could “lead to potentially serious consequences affecting the well-being of juveniles.”¹²

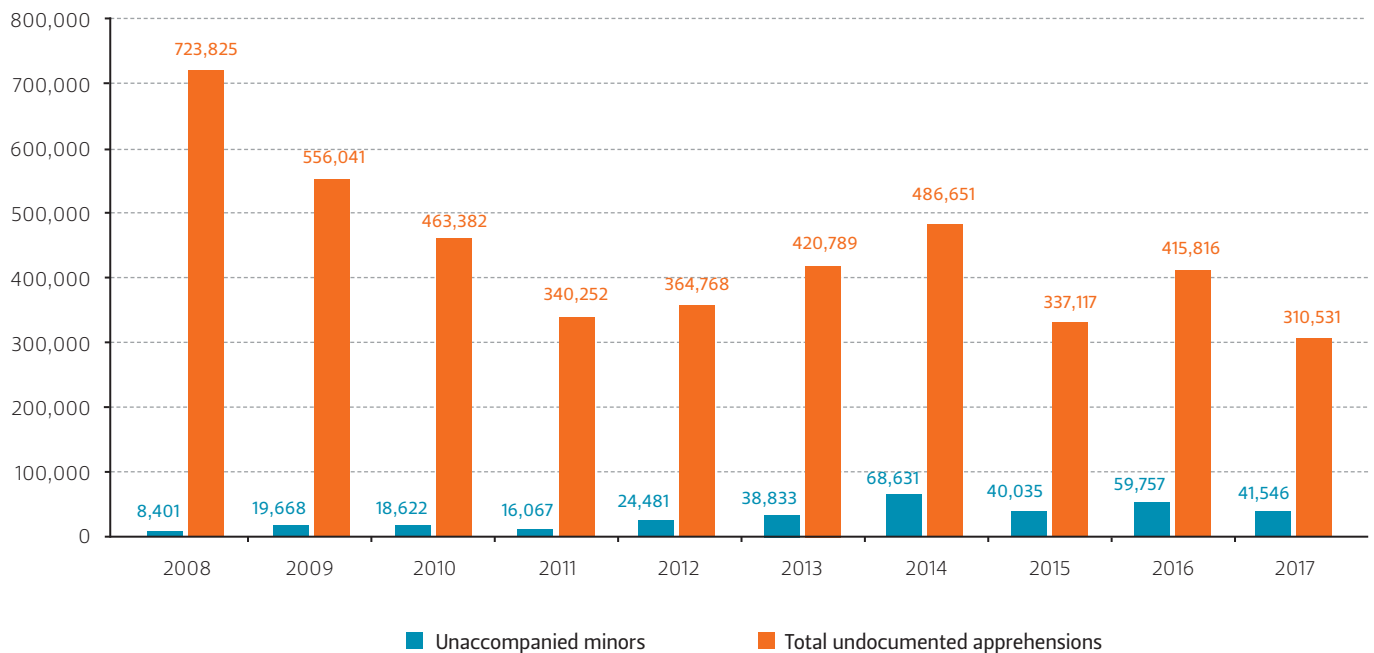
On March 1, 2003, through the Homeland Security Act of 2002, INS was dissolved and the newly created Department of Homeland Security (DHS) assumed immigration responsibilities, with functions under three agencies: U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE). Responsibility for the custody and care of unaccompanied minors was then transferred to the Office of Refugee Resettlement (ORR) within the Administration for Children and

Families, a division of the U.S. Department of Health and Human Services (HHS).¹³ But even after these administrative changes, allegations continue in the present day that the Flores Agreement has not been fully implemented by HHS, with the stations and facilities housing children failing to meet “basic standards for hygiene, food, sleeping conditions, and medical care.”¹⁴

Figure 1 shows the total overall immigration apprehensions and total unaccompanied minor apprehensions in the U.S. from 2008 to 2017.¹⁵ Clearly, overall immigration apprehensions have been declining, and unaccompanied minor apprehensions represent a very small portion of overall immigration apprehensions. The largest surge of unaccompanied minors occurred in 2014, with 68,631 minors apprehended. Then-President Barack Obama referred to the influx as an “urgent humanitarian situation requiring a unified and coordinated federal response,” and the administration moved to increase enforcement; authorize a multi-agency response by the departments of Homeland Security, Defense, Justice, and Health and Human Services and the U.S. Agency for International Development; and partner with Mexico and countries in Central America to deter unauthorized migration.¹⁶ While this response led to a decrease in the number of unaccompanied minors and family units, apprehensions rose again in 2016 and 2017. As of fiscal year-to-date 2018 (October 1, 2017–August 31, 2018), 45,704 unaccompanied minors on the Southwest border have been apprehended.¹⁷

MEXICO’S CHALLENGES WITH UNACCOMPANIED MINORS FROM CENTRAL AMERICA

In Mexico, several laws set the legal framework for the country’s treatment of NNAs: the National Migration Law of 2011; the Law for Refugees, Complementary Protection, and Political Asylum of 2011; and the Law on the Rights of Boys, Girls, and Adolescents of 2014, which led to the creation of the National Comprehensive Child Protection System in 2015.¹⁸ The

FIGURE 1 — TOTAL U.S. UNDOCUMENTED APPREHENSIONS AND TOTAL UNACCOMPANIED MINOR APPREHENSIONS (2008–2017)

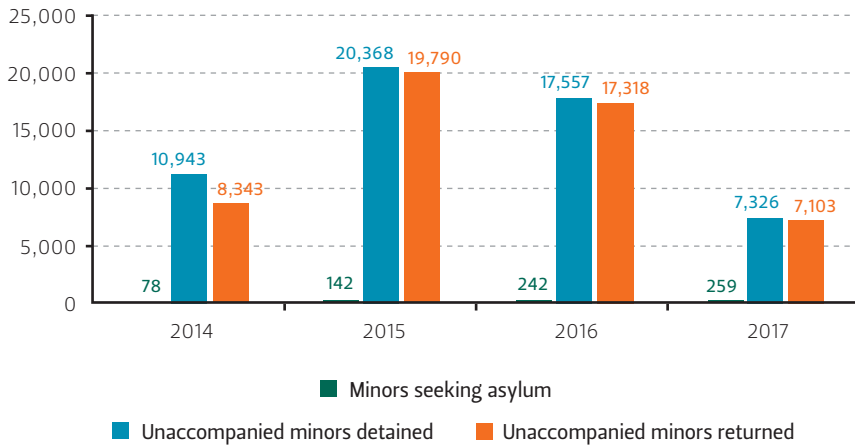
SOURCES U.S. Customs and Border Protection; Migration Policy Institute

United Nations High Commissioner for Refugees (UNHCR) and UNICEF hailed Mexico’s migration law and the refugee law for including the *best interest of the child* principle.¹⁹ Despite these welcomed developments, various organizations have found that Mexico’s enforcement of migration and refugee laws does not correspond to the reality of how migrants are treated during their apprehension and detention as well as the barriers they face in terms of access to asylum and other protections.²⁰ Particularly worrisome is the small number of minors seeking asylum in Mexico. Figure 2 illustrates the number of unaccompanied minors detained, returned to their country of origin, and seeking asylum.²¹ UNHCR found that agents at Mexico’s National Institute of Migration (INM) often fail to inform migrant children of their right to seek asylum. As the Latin America Working Group Education Fund states, “access to asylum in Mexico is still the exception rather than the rule as it should be under law.”²² Unaccompanied minors are often left to navigate a frustrating system

alone with limited options because of their lack of knowledge on laws, asylum, or other protections that may benefit them.

Moreover, in July 2014, partly under pressure from the United States to stem the flow of undocumented immigrants, the Mexican government announced the creation of the Southern Border Program (*Plan Frontera Sur*), with the purpose of coordinating with Central American countries to address common challenges such as migration flows, respect for human rights, security, and socioeconomic development, and to move toward a “modern, efficient, prosperous, and safe” border.²³ Under the initiative, Mexico ramped up its enforcement efforts on its southern border. This led to severe negative consequences for migrants, such as forcing them to seek different routes of entry and increasing their vulnerability to extortion from criminal entities or immigration and police officials in Mexico.²⁴ Since the start of the Southern Border Program, Mexico has deported more than half a million Central Americans, even surpassing U.S.

FIGURE 2 — UNACCOMPANIED MINORS DETAINED, RETURNED, AND SEEKING ASYLUM IN MEXICO (2014–2017)



SOURCE Migration Policy Unit, Mexican Secretariat of the Interior's (Secretaría de Gobernación, SEGOB); and Mexico's Refugee Commission (COMAR)

deportation figures in some years.²⁵ This has also led to worsening conditions for minors. Apprehensions and deportations of unaccompanied minors rose significantly under the Southern Border Program; in 2014, Mexico deported 77 out of every 100 minors, compared to just three out of 100 for the United States, according to the Migration Policy Institute.²⁶ The next section discusses the various and complex factors on why unaccompanied minors are fleeing their countries of origin.

Under a strained U.S.–Mexico relationship, the U.S. could face a rise in undocumented immigrants at its southern border.

WHY MINORS MIGRATE ALONE

The plight of unaccompanied minors begins in their countries of origin. The overwhelming majority of unaccompanied children apprehended in Mexico or at the U.S.–Mexico border are from Guatemala, Honduras, and El Salvador—countries consistently ranked as some of the most violent nations in Latin America. Figures from 2017 indicate that El Salvador has a murder rate of 60 per 100,000 people (a drop from 81.2 per 100,000 in 2016), followed by Honduras with 42.8 murders per 100,000, and Guatemala with 26.1 per 100,000.²⁷ Additionally, the three countries are wracked by poverty, unemployment,

inequality, the presence of transnational gangs and criminal organizations, violence, impunity, structural weaknesses in governance, and “few opportunities available for growing youth populations.”²⁸ Minors leave to flee these conditions. Crime, insecurity, violence, and economic concerns are among their top reasons for migrating, followed by a lack of educational opportunities, a desire to reunite with family members who have already migrated, the role of smuggling networks, perceptions of U.S. immigration policy, and a lack of youth services.²⁹ This is despite the fact that unaccompanied children are vulnerable and their journey is often perilous, posing risks such as sex trafficking, sexual violence, abuse, kidnapping, extortion, and even death.³⁰ When or if they succeed in leaving their countries of origin, apprehension, detention, and mistreatment by immigration officials have become yet further obstacles for unaccompanied minors. The American Civil Liberties Union (ACLU) obtained more than 30,000 pages of records related to abuses and neglect of children in CBP custody between 2009 and 2014, including allegations of intimidation, harassment, excessive force, physical and verbal abuse, refusal of medical services, denial of food and water, and improper deportation.³¹ Similar harsh conditions and abuses have been reported in Mexico.³²

MINORS CAUGHT BETWEEN MEXICO AND THE UNITED STATES

On June 21, 2018, President Donald Trump declared that “Mexico does nothing for us at the border” during a Cabinet meeting that addressed illegal immigration along the southern U.S. border.³³ That statement is unequivocally false. Mexico has taken strong border enforcement steps at its own southern border, to the detriment of migrants and undocumented minors’ rights. According to the Migration Policy Institute, Mexico’s border enforcement activities contributed to the decrease in child arrivals at the U.S. border. ³⁴ Trump has failed to acknowledge this. However, Mexico’s collaboration with the U.S. on the detention

and deportation of undocumented minors may be about to change.

On July 1, 2018, voters in Mexico elected a new president, Andrés Manuel López Obrador (AMLO), and it remains to be seen how U.S.–Mexico relations will continue in key areas, including migration. During Mexico’s second presidential debate in Tijuana, Mexico, candidates addressed questions on undocumented migration, including unaccompanied minors. López Obrador stated that Mexico would not continue doing the United States’ “dirty work” of stopping Central Americans.³⁵ On September 12, 2018, *The New York Times* reported that the Trump administration proposes to divert \$20 million in foreign assistance funds to Mexico in order to assist in costs related to plane and bus fare to deport up to 17,000 people who are in the country illegally.³⁶ In response to the media coverage, the outgoing Enrique Peña–Nieto government issued a statement saying that Mexico would evaluate the proposal and would continue cooperating with the United States on migration issues.³⁷ However, according to *The Guardian*, the incoming López Obrador administration has reportedly rejected the U.S. offer to help fund deportations, stating that the offer “has not been put on the table in any way.”³⁸

Thus, under a strained U.S.–Mexico relationship, the U.S. could face a rise in undocumented immigrants at its southern border. That would certainly not help detained minors, whose numbers could rise quickly, which could spur further deterioration of their detention conditions. For a strong collaborative relationship, the U.S. needs to view Mexico and Central American countries as essential partners in efforts to create best practices and solutions to any future surges in undocumented migration. Minors should be an important part of those discussions, but under less acerbic rhetoric.

CONFLATING ISSUES AND RHETORICAL DISTRACTIONS

Indeed, a particularly worrisome issue to be addressed is the Trump administration’s anti-immigrant rhetoric, particularly on

undocumented youth and their alleged gang affiliations. The vast majority of unaccompanied minors and youth left their countries to flee from gangs, their forced recruitment tactics, and violence in Central America, not because they are part of such organizations. Research conducted in El Salvador on child migrants deported from Mexico found that 60 percent of the children listed “crime, gang threats, and insecurity as a reason for leaving.”³⁹ While it is true that gangs such as Mara Salvatrucha, also known as MS–13, are present in the United States, they represent a very small portion (estimated at 6,000–10,000 members) of the approximately 1.4 million members of roughly 33,000 violent and active gangs in the United States.⁴⁰ Yet the Trump administration consistently attempts to link undocumented immigration with crime (even though studies show that immigrants commit fewer crimes than native–born U.S. citizens) and gang ties and affiliations.⁴¹ These allegations, particularly in reference to unaccompanied minors, taint the real issue: vulnerable minors who are running from these gangs and are in desperate need of protection. Findings from a national survey of immigration lawyers found that gang affiliations among immigrants have been increasing.⁴² Critics argue that the sources and evidence for such allegations, such as gang databases, are unreliable⁴³; for instance, they may include broad criteria such as individuals seen dressing in certain colors, living in certain neighborhoods, or appearing in photographs with gang members.⁴⁴ However, on July 30, 2018, U.S. District Judge Dolly M. Gee ruled that the U.S. government cannot hold minors in secure facilities solely on “reported gang involvement.”⁴⁵ This ruling is a step forward in making sure that the Flores Agreement is correctly implemented and that immigration detention facilities serve the best interests and well–being of these unaccompanied minors.

Trump administration officials have also alleged that gang members exploit the unaccompanied minors program; Attorney General Jeff Sessions stated on September 21, 2017, that MS–13 takes advantage of

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the program to replenish its ranks, for instance.⁴⁶ Yet it is important to note that there are no official statistics on the number of unaccompanied minors involved with gangs.⁴⁷ Thus, the administration is relying on anecdotal evidence, which may not be representative of the entire population of unaccompanied minors. The Office of Refugee Resettlement suggested that only a small proportion of unaccompanied minors are affiliated with gangs, based on a June 9, 2017, review indicating that only 35 out of 138 UACs in detention facilities were voluntarily involved with gangs. In the context of the nearly 2,400 unaccompanied minors in ORR custody on that date, ORR stated “this means that gang members were approximately 1.6% of all UAC in care.”⁴⁸ Utilizing this kind of rhetoric distracts from the need for policies for managing unaccompanied minors that ensure the *best interests of the child*.

CONCLUSION

Unaccompanied minors represent an increasing number of migrants journeying to Mexico and the United States. It is clear that their needs are different than those of adult undocumented migrants. Their detention and safekeeping requires a policy with specific principles, such as focusing on the *best interests of the child*, as well as specific actions to ensure that they are kept safe and have access to counseling, education, and humane treatment while in government custody. Their physical well-being and mental health should be a priority for all agencies and governments involved in their apprehension and detention, and they should be provided with proper information and legal counsel when placed in the judicial system. The immigration system—or deterrence mechanisms, such as policies to separate children from their parents—cannot put at risk the safety of children who end up in the government’s custody. If these minors are to be sent back to their home countries, great care should be taken to ensure that they are returned to their rightful parents or guardians under the best possible conditions.

Finally, and broadly speaking, the issue of unaccompanied minors should be addressed jointly by Mexico and the United States, with standardized procedures in both countries and actions directed at mitigating the reasons why these unaccompanied minors are fleeing their countries. Antagonistic rhetoric from the United States toward Mexico, and the potential new position Mexico may take under the next administration in response to that rhetoric, can only worsen the future of a whole generation of children and adolescents—who may be physically and psychologically scarred from negative migration and detention experiences, perhaps to the point that they become a regional problem once they reach adulthood—rather than provide meaningful solutions for an already suffering population.

ENDNOTES

1. There are different terms that are often used interchangeably as well, such as: unaccompanied minors, unaccompanied alien minor, unaccompanied migrants, child migrant, migrant children, separated minors, juvenile asylum seekers, refugee children, unaccompanied immigrant children, unaccompanied juveniles, and asylum children seekers. See Lilian Chavez and Cecilia Menjívar, “Children without Borders: A Mapping of the Literature on Unaccompanied Migrant Children to the United States,” *Migraciones Internacionales* 5, no. 3 (2010): 71–111; and Amanda Levinson, *Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions* (Washington, D.C.: Migration Policy Institute, January 24, 2011), <http://bit.ly/2zRmfkO>.

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3. Defined as a national or foreign boy, girl, or adolescent younger than 18 years old who is found to be in national territory and is not accompanied by a blood relative or a person who has legal representation. See Ley de Migración, Article 3, XVIII, <http://bit.ly/2DXIDyk>.

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