

APPLESEED MEXICO REPORT 2023 CHILDREN AT THE BORDER

Children at Risk at the Border:
Evaluation of the Protection and
Care of Unaccompanied
Mexican Migrant Children

—
2023 Update

Appleseed

Sembrando la semilla de la justicia
México

**APPLESEED
MEXICO
REPORT 2023
CHILDREN AT
THE BORDER**

ACKNOWLEDGMENTS

Executive Leadership: Maru Cortazar, Appleseed Mexico Chief Executive Officer

Research and Drafting: Claudia Stephany León Ang and Diego Lorente Pérez de Eulate

Technical Team: El Rebozo Team, Cuidado de la vida y los territorios, A.C. | Ana Elena Barrios and Salva Lacruz. We also appreciate the support of Ana María Silva and Laura Tabares, who completed their internships for Universidad del Rosario de Colombia at Appleseed Mexico, as well as Isabella Cabal Mazuera, who assisted in the research for this report.

Support from Appleseed U.S. sites:

Appleseed Foundation
Benet Magnuson, Executive Director
Sarah Pacilio, Director of Network Collaboration

Appleseed Texas
Deborah Fowler, Executive Director
Gabriella C. McDonald, Deputy Director

This report is the result of a pro bono collaboration between **three Mexican law firms**—Hogan Lovells Mexico, Sánchez Devanny, and Jaúregui y Del Valle—and **three U.S. law firms**—Akin Gump Strauss Hauer & Feld LLP, DLA Piper LLP (US), and Hogan Lovells US LLP. We thank each and every lawyer who contributed to this report:

Independent Lawyers: *Gerardo Prado Hernández and Alberto Lascurain Grosvenor

Akin Gump Strauss Hauer & Feld LLP

Greg Coutros
Dasha Hodge
Courtney Beloin
Andrew Coleman
Andrea Cabada
Steven Schulman
Eduardo Canales
Cindy Owens
Lulu Qian
Melissa McCafferty
Brandon Brown
Arielle Amegashie
Sara Ainsworth
Annie Gipson
Paxton Merrill
Eric Muñoz

Hogan Lovells U.S. – México

Kelly Tubman Hardy
Marino Castillo Moreno
Taylor Evans
Cassady Cohick
Aidan Coleman
Kevin Downey
Lila Alejandra Gasca
Rogelio Gama
Jamie Hannah
Patrick Miller
Armando Neavez
Andrew Norman
Alan Ramirez
Omar Guerrero
Andrea Pérez
Sydney Rupe
Carlos Ramos
Adrienne Weld
Ivan Zapien

*Now at Holland & Knight

DLA Piper

Lara Assaf
Jade Bainborough
Bethany Bunge
Virginia Callahan
Samantha Craig
Riley Combelic
Crystal Doyle
Maria Garrett
Annette Moreno
Caroline Moss
Allissa Pollard (formerly of DLA Piper)
Harry Rudo

Jáuregui y Del Valle

David Hurtado Badiola
Asia Gabriela Leños León

Sánchez Devanny

Diego Gómez-Haro Katznelson
Franco Rafael Guízar Iriarte
Hugo Adolfo Gutierrez Flores
Elsa Leticia Neve Ramírez-Wiella
Jose Miguel Ortiz Otero
Brandon Rodriguez Lugo
Alonso Sandoval Arroyo



We also appreciate the contributions of the many organizations and institutions interviewed for this report. Specifically, we appreciate the participation of the following Mexico-based organizations which advocate on behalf of migrant children: Al Otro Lado (Tijuana, Baja California); Centro de Atención al Migrante Exodus (Agua Prieta, Sonora) (“CAME”); Albergue del Desierto (Mexicali, Baja California); Casa del Migrante de Matamoros (Tamaulipas); Casas YMCA (Tijuana, Piedras Negras, and Ciudad Juárez); Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (Mexico City) (“CMDPDH”); Derechos Humanos Integrales en Acción (Ciudad Juárez, Chihuahua) (“DHIA”); Iniciativa Kino (Nogales, Sonora); Instituto para las Mujeres en la Migración (Mexico City) (“IMUMI”); Kids in Need of Defense (Ciudad Juárez, Chihuahua) (“KIND”); Red de Psicólogos Sin Fronteras (Baja California); Red por los Derechos de la Infancia en México (“REDIM”); and Save the Children México (Ciudad Juárez, Tamaulipas, Baja California, and Sonora). In addition, we thank the project “Geografías del Desplazamiento: niños migrantes y refugiados en la frontera entre México y Estados Unidos” (Geography of Displacement: Migrant and Refugee Children on the Border Between Mexico and the United States), and specifically the participation of Dr. Valentina Glockner of the Department of Educational Investigation of CINVESTAV and Dr. Óscar Misael Hernández of the Department of Social Studies of Colegio de la Frontera Norte A.C. We also appreciate the participation of International Organization for Migration (Ciudad Juárez) (“IOM”), United Nations Children’s Fund Mexico (Tijuana) (“UNICEF”), and the former Head of UNICEF Mexico in Ciudad Juárez.

From the public sector, we thank the Directorate of Protection for the United States within the Secretariat of Foreign Affairs, the representatives of the San Diego and McAllen Mexican Consulates, the Prosecutor’s Office for the Protection of Children and Adolescents of the State of Chihuahua, the Assistant Secretary of Immigrant Care of the Secretariat of State of the Government of Baja California, the Director for Non-Discrimination and Equality of the Secretariat of Equality and Inclusion of the State of Nuevo León, as well as the former Prosecutor for the Protection of Children and Adolescents of Baja California, and the former Assistant Prosecutor of Tijuana, for their openness and availability.

On the U.S. side, we thank the following organizations that provided their time and knowledge to aid this investigation: Amnesty International USA; Casa Cornelia Law Center, Children’s Defense Fund-Texas; Immigrant Legal Defense; Kids in Need of Defense (“KIND USA”); Latin American Working Group (“LAWG”); Refugee and Immigrant Center for Education and Legal Services (“RAICES”); Save the Children USA, South Texas Pro Bono Asylum Representation Project (“ProBAR”); and the Washington Office for Latin America (“WOLA”). We also thank the United Nations High Commissioner for Refugees in the United States (“UNHCR USA”), the Office of Refugee Resettlement (“ORR”), the Department of Homeland Security (“DHS”), and U.S. Customs and Border Protection (“CBP”) for their efforts and availability.

Likewise, we thank the children and families who shared their personal stories and participated in the focus groups for this report. We are especially thankful for the support and coordination of Derechos Humanos Integrales en Acción, Iniciativa Kino, and the Save the Children team in Nogales for facilitating these focus groups. The quotes from these children that appear in this report are verbatim and anonymous to protect the children’s identities.

Appleaseed Mexico’s work on this project was possible thanks to the generosity of Hispanics in Philanthropy (HIP) and its donor network, with the support of Andrea Villaseñor de la Vega, Director of Migration and Forced Displacement for Mexico and Central America.



GLOSSARY

Glossary of Acronyms

US	United States of America
MPP	Migrant Protection Protocols / Remain in Mexico Policy
RCAHM	Registry of Children and Adolescents During Human Migration
UACs	Unaccompanied Children/Unaccompanied Minors
SGBV	Sexual and Gender-Based Violence

Institutions and Acronyms for the United States¹

CBP	Customs and Border Protection
CRS	Congressional Research Service
DHS	Department of Homeland Security
DOD	Department of Defense
EOIR	Executive Office for Immigration Review
FEMA	U.S. Federal Emergency Management Agency
FOIA	Freedom of Information Act
HHS	Department of Health and Human Services
OFO	Office of Field Operations
ORR	Office of Refugee Resettlement
TVPRA	The William Wilberforce Trafficking Victims Protection and Reauthorization Act
USBP	U.S. Border Patrol
USCIS	U.S. Citizenship and Immigration Services

Institutions and Acronyms for Mexico

SAC	Social Assistance Centers
INAI	Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales (National Institute of Transparency, Access to Information, and Protection of Personal Data)

1. In Appleseed's 2011 report, a glossary of acronyms and terms is provided which describes the functions performed by the various government agencies involved in the execution of immigration, asylum, and child protection policies. For more information, refer to pages 5 and 6 of the report, available at <https://appleseedmexico.org/biblioteca-archivos/ninos-en-la-frontera-evaluacion-proteccion-y-repatriacion-de-ninos-ninas-y-adolescentes-mexicanos-sin-compania/>.

Institutions and Acronyms in Mexico

INM	Instituto Nacional de Migración (National Immigration Institute)
LGDNNA	Ley General de Derechos de los Niños, Niñas y Adolescentes (General Law on the Rights of Children and Adolescents)
PPFNNA	Procuraduría Federal de Protección a Niños, Niñas y Adolescentes (Federal Prosecutor's Office for the Protection of Children and Adolescents)
PPNNA	Procuraduría de Protección a Niños, Niñas y Adolescentes (estatal y municipal) (Prosecutor's Office for the Protection of Children and Adolescents (State and Municipal))
SCJN	Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation)
SIPINNA	Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes (National Comprehensive Protection System for Children and Adolescents)
SNDIF / DIF	Sistema Nacional para el Desarrollo Integral de la Familia (National System for Comprehensive Family Development)
SRE	Secretaría de Relaciones Exteriores (Secretariat of Foreign Affairs)

International Organizations and Agencies

UNHCR	United Nations High Commissioner for Refugees
CAME	Centro de Atención al Migrante Exodus (Exodus Migrant Care Center)
IAHCR	Inter-American Human Rights Commission
CMDPDH	Comisión Mexicana de Defensa y Promoción de Derechos Humanos (Mexican Commission for the Defense and Promotion of Human Rights)
RCM	Regional Migration Conference
DHIA	Derechos Humanos Integrales en Acción (Comprehensive Human Rights in Action)
GTPM	Grupo de Trabajo Sobre Política Migratoria (Migratory Policy Working Group)
IDMC	Observatorio de Desplazamiento Interno (Internal Travel Observatory)
KIND	Kids in Need of Defense
REDIM	Red por los Derechos de la Infancia en México (Network for the Rights of the Child in Mexico)
UNICEF	United Nations Children's Fund
IOM	International Organization for Migration
CSOs	Civil Society Organizations

TABLE OF CONTENTS

1. INTRODUCTION	9
2. METHODOLOGY: CHALLENGES AND ACHIEVEMENTS	11
3. CURRENT PROFILE OF MEXICAN CHILDREN AT THE MEXICO-U.S. BORDER	15
3.1 Socio-demographic characteristics and profiles of Mexican UACs at the Mexico-U.S. border	15
3.2 Detentions, expulsions, and repatriations of Mexican children on the Mexico-U.S. border	18
3.3 Main reasons for children to migrate to and cross the border unaccompanied	23
3.3.1 Criminal violence as the main cause for migration: impacts of forced displacement on Mexican children	24
3.3.2 How criminal violence affects Mexican girls and their reasons for migrating	25
3.3.3 Family separation and artificial creation of Mexican UACs due to U.S. policy	27
3.4 Main problems and risks faced by migrant children at the Mexico-U.S. border	27
3.4.1 Risks during the journey and crossing	27
3.4.2 Risks and impacts during detention in the U.S. and return to Mexico	29
3.5 Particularly vulnerable children	32
3.5.1 Migrant children from indigenous Mexican communities	32
3.5.2 LGBTQ+ children and survivors of sexual and gender-based violence (SGBV)	33
3.5.3 Child victims of cross-border trafficking rings	34
4 LEGAL RESPONSE FOR MEXICAN CHILDREN AT THE BORDER	38
4.1 Evolution of the regulatory framework in Mexico and the United States with respect to children in recent years	38
4.1.1 Evolution of the Mexican regulatory framework since 2011	38
4.1.2 Evolution of the U.S. legal framework since 2011	39
4.2 Response of the Mexican Government	40
4.2.1 Applicable legal framework	40
4.2.2 Summary of rights of migrant children under Mexican law	45
4.2.3 Relevant judicial precedents	53
4.3 U.S. Legal response to Mexican children at the border	57
4.3.1 Applicable legal framework	60
4.3.1.1 Federal Statutes	61
4.3.1.2 Significant Cases Affecting the Rights of UACs: <i>Plyler</i> and the <i>Flores</i> Settlement	63
4.3.2 Agency action, policies, and procedures	64
4.3.2.1 Recent developments	72
4.3.2.2 Support to survivors of human trafficking and other kinds of violence and/or trauma	74
5 INSTITUTIONAL RESPONSE FOR THE PROTECTION OF MEXICAN CHILDREN AT THE BORDER	76
5.1 Response from the Mexican State	76
5.1.1 Assessment of Advances in Care and Protection Policies and Procedures	76

TABLE OF CONTENTS

5.1.2 Main Challenges and Gaps to Ensure the Protection and the Best Interest of Mexican UACs	79
5.2 Response from the U.S. Government	85
5.2.1 Evaluation of U.S. Policies and Procedures for the Care and Protection of Mexican UACs	85
5.2.2 Challenges and Gaps	87
6 FINDINGS AND RECOMMENDATIONS FOR CHILD PROTECTION AT THE BORDER	91
6.1 Recommendations for Mexico	92
6.2 Recommendations for the United States	101
6.3 Binational Mexico–United States Recommendations	107
7 APPENDIX	109

1. INTRODUCTION

In 2011, Appleseed (Appleseed USA and Appleseed Mexico) published a binational report entitled “Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors”² with the aim of evaluating why Mexican UACs are forced to migrate to the United States, what they experience during their journeys, crossing, detention in the U.S. and return to Mexico, and the U.S. and Mexican legal frameworks that exist to protect these children. This binational report had significant impact and achieved wide acceptance in the community focused on the care and protection of Mexican children. The report highlighted the differences between the response models these children face in the U.S. and Mexico—it found that both were lacking and made detailed findings and recommendations for improvements in both countries.

The 2011 report was an important resource that sparked collaborative efforts by Appleseed and others to provide technical support, contributions, and comments on various Mexican legislative processes, including several significant advancements for the protection of Mexican UACs such as the enactment of the 2011 Immigration Law, the 2014 General Law on the Rights of Children and Adolescents, the Consular Care Protocol for Unaccompanied Migrant Children conducted by the Secretariat of Foreign Affairs (SRE) in conjunction with UNICEF in 2015,³ and the Care Protocol for Unaccompanied or Separated Sheltered Migrant Children⁴ prepared by the National DIF System and the International Organization for Migration (IOM) in 2015; among other legislative and rule-making efforts that have taken place during the last decade.

Twelve years later, having undertaken to update the 2011 report, the first thing we found was that despite important legislative and political advances in Mexico—something that cannot be said of the U.S., as we will discuss throughout this report—these advances have not been sufficient to achieve, at a practical level, that protections mandated by laws and policy for Mexican children. It is for this reason that more than a decade after the publication of the 2011 report Appleseed and its pro bono partners in both countries decided to undertake this new investigation and update of the conditions actually experienced by Mexican children who are forced to migrate, most of them unaccompanied; to continue to sensitize the

authorities on both sides of the border with respect to the invisibility of this group, consisting of tens of thousands of minors of Mexican nationality who cross or attempt to cross the border with the United States each year.

The 2011 report was centered on the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA). At first glance, the TVPRA sought to augment the protections for unaccompanied Mexican and Canadian children. Before the TVPRA was passed, children from contiguous countries were automatically repatriated without any determination of their risk profiles.

Under the TVPRA, authorities began to be required to analyze whether there was a credible threat of persecution or risk of trafficking before proceeding with repatriation, and unaccompanied Mexican children were permitted to stay in the United States⁵ and access corresponding protection mechanisms. Notwithstanding, the extremely important evaluation carried out in connection with the 2011 report demonstrated grave shortcomings and that many at-risk unaccompanied Mexican children continued to be returned to Mexico. Since then, the United States has implemented additional restrictive immigration policies, including several that were implemented in response to COVID-19, including Title 42, which between March 2020 and May 2023 mandated the

2. *Id.*

3. Secretariat of Foreign Affairs, *Protocol for the Consular Care of Unaccompanied Migrant Children and Adolescents; General Directorate for the Protection of Mexicans Abroad* (2015), available at https://www.gob.mx/cms/uploads/attachment/file/109332/Protocolo__ING_.pdf.

4. National System for Comprehensive Family Development and the International Organization for Migrations, *Care Protocol for Unaccompanied or Separated Sheltered Migrant Children and Adolescents* (2015), available at <https://appleseedmexico.org/biblioteca-archivos/protocolo-de-atencion-para-ninos-ninas-y-adolescentes-migrantes-no-acompanados-o-separados-que-se-encuentran-albergados/>.

5. in accordance with the definition of the UNHCR, unaccompanied children are “those who have become separated from both parents or other relatives and are not in the care of an adult who, by law or in practice, is responsible for them.” Some states refer to these children as “unaccompanied minors” in their legislation and policies, but throughout this report we will use the term “unaccompanied children.” For more information see the UNHCR document regarding unaccompanied and separated children, available at https://www.unhcr.org/handbooks/ih/files/2021-06/PDF%20insert%20link%20for%20download%20Unaccompanied%20and%20Separated%20Children%20_.pdf

immediate deportation of any person who crossed into the United States without proper documentation, including those individuals in need of international protection and asylum seekers.

This investigation makes clear the impact that these immigration policies have had on unaccompanied Mexican children in migration, as well as the reasons that these children are forced to migrate, the risks that they experience during their journey and border crossing, when detained in the U. S. and upon their return to Mexico, as compared to the experience of this same population 12 years ago. This analysis has provided a framework with which to evaluate the protection mechanisms that currently exist and the challenges that these children face given the institutional gaps that still persist today.

Throughout this investigation, we have identified different profiles of especially vulnerable children. The increased risk due to immigration policies imposed by the U. S. to accelerate the expulsion of migrants has caused children to cross the border on an unaccompanied basis despite having begun their journeys with their families, something that will be described in greater detail in this report, as will the situation of child victims of human trafficking rings at the border, a subgroup which we identified in the 2011 report but to which we devoted special attention in this report given the victimization that these children continue to experience. It is through this lens that we have carried out a description and evaluation of the institutional response to the protection of unaccompanied migrant Mexican children at the border, through an analysis of the evolution of the legal frameworks in the United States and Mexico and have identified the current challenges for achieving effective protection of migrant children.

Beginning with a description and rights-based analysis, we highlight the most relevant findings of the report and make recommendations to improve unaccompanied Mexican children's access to rights and protection in Mexico, the United States and a binational level.

This report is the result of a collaborative effort carried out by a technical and drafting team, led by the consulting firm El Rebozo, cuidado de la vida y los territorios, and coordinated by Appleseed Mexico, along with the pro bono contributions of three law firms in Mexico and three law firms in the U.S. We also appreciate the contributions of various Mexican and U.S. organizations and institutions that participated in this investigation. First and foremost, we thank the children and families who participated in the focus groups for this investigation.

2. METHODOLOGY: CHALLENGES AND ACHIEVEMENTS

To prepare our comparative analysis of the policies, practices, and procedures for the care and protection of Mexican UACs at the Mexico-U.S. border from 2011 to 2023, we carried out a rigorous investigation, consisting of a yearlong effort (February 2022 to February 2023) to collect qualitative and quantitative information from a variety of sources in Mexico and the United States. These **information sources** included:

- **Semi-structured interviews** with strategic civil society actors and government and international bodies in Mexico and the United States.
- **Focus groups** with migrant children from a variety of backgrounds at the northern border of Mexico.
- Information obtained **through requests for access to public information**⁶ in Mexico, through the National Institute of Transparency, Access to Information, and Protection of Personal Data (INAI).
- **Statistical and quantitative information** obtained from public government platforms and reports from civil society organizations.
- **Legal information** from Mexico and the United States, including state and federal legislation, regulatory frameworks, judicial precedent, protocols, binational agreements, international regulatory frameworks, and others.
- Various **secondary sources**.

A total of **40 interviews**, 60% with representatives of civil society organizations (CSOs) that either provide direct care to migrant children, including legal support, psycho-social care, and humanitarian care, as well as organizations that advocate for the rights of these children, 5% with academics, 25% with governmental agencies, and 10% with international bodies, were conducted.

Of these interviews, 26 were conducted with actors based in Mexico and 14 with actors based in the United States (See Figure 1). All interviews were conducted virtually, which provided an opportunity to reach interviewees across a large geographic area; however, safety precautions and protocols in response to the COVID-19 pandemic limited opportunities for face-to-face interviews with officials such as immigration authorities and those who have the first contact with migrant children working directly “in the field” on the border of Mexico and the United States.

6. A number of FOIA requests were submitted to U.S. agencies, but were not met with a satisfactory response.

Type of organization or institution interviewed in Mexico and the United States

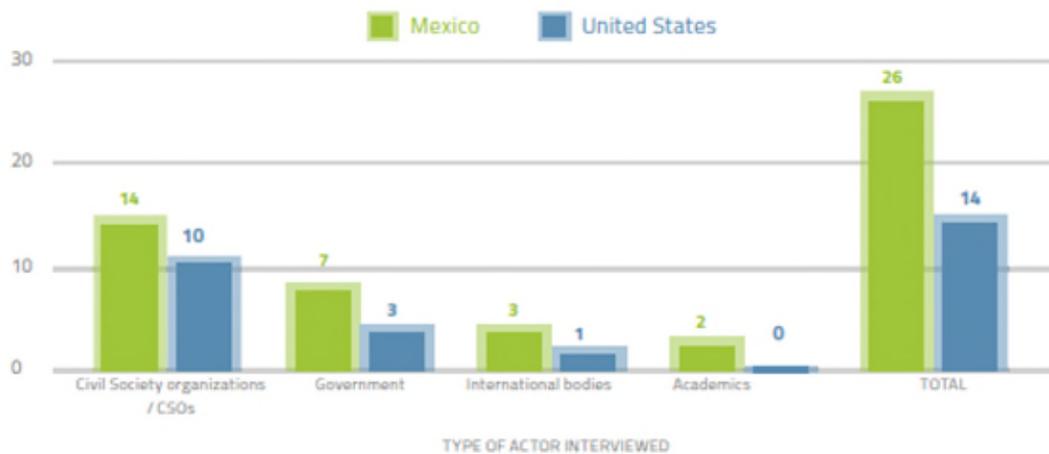


Figure 1. Type of organization or institution interviewed for this report.

All the interviews were conducted using a **structured questionnaire** created for the particular type of organization, with the hope of gathering comparative information from each interviewee. This information included data relating to the legal and socio-demographic profile of Mexican UACs, including their reasons for migrating; risks and harms experienced during their journey, crossing, detention, and return; the impact of child protection and immigration containment policies in the United States and Mexico in recent years; the models for care, referral, and interinstitutional coordination for the protection of Mexican UACs; and government responses, initiatives, and strategies at the national and binational levels.

It should be noted that, while the interview questionnaires sought to gather information about the experiences of Mexican UACs **with different gender, sexual orientation/identity, and cultural backgrounds**, many interviewees did not possess or could not provide complete information in this regard, making a detailed analysis on the differentiated needs and experiences of these groups difficult. While we drew upon other sources of data to provide a more thorough analysis, the fact many of these SCOs and governmental organizations did not collect or could not share this information is an important finding in itself.

Both in **Mexico and the United States**, it was a challenge to conduct interviews with government actors due to a lack of timely responses to interview requests.



In both **Mexico and the United States**, it was a challenge to conduct interviews with government actors due to a lack of timely responses to interview requests. Despite these difficulties, we were able to interview the Mexican Consulates in San Diego and McAllen, the Mexican Directorate of Protection for the United States within the Secretariat of Foreign Affairs, one State Prosecutor's Office for the Protection of Children and Adolescents,⁷ and multiple Mexican State Secretariats dedicated to the care of migrants and to addressing issues of equality and inclusion in Baja California and Nuevo León.⁸ However, there was no response from the Mexican Federal Prosecutor's Office for the Protection of Children and Adolescents, the National DIF System, the State Prosecutor's Offices for the Protection of Children and Adolescents, or from the DIFs located in border states and cities. We were unable to discuss the contents of this report with immigration authorities of the National Immigration Institute despite various efforts to arrange interviews.⁹

Despite the difficulties in engaging extensively and directly with government actors, we were able to obtain significant information about the Mexican government response through **requests for access to information** through the INAI.

In the United States, we were able to connect with the Policy Adviser for ORR, the Acting Chief of Staff of CBP, and various staff from subagencies of DHS.



Requests were sent to the Prosecutor's Office for the Protection of Children and Adolescents (PPNNA) and the National System for Comprehensive Family Development (SNDIF). Information was requested from the DIFs and Prosecutor's Offices in the six northern border states (Tamaulipas, Nuevo León, Coahuila, Sonora, Chihuahua, and Baja California); as well as eight strategic border municipalities (Tijuana, Ciudad Juárez, Nogales, Agua Prieta, Piedras Negras, Nuevo Laredo, Reynosa, and Matamoros).



Responses were received from all these institutions. The information received was indispensable given the difficulties in obtaining interviews with government actors and permitted a much more rigorous analysis and development of findings related to these government institutions.



The National Comprehensive Protection System for Children and Adolescents (SIPINNA) also provided a response through the INAI.

7. Near the end of this investigation, the Prosecutor for the Protection of Children and Adolescents of the State of Chihuahua agreed to carry out an interview, which was conducted on February 2, 2023.

8. We interviewed the Assistant Secretary of Migrant Care of the Secretariat of State of the Government of Baja California, as well as the Director for Non-Discrimination and Equality of the Secretariat of Equality and Inclusion of the State of Nuevo León.

9. An interview request was made to the Director General of Migrant Protection and Coordination of the INM on June 9 and June 22, 2022 by sending an email and letter of request. No response was received on either occasion. Also, Sanchez Devanny, a pro bono counsel for Appleseed Mexico that collaborated in the development of this report, attempted to contact the Federal Prosecutor's Office for the Protection of Children and Adolescents of the National DIF System, the Director General of Legal Representation of Children and Adolescents, and the PFPNNA Director of Protection Measures through a letter dated May 26, 2022 requesting an interview. There was no response.

In the U.S., although we submitted public information requests to several government agencies through the Freedom of Information Act (FOIA) process, we did not receive timely responses to such requests. Notwithstanding, we were able to obtain quantitative information for this investigation through different secondary sources and official public information, although certain critical information was still insufficient or limited.

Additionally, **three focus groups** were held with Mexican UACs at the northern border of Mexico: a group in Ciudad Juarez, Chihuahua, with seven minor children who were victims of cross-border trafficking rings; and two groups in Nogales, Sonora, with 17 people in total, of whom at least seven were accompanied children between the ages of 11 and 17 who were victims of forced displacement (See Figure 2).¹⁰ These focus groups were organized thanks to the collaboration and work of DHIA in Ciudad Juarez, Iniciativa Kino and Save the Children in Nogales. These interactive focus groups allowed the voices of these children to be recorded directly to best reflect their personal immigration experiences, perspectives, and needs. During these focus groups, we prioritized the well-being, care, and privacy of these children.

Focus Groups: Investigation on Children at the Border		
Place	Number of Focus Groups	Number of Participants
Ciudad Juarez, Chihuahua	1	7
Nogales, Sonora	2	17
Total	3	24

Figure 2. Total focus groups, broken down by location and number of participants



Picture. Human Trafficking in México 2 HIP Report

10. For the purposes of this report, all those who have been directly affected by the intensification of armed conflict, criminal violence in their places of origin, and sociopolitical violence in Mexico inflicted by different organized criminal groups seeking to maintain or expand their territorial control, in collusion with or due to the inaction of Mexican authorities, are considered victims of forced displacement, with children and adolescents being the main victims. For further reference, see: Vanegas López, Julián Alberto; Bolívar Bonilla Baquero, Carlos; Camacho Ordóñez, Leidy Bibiana, "Significado del desplazamiento forzado por conflicto armado para niños y niñas (The Effect of Forced Displacement Due to Armed Conflict on Children)," "Fundamentos en Humanidades (Fundamentals in Humanities)" vol. XII, No. 24, (2011) (pp. 163-189) Universidad Nacional de San Luis San Luis, Argentina, available at <https://www.redalyc.org/pdf/184/18426920007.pdf>.

3. CURRENT PROFILE OF MEXICAN CHILDREN AT THE MEXICO-U.S. BORDER

3.1 Socio-demographic characteristics and profiles of Mexican UACs at the Mexico-U.S. border

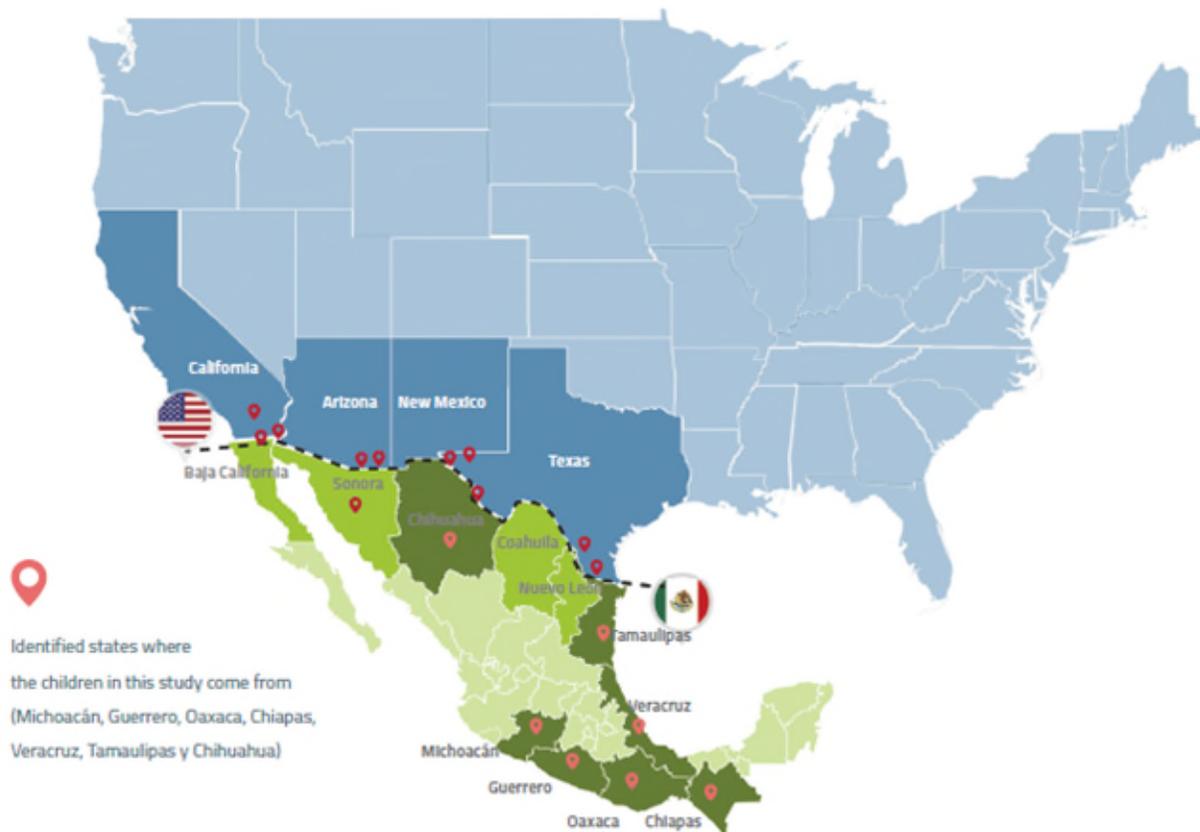
Children present at the Mexico-U.S. border are diverse in gender, age, ethnicity and national origin, conditions surrounding their journeys, and other characteristics. In addition to the Mexican children who are the focus of this report, there are children from the Northern Triangle of Central America, the Caribbean, and even, although to a lesser extent, children from African, Asian, and Eastern European countries. The vast majority of these children have traveled from areas experiencing conflict or severe humanitarian crises that forced their departure, either accompanied by their families or traveling alone.

Among Mexican children who migrate to the U.S., there is also a diverse range of personal characteristics, with different needs and experiences. Some of these characteristics include:

- **Origin within Mexico and journey to the border.** Some Mexican UACs, many of them originating from states such as Michoacán, Guerrero, Oaxaca, Chiapas, Veracruz, and northern states, may have previously been forcibly displaced for some time within Mexico before making their journey to the U.S. border. Others travel directly from their respective points of origin to the U.S. border. (See Figure 2).
- **Purpose in seeking to enter the United States.** While the vast majority of Mexican UACs aim to cross into the United States to find protection or to meet family members already living there, it is important to highlight the case of **child victims of cross-border trafficking rings** (sometimes referred to as “circuit children” or “circuit minors”),¹¹ who are forced to cross from Mexico to the U.S. repeatedly to fulfill tasks forcibly assigned to them by the criminal networks that control the border.
- **Level of adult accompaniment during their travels.** There are three typical scenarios: (1) children accompanied by one or more parents or guardians during the journey and crossing to the United States; (2) separated children, meaning those accompanied by a non-parent or trusted adult who is supporting their border crossing; and (3) unaccompanied children, mostly teens, who are not accompanied by any responsible adult. Unaccompanied teens are usually accompanied by human traffickers and/or *coyotes*, who do not provide the care of a protective adult.
- **Age.** Children of all ages are found at the border, although very young children are typically accompanied by their mothers or both parents, while teens travel alone and are at the greatest risk of forced recruitment by cross-border trafficking networks.
- **Additional or different factors and risks faced by particularly vulnerable children.** Girls, LGBTQ+ children, survivors of SGBV, and indigenous children often have additional reasons for undertaking the journey and face different experiences during the journey, crossing and return.

11. The term “circuit minors” initially arose as a denomination by government institutions, such as the National Immigration Institute and the DIF System—which have direct contact with this population—to differentiate this group from the rest of the migrant children due to certain characteristics the circuit children present such as recidivism as a result of their cyclical participation in border crossing processes. For more information, see DHIA-Juárez, *Ni “delincuentes” ni “ilegales”: El trabajo de niños, niñas y adolescentes fronterizos en los procesos de movilidad humana en el corredor El Paso-Juárez (Neither “Criminals” nor “Illegals”: The Work of Border Children in the Human Migration Processes in the El Paso-Juarez Corridor)* (August 2017) (hereinafter *El Paso - Juarez Report*), available at <https://dhia.mx/wp-content/uploads/2021/02/nidelincuentes.pdf>.

- **Reasons for leaving places of origin.** There are typically multiple push and pull factors that lead a child to leave his or her home, accompanied or not. These often include criminal and/or domestic violence, a desire for reunification with family in the U.S., and/or economic necessity. The children and families who participated in the focus groups for this investigation, as well as many representatives of the CSOs that were interviewed, identified violence caused by organized crime as a primary reason pushing Mexican children north to the U.S. They also reported that the violence of these criminal elements is sometimes perpetrated in collusion with, or due to the inaction of, Mexican authorities, which are unable to safeguard the population from organized criminal groups.
- On the Mexican side of the border, another distinguishing characteristic is **the place of accommodation during the migration process.** Children experience different impacts and needs according to whether the children are traveling with or without family and whether they stay in public shelters, private shelters or other kinds of private spaces.¹² These differences are important because, in the case of UACs who are held in government shelters—whether federal, state, or local DIF centers—the vast majority will be returned to their states of origin without protection or the legally required assessment of the best interest of the child.



12. For example, some people are able to rent rooms or other type of temporary housing outside the shelter system, either through external support or using their own funds.



Figure 2. Map of major places of origin of unaccompanied Mexican children and adolescents and crossing points at the Mexico-United States border. **Source.** Map created with information from Amnesty International, *Pushed into Harm’s Way* (2021) (hereinafter the “Amnesty Report”) (p.23), with supplementary information gathered through interviews for this report.

These diverse characteristics mean that Mexican UACs entering the United States are not all the same and have different needs and vulnerabilities, which must be considered in any governmental responses and efforts to protect the children. This differentiation relates to structural discrimination that affects UACs from their points of origin. Being female, indigenous, or having diverse sexual preferences, among other things, puts certain UACs in a situation of greater vulnerability as they cross the border. On other occasions, this greater vulnerability has to do with things that have happened on the journey, with their conditions of travel or other grave situations that arise from the difficulty of the journey, as will be described elsewhere in this report.

3.2 Detentions, expulsions, and repatriations of Mexican children on the Mexico-U.S. border

As in 2011, Mexican UACs continue to cross into the U.S in large numbers, accounting for approximately 20% of CBP’s recorded encounters with UACs.¹³ And, despite the screening requirements of the TVPRA, most of these Mexican UACs are immediately repatriated. This is in contrast to their peers from non-contiguous countries, who are almost never immediately returned. Rather, children from non-contiguous countries benefit from automatic transfer to the custody of ORR, which leads to a meaningful opportunity to have their protection claims heard by a judge or USCIS asylum officer.¹⁴

The real-world effect of the disparate legal treatment of UACs from contiguous and non-contiguous countries is striking. Between 2013 and 2019, there were 97,735 encounters¹⁵ between CBP and Mexican UACs, and 89% of the Mexican UACs were immediately returned.¹⁶ (See Figure 3).

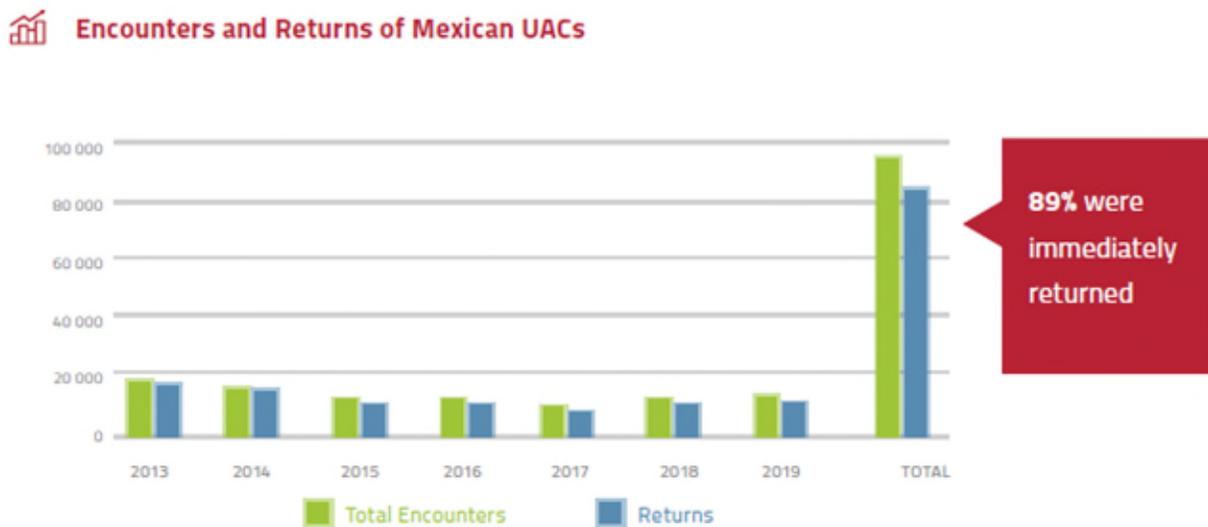


Figure 3. Encounters and Returns of Mexican UACs by CBP, FY 2013–2019.
Source: Created with publicly available data provided by U.S. Department of Homeland Security

13. See William A. Kandel, Congressional Research Service, *Increasing Numbers of Unaccompanied Children at the Southwest Border* (Updated Jun. 28, 2023), available at <https://crsreports.congress.gov/product/pdf/IN/IN11638>. Of note, while Mexican UACs now represent a smaller percentage of the total number of UACs entering the U.S.—having been eclipsed by UACs from the Northern Triangle of Central America—the actual numbers of recorded encounters between Mexican UACs and CBP have remained consistently high, with some decrease in FY 2017 and 2020. However, there have been record numbers of encounters in recent years, as discussed in this Section.

14. See discussion in Section 4.3 on the benefits of being transferred to ORR and having access to an opportunity to apply for immigration relief before USCIS or the Immigration Court.

15. It is important to note that an “encounter” does not necessarily represent an encounter with a single, unique UAC. As discussed throughout this report, some Mexican UACs, including victims of cross-border trafficking organizations, cross into the U.S. multiple times per year.

16. See Department of Homeland Security, *2020 Enforcement Lifecycle Report—Detailed Appendix Tables*, available at https://www.dhs.gov/sites/default/files/publications/2020_enforcement_lifecycle_appendix_tables.xlsx.

Compare this with UACs from non-contiguous countries, with whom there were 314,627 encounters with CBP, and of whom only 1.2% were immediately returned.¹⁷ (See Figure 4).

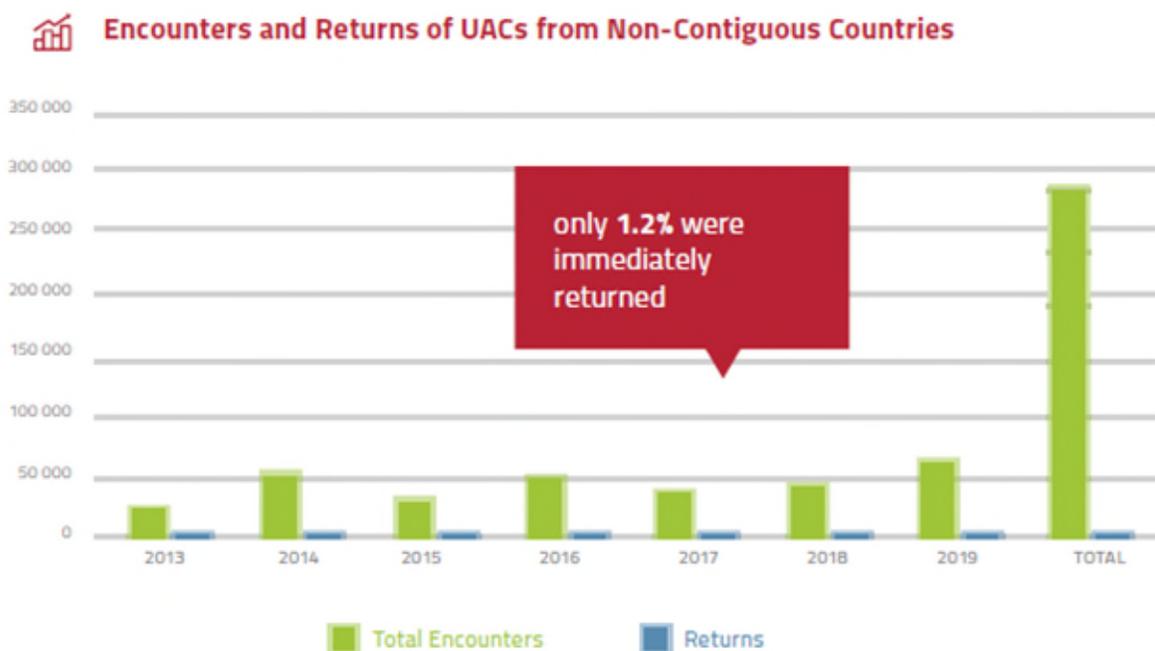


Figure 4. Encounters and Returns of UACs from Non-Contiguous Countries CBP, FY 2013–2019.
Source: Created with publicly available data provided by U.S. Department of Homeland Security

While DHS has not publicly provided data on encounters and expulsions of Mexican UACs since its FY 2020 Enforcement Lifecycle Report,¹⁸ we can still conclude that Mexican UACs are continuing to arrive at the U.S. border and are immediately returned at rates similar to those depicted above.

First, we know that Mexican UACs are continuing to seek entry into the United States. According to publicly available data from DHS, CBP had 16,292 encounters with Mexican UACs in FY 2020, 25,697 encounters in FY 2021, 27,994 encounters in FY 2022, and 14,517 encounters throughout the first quarter of FY 2023¹⁹ (See Figure 5). There was a significant increase in encounters in FY 2021 and 2022, as compared with the prior yearly average of 14,253 encounters per year for FY 2013–2020. It is important to remember that, as noted above, each “encounter” does not necessarily represent a single UAC seeking entry. CBP indicated a significant increase in repeat encounters—from one in eight encounters representing a repeat encounter, to one in three encounters representing a repeat encounter—for all populations during the pandemic, suggesting a likely connection with the implementation of Title 42.²⁰

17. *Id.*

18. *See, e.g.*, Department of Homeland Security, *Enforcement Lifecycle Report*, available at <https://www.dhs.gov/immigration-statistics/special-reports/enforcement-lifecycle>. The FY 2021 Enforcement Lifecycle Report and Appendix Tables no longer separate out data for Mexican UACs.

19. Encounters of Mexican UACs registered between October 2022–March 2023 by the U.S. Customs and Border Protection, Southwest Land Border Encounters, Demographics for U.S. Border Patrol (USBP) and Office of Field Operations (OFO), available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

20. U.S. Customs and Border Protection, CBP Releases Operational Fiscal Year 2021 Statistics (Jan. 3, 2022), available at <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-operational-fiscal-year-2021-statistics>.

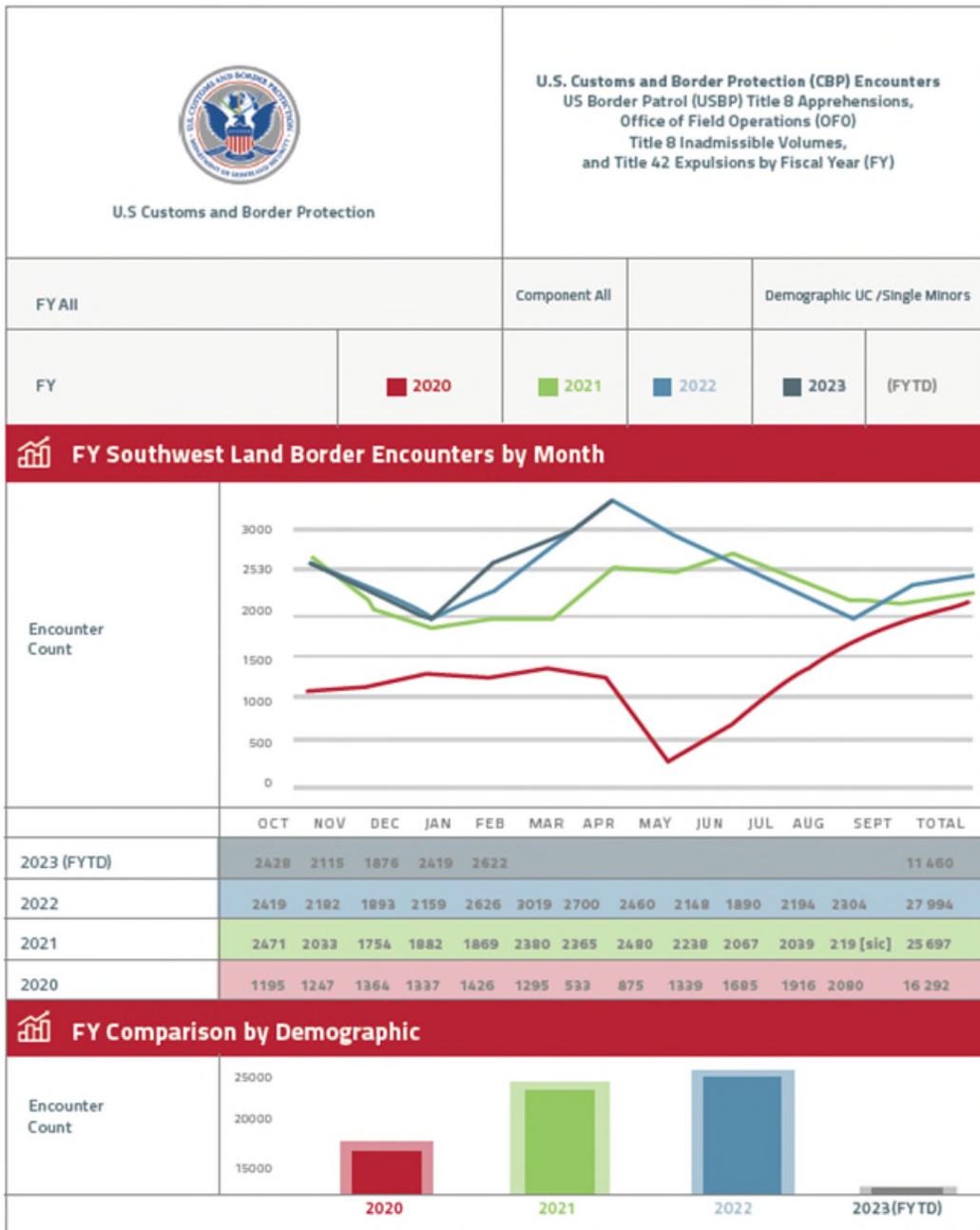


Figure 5. Mexican UACs encountered by CBP at the U.S. southern border from FY2020 to FY2023YTD.

Source: Image obtained through the official U.S Customs and Border Protection website. Southwest Land Border Encounters.

Source: Replica of the graphic provided by CBP through its official US Customs and Border Protection website. Encounters on the southwestern land border / USBP and OFO official year end reporting for FY20-FY22; USBP and OFO month end reporting for FY23 to date. Data is current as of 3/3/2023.

Specific data about the number of repeat encounters for Mexican UACs during this period is not available, so it is difficult to make additional specific conclusions beyond “Mexican UACs continue to seek entry to the U.S. in large numbers,” which is still a significant finding.

Second, we know that Mexican UACs continue to be immediately returned to Mexico in very large numbers. While we do not have specific data on returns of Mexican UACs for FY 2020, 2021, and 2022 from the U.S. government, we do have access to the corresponding statistics from the Mexican government, which tracks the number of Mexican citizens returned from the U.S. each year, disaggregated by age, sex, and whether the minor was accompanied or unaccompanied.²¹

According to official INM data on the total number of repatriations of children from the United States to Mexico between 2018 and 2022, 80% are recorded as UACs. During this five-year period, there were a total of 83,909 children, of which 67,803 were UACs,²² repatriated from the United States and registered by the Mexican authorities. (See Figure 6). Based on this information, it is estimated that at least **8 out of 10 Mexican children repatriated from the United States were unaccompanied**.

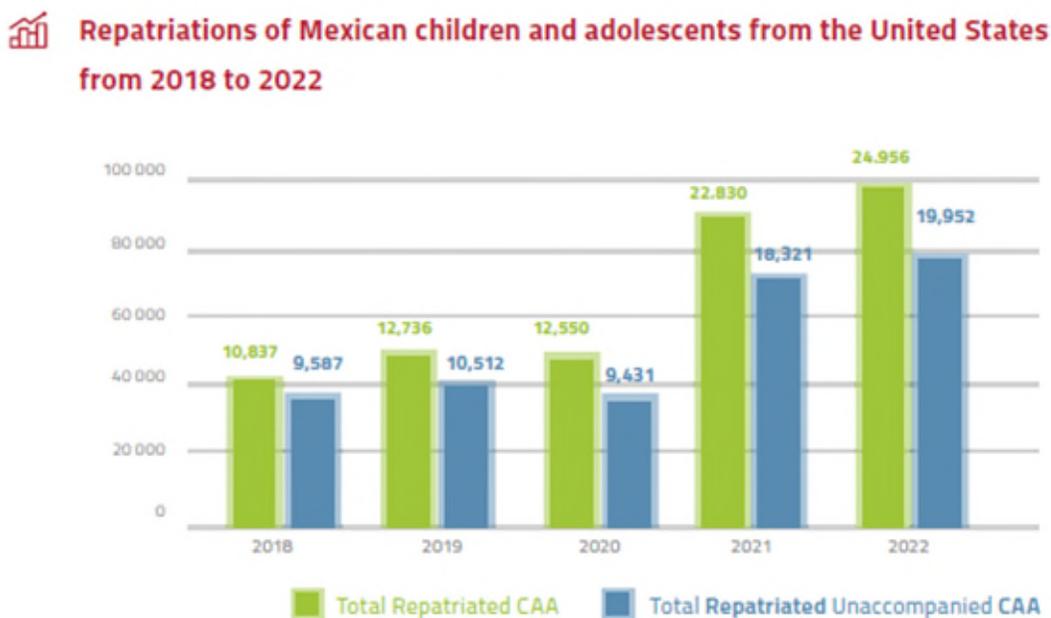


Figure 6. Comparative graph of Mexican UACs and total Mexican children repatriated from the United States from 2018 to 2022.

Source: Original analysis using data obtained from the Unit for Immigration Policy, Registration, and Identity of Persons.

It should be noted that the INM recorded an **82% increase in Mexican child repatriation events from the United States between 2020 and 2021, while repatriated Mexican UAC cases increased by 94%** during that same period.²³ INM recorded 9,431 Mexican UACs returned by the U.S. in 2020.²⁴ In 2021, INM recorded 18,321 Mexican UACs returned by the U.S.²⁵ The upward trend continued in 2022, with INM recording 24,956 Mexican children returned from the United States, of which 19,952 were UACs.²⁶ 2022 saw the most returns of the last five years.

21. INM records whether Mexican migrant children repatriated by the U.S. are accompanied or unaccompanied.

22. This information was obtained from the 2018 to 2022 Annual Statistical Bulletins on the return of Mexican children and adolescents from the United States, available at http://www.politicamigratoria.gob.mx/es//PoliticaMigratoria/Boletines_Estadisticos.

23. Unit for the Immigration Policy, Registration, and Identity of Persons, *Annual statistical newsletters from 2018 to 2021. Data Tables on the Return of Mexicans from the United States (formerly, repatriation of Mexicans), Events of returns of Mexican children and adolescents from the United States, based on age groups, travel status, and gender (Table 5.4)*. Repatriation events of Mexican migrant minors from the [United] States, available at http://www.politicamigratoria.gob.mx/es//PoliticaMigratoria/Boletines_Estadisticos.

24. *Id.* at Table 5.5.

25. *Id.*

26. *Id.*

It should be noted that, as described above, (1) some percentage of the CBP “encounters” represent single UACs attempting to re-enter the U.S. multiple times and (2) the U.S. data is presented on a fiscal year (November through October) basis, whereas the Mexican data is presented on a calendar year basis. Nonetheless, we can say with confidence that a very high percentage of Mexican UACs continue to be immediately repatriated, continuing the trend seen in the CBP data from 2013 to 2019 and the data registered by INM through 2022.

Although CBP does not track or publish any data related to the occurrence or results of TVPRA screenings,²⁷ it is clear from the high return rates for Mexican UACs that TVPRA screening is either not occurring or is not being conducted competently. As will be discussed in the next Section, most Mexican UACs are traveling to the United States in response to threats of violence, trafficking, or other types of harm that should qualify as a risk factor under the TVPRA analysis and trigger a referral to ORR. **Given the existence of identifiable risks, it is concerning that an estimated 8 in 10 Mexican UACs are returned to Mexico.²⁸ And, as discussed in detail in Section 3.4 of this report, multiple U.S.-based SCOs report that CBP officers are not aware of the TVPRA requirements or are otherwise not conducting the screenings before returning Mexican UACs to Mexico.**



Photo. Human Trafficking in Mexico 2 HIP Report

27. Interview held on January 19, 2023, with representatives of U.S. Customs and Border Protection.

28. This figure is based on the 2013-2019 data presented above, as specific percentages cannot be calculated for 2020-2023 based on available data, though it does not appear that there have been significant changes.

3.3 Main reasons for children to migrate to and cross the border unaccompanied

Although the causes leading to the forced migration of children are multiple, complex, and intertwined, our research found that **the most cited reason for migration was to escape from organized criminal violence**. This was particularly so for children migrating from Guerrero, Michoacán, Veracruz, Oaxaca, Chiapas, and border states such as Tamaulipas and Chihuahua, which are controlled by criminal groups. At least 94% of the individuals interviewed for this report identified flight from organized criminal violence as at least one of the contributing factors for the migration of Mexican UACs, a sentiment echoed by all the children who participated in our focus groups.²⁹

It is important to note that though the term “gang” is sometimes used to refer to these organizations, these entities are sophisticated, powerful, transnational criminal organizations that sometimes operate as parallel governmental authorities, beyond the control of local law enforcement.³⁰ The children do not receive protection from their government and therefore have no choice but to flee north. In addition, approximately three-quarters of those interviewed for this report also indicated that family reunification and escaping domestic violence were important reasons why Mexican UACs migrate. (See Figure 7).

Reasons for the forced migration of Mexican children and adolescents

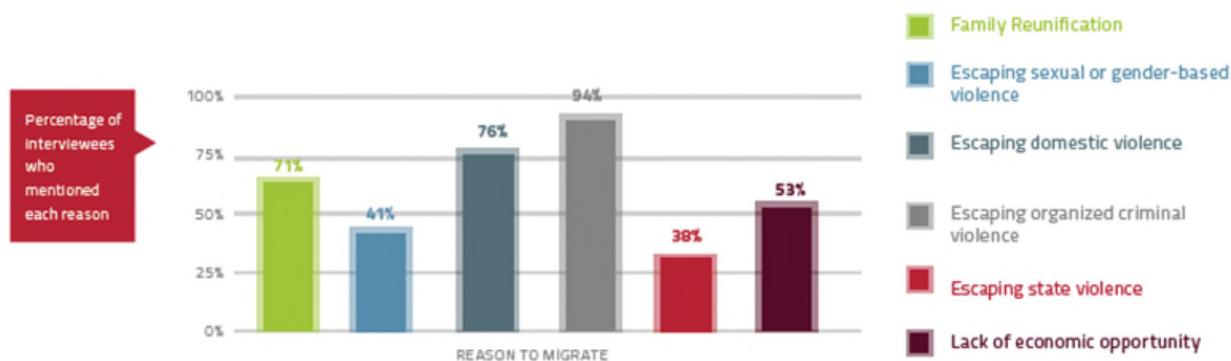


Figure 7. Main reasons for unaccompanied children to migrate. Respondents could select all reasons for migration that applied to them or the children they worked with.

Source: Original analysis of information gathered in interviews.

Thus, current findings show there has been a significant shift since 2011 in children’s reasons for migrating to the United States. Thirteen years ago, the most-cited reason was a desire for better economic opportunities; that has now been eclipsed by fears around violence. Family reunification remains an important reason for children to try to cross the border, as it was in 2011.

29. These percentages are based on the information provided by 34 actors interviewed out of the 40 who participated in this research, since not all actors provided information regarding the reasons why children and adolescents of Mexican nationality migrate, either because they did not have this information or because they omitted it.

30. See, e.g., June S. Beittel, Congressional Research Service, *Mexico: Organized Crime and Drug Trafficking Organizations* (June 7, 2022), available at <https://sgp.fas.org/crs/row/R41576.pdf>.

3.3.1. Criminal violence as the main cause for migration: impacts of forced displacement on Mexican children

Throughout this investigation, we discovered that criminal violence has increased in Mexico, causing increased displacement of families and entire communities. The Comisión Mexicana de Defensa y Promoción de Derechos Humanos (Mexican Commission for the Defense and Promotion of Human Rights) (CMDPDH) has documented various episodes of forced internal displacement in Mexico caused mainly by criminal violence, including violence linked to drug trafficking and violence due to sociopolitical and territorial conflicts.³¹ This violence has a tremendous negative effect on Mexican children who live in these communities and acts as a significant push factor in forcing these children to journey to other regions of Mexico or the U.S. for safety.

The increased importance of organized criminal violence as a primary push factor for the forced displacement of Mexicans has been noted by CSOs working in and/or investigating the situation at the northern border of Mexico. According to a 2022 UNICEF-Mexico report on internal forced displacement of children, in 2014 there was a noticeable increase in people from Michoacán and Guerrero arriving in cities along the northern border, such as Tijuana and Mexicali, as a direct result of an increase in violence by organized criminal organizations.³² Various CSOs interviewed for this report also noted this change:

“None of these families had Nogales, Sonora, as their original destination, but it became a forced destination. In July last year [2021], the vast majority of families who arrived in a couple of weeks were all coming from the same municipality of Guerrero: Leonardo Bravo. When I asked them what happened there, they told me, “Organized crime came, and they told us, “You either work with us or you will be sorry,” so the families chose to leave. But they arrived [here] and found that there is no way forward, but they cannot go back either, as they burned their homes and [the criminal organizations] kept their land. (Iniciativa Kino, Nogales, Sonora)”

During the two focus groups that were held in Nogales, we discovered that all 17 participants were fleeing organized crime and had either lost a close relative to homicide or forced disappearance, suffered death threats or forced evictions, or been otherwise harassed by organized crime. We note that the children and their families consistently referred to the complicity of state and local government officials with criminal groups, demonstrating how organized crime co-opts state institutions.

The Internal Displacement Monitoring Center (IDMC) estimated that at the end of 2019 the total number of people displaced in Mexico due to armed conflicts and violence reached 345,000, of which 31% were minors.³³ This means that, in 2019, more than 107,000 Mexican children are victims of forced displacement, either due to violence from organized crime groups or family violence, which according to UNICEF, is the second leading cause of forced displacement of Mexican children.³⁴

31. Pérez Vázquez, Brenda Gabriela, et al, *Episodios de desplazamiento forzado en México (Forced Displacement Episodes in Mexico)*, Report 2020, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH) (2021), available at <https://www.cmdpdh.org/publicaciones-pdf/cmdpdh-episodios-de-desplazamiento-interno-forzado-en-mexico-informe-2020.pdf>.

32. Silva Hernández, Aída and Beatriz Alfaro Trujillo, “*Es mucho daño lo que tengo*” Niñas, niños y adolescentes desplazados forzados internos en la frontera norte de México (“I’ve Been Damaged Too Much” Internally Forcibly Displaced Children on the Northern Border of Mexico), United Nations Children’s Fund, UNICEF Mexico (2022), available at <https://www.unicef.org/mexico/informes/es-mucho-da%C3%B1o-lo-que-yo-tengo>.

33. Internal Displacement Monitoring Center (IDMC), *Briefing paper. Number of IDPs by age at the end of 2019* (2019), available at <https://www.internal-displacement.org/sites/default/files/publications/documents/202004-age-disaggregated-IDP-data-paper.pdf>.

34. Silva Hernández, Aída and Beatriz Alfaro Trujillo, “*Es mucho daño lo que tengo*” Niñas, niños y adolescentes desplazados forzados internos en la frontera norte de México (“I’ve Been Damaged Too Much” Internally Forcibly Displaced Children on the Northern Border of Mexico), UNICEF Mexico (2022), available at <https://www.unicef.org/mexico/informes/es-mucho-da%C3%B1o-lo-que-yo-tengo>.

3.3.2. How criminal violence affects Mexican girls and their reasons for migrating

Of the interviewed organizations that were able to provide information specifically about the experiences of Mexican girls, many reported that **sexual or gender-based violence is the main reason why Mexican girls are forced to migrate unaccompanied to the United States, and the vast majority pointed to sexual or gender-based violence as the most common risk girls face during the journey and border crossing.** Additionally, these organizations reported that **escaping the violence of organized crime is a primary reason why girls migrate.**³⁵ Even so, less than half of the organizations interviewed were able to provide specific information about unaccompanied Mexican girls, including (1) their reasons for migrating; and (2) their experiences during the journey, border crossing, and return. This is surprising given that girls are one of the most vulnerable subsets of Mexican UACs who have been forced to migrate.³⁶ This lack of available data is a relevant finding in itself.

The need to incorporate a gender perspective when investigating this subject and when working with Mexican migrant children is particularly important because, as related by REDIM, “Sexual and family violence based on gender and age has increased in [Mexico].”³⁷ According to data collected by REDIM, from 2020 to 2021, there was an increase of almost 50% in the number of children—aged 1 to 17—who received care from the Secretary of Health after having suffered sexual violence.³⁸ 88.3% of these cases were girls,³⁹ with 75.4% of these sexual assaults against girls occurring inside their own homes.⁴⁰

In 2015, the Inter-American Commission on Human Rights (IACHR) stated that at least 460,000 minors were kidnapped by criminal groups in Mexico in 2018.⁴¹ This represents a 14-fold increase, in just three years, from the 30,000 minors who were kidnapped in 2015.⁴² It is important to emphasize that **there are gender-related differences in the types of harm perpetrated against these children by organized crime: boys are at greater risk of forced recruitment; and girls are at greater risk of suffering violence and sexual exploitation.** This conclusion is supported by the testimonials of the children and families interviewed during the focus groups, as well as the interviews from the CSOs and government agencies who participated:

They leave because of the [in]security in their communities. Especially from a community in Guerrero, in 2020, we had many displaced families. They told us that organized crime came to their home and if their children were boys, they told them that it was time to take their children, and what they did was not oppose and say that they had to prepare their children, [but] they would [then] leave their home in the morning and never return. That happens to men. Girls were recruited in order to prostitute them when they were between the ages of 12 and 16. They leave their communities and are looking to request asylum in the United States, and many are still waiting to do so.

(Centro de Atención al Migrante Exodus (CAME), Agua Prieta, Sonora)

35. Of the total 40 actors who participated in this investigation, only 17 organizations responded on this topic, 7 of those 17 organizations are based in the United States and 10 are based in Mexico.

36. All NGOs interviewed were asked the open-ended questions, “have you observed differences in the needs of children according to their gender?” and “are there specific needs in the case of girls?”.

37. Interview held on May 25, 2022, with the Chief Executive Officer and the Head of Law and Public Policy of REDIM.

38. REDIM Data Blog and Political Incident, *Violencia sexual contra la niñez y adolescencia en México (Sexual Violence Against Girls and Adolescents in Mexico)*, October 6, 2022, (hereinafter *Violence Against Girls Report*), available at <https://blog.derechosinfancia.org.mx/2022/10/06/violencia-sexual-contra-la-ninez-y-adolescencia-en-mexico/>.

39. REDIM, 2021 Balance Anual “*Discriminación y violencia contra la niñez durante la pandemia*” (2021 Annual Balance Sheet “Discrimination and Violence Against Children During the Pandemic”), January 2022 (p. 36.) (hereinafter *2021 Annual Balance Sheet*), available at https://issuu.com/infanciacueta/docs/balance_anual_redim_documento_a4_1_.

40. *Violence Against Girls Report*, *supra*, note 36.

41. Inter-American Commission on Human Rights (IACHR), *Violence, Children, and Organized Crime*, November 2015, Organization of American States, OEA/Ser.L/V/II. Doc. 40/15, available at <http://www.oas.org/es/cidh/informes/pdfs/violencianinez2016.pdf>.

42. IACHR, *Violencia, niñez y crimen organizado (Violence, Children, and Organized Crime)*, Organization of American States. OEA/Ser.L/V/II. Doc. 40/15 (Nov. 2015), available at <http://www.oas.org/es/cidh/informes/pdfs/violencianinez2016.pdf>.

REDIM's 2021 report on the recruitment and use of children by criminal groups in Mexico⁴³ also highlights these gender differences: the report describes how girls are forcibly recruited by criminal groups for use as sex slaves and subjected to forced pregnancies or abortions, while boys are recruited to perform work as informants or "halcones" (lookouts) for the transfer of illegal goods or made to carry out kidnappings or homicides. There is particular concern for children who face forced recruitment by criminal organizations that control the northern border of Mexico and then are forced to cross the border repeatedly to carry out tasks for these trafficking networks, as addressed in more depth later in this report.

As confirmed in the interviews and the stories shared by those who participated in this investigation (See Photos 1-2), Mexican children face a crisis of forced migration resulting from cumulative and intertwining causes, most notably criminal and family violence, corruption, impunity, insecurity, and limited access to institutions to guarantee their rights and protection.⁴⁴



Why did they have to leave their place of origin?

Some of the answers read: "Due to the harassment of my daughter and death threats by the same people," "Because I suffered from harassment and threats," and "Because of the death threat by criminals."

Photo 1 Image with answers to the question, "Why did they have to leave their place of origin?" asked during the focus groups held in Nogales, Sonora. Some of the answers read: "Due to the harassment of my daughter and death threats by the same people," "Because I suffered from harassment and threats," "Because of the death threat by criminals," "...threats and evictions by criminals," "Due to insecurity, for violent threats," "My dad was killed," "Because my uncles were killed," and "Because of my dad's death."

What would you say to the authorities to feel you are more respected?

Some of the responses directed to the Mexican government read: "To have more security and no corrupt government," and "More security on the streets, with police officers who are not corrupt and no corrupt authorities,"

Photo 2 Image with some of the answers to the question, "What would you say to the authorities to feel you are more respected?" asked during one of the focus groups held in Nogales, Sonora. Some of the responses with respect to the Mexican government read: "To have more security and no corrupt government," "More security on the streets, with police officers who are not corrupt and no corrupt authorities," and "...to have no pacts with criminals."

43. REDIM; Red por los Derechos de la Infancia en México, Justicia y Legalidad. Reclutamiento y utilización de niñas, niños y adolescentes por grupos delictivos en México. Acercamiento a un problema complejo (Recruitment and Use of Children and Adolescents by Criminal Groups in Mexico. Approach to a Complex Problem), First edition 2021 (Sept. 7, 2021), available at https://issuu.com/infanciakuanta/docs/reclutamiento.v.digital-6_sept-final.

44. 2021 Annual Balance Sheet, *supra*, note 37.

3.3.3. Family separation and artificial creation of Mexican UACs due to U.S. policy

Throughout this investigation, we observed that the hardening of immigration detention and expulsion policies in the U.S. resulted in **the artificial creation of UACs and the separation of families who initially traveled together, because families had to send their children across the border alone as a survival strategy**. This sad scenario was described by various humanitarian aid organizations in northern Mexico, such as the Kino Border Initiative shelter, on the border of Nogales, Sonora:

When families arrive, they see as an option to have an unaccompanied minor cross the border and someone on the other side can receive the minor, and in the hope that this is possible, families send their minor children alone to cross... Because of this desperation, families think that if the whole family can't cross, at least minor children can do it. However, it is a very difficult process as there is no guarantee that the child will be able to be reunited with their family members in the United States. (...) This year we have 70% Mexican [families] and 30% Central American families, but this practice is greater in Mexican families... This poses great challenges in determining the child's best interest. (Iniciativa Kino, Nogales)

The specific U.S. policies that led to this increase in Mexican UACs due to forced family separation are described in Section 4.1 of this report.

3.4 Main problems and risks faced by migrant children at the Mexico-U.S. border

Mexican children who are forced to migrate to the U.S. border for the reasons described earlier in the report often face significant violations of their basic rights as children—including the fundamental rights to full development and physical and emotional safety—as recognized under international law and the laws of both countries.⁴⁵

This Section describes the different rights violations that Mexican UACs may experience throughout their journey, crossing, interception and detention by U.S. immigration authorities, and return to Mexico. Where sufficient information is available, we also provide a differentiated analysis of rights violations by gender, age, ethnic origin, and other sources of vulnerability.

3.4.1. Risks during the journey and crossing

Mexican children detained at the border **face numerous risks of physical, verbal, emotional, and psychological violence at the hands of U.S. immigration authorities—including Border Patrol—but also guides, human traffickers, local criminals, and family members**. Our interviewees for this report identified the following risks:



45. As described in Section 4.3, the U.S. is not a signatory to the Convention on the Rights of the Child and does not have a standard federal framework for the rights of children or any single national body of law endowing children with a universal set of rights. Rather, the protection of children is governed primarily by individual state laws and implemented by state agencies. This situation complicates a purely rights-based analysis from the U.S. perspective.



Most common risks faced by Mexican UACs during the journey and crossing to the U.S.

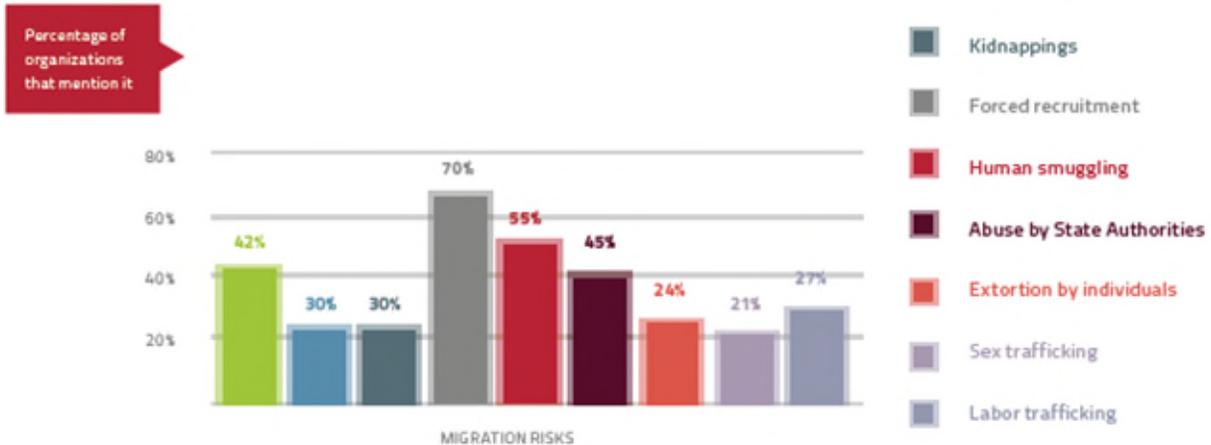


Figure 8. Main risks faced by UACs during the journey and crossing from Mexico to the United States.

Source: Original analysis of information gathered in interviews.

Forced recruitment by organized crime was the most commonly cited risk facing Mexican UACs, followed by various types of human smuggling, abuse by state authorities, sexual violence, kidnapping by criminal networks, theft or robbery, labor and sex trafficking, and extortion.⁴⁶ (See Figure 8).

Nearly all respondents who provided information about differentiated risks based on gender observed that girls experience a greater risk of sexual violence, as well as sex trafficking, kidnapping, theft or robbery, human smuggling, and abuse by state authorities. Approximately 95% of interviewees who responded highlighted gender as a particular risk in crossing the border. The following testimony describes this situation:

“There have been cases of young women leaving rural parts of Guerrero with smuggling or “coyote” networks that do not necessarily take them to their destinations. There have been cases where it is suspected that the coyotes brought them to human trafficking networks. In one specific case, a coyote said that the young indigenous girl he was bringing with him was not able to survive the journey through the desert, but afterward it was also said in the community that this same coyote had lost another young girl before and that it was possible he was delivering them to human trafficking rings. It is also possible to speak of cases in which they do not even get to the point of crossing the border before they are captured by organized crime who intend to traffic them. It is fundamental that we bring to light that smuggling and trafficking are two criminal activities that are taking place in the same spaces and along the same routes as human migration. **Valentina Glockner, Anthropologist with the Geographies of Displacement Project: Refugee and Migrant Children at the Mexico - U.S. Border.**”

Interviewees said that boys are at an increased risk of being recruited by organized crime for human smuggling and drug trafficking activities. In addition, U.S. CSOs have noted that teenage boys can be perceived by CBP officers as a threat and receive rougher treatment as a result. Furthermore, more than one U.S. CSO reported that, while rates of sexual assault are higher among girls, many boys have also been victims of sexual abuse but do not report it because of social norms. Another CSO observed that many boys need counseling because of the trauma they experienced during the journey and their fear that they must “act tough” or the cartels will strike.

46. We note that 83% of the interviewees that participated in this investigation provided information on this topic, and they largely agree on the risks faced by Mexican UACs.

Here, it is also important to highlight the situation of the so-called circuit children, primarily boys, at the Mexico-U.S. border, who in this report we have preferred to call **child victims of cross-border trafficking rings**. This terminology recognizes that these are vulnerable young victims,⁴⁷ and attempts to promote a paradigm change that avoids stigmatizing these children and teens and blaming them for their situation. The information we gathered from our interviewees and focus groups indicate that these child victims of cross-border trafficking circuits are found along the entirety of the Mexico-U.S. border and that these children face significant dangers, including stigmatization by society and government, travel risks such as dehydration and accidents, abuse by Mexican authorities when detained, as well as threats or abuses that they experience when they try to leave—or fail to perform the tasks assigned to them by—the human and drug trafficking networks that use them.⁴⁸

We also note the **risks that the lack of access to international protection in the U.S. generates for Mexican UACs**. As described below in Section 4.3, the vast majority of Mexican UACs who attempt to enter the U.S. and are encountered by CBP are immediately returned, despite legal requirements that they be screened for protection needs. As described throughout this report, that screening is clearly not being conducted properly, resulting in many Mexican UACs not gaining access to the protection they have a right to under U.S. and international law.

3.4.2. Risks and impacts during detention in the U.S. and return to Mexico

Upon entering the United States and being intercepted by U.S. immigration authorities, Mexican UACs become involved in a series of processes during which rights violations have been reported, whether before, during, or after their return to Mexico. These include immigration detention in the U.S., placement in government institutions upon return to Mexico, and a general lack of safe, effective alternatives to detention from both governments that would provide better care and protection for these children.

One of the most evident dangers these children face—and a primary focus of this report and the last—is that U.S. immigration authorities are not properly screening Mexican UACs for trafficking and harm risks upon return, as required by U.S. and international law, resulting in the widespread return of Mexican UACs who should be afforded protection. This is clear from DHS’s own publicly available statistics, which show an overwhelming number of Mexican UACs returned, as well as the information provided by the organizations interviewed for this report, each discussed later in this Section. This problem has also been highlighted in the reports and investigations of other organizations.

For example, in its 2021 report, Amnesty International reported that, according to the DIF shelter coordinator and the Deputy Prosecutor’s Office for the Protection of Children and Adolescents of Chihuahua, **Mexican children entered the United States irregularly every day and, normally the CBP returned them to Mexico within 24 hours** pursuant to a local repatriation agreement between the two countries.⁴⁹

47. In 2017, the organization Derechos Humanos Integrales en Acción (DHIA), based in Ciudad Juárez, published the *El Paso - Juarez Report*, which shed light on the situation and experience of so-called “circuit children” who participate in the irregular crossing of migrants or in drug trafficking along the border between Mexico and the United States and the criminalization and stigma that they experience. See *El Paso - Juarez Report*, *supra*, note 10.

48. See generally discussion throughout the report; see also, Díaz Prieto, Gabriela, 2019, *Niñez Migrante, Desafíos en la protección de derechos de la niñez migrante en la frontera norte de México*, (Migrant Children, Challenges in protecting the rights of migrant children on the northern border of Mexico), *La Infancia Cuenta, Red por los Derechos de la Infancia en México (REDIM)* (pp. 7-8) hereinafter *Díaz Prieto Report*], available at https://issuu.com/infancia cuenta/docs/_nin_ezmigrante_2019.

49. Amnesty Report, available at <https://www.amnestyusa.org/wp-content/uploads/2021/06/PUSHED-INTO-HARMS-WAY.pdf>.

In addition to that violation of their rights, our interviewees identified the following risks that face Mexican UACs at the time of interception and detention by U.S. authorities and return to Mexico:⁵⁰

Most Common risks experienced by Mexican UACs during detention and return

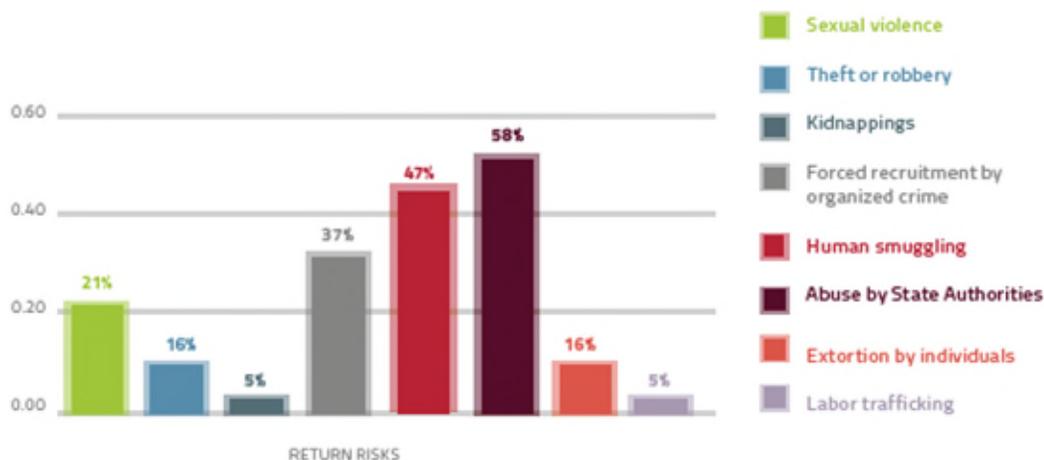


Figure 9. Main risks faced by UACs during interception in the U.S. and return to Mexico

Source: Information gathered in interviews.

There was a consensus among the interviewed organizations that did provide information on this topic that both U.S. and Mexican governmental authorities have committed acts of abuse against Mexican UACs. These organizations identified state abuse as one of the greatest risks faced by this population. The organizations shared that these risks include instances of physical and verbal abuse, and even noted instances of sexual abuse during time spent in immigration detention. Additional risks faced by these children include human smuggling, forced recruitment by organized crime, and sexual violence. Interviewees also identified other important, if less common, risks, including theft or robbery, extortion, labor trafficking, and kidnapping. (See Figure 9).

When questioned regarding specific risks for girls and boys, most respondents who were able to provide information on this topic indicated a higher risk of sexual violence, sex trafficking, and smuggling for girls, and a higher risk of forced recruitment by organized crime for boys.⁵¹ It bears repeating that only 23% of the interviewed organizations were able to provide information regarding the impact of gender on the risks and experiences of Mexican UACs, a data gap that government and civil society organizations must seek to fill to better protect these children. That being said, this lack of data is due in large part to the fact that when these children are deported from the U.S., they are transferred directly from the custody of U.S. authorities to the custody of Mexican government institutions. This makes it very difficult for human rights CSOs, except for those very few organizations that have agreements with DIF to provide care and shelter for returned Mexican children, to gain access to this population and thereby obtain direct knowledge of their experiences.

Both human rights organizations and child protection agencies have reported **serious rights violations and abuses suffered by Mexican UACs, both when detained in the United States and upon their return to Mexico.** In its 2021 report, Amnesty International observed that UACs **who entered the United States without documentation were detained in CBP facilities longer than is permitted and under inadequate conditions.**⁵² Sections 4 and 5 of this report further explore the conditions and services within U.S. Government facilities.

50. Of all organizations or institutions interviewed for this project, only 19 provided information on this topic.

51. Of the organizations that were interviewed for this investigation, only 9 of them provided information related to the different experiences of boys and girls during detention and return to Mexico.

52. *Amnesty Report, supra*, note 47, at 16.

Mexican child protection authorities and various U.S. CSOs have reported that U.S. immigration agents have returned children through border entry points that are not regulated by the nine repatriation agreements entered into by the U.S. and Mexican governments to provide protection for Mexican citizens during their return to the Mexico⁵³ These unauthorized return points, such as Puerto Palomas in Chihuahua, do not have appropriate infrastructure for the care and protection of UACs.⁵⁴

Even when repatriation occurs at a border point covered by one of the repatriation agreements, the situation does not seem to improve when the children are returned to Mexico:

- Mexican UACs, unlike other accompanied children, face the additional risk of double detention—first in the U.S. and again upon return to Mexico—where they are placed in Mexican Government-run shelters, which do not have adequate conditions or support services.
- **The Mexican Government appears to emphasize family reunification in the child’s place of origin over the best interest of the child**, resulting in the return of children to the same dangerous locations from which they fled.⁵⁵

The risks and harms Mexican UACs experience, including acts of institutional violence, leave their mark, and many of the organizations interviewed for this report identified common **physical and psycho-emotional impacts on returned children**:

“ (...) they go through a detention process, feeling cold, without adequate care, some are not even interviewed to [have the opportunity to] express that their lives are at risk if they go back. They come with a burden of frustration, uncertainty, anger, and concern for money and what they owe, feelings of failure. **(YMCA Homes Tijuana, Ciudad Juárez, and Piedras Negras)** ”

According to human rights advocates and mental health experts who were interviewed, returned children primarily experience feelings of frustration, hopelessness, fear, anger, confusion, and uncertainty, emotions that are heightened by the discrimination and humiliation that most of these children report experiencing during their detention and return:

“ Children and adolescents are usually returned within a few hours, and they often feel unheard and discriminated against. At the same time, they sometimes return physically hurt by the crossing, and emotionally, they feel humiliated, discriminated against, and scared. **(anonymous NGO working with children at the northern border of Mexico)** ”

The volunteer network Psychologists Without Borders,⁵⁶ which works directly with the shelters that receive UACs repatriated by the United States and provide pro bono⁵⁷ psychosocial services in migrant camps along the northern border of Mexico, also highlight that these children experience not only **the direct and immediate effects of the institutional abuses they suffer when returned, but also medium- and long-term impacts generated by the deportation itself**:

53. These agreements apply to repatriations from Brownsville, Del Rio, El Paso, Laredo, McAllen, Nogales, Presidio, San Diego, and Yuma. See U.S. Department of Homeland Security, *Updated U.S.-Mexico Local Repatriation Arrangements*, available at <https://www.dhs.gov/publication/updated-us-mexico-local-repatriation-arrangements>.

54. See, e.g., SIPINNA report: SEGOB/SIPINNA, Commission for the Comprehensive Protection of Migrant Children and Adolescents and Applicants for Refugee Status, Report 2019–2020 (Dec. 2020) (pp. 16–17).

55. *Amnesty Report*, *supra*, note 47, at 27.

56. To learn more about Psychologists Without Borders, see Psicólogos Sin Fronteras México, ¿Quiénes somos? available at <https://psicologossinfronterasmx.org/quienes-somos>

57. This means organizations that provide social services without the expectation of receiving any remuneration. This term is associated with the presence of free services offered voluntarily as a professional responsibility. See Sin Fronteras I.A.P. 2011. Pro bono work and professional responsibility of lawyers. available at <https://sinfronteras.org.mx/wp-content/uploads/2018/12/El-trabajo-pro-bono-y-la-responsabilidad-social-de-los-abogados-y-las-abogadas.-1.pdf>

“
There are abuses by authorities that may consist of physical, sexual, or psychological violence. Because of the constant concern about their future, they have a lot of uncertainty. At the same time, they turn to drugs and alcohol because of their psychological condition or social pressure. (...) Due to the Title 42 returns, anxiety, depression, and suicidal ideation have increased a lot. (...) Another focus of concern is that, many times, they can't be informed or updated about what's going on in their legal processes, and that causes a lot of stress. (Psychologists Without Borders)
”

In the case of returned children who are recruited and used by cross-border trafficking networks, institutional violence and mistreatment, with their attendant psychological ramifications, are even greater during the return:

“
DHIA works especially with “circuit children,”⁵⁸ so we have identified that, both at crossing and at return, the risks they face are different (...). In immigration arrests, they face excessive use of force and are subdued when they resist. On many occasions, children who are part of this population are already familiar with the procedures for returning them, (...) they point out that the hardest thing is with CBP, with which they experience threats, intimidation, psychological violence. (Derechos Humanos Integrales en Acción, DHIA)
”

3.5 Particularly vulnerable children

As noted above, the profile of migrant Mexican children at the U.S. border is diverse. Some of this diversity relates to the migration profile—how, when, why, and with whom they migrate—but some of this diversity relates to personal characteristics such as being female, indigenous, LGBTQ+, etc., which can lead to increased vulnerability during forced migration due to structural discrimination. Other times, a child's own experiences during their migration creates additional vulnerability, such as having experienced violence or being separated from their families. It is important to analyze the experiences and needs of these children in order to create and implement policies tailored to fit their protection needs. While this report focuses on Mexican UACs specifically, the below characteristics create enhanced vulnerabilities and service needs for all Mexican children in migration, whether accompanied or unaccompanied.

In accordance with the above, the groups of children that are most vulnerable during migration and require specific interventions are addressed below.⁵⁹

3.5.1. Migrant children from indigenous Mexican communities

This population remains highly invisible and ignored by the institutions charged with their protection, especially those who travel unaccompanied and whose primary language is an indigenous language. Despite the great ethno-cultural diversity of Mexico, including in regions from which there is a high level of forced migration, indigenous migrant children have suffered historical and systematic exclusion. Though this investigation sought to gather and analyze data related to the experience of indigenous migrant children, only very limited information could be collected through the interviews, which only highlights the invisibility of this population.

58. Referred to in this report as “child victims of cross-border trafficking rings,” as defined above.

59. We were unable to obtain detailed information for all subgroups of children. Certain groups of children are less visible within the system and therefore more difficult to identify; others are discussed in more detail in other portions of this report.

As far as we could ascertain from the limited primary data available and from secondary sources, indigenous migrant children present at the northern Mexican border originate mainly from southern Mexico, including Chiapas, Oaxaca, Guerrero, Veracruz, and Puebla. For most of these children, Spanish is a second language. Throughout the interviews, U.S. CSOs reported that indigenous children are at higher risk of violence, and that language can be a barrier for those who do not speak fluent Spanish as a first or second language. While the U.S. Office of Refugee Resettlement noted improved language access over the past decade, they admitted it was sometimes difficult to find interpreters for very rare languages.⁶⁰ It is unclear how available interpretation is for children in the custody of CBP. While CBP reported having 24/7 language capabilities, they did not comment specifically on the availability of indigenous languages.⁶¹ And, beyond language access, there did not appear to be any structured efforts to provide culturally sensitive services designed to meet the needs of these children.⁶²

3.5.2. LGBTQ+ children and survivors of sexual and gender-based violence (SGBV)

Multiple CSOs reported that LGBTQ+ children face increased discrimination and violence compared with other UACs, and that LGBTQ+ children might not receive adequate screening for persecution risk because of discrimination or lack of understanding by government officials of LGBTQ+ status and the vulnerabilities these children face. One U.S.-based CSO noted that LGBTQ+ children themselves often have trouble identifying as LGBTQ+, and using appropriate, non-derogatory terms, because of cultural stigma and lack of experience with LGBTQ+-friendly terminology. The invisibility of these children results in a gap in appropriate care and services tailored to meet the children's needs.

This blindness to differences related to gender leads, in turn, to a failure to identify the specialized needs of this population and create or implement adequate forms of care that take into account cultural and gender differences, something that became much more evident during interviews with agencies that provide services for the protection of these children.

Not only are there gaps in gender-based care, but tracking of child migrants is carried out from a heteronormative perspective without taking into account differences in sexual orientation and gender identity. This means that the care and protection that is provided to this population is not effective for LGBTQ+ children, above all because of the risks and vulnerable situations that they confront. This was pointed out by a UNICEF Mexico representative in Tijuana:

LGBTQ+ children are also seen as possessions and ripe for exploitation through human trafficking. There is a shelter called Fundación Arcoíris, which welcomes LGBTQ+ children and they have shared the situations [these children] experience. These children continue to be discriminated against in a certain way and there is lack of knowledge by the authorities [who] do not know where to shelter them. (UNICEF Mexico, Tijuana)

60. Information obtained through an interview conducted in August 2022 with the Senior Policy Adviser for the Department of Health and Human Services, on which the ORR depends.

61. See discussion in Section 4.3.2.

62. The rights enshrined in the Convention on the Rights of the Child are applicable to all children, without exception, but the special situation of indigenous children justifies special treatment. The Convention on the Rights of the Child itself contains clear references to indigenous children, developed in General Observation No. 11 of the Committee on the Rights of the Child in 2009, Indigenous Children and their rights under the Convention. As Orrego and Riquelme point out, "it is important to take into account the categories of rights applicable to indigenous peoples and integrate those rights with the rules for the protection of children." See Ref. Orrego, Claudia, and Paula Riquelme, *Children, Rights, and Interculturality*, Catholic University of Temuco and UNICEF (2014), available at https://www.unicef.org/chile/media/1956/file/modulos_de_apoyo_de_la_docencia.pdf.

3.5.3. Child victims of cross-border trafficking rings

As noted above, children who fall victim to forced recruitment and exploitation by cross-border criminal trafficking rings (or “circuits” or “networks”) are particularly at risk. These children are not only unprotected, but also criminalized and stigmatized, both socially and by government institutions and agents in Mexico and the United States.⁶³

The criminal organizations target children who live in the peripheries of northern Mexico’s border cities, in unsafe districts that lack basic services.⁶⁴ These children typically come from low-income, under-resourced families in states such as Guerrero, Oaxaca, or Sinaloa, and then journey north to work in the maquilas, or border factories:

“
Because they live in the outer urban areas, in districts adjacent to the border, it is difficult for them to access their rights. Most have problems with addiction and lack of care, and therefore have healthcare needs that must be addressed. There is a big gap in mental health care. [T]here is [also] a lack of support and education inside their homes. The strongest need is for educational opportunities. **(Derechos Humanos Integrales en Acción, DHIA)**”

Staff from the Mexican Consular Network in the United States further indicated that these forced recruitment victims are typically between 14 and 17 years old, 95% are male, and they are required to cross the border repeatedly until they turn 18.⁶⁵

Appleseed’s 2011 report already highlighted the plight of these children: “Mexican officials believe that minors are recruited by criminal gangs precisely because they serve as smugglers of people, things, or drugs; if they catch them, they are likely to be sent back to Mexico and be available again to work for them.”⁶⁶ The situation remains the same 13 years later: unlike adults or UACs from other countries, Mexican UACs are particularly valuable to criminal trafficking networks because of this ability to cross the border continuously. When one of these children is intercepted by U.S. immigration authorities, the child is simply deported back to Mexico within a very short period, and the criminal organization can then give the child another cross-border task to fulfill. While both Mexican and U.S. agents encounter these children on a regular basis, at the time of this study the Mexican Government did not track these children as a subgroup. The head of the Mexican Directorate of Protection for the United States within the Secretariat of Foreign Affairs estimated that “50% of those the consular network has contact with are ‘circuit children,’ but it may be more depending on the crossing point.”⁶⁷

63. See, e.g., *El Paso - Juarez Report*, supra, note 10.

64. *Díaz Prieto Report*, supra, note 46, at pp. 5-6.

65. Although there is no official data in this regard, nor is there a documentation practice for these cases by the Mexican Consular Network in the United States, this information was obtained through the estimates provided by personnel of the Mexican Consulate in McAllen in an interview held on September 20, 2022, as well as through the interview conducted by the Directorate of Protection for the United States, within the Directorate Protection within the Secretary of Foreign Affairs on September 29, 2022.

66. *Appleseed 2011 Report*, supra, note 1.

67. Interview held on September 29, 2022, with the Directorate of Protection for the United States, within the Directorate of Protection within the Secretary of Foreign Affairs.

This is consistent with the information provided through interviews with Mexican consular personnel working directly at the border: 70% of the children the consulate serves at the Texas border with Tamaulipas are child victims of cross-border trafficking networks, while at the California border with Baja California Norte, it is only 20%. On average, it is estimated that each of these children makes up to seven crossings in a year. These percentages, despite not being official due to the lack of tracking by SRE or CBP, represent a daily reality that cannot be denied, and it is concerning that there are no institutional actions to care for and protect this group of children.

There are also **concerns regarding the normalization of the life circumstances of this population of children who fall victim to human trafficking and smuggling networks, including the high frequency with which they cross the border, the lack of government intervention to stop the victimization and criminalization of these children, as well as the patterns and conditions that made them vulnerable to forced recruitment by organized criminal groups in the first place.**

Unfortunately, society and authorities continue to perceive these children's involvement with these criminal networks as a voluntary choice,⁶⁸ placing all responsibility on the children without considering the realities of their victimization.

These children live in constant danger while also facing near total abandonment by society and the state, including exclusion from any type of protection or restorative justice measures on both sides of the border,⁶⁹ and the prospect of being arrested and charged as criminals upon reaching the age of majority.⁷⁰

It is concerning that there are children in prison in the United States who were originally part of these circuits and who, when they turned 17 in Texas, or 18, are charged with felony crimes with a sentence of up to 50 years.

(Directorate of Protection for the United States of America within the SRE)

We were able to hear directly from several of these children during the focus group carried out in Ciudad Juárez, Chihuahua, and learn directly from them about the constant dangers they face, in addition to systematic abuse by police, border agents, and the criminal networks, and the near impossibility of escaping their situation. This is demonstrated by the following two testimonials:

Well, honestly, the dudes on the wall have caught me a shit-ton of times and they have beaten me up (...) Immigration officers hit me once, (...) and he had shoes with metal tips, the immigration officer, and "pow!" he hit me like this (...) because they do discriminate against you here, honestly, they discriminate against you really bad.

(Anonymous textual testimony taken from the focus group in Ciudad Juárez)

Not everyone has the same luck, some want to go out and they want to tie them up, and they hit you with a board, but this shit is not easy, honestly.

(Anonymous textual testimony taken from the focus group in Ciudad Juárez)

68. Quintero Serrano, Norma Patricia, E. Salas Mayme, and Valeria Geremia, *Reclutamiento y utilización de niñas, niños y adolescentes por grupos delictivos, Análisis desde las políticas públicas y la legislación (Recruitment and Use of Children by Criminal Groups. A Public Policy and Legislative Analysis)* 2nd Part, REDIM, available at https://issuu.com/infancia cuenta/docs/reclutamiento_final_7_de_diciembre_compressed_1_.

69. *Díaz Prieto Report*, *supra*, note 46.

70. Restorative justice refers to any program that focuses on the rehabilitation and reintegration of children, bypassing the punitive approach to justice that holds child offenders criminally accountable. See Office of the Special Representative of the Secretary General on Violence against Children, *Promotion of Restorative Justice for Children and Adolescents* (2013), available at <https://violenceagainstchildren.un.org/es/news/promoting-restorative-justice-children-0>.

As organized crime has grown in strength and geographic spread, this situation has continued to worsen without the development and implementation of public policies, institutional tools, and actions to address the victimization of these children and permit them to access protection and restoration of their rights in the country that suits their individual best interests. For example, as indicated by Derechos Humanos Integrales en Acción (DHIA) in its 2017 report, the 2015 Protocol prepared by the DIF and IOM for the care of unaccompanied or separated migrant children does not include specific measures to accompany and protect child victims of cross-border trafficking rings.⁷¹ Rather, the common practice is still to institutionalize or detain these children.

71. El Paso - Juarez Report, *supra*, note 10.



4. LEGAL RESPONSE FOR MEXICAN CHILDREN AT THE BORDER

4.1 Evolution of the regulatory framework in Mexico and the United States with respect to children in recent years

4.1.1. Evolution of the Mexican regulatory framework since 2011

In Mexico, children’s rights are protected through an extensive regulatory framework, which has undergone an interesting evolution and establishes the special protections necessary for children to fully exercise their rights. A child’s migration status—like the child’s nationality, age, gender, or any other condition—does not alter or diminish the child’s rights or the state’s duty to protect those rights. The legal rights of children are equally applicable to all children, without distinction based on migration status, origin, or any other condition.

There has been a very significant evolution in the regulatory frameworks for migration and children since the 2011 Appleseed report. In 2011, the first Mexican Migration Law was published almost at the same time as the report, as was the Law on Refugees, Supplemental Protection, and Political Asylum, and its regulations, which were promulgated a year later. It was impossible to evaluate the scope or effect of these laws in the first report, as they were newly enacted.

Then, in 2014, the General Law on the Rights of Children and Adolescents (LGDNNA) was published and entered into force. The approval of the LGDNNA was a decisive step in Mexico to move from a pre-conventional, guardianship-focused system to a protection system that views children as rights-holders. After some early drafts that did not address migrant children, the published law integrated a chapter specifically dedicated to them, thanks to the advocacy of civil society organizations and international bodies. It also created an inter-institutional response mechanism with the creation of SIPINNA,⁷² the Prosecutor’s Office for state-level

laws throughout the Mexican Republic, and the creation of SIPINNAs at the state and local level.

Legislative and regulatory changes did not stop there. The inconsistencies between the “new” 2014 LGDNNA and the pre-existing Law on Immigration and Refuge, which contained the procedures for care of migrant children, were corrected at the end of 2020 with congressional approval of a decisive reform to the Law on Immigration and Refuge.

Before and after this reform, international bodies and civil society organizations supported the development of various processes related to the LGDNNA, including protocols and operational guidelines, which are highlighted in later sections of this report.

This report documents and analyzes the significant regulatory advances in Mexico in the past 13 years, along with the and remaining challenges. As the following Section describes, though, the evolution of the legal framework during this period was very different in the United States.

72. On December 2, 2015, the National Comprehensive Protection System for Children and Adolescents was officially installed in Mexico. For more information on its progress, see the official public information on SIPINNA, available at <https://www.gob.mx/segob/documentos/sistema-nacional-de-proteccion-integral-de-ninas-ninos-y-adolescentes-sipinna>.

4.1.2. Evolution of the U.S. legal framework since 2011

As in Mexico, the rights of UACs in the United States have long been governed by a complicated and dynamic legal regime. That is no less true today than it was in 2011. The basic process that Applesseed's 2011 report described is largely unchanged—when Mexican UACs encounter CBP officers at a port of entry or after crossing the U.S. border outside a port of entry, U.S. law requires that the UACs be screened within 48 hours and either repatriated immediately or placed within the custody of the U.S. Government pending a subsequent determination of their continued custody, right to reside in the United States, or both. While there have been limited efforts to improve how Mexican UACs are screened and cared for, there remain significant problems that must be addressed, as described below in Section 5.

Furthermore, events of the past decade have underscored how vulnerable the U.S. immigration system can be to the winds of social and political sentiment, and how this can harm immigrants and stymie efforts to effect positive change. As described in more detail elsewhere in this report, in recent years, Congress has been ground to a halt by intransigent political forces and has largely yielded its role in shaping immigration law to the executive and judicial branches.

Although gridlock on Capitol Hill is hardly a new phenomenon, the increased politicization of immigration issues over the past decade has made enacting any reforms in Congress extremely difficult. In Congress's absence, the executive branch has assumed an outsized role in immigration law. Because of this, immigration policy generally—and the rights of UACs specifically—have been subjected to frequent revision by successive presidential administrations, leaving the status of many immigrants, including UACs, uncertain.

For example, in 2019, the Trump Administration implemented the Migrant Protection Protocols (“MPP”), also known as the Remain in Mexico policy. MPP required asylum seekers at the southern border to wait in Mexico while their asylum claims progressed through the U.S. court system. Prior to the implementation of MPP, asylum seekers who demonstrated a credible fear of persecution if they returned to their home countries⁷³ were allowed to enter and remain in the United States while they pursued their asylum claims.⁷⁴ While MPP appears to violate the U.S.'s obligations towards refugees and asylum-seekers under U.S. and international law, it remained in place until the Biden Administration came to power in January 2021 and sought to rescind the application of the law.⁷⁵ It is important to note that the text of MPP always exempted UACs of any nationality, and all Mexican nationals (of any age); however, several CSOs that participated in this investigation⁷⁶ observed that the program contributed to significant confusion and chaos at the Mexico-U.S. border and spill-over effects for all individuals seeking safety. This included reported increases in crime, including against those waiting to enter the U.S., but also Mexican UACs being improperly turned back without appropriate screening, potentially due to so many new policies (including MPP and Title 42) being implemented at the border.

This dynamic has been replicated in a host of circumstances. For instance, in 2020, at the outset of the COVID-19 pandemic, the Trump administration issued a policy relying on Title 42 of the U.S. Code (which addresses health and social welfare) to expel newly arrived migrants without considering the merits of any asylum claims they might present. The order issued under Title 42 sought to deny migrants entry into the U.S. based on concerns about the pandemic. While UACs were initially subject to expulsion under the Title 42 order, the Biden Administration exempted them from expulsion in early 2021.⁷⁷

73. Credible fear equates to a significant possibility that the alien is eligible for asylum. See *Dep't of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1965 (2020). This fear of persecution must be based on at least one of the following five categories: race; religion; nationality; membership in a particular social group; or political opinion. 8 U.S.C. § 1101(42)(A).

74. This protection is mandated under U.S. statutory law reflecting the obligations of the United States, as a signatory to the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugee, to refugees and asylum seekers. See 8 U.S.C. § 1158(a)(1) (“Any alien who is physically present in the United States or who arrives in the United States . . . may apply for asylum”); see also The UN Refugee Agency, Convention and Protocol Relating to the Status of Refugees, available at <https://www.unhcr.org/en-us/3b66c2aa10>.

75. A court battle ensued, and at the time of publication of this report, the ultimate fate of MPP was still being decided by the courts, however new enrollments were not occurring. See *State of Texas v. Joseph R. Biden*, 2:21-cv-00067 (N.D. Tex. 2021).

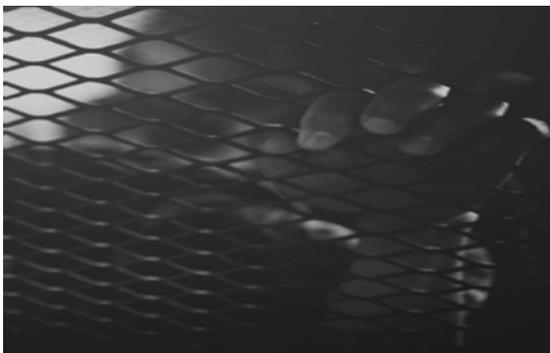
76. This report includes information from representatives of unnamed U.S. NGOs who requested that they remain anonymous, so they could share their frankest observations and insight regarding the situation of Mexican UACs at the border. Wherever possible, NGO observations are only included where two or more NGOs reported the same experience.

77. As with MPP, a court battle ensued, with UACs permanently being exempted from the Title 42 order in March of 2022, though the Title 42 order otherwise remained in place until May 2023, when the Biden Administration declared the COVID-19-related health emergency was over.

There has also been variation in the conditions and standards of care provided to UACs, including the housing of children in temporary buildings and the Trump Administration's failed attempt to terminate longstanding safeguards contained in the "Flores Settlement."

If UACs were always exempt from the MPP, and were eventually exempted from Title 42, these exemptions had the perverse effect of separating families. In many cases, parents, desperate for their children to find security, encouraged them to cross the border alone so that they could stay in the U.S. and seek asylum, an option that would not have been possible if they had stayed with their parents. This forced family separation as a strategy, due to the harsh immigration policy in the U.S., is not a phenomenon unique to the COVID-19 era. In 2018, the Trump Administration decided to take criminal action in cases that had previously been treated as civil or administrative infractions. As a result, many adult migrants (converted into criminal defendants) were incarcerated and separated from their children, turning many accompanied children into unaccompanied children.

Given the primacy of the executive branch in driving U.S. immigration policy over the last decade, the scope of the rights afforded to all immigrants, including UACs, have ebbed and flowed with the priorities of successive presidential administrations. Section 4.3 of this Report will summarize the most salient aspects of the U.S. system and the ways in which it has changed since 2011.



4.2 Response of the Mexican Government

4.2.1. Applicable legal framework

Hierarchy of laws—Mexico

The highest authority of the Mexican legal system—the Political Constitution of the United Mexican States—addresses the protection of children in Article 4, which contains respect for the best interest of the child as a fundamental and cross-cutting principle.

The Mexican legal framework consists of federal and state laws that specifically regulate the rights of all children, regardless of background. These laws are then implemented and enforced by various internal regulations, guidelines, and protocols. As already noted, the fact that a child, whether a Mexican national or a national of some other country, is migrating does not result in any difference in the existence of or duty to protect the child's rights, because in principle, all rules, rights, and guarantees are equally applicable to all children, without any discrimination.

International law also plays an important role here, as the rights of children are contained in a specific international convention, namely the 1989 United Nations Convention on the Rights of the Child. This convention is supplemented by secondary implementing regulations, both at the international and inter-American levels, and the regulations establish the rules applicable to all signatory countries, such as Mexico.⁷⁸ Consequently, this framework is an integral part of the Mexican domestic legal system and takes its place among the highest legal authorities, as established in Article 133 of the Political Constitution of the United Mexican States, and confirmed by the Supreme Court of Justice of the Nation (SCJN).

The primary law regulating the rights of children in Mexico is the LGDNNA, which came into effect at the end of 2014. As noted above, this law has a specific chapter dedicated to human migration—Chapter 19—which provides for an interinstitutional response, through the creation of the SIPINNA⁷⁹ and Prosecutor's Offices for the Protection of Children and Adolescents at the federal and state levels. This general law also mandated the enactment of state-level implementing laws throughout the republic and called for the creation of SIPINNAs at the state and local levels.

78. Notably, the United States is not a signatory to the United Nations Convention on the Rights of the Child.

79. On December 2, 2015, the National Comprehensive Protection System for Children and Adolescents was officially installed in Mexico. For more information on its progress, see the official public information on SIPINNA, available at <https://www.gob.mx/segob/documentos/sistema-nacional-de-proteccion-integral-de-ninas-ninos-y-adolescentes-sipinna>.

It is also important to note the following regarding the Mexican legal framework with respect to human migration:

- The Immigration Law of May 2011 and its regulations.
- The 2011 Law on Refugee, Supplemental Protection, Political Asylum, and its regulations.
- The inconsistencies between the new requirements of the LGDNNA of 2014 and the existing Law on Immigration and Refuge, which was corrected through a congressionally approved reform to the Law on Migration and Refugee that entered into force in February 2021.



The following table provides more detail on the laws that affect the rights of migrant children:

Law	Summary
General Law on the Rights of Children and Adolescents – LGDNNA	The LGDNNA protects, guarantees, and promotes the rights of minors in the country, recognizing their rights and establishing fundamental principles, such as the best interest of the minor, non-discrimination, participation, and respect for their dignity. The law establishes obligations for the authorities and for society in general to guarantee these rights, as well as the mechanisms for the protection and defense of children.
Regulations of the General Law on the Rights of Children and Adolescents – RLGDNNA	The RLGDNNA complements and regulates the application of the LGDNNA, establishing specific provisions to protect the rights of minors and specifying the correct authorities to enforce the law, the purpose of the law, enforcement mechanisms, and restitution in case of a violation of a child’s rights.
Immigration Law – LM	The LM regulates the entry into, journey through, stay in, and departure from Mexican territory by foreign persons, establishing measures to protect the rights of migrants and fight illegal migration, as well as the requirements and procedures for obtaining visas and residence permits. The law recognizes the right to protection and respect of the human rights of migrants, regardless of their immigration status.
Regulation of the Immigration Law – RLM	The RLM complements and regulates the application of the LM, establishing specific provisions for the protection of the rights of migrants and the control of illegal migration, as well as procedures for obtaining visas and residence permits, and regularization of the immigration situation of people who are out of status. It also includes protective measures for vulnerable migrants and penalties for violating the law.

Law	Summary
<p>Law on Refugees, Supplemental Protection, and Political Asylum – LRPCAP</p>	<p>The LRPCAP regulates the protection of the rights of refugees and asylum seekers, establishes procedures and requirements for applying for and obtaining refugee status, and provides supplemental protection for those who need protection due to situations of violence or risk in their home countries. It also establishes the obligations and responsibilities of law enforcement authorities, as well as measures for the social and economic integration of refugees in Mexico.</p>
<p>Regulation of the Law on Refugees, Supplemental Protection, and Political Asylum – RLRPCAP</p>	<p>The RLRPCAP regulates and supplements the application of the LRPCAP, establishing specific provisions for the protection of the rights of refugees and asylum seekers. It establishes measures to ensure the non-return or expulsion of persons with refugee status or supplementary protection to countries where they may suffer persecution or violence. It also establishes the powers and responsibilities of law enforcement and the sanctions for violators.</p>
<p>Protocol for the consular care of unaccompanied migrant children and adolescents</p>	<p>The Protocol establishes the procedures and protection measures to ensure the care and protection of the human rights of unaccompanied migrant children located in Mexican territory. It seeks to provide for immediate and appropriate care for minors by Mexican consulates abroad and domestic Mexican authorities, including by identifying cases of vulnerability and providing health, food, accommodation, education, and legal protection services.</p>
<p>Agreement setting down Guidelines for Protection of Migrants to be followed by the National Migration Institute</p>	<p>The Guidelines establish protection measures that the INM must take to ensure the respect and protection of the human rights of migrants, including measures to protect the physical and psychological integrity of migrants, ensure the protection of the rights of migrants in vulnerable situations, establish procedures for handling complaints and grievances, and ensure collaboration with other civil society institutions.</p>

It is important to understand and analyze these various sources of law and also to observe how they are implemented in practice, as they are not always applied uniformly to all children. As a preliminary matter, it must be noted that these are broad rules that are hierarchically structured, but whose order of precedence and substance are not always respected in practice. Therefore, we will first explain the regulatory and hierarchical order that should be observed, and then discuss the substance of these laws:

1. International child protection rules and standards ratified by the Mexican State.
2. Political Constitution of the United Mexican States (Highest authority of the Mexican legal system).
3. General national laws specifically regulating the rights of children.
4. General national laws regulating the conditions in which children are found (e.g., migrant children).
5. National laws and codes that penalize illegal conduct by minors.
6. Regulations of the above-referenced national laws.
7. State laws that develop the principles and rights set forth in national laws.
8. Administrative guidelines and circulars, which establish the operating procedures for the exercise of any aspect or right related to the protection of children.
9. Case law and doctrines issued by courts (all levels) that relate to situations that put the fundamental rights of children at risk.
10. Operational protocols prepared by federal, state, and local institutions with jurisdiction over issues related to children, which regulate the practice and institutional coordination required for the exercise and protection of children's rights.



Below is a visual depiction of the hierarchical relationship among the main sources of law related to the rights of migrant children. (See Figure 10).

INTERNATIONAL HUMAN RIGHTS TREATIES

Treaties, covenants, conventions, general observations, and case law of the IHR Court, issued by international bodies and ratified by the Mexican state

Applicable to migrant children: Convention on the Rights of the Child 1989; Convention on the Rights of Immigration Workers and Their Families of 1991; General observations of the Committee on the Rights of the Child; Consultative opinion 21/14 of the Inter-American Court of Human Rights

POLITICAL CONSTITUTION OF UNITED MEXICAN STATES

Highest authority of the Mexican legal system

FEDERAL REGULATIONS

Laws approved by Mexican Congress and developed by the federal executive branch

Applicable to migrant children: General Law on the Rights of Children and Adolescents; Immigration Law, Refugee Law; Supplemental Protection and Political Asylum:

Regulations of the General Law on the Rights of Children and Adolescents; the Immigration Law and the Refugee Law

STATE AND LOCAL LAWS

Rules approved by Congresses of the states of the Republic and developed by state and local executive branches.

Examples for migrant children: Migrant Protection and Support Law for the State of Chihuahua; Law for the Protection of Rights and Support of Migrants of Baja California; Law for the Care and Protection of Migrants and Human Migration of Coahuila

OPERATING PROTOCOLS

Operational rules for the care of migrant children, issued by different government agencies

Example: SIPINNA's comprehensive care path for migrant children.

Figure 10. Infographic of hierarchical relationship among sources of law applicable to migrant children.

Source: Original infographic.

4.2.2. Summary of rights of migrant children under Mexican law

As reported in the 2011 Appleseed Report, and as we have observed throughout this report, the substantive and procedural legal rights of Mexican UACs continue to be violated, placing these children at ongoing serious risk in terms of their physical and psychological safety and development.

Given the rights and guarantees at stake, a thorough legal review was carried out by several law firms within Appleseed Mexico's Pro Bono Network.⁸⁰ These firms identified the articles and sections of each law and regulation that relate to each right and guarantee and provided analysis of how each law interplays with these rights and guarantees. We have then used this rights-based legal framework to document the infringements of rights and to identify recommendations that promote effective application of laws to protect children's rights.

The following table presents a summary of the rights of migrant children that are guaranteed by each of the laws and regulations described in the prior Section. For those wishing to delve deeper, the full text of these sources of law can be found in the annexes to this report.

Type or rule	Rule	Concept	Article
International Human Rights Treaties	<i>Convention on the Rights of the Child 1989</i>	Best Interest	2, 3, 6, 12
		Family Reunification	9
		Special Protection	19
		Right to Specialized and Differentiated Judicial Process	4, 19
		Participation in Matters Affecting Them	12
		Right to Protect Their Privacy, Identity, and Private Life	8, 16
		Right to Life, Survival, and Development	6, 16, 27
		Right to Health, Health Services, and Social Security	24, 26
		Right to Education	23, 28
		Right to Rest and Leisure	31
		Right to Freedom of Ethical Convictions, Thinking, Awareness, Religion, and Culture	12, 13, 14
		Right to Association and to Gather	15
		Right to Progressive Autonomy	5, 12

Figure 10. Legal sources of migrant children's rights.

Source: Original analysis.

80. The firms Hogan Lovells Mexico, Sanchez de Vanny, and Jaúregui y Del Valle were mainly engaged. For more information on Appleseed Mexico Pro Bono Network, see <https://appleseedmexico.org/red-pro-bono-mexico/>.

Type or rule	Rule	Concept	Article
Main Rule of the Mexican Legal System	<i>Political Constitution of the United Mexican States</i>	Best Interest	4
		Right to Equality and Non-Discrimination	1
		Right to Specialized and Differentiated Judicial Process:	1
		Right to Due Process	14
		Participation in Matters Affecting Them	4
		Right to Health, Health Services, and Social Security	4
		Right to Education	3
		Right to Freedom of Ethical Convictions, Thinking, Awareness, Religion, and Culture	6
		Right to Association and to Gather	9
Federal Laws	<i>General Law on the Rights of Children and Adolescents</i>	Chapter 19 - Migrant Children and Adolescents Articles	Articles 89 to 106
		Best Interest	2, 3, 6, 18, 22
		Placement and Reunification according to Best Interest of the Child	2, 6, 18, 24, 26
		Family Reunification	91, 93
		Humanitarian Protection and Aid and Help	17
		Special Protection	10, 89, 122
		Alternative Care	24
		Right to Live in a Family	13, 22
		Right to Have an Identity	Cap. 3
		Adoption of Measures in Cases of Separation from Family or Guardians	25
		Plan for the Restitution of Rights	123
		Requirement that Unprotected Children be Presented to the Authorities	30 Bis
		Child Protection	89
		Prosecutor's Office for the Protection of Children	121
		Social Assistance Centers – Shelters	4, 94, 95, Title 4

Federal Laws	<i>General Law on the Rights of Children and Adolescents</i>	Child Databases	99, 100
		Repatriation	100
		Right to Due Process	82, 92
		Representation by Proxy	106
		Participation in Matters Affecting Them	2, 6, 13, 73
		Right to Information	13, 56, 65, 66
		Right to Protect their Privacy, Identity, and Private Life	13, 83, 86, Cap 17
		Safe and Appropriate Environments	83
		Right to Life, Survival, and Development	13, 14, 15
		Right of Priority	3, 17
		Right to Live in Healthy Conditions and to Full, Healthy Development	13, Cap 7
		Right to Violence-Free Living and to Personal Safety	13, Cap 8
		Right to Health, Health Services, and Social Security	13, Cap 8
		Right to Inclusion of Children with Disability	13, Cap 10
		Right to Education	13, Cap 11
		Right to Rest and Leisure	13, Cap 12
		Right to Freedom of Ethical Convictions, Thinking, Awareness, Religion, and Culture	13, Cap 13
		Right to Association and to Gather	13, Cap 16
		Right to Legal Security and Due Process	13, Cap 14
		Right of Access to Information and Communication Technologies	13, Cap 20
		Right to Accompaniment	4
Prohibition of Detention for Immigration Reasons	111		
Notification to the Prosecutor's Office for Protection	106		

Type or rule	Rule	Concept	Article
Federal Laws	<i>Immigration Law</i>	Best Interest	2
		Placement and Reunification according to Best Interest of the Child	2, 112
		Family Reunification	29, 112
		Special Protection	29, 3
		Plan for the Restitution of Rights	20, 74, 79
		Repatriation	18
		Reception	20, 112
		Definition of Children	3
		Prohibition of Detention for Immigration Reasons	6, 11, 20, 99
		Scheduled Interview with Personnel Specializing in Child Protection	6, 11, 20, 99
		Referral to the DIF System	112
		Housing Facilities	11, 112
		Be Informed of Process of Return to Community of Origin	112
		Assisted Return	112
Federal Laws	<i>General Victims Laws</i>	Special Protection	28
Federal Regulations	<i>Regulations of the General Law on the Rights of Children and Adolescents</i>	Child Databases	43, 110
		Prohibition of Detention for Immigration Reasons	111
		Issuance of Regulation	105, 107
		Notification to the Prosecutor's Office for Protection	106
	<i>Regulation of the Immigration Law</i>	Best Interest	172, 173
		Scheduled Interview with Personnel Specializing in Child Protection	172, 173

Operational Protocols	<i>Agreement Issuing the Guidelines on the Protection of Migrants of the National Immigration Institute</i>	Special Protection	3
		Reception Facilities for Repatriated Individuals	14
		Child Repatriation Procedure	18, 61, 62
		Receipt of Children	18
		Definition of Children	3
		Scheduled Interview with Personnel Specializing in Child Protection	12, 25
		Referral to the DIF System	19

Figure 10. Legal sources of migrant children’s rights.
Source: Original analysis.

Having briefly identified the most important articles, rules, and concepts within the national legal framework, we provide more detail below regarding the components of these laws and regulations that are most relevant to migrant children.

At the highest level of the Mexican legal system, we must begin by considering the various reforms made to bring a human rights perspective to the Constitution. Some of these reforms include express references to the rights of children to have their best interest considered, the right of children to have access to basic rights, and the obligation of the state to fulfill these rights.



The following image (Figure 11) shows the different reforms that have taken place since 2000 that have brought the Constitution into compliance with international rules for the protection of children and the defense of human rights:



CONSTITUTIONAL REFORMS concerning children



2000
Art 4

Right of children to have their needs for food, health, education, and healthy leisure met for their comprehensive development



2001
Art 1

Prohibits any discrimination based on ethnic or national origin, gender, age, disability, among others.

Art 2

Recognizes the rights of Indigenous Peoples, especially for the child population. Support for nutrition and education

POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES



2002
Art 3

Mandatory basic education, preschool level was added to elementary and secondary levels



2011
Art 1

Establishes the pro-person principle

Art 2

Recognizes the Child's Best Interest as a fundamental guarantee



2014
Art 4

The right to identity and to be registered at birth is added, guaranteeing the free issuance of the first certified copy of the birth certificate

Figure 11. Infographic on the various constitutional reforms concerning children since 2000.

Source: Original infographic.

At the federal level, the main law protecting and promoting children's rights is the December 2014 General Law on the Rights of Children and Adolescents, and its Regulations: This law contemplates the creation of a Prosecutor's Office for the Protection of Children and Adolescents (federal, state, and local) with the following concurrent powers (Art. 122):

- Ensure the comprehensive protection of children.
- Provide legal advice and representation in judicial and administrative proceedings involving children.
- Determine special protection measures for each child (the plan for protection and restitution of rights—equivalent to the Determination of the Best Interest).
- Order other authorities to execute such measures.
- Coordinate and oversee the execution of the protection measures for the restitution of children's rights.

This law establishes a procedure equivalent to the determination of the best interest of the child in Art. 123. To request comprehensive protection and restitution of the rights of children, the Prosecutor's Offices for Protection of Children and Adolescents must adhere to the following procedure:

- I. Detect or receive cases involving children's rights;
- II. Visit the family or places where the children are located to evaluate the state of their rights when there is information about a possible restriction or violation thereof;
- III. Determine the rights that are restricted or violated in each of the identified cases;
- IV. Prepare, under the principle of the best interest of the child, an assessment of the situation of infringement and a plan for restitution of rights, including proposals for measures for their protection;
- V. Arrange and coordinate with the relevant institutions to implement and fulfill the plan for reinstatement of rights; and
- VI. Follow on each of the actions in the rights reinstatement plan, until all the rights of the child have been guaranteed.

The **National Comprehensive Protection System for Children and Adolescents – SIPINNA was created, with the following functions:**

- Establish instruments, policies, procedures, services, and actions to protect the rights of children;
- Act as a mechanism for coordination between federal, state, and local entities, as well as the entities of Mexico City;
- Operate an executive secretariat, which is a decentralized administrative body that coordinates the state-level executive secretariats and has these **functions:**
 - Coordinate actions among institutions
 - Design the National Protection Program, including follow-up and monitoring
 - Support the execution and follow-up of system agreements
 - Manage the information system
 - Conduct and promote studies and research
 - Advise and support governments
 - Provide the necessary information to CONEVAL (Consejo Nacional de Evaluación de la Política de Desarrollo Social (National Council for the Evaluation of Social Development Policy))
 - Serve as a liaison with civil society

Specialized care for migrant children has been developed within the SIPINNA framework, including the following advances and setbacks:

- On April 30, 2019, at the SIPINNA reinstatement session led by the President of the Republic and attended by the executive leaders of all states, the creation of the Commission for the Comprehensive Protection of Migrant Children and Adolescents and Asylum/Refuge-Seekers was unanimously approved.
- In its reinstatement session, the states and members of the system unanimously approved the **Comprehensive Protection Path for the Rights of Migrant Children and Adolescents**.⁸¹
- Unfortunately, at the time of this report, **the federal SIPINNA is suffering significant setbacks**. The current Mexican government is seeking to reduce SIPINNA's powers, including eliminating SIPINNA⁸² and converting it into an administrative sub-unit of the DIF System,⁸³ which is the system that provides assistance to minors, but does not attend to their comprehensive protection needs. There is already a proposal before Congress to this effect that has been rejected by the those civil society organizations that are in favor of promoting and protecting children's rights.⁸⁴

With respect to immigration laws, it is important to note the November 11, 2020, reform to the Immigration Law and the Law on Refugees, Complementary Protection, and Political Asylum, which entered into force in February 2021, and brought the national immigration law into compliance and harmony with the 2014 LGDNNA, an achievement that took six years.

Post-reform, the most relevant requirements of the Immigration Law are:

- **The non-detention** of migrant children, whether accompanied or unaccompanied, in immigration stations or houses and the provision of open care alternatives within the child protection system.
- **The determination of the best interest** of children with of corresponding plans for restitution of rights as a central element of the comprehensive rights-guarantee process (before making any other decisions) to be made by the Prosecutor's Offices for the Protection of Children and Adolescents.
- The requirement to consider the best interest of children during the entire administrative immigration process and resolve the process in accordance with the Rights Restitution Plan issued by the Prosecutor's Office for the Protection of Children and Adolescents. (art. 120 and 122):
 - The assisted return of children to their countries of origin will be carried out in accordance with the rights restitution plan of the Prosecutor's Office for Protection of Children and Adolescents. (art. 20 and 122)
 - In no case may the immigration authority send back, expel, deport, return, reject at the border, or not admit a minor without first assessing whether the minor's life, freedom, or safety is in danger. (art. 74)

81. To view the Comprehensive Protection Path for the Rights of Migrant Children and Adolescents, see

https://www.gob.mx/cms/uploads/attachment/file/775149/Ruta_Protecci_n_Integral_de_Derechos_NNA_situac_n_migraci_n.pdf.

82. View the press article "Federal Government prepares decree to disappear the System for the Protection of Children and Adolescents" (Nov. 11, 2021), available at <https://www.eluniversal.com.mx/nacion/gobierno-federal-alista-decreto-para-desaparecer-el-sipinna/>.

83. "Thirty-eight million children will be left defenseless due to the merger of the SIPINNA with the DIF: Coparmex," Forbes (Apr. 25, 2023), available at <https://www.forbes.com.mx/quedaran-en-indefension-38-millones-de-menores-por-fusion-del-sipinna-con-el-dif-coparmex/>.

84. "The Disappearance of SIPINNA, 'The Worst Scenario for Our Children': NGOs," April 25, 2023, available at <https://www.proceso.com.mx/nacional/2023/4/25/la-desaparicion-de-sipinna-el-peor-de-los-escenarios-para-nuestras-infancias-ongs-305951.html>.

- **The provision of temporary immigration status for all migrant minors** in order to avoid their expedited return and thus ensure that their basic rights, including access to international protection, can be met. (Art. 52, 74, and 122)
- **The extension of protection to all migrant children, not just unaccompanied ones, and to families.** For example, permission to stay will be granted to the caregiving adult when they respond to the child’s best interest. (art. 52)
- For those who receive the status of “Visitor for Humanitarian Reasons,” **a CURP (Clave Única de Registro de Población (Unique Population Registry Code) must be issued. (Art. 20)**

This reform also had an **impact on the LRPCAP for asylum and refugee matters.** Post-reform, this law provides that:

- In the case of child applicants, refugees or persons with complementary protection, non-return and family unity will be guaranteed. (art. 6)
- When bestowing refugee status, the state must protect the composition and development of the family and the best interest of the child. (Art. 9)
- At no time will child applicants, whether accompanied or not, be deprived of freedom at immigration stations or authorized places. (art. 20)
- Interviews with UACs will be conducted in accordance with the LGDNNA. (art. 23)
- During processing and interviews, children may file proceedings by themselves or through their representatives in accordance with the LGDNNA. (art. 41)

4.2.3. Relevant judicial precedents

The legal framework described above is supplemented by precedential decisions issued by courts at various levels regarding the application of the laws and regulations on the rights of migrant children.

While relevant judicial decisions are unfortunately scarce in Mexico, thanks to the strategic litigation and judicial awareness campaigns developed by pro-bono lawyers, civil society organizations, and international bodies, the number of judicial precedents has been increasing in recent years:

Concept	Case Law	Summary
BEST INTEREST	<p><i>Case law thesis 2nd./I. 113/2019 (10th), under the heading: RIGHTS OF CHILDREN AND ADOLESCENTS. THE BEST INTEREST OF THE CHILD IS ERECTED AS THE PRIMARY CONSIDERATION TO BE ADDRESSED IN ANY DECISION AFFECTING THEM. Second Chamber of the SCJN. Entry 2020401</i></p>	<p>The best interest of the child should be considered in any decision-making or evaluation involving minors, both in an individual and collective manner. This is a right, legal principle, and rule of procedure.</p>

<p style="text-align: center;">LOCALIZATION AND REUNIFICATION ACCORDING TO THE BEST INTEREST OF THE MINOR</p>	<p><i>Isolated thesis 1.XXVI/2022 (11TH), item: "RIGHTS OF MIGRANTS IN THE FACE OF THE MASS INFLUX OF MIGRANTS, THE CONSTITUTIONAL OBLIGATION TO DESIGN COLLECTIVE OR GROUP MEASURE TO GUARANTEE THE INITIAL EVALUATION OF MIGRANT CHILDREN AND TO ADOPT COMPLEMENTARY MEASURES IN ORDER TO ATTEND TO THE COMMUNITY IN A MANNER INDEPENDENT OF THE IMMIGRATION PROCEDURE IS TRIGGERED."</i> First Chamber of the SCJN. Entry 2024912.</p>	<p>Mechanisms and records shall be established for the identification of minors to facilitate the protection of minors and the evaluation of each case based on the best interest of the minor. These measures must satisfy certain requirements, including interviews that take the age and gender of the child into consideration and access to legal advice, to effectively protect children. Within the process, the reasons for vulnerability and family separation must be taken into account.</p>
<p style="text-align: center;">RIGHT OF EQUALITY AND NON-DISCRIMINATION</p>	<p><i>Amparo under review 275/2019. Judgment May 18, 2022. First Chamber of the SCJN. Isolated Thesis 1. LXXXIV/2015 (10a.), under the heading: "PRINCIPLE OF EQUALITY AND ON DISCRIMINATION IN THE CONVENTION ON THE RIGHTS OF THE CHILD."</i> First Chamber of the SCJN. Entry 2008551.</p>	<p>Apart from the requirement of the courts to ensure that public policies do not create inequality, non-discrimination principles must be considered in cases involving minors. Any minor in the country has the same rights and protections.</p>
<p style="text-align: center;">RECEPTION SITES FOR REPATRIATED INDIVIDUALS</p>	<p>Judgment issued under Direct Amparo in Review 474/2014. First Chamber of the SCJN. Judgment of March 18, 2015, paragraph 130.</p>	<p>"Based on the principle of nondiscrimination, the judge must provide differentiated and specialized treatment in the procedural sequelae, in any risk assessment, in the protection measures, and, in general, in the assessment of any issue that affects a child. In this regard, any decision adopted in the jurisdictional field that directly or indirectly affects the rights of a child must be adopted on the basis of the recognition of its own characteristics."</p>
<p style="text-align: center;">PARTICIPATION IN MATTERS AFFECTING THEM</p>	<p>Judgment issued under Direct Amparo in Review 2479/2012. First Chamber of the SCJN. Judgment of October 24, 2012. pp. 1217 and 24.</p>	<p>Minors have the right to participate in legal matters concerning them. This right includes having their opinion taken into account in decision-making.</p>

<p style="text-align: center;">RIGHT TO PROGRESSIVE AUTONOMY</p>	<p><i>Case law thesis 1a/J. 13/2015 (10th), with heading: BEST INTEREST OF THE CHILD. THE RIGHT OF MINORS TO PARTICIPATE IN JURISDICTIONAL PROCEEDINGS AFFECTING THEIR LEGAL SPHERE CANNOT BE PREDETERMINED BY A FIXED RULE BASED ON THEIR AGE. First Chamber of the SCJN. Entry 2009009.</i></p>	<p>A children has the right to express their opinions, and this right must not be limited by any law that predetermines their participation due to their age.</p>
<p style="text-align: center;">RIGHT OF ACCESS TO INFORMATION</p>	<p><i>Judgment issued under Direct Amparo in Review 4698/2014. First Chamber of the SCJN. Resolved on April 6, 2016, pp. 70-71.</i></p>	<p>Minors must have all the necessary information and advice to make a decision in their best interest.</p>
<p style="text-align: center;">RIGHT TO PROTECT THEIR PRIVACY, IDENTITY, AND PRIVATE LIFE</p>	<p><i>Isolated thesis 1. CXLII/2007, under the heading: "RIGHT TO THE IDENTITY OF MINORS. ITS CONTENTS." First Chamber of the SCJN. Entry 172050.</i></p>	<p>Minors have the right to have an identity. This right to have an identity is made up of different factors, including a first and last name, knowing their origin, and knowing who their parents are.</p>
	<p><i>Direct Amparo in Review 402/2007, resolved on May 23, 2007, p. 23.</i></p>	<p>Within the right to a private life is the protection of privacy.</p>
	<p><i>Direct Amparo Judgment 48/2015, resolved includes April 27, 2016, p. 33.</i></p>	<p>The right to have an identity also includes the right to one's own likeness.</p>
<p style="text-align: center;">RIGHT TO LIFE, SURVIVAL, AND DEVELOPMENT</p>	<p><i>Judgment issued under Amparo in Review 73/2016, resolved on April 13, 2016, p. 28</i></p>	<p>The right to life, survival, and development, including necessary conditions, such as water, food, health, and education, must be considered in all decisions regarding children.</p>
<p style="text-align: center;">RIGHT TO HEALTH PROTECTION AND SOCIAL SECURITY</p>	<p><i>Amparo under review 81/2021. Judgment of October 03, 2021. Second Chamber of the SCJN.</i></p>	<p>A CURP is not required to access health services, including for migrants.</p>
<p style="text-align: center;">RIGHT TO FREEDOM OF ETHICAL BELIEFS, THINKING, AWARENESS, RELIGION, AND CULTURE</p>	<p><i>Isolated thesis 1. VIII/2019 (10th), under the heading: PROGRESSIVE AUTONOMY OF MINORS. RIGHT OF CHILDREN TO EXERCISE THEIR RELIGIOUS FREEDOM. First Chamber of the SCJN. Entry 2019216.</i></p>	<p>Once a child has reached a certain age, the child can make decisions regarding what religious beliefs and practices they wish to adopt, due to the progressive development of autonomy.</p>

<p style="text-align: center;">RIGHT OF ASSOCIATION AND MEETING</p>	<p><i>Isolated thesis 2. VII/2018 (10th), under the heading: RIGHTS OF CHILDREN AND ADOLESCENTS FOR THE STATE OF AGUASCALIENTES. ARTICLE 13, SECTION XVI, OF THE RELATIVE LAW, WHICH RECOGNIZES THE RIGHT OF ASSOCIATION AND GATHERING FOR MINORS, ADHERES TO THE PARAMETER OF CONSTITUTIONAL REGULARITY. Second Chamber of the SCJN. Entry 2016010.</i></p>	<p>The fact that the rule recognizes the rights of peaceful association and gathering does not imply that children can unrestrictedly associate and meet with anyone, since the parents and other caregivers have the right and duty to protect children so that any interaction with society is in line with their best interests. The freedoms of this right increase with the capacity and maturity of the minor.</p>
<p style="text-align: center;">ASSISTED RETURN</p>	<p><i>Isolated Thesis II.4o.A.1 K (11): PRINCIPLE OF EXCEPTIONALITY OF THE DETENTION OF IMMIGRANTS. WHEN GRANTING THE SUSPENSION OF THE PLAN AGAINST IT IN THE AMPARO TRIAL, IT MUST BE ORDERED THAT IT CEASE AND SET THE ALTERNATIVE MEASURES NECESSARY TO ACHIEVE THE FOLLOW-UP OF THE ADMINISTRATIVE PROCEDURE, ESPECIALLY IF MINORS ARE INVOLVED. 4TCC in Administrative Matters of the 2C. Entry 2024000.</i></p>	<p>Measures should be taken so that a child's assisted return to their place of origin, or other processes related to it, proceeds as quickly as possible.</p>

Summary table of relevant judicial precedents.

Source: Original analysis drawn from various relevant judicial orders.



4.3 U.S. Legal response to Mexican children at the border

As noted in the 2011 report, “[u]pon encountering United States authorities near the border, Mexican UACs enter into a complex structural and legal framework designed to determine whether they should be repatriated immediately or given at least temporary shelter in the United States.”⁸⁵ At its core, the process by which Mexican UACs are apprehended, transferred, processed, screened, housed, and/or repatriated by U.S. government authorities has not changed significantly since the 2011 report. Just as in 2011, the TVPRA “contiguous country” provisions dictate whether a Mexican UAC detained at the border will be repatriated immediately or, instead, afforded the protections that UACs from all other countries receive—the opportunity to be sheltered in the United States, at least temporarily, while the right to remain can be considered in an orderly fashion.

Under these provisions, a Mexican UAC apprehended at the border is transferred to a border patrol station or escorted to an Office of Field Operations (OFO) security screening area at the port of entry, where the UAC will be screened by a CBP officer. DHS must screen Mexican UACs within 48 hours to determine whether they are at risk of trafficking, possess a fear of persecution if returned to Mexico, or lack the capacity to make an independent decision to return to their country. CBP, as a sub-agency of DHS, has been delegated this authority.

The CBP officer completes this screening via Form 93 (further described in Section 4.3.2.). If CBP identifies one of these risk factors, then the child will be referred to ICE for transfer to ORR custody, where the child will undergo the same processing as all other UACs. If CBP does not identify a risk factor, the child can be immediately returned to Mexico without ever seeing a lawyer or judge, and without further consideration of whether their safety or best interests require that they remain in the United States. The officer will ask the child to sign a Notice of Rights and Request for Disposition form (Form I-770), which contains a selection where the child may formally withdraw his or her application for admission. The child is then referred to ICE for voluntary return to Mexico, where the Mexican Consulate performs a repatriation interview and then sends the minor to a DIF Processing Center or private shelter to await family reunification.

Proper TVPRA screening remains vital, as referral to ORR—as opposed to immediate return to Mexico—provides Mexican UACs with the opportunity to apply for any immigration relief that may be available to them. This is a meaningful opportunity for the minor to obtain lawful status and safety in the U.S.

The types of immigration relief that may be available to Mexican UACs include the following:

Special Immigrant Juvenile Status. This route to legal permanent residency is available to a UAC who cannot be reunited with one or both parents due to abuse, neglect, or abandonment, and who obtains a judicial determination that it is not in his or her best interest to return to his or her (or a parent’s) country of origin.⁸⁶

Status for Victims of Severe Forms of Trafficking (T Nonimmigrant Status). Under the Victims of Trafficking and Violence Protection Act of 2000 (TVPA), an unaccompanied minor can qualify for T non-immigrant status—a “T Visa”—if he or she was a victim of a severe form of trafficking (defined as sex trafficking or forced labor),⁸⁷ is physically present in the United States on account of the trafficking, and would suffer “extreme hardship involving unusual and severe harm upon removal.”⁸⁸

85. *Appleseed 2011 Report*, *supra*, note 1.

86. 8 U.S.C. § 1101(a)(27)(I).

87. 22 U.S.C. § 7102(8).

88. 8 U.S.C. § 1101(a)(15)(T)(i). Only 7% of T nonimmigrants are under 18 years old, although 20% of T nonimmigrants, from all age groups, are Mexican. Precise statistics about Mexican children who were granted T nonimmigrant status were not available. See USCIS, *Characteristics of T Nonimmigrant Status (T Visa) Applicants* (Jan. 2022), available at https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet.pdf.

Asylum, Withholding of Removal, and Protection under the UN Convention Against Torture (CAT). In the TVPRA, Congress provided UACs with a more child-friendly asylum procedure, giving initial jurisdiction over all UAC asylum applications to USCIS, rather than forcing the minors to defend their asylum applications in immigration court.⁸⁹ To qualify for asylum, a UAC must show that he or she has a well-founded fear of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group and that the persecution is perpetrated by the government of the home country, or that the government is unable or unwilling to protect the asylum-seeker.⁹⁰ Asylum is a permanent status that provides employment authorization and path to legal permanent residence and U.S. citizenship.⁹¹

Status for Victims of Certain Crimes (U Nonimmigrant Status). U Nonimmigrant Status (“U Visa”) provides a path to lawful status and legal permanent residence for victims of certain enumerated crimes that occurred in the U.S. who have suffered substantial mental or physical abuse as a result of those crimes and who are willing to assist law enforcement and government officials in the investigation and prosecution of the criminal activity.

Family-Based Immigration. A UAC with a family member who is a U.S. citizen or legal permanent resident may also be eligible for permanent residency if the U.S. citizen or permanent resident petitions for the UAC to receive a family-based visa, which can then be adjusted to legal permanent residence.⁹²

While the basic TVPRA screening process and onward immigration pathways for Mexican UACs remain the same, new developments, including responses to the COVID-19 pandemic and other measures initially enacted during the Trump Administration, have impacted the way these regulations and policies are implemented. This includes both Title 42 and the MPP “Remain in Mexico” policy, discussed in greater detail below.

This Section will review in greater detail than the 2011 report the relevant U.S. law and policy related to the treatment of Mexican UACs. Like in Mexico, immigration laws in the United States are governed and enforced at the federal level. Within the immigration context, there are special laws and policies that apply to the screening, protection, and repatriation of UACs. However, unlike Mexico, the United States is not a signatory to the United Nations Convention on the Rights of the Child and does not have a standard federal framework for the rights of children or any single national body of law endowing children with an omnibus set of rights. Rather, the protection of children is governed primarily by individual state laws and implemented by state agencies.

For example, whether an unaccompanied child is entitled to certain state-funded healthcare and other assistance programs is largely state-dependent. Additionally, the age at which a child is no longer eligible to seek protection as a minor from local juvenile or family courts varies from state to state. For example, in Texas, children age out at 18 years old, but a child in California does not age out until they are 21 years old. One immigration consequence of this difference is that unaccompanied children in California are potentially eligible for Special Immigrant Juvenile Status—which provides a path to permanent status for certain undocumented children—for three years longer than UACs in other states.

89. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended in scattered titles of the U.S.C.) (“TVPRA”). TVPRA § 235(d)(7).

90. 8 C.F.R. § 208.13.

91. For individuals who still fear significant harm—such as persecution or torture—upon return to their home country, but who do not qualify for asylum, they may be able to apply for lesser forms of relief such as withholding of removal under INA section 241(b)(3) and withholding of removal and deferral under the U.N. Convention Against Torture (CAT). These forms of relief do not provide a path to legal permanent residence or citizenship, but do protect one from deportation and provide eligibility for work authorization. They are usually included as “in the alternative” requests to asylum for individuals who may have an underlying bar to asylum or ground of inadmissibility, which is beyond the scope of this report.

92. UACs who entered without inspection or accrued unlawful presence may face one or more grounds of inadmissibility that prevent them from obtaining status through family-based immigration, depending on their individual circumstances and the availability of a waiver.

Because the United States lacks a standard, national framework for children’s rights, this Section, which focuses on the United States legal system, centers on federal agencies and policies involved in the screening, protection, and repatriation of unaccompanied minors, but is not organized according to the rights of the child under international law. The rights of Mexican UACs under U.S. law are summarized in the below chart.

Rights of Mexican UACs Under U.S. Law			
Type of Standard	Standard	Concept	Citation
Supreme Law of the U.S.	<i>The U.S. Constitution</i>	Due Process (applicable to UACs who have already entered the U.S., but does not apply to UACs still seeking entry)	5th Amendment
		Right to free legal counsel (in criminal, but not immigration, proceedings)	6th Amendment
Federal Common Law	<i>Plyler v. Doe</i>	Interpreted the Equal Protection Clause of the Fourteenth Amendment to provide a right to free public education for all children regardless of immigration status	457 U.S. 202 (1982)
Federal Statutory Rights & Legal Agreements	<i>TVPPRA</i>	Right to (i) be screened for credible fear of persecution, trafficking risk, and inability to make voluntary decision, and (ii) not be immediately returned to Mexico if a risk factor is identified	8 U.S.C. § 1232(a)(2)(A)(4)
		Right to be transferred to ORR if a risk factor is identified	8 U.S.C. § 1232(a)(2)(A)(4)
		Right to not be returned to Mexico unless to appropriate employees or officials	8 U.S.C. § 1232(a)(2)(C)(i)
		Right to be returned only during business hours	8 U.S.C. § 1232(a)(2)(C)(ii)
	<i>The Flores Settlement & Subsequent Case Law</i>	UACs must not be in immigration detention facilities for more than 20 days, though they may be held in ORR custody for longer	
		Right to be placed within the least restrictive setting appropriate to child’s needs and age	

	<i>The Flores Settlement & Subsequent Case Law</i>	<p>While in ORR’s custody, including when housed in Emergency Intake Sites, UACs have the following rights:</p> <ul style="list-style-type: none"> • Access to sanitary and temperature-controlled conditions; • Access to water, food, medical assistance, ventilation, and contact with family members; • Suitable living conditions; • Daily outdoor activity; • Private phone calls at least twice a week for at least ten minutes in length; • Appropriate mental health interventions; • Educational services; • Legal services information; • Structured leisure time; • Specific case management services such as initial assessments by a case manager within 24 hours of a minor’s admission to the facility; and • Weekly meetings with case managers. 	
State Laws	<i>Various State Laws and Regulations</i>	The rights of children to certain standards of care and services vary widely from state to state. These state-level requirements, which apply to all children, are what govern the rights of Mexican UACs once they are released by ORR to family or other sponsors in the U.S. A review of these state-level child rights is beyond the scope of this report.	

Source: Original analysis of laws and judicial precedent relevant to Mexican UACs.

4.3.1. Applicable legal framework

This Section aims to provide advocates in the U.S. and Mexico—regardless of legal background—with a basic understanding of the U.S. legal framework for the screening, protection, and repatriation of Mexican UACs, as this understanding is essential in developing and championing improvements in this area.

Overview

The basis for United States law, including immigration law, is the United States Constitution. A key principle of the U.S. Constitution is the separation of powers among the three branches of the federal government (the executive, legislative, and judicial branches) and between the federal government and the respective governments of the fifty states. The U.S. Constitution vests in the U.S. Congress all federal legislative power, in the U.S. President all power to execute federal laws,⁹³ and in the federal court system all federal judicial power.⁹⁴ The U.S. Constitution grants Congress the sole power to “establish a uniform Rule of Naturalization;”⁹⁵ the U.S. President’s power is exercised through the various executive agencies, including the Department of Homeland Security (DHS);⁹⁶ and the judicial branch reviews challenged agency actions, including decisions issued by administrative tribunals, to ensure that the executive branch exercises its power in a lawful manner.

93. U.S. Const. Art. 2 §1.
94. U.S. Const. Art. 3 §1.
95. U.S. Const. Art. 1 §8.
96. U.S. Const. Art. 2 §1.

The U.S. President, with the consent of at least two-thirds of the Senate, may enter into bilateral and multi-lateral treaties⁹⁷ that become U.S. law upon adoption and ratification.⁹⁸ While the U.S. is a party to the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees, it is unique in its failure to sign the Convention on the Rights of the Child.⁹⁹

As noted above, and in the 2011 report, the executive power is delegated among various agencies. UACs, including Mexican UACs, may interact with a number of different agencies, including the Department of Homeland Security (DHS), and its sub-agencies Customs and Border Protection (CBP), Immigration Customs and Enforcement (ICE), and Citizenship and Immigration Services (USCIS); the Department of Health and Human Services (HHS); the Office of Refugee Resettlement (ORR), the Division of Unaccompanied Children's Services (DUCS), and the Executive Office for Immigration Review (EOIR, also often simply called Immigration Court), each with its own mission, policies, and procedures. The complex interaction among various federal and state government branches and agencies is daunting on its face, and to UACs must seem confusing and disorienting, if not frightening.

The following Section provides an overview of this complex legal landscape that affects the treatment and experience of Mexican UACs, including federal statutes, regulations, judicial decisions, policies, and practices.

2.1.1 Federal Statutes

United States immigration policy is generally contained in the Immigration and Nationality Act (INA).¹⁰⁰ Policy on treatment and processing of UACs is further guided by the *Flores* Settlement,¹⁰¹ the Homeland Security Act of 2002 (HSA),¹⁰² and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), each of which is discussed in additional detail below.

Immigration and Nationality Act.

The INA was adopted in 1952 and remains the main body of law governing United States immigration policy. The INA governs whether and the process by which non-U.S. citizens can enter the United States, as well as the terms on which non-U.S. citizens may stay within the United States. It addresses, among other things, allocation and issuance of immigrant visas, asylum and refugee admission, removal proceedings, adjustment of status, and naturalization. The framework applicable to Mexican UACs, however, is mainly embedded within the HSA and the TVPRA.

Homeland Security Act of 2002.

In 2002, Congress enacted the HSA, which contains several important provisions regarding the processing and treatment of UACs. The HSA defines "unaccompanied alien child" as a child who:

- has no lawful immigration status in the United States;
- has not attained 18 years of age; and
- with respect to whom
 - there is no parent or legal guardian in the United States; or
 - no parent or legal guardian in the United States is available to provide care and physical custody.¹⁰³

97. U.S. Const. Art. 2 §2.

98. U.S. Const. Art. 3 §2.

99. Miriam Abaya, et al., *US High-Level Office for Children is Critical for Children's Rights*, *Health and Human Rights Journal* (Mar. 10, 2022), available at <https://www.hhrjournal.org/2022/03/us-high-level-office-for-children-is-critical-for-childrens-rights/> (recognizing that the United States "remains the only country in the world that has failed to ratify the United Nations Convention on the Rights of the Child (CRC)").

100. 8 U.S.C. § 1101.

101. Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-CV-4544 (C.D. Cal. 1997) (hereinafter *Flores Settlement*).

102. Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (2002).

103. Homeland Security Act §462(g)(2).

Principally, the HSA divided responsibilities for the processing and treatment of UACs between DHS and ORR: DHS was entrusted with implementing and enforcing the nation's immigration laws, whereas ORR was charged with providing for the care and placement of UACs.¹⁰⁴ UACs first come into contact with DHS officials—typically CBP officers—when seeking entry at an official port of entry or if apprehended while attempting to enter the country without inspection. After initial processing and screening by CBP, UACs who are not from either Mexico or Canada are then transferred to the care of ORR. ORR is charged with, among other things, coordinating and implementing the care and placement of UACs in appropriate custody; ensuring that the interests of the child are considered in decisions relating to the care and custody of UACs; making and implementing placement determinations; reunifying UACs with their parents, if appropriate; maintaining and publishing a list of legal services available to UACs; implementing policies with respect to care and placement of UACs; and collecting statistical information on UACs.¹⁰⁵ As discussed in Section 4.3.2, however, the executive branch has also enlisted the services of other agencies, such as the U.S. Federal Emergency Management Agency (FEMA), to help manage this process in times of crisis.

William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)

The TVPRA was adopted to prevent human trafficking and protect victims of human trafficking. The TVPRA, specifically through Section 235, also includes special provisions for the protection of UACs, in large part by divesting the responsibility of caring for UACs from agencies that are principally focused on enforcing the country's immigration laws.

With respect to UACs from Mexico and Canada, the TVPRA requires that, within 48 hours of apprehension, DHS must complete a screening of the UAC to determine whether the UAC:

- (i)** has in the past been a victim of trafficking, and there is credible evidence that the UAC is at risk of being trafficked if returned to the UAC's country of nationality or last habitual residence;
- (ii)** has a credible fear of persecution if returned to the UAC's country of nationality or last habitual residence; and
- (iii)** is able to make an independent decision to return voluntarily to the UAC's country of nationality or last habitual residence.¹⁰⁶

Importantly, the TVPRA does not specify which agency within DHS must complete this screening; rather, it states that screening is a responsibility of the Secretary of Homeland Security, who shall develop policies and procedures to implement the Act.¹⁰⁷ If the screening officer is satisfied that the UAC is not at risk of being trafficked or persecuted and can make an independent decision about return, the UAC is repatriated to their country of origin;¹⁰⁸ otherwise, the UAC is referred to ORR care to await further proceedings.¹⁰⁹

The TVPRA also requires the Secretary of State to negotiate with Mexico and Canada agreements for repatriation of their UACs that serve to protect the minors from trafficking. These agreements must include, at a minimum, provisions that (i) ensure the handoff of a minor child to an appropriate government official; (ii) prohibit returning UACs outside of "reasonable business hours"; and (iii) require border personnel of the contiguous countries to be trained in the terms of such agreements.¹¹⁰ UACs from non-contiguous countries are subject to standard removal.¹¹¹

104. Homeland Security Act § 462.

105. Homeland Security Act § 462(b).

106. TVPRA § 235(a)(2)(A).

107. TVPRA § 235(a)(1).

108. TVPRA § 235(a)(4).

109. TVPRA § 235(a)(2)(B). In contrast, UACs from non-contiguous countries are subject to a slightly different process: (1) DHS determines the UAC's country of origin; (2) if the UAC is from a non-contiguous country then, within 72 hours of apprehension, the UAC must be referred to ORR; and (3) if a family member of or a suitable sponsor for the UAC resides in the United States and is available to assume custody for the UAC, the UAC must be released from ORR custody for the pendency of their immigration proceedings. See TVPRA § 235(b)(3), (c)(1)-(3).

110. TVPRA § 235(a)(2)(C).

111. TVPRA § 235(a)(2)(B).

Among other important protections, the TVPRA mandates that personnel who have contact with UACs receive specialized training¹¹² and that UACs in custody have counsel, both to “represent them in legal proceedings” and to “protect them from mistreatment, exploitation, and trafficking.”¹¹³

4.3.1.2 Significant Cases Affecting the Rights of UACs: Plyler and the Flores Settlement

U.S. courts have often deferred to the power of Congress to design the nation’s immigration laws, finding that the rights and treatment of immigrants, including UACs, constitute political questions that fall solely within Congress’s purview. However, there are two significant U.S. Supreme Court cases that have established the legal framework for the rights and treatment of UACs under constitutional law: *Plyler v. Doe*, in 1982, and *Reno v. Flores*, in 1993. The latter resulted in the *Flores* Settlement, which has served as an instrument to protect the rights of UACs for the past three decades.

In the 1982 case *Plyler v. Doe*,¹¹⁴ the Court extended to noncitizen children the right to receive a public education in the United States, finding that denying undocumented children the right to attend public school amounted to unlawful discrimination on the basis of alienage, in violation of the Equal Protection Clause of the Fourteenth Amendment.¹¹⁵ This case has been important in preserving the right of Mexican UACs to obtain an education while in ORR custody.

Reno v. Flores (1993) concerned the legality of certain regulations that, at the time, governed the detention of minor children by the Immigration and Naturalization Service (INS). However, the case is important not so much for the Court’s ruling, but rather for the *Flores* Settlement that arose subsequent to the Court’s decision.¹¹⁶

The *Flores* Settlement is a 1997 settlement agreement by the United States government that sets forth foundational principles and protections regarding the care, custody, and release of immigrant children in federal custody.¹¹⁷ The *Flores* Settlement originally applied to the now-dissolved INS, and currently applies to DHS and ORR, which share responsibility for overseeing the care of UACs. The *Flores* Settlement lays out specific protections for children in the care of the federal government. These include the following:¹¹⁸

- Facilities must provide children with access to sanitary and temperature-controlled conditions;
- The government must provide children with access to water, food, medical assistance, ventilation, and contact with family members;
- The government must release children without unnecessary delay to parents or approved sponsors in order of preference as discussed in the *Flores* Settlement;
- If a child cannot be released, the child must be placed in the “least restrictive” setting appropriate, based on age and needs; and
- Government agencies must expeditiously process minors and provide them with notice of rights, as applicable.

112. TVPRA § 235(e).

113. TVPRA § 235(c)(4).

114. See 457 U.S. 202 (1982). This case was a notable and important exception to the principle that had been laid down in *Mathews v. Diaz*, 426 U.S. 67 (1973), which found that undocumented immigrants do not have a constitutional right to the same benefits as US citizens.

115. *Id.* at 226–30.

116. See 507 U.S. 292 (1993).

117. See generally, *Flores Settlement*, *supra*, note 97.

118. See *id.*

In 2019, the Trump Administration attempted to amend the *Flores* Settlement by issuing a regulation that would have allowed for detentions longer than the 20-day maximum imposed by the settlement,¹¹⁹ but it was struck down as a violation of the settlement.¹²⁰ The *Flores* Settlement was also invoked in 2022 to require CBP to maintain safe and sanitary conditions in emergency facilities¹²¹ at a standard that complied with the terms of the settlement, mandating that, even in emergency facilities, CBP must “provide suitable living accommodations, access to daily outdoor activity, private phone calls for at least ten minutes in length at least twice a week, family reunification services, appropriate mental health interventions, educational services, legal services information, and structured leisure times activities.”¹²²

4.3.2. Agency action, policies, and procedures

United States immigration law is implemented through a number of interlocking federal agencies, which are empowered to issue rules, policies, and procedures pursuant to the authority conferred on them by the HSA, as described above. The main agencies that interact with Mexican UACs are the Department of Homeland Security (DHS), and its sub-agencies Customs and Border Protection (CBP), Immigration Customs and Enforcement (ICE), and Citizenship and Immigration Services (USCIS); the Department of Health and Human Services (HHS), and its sub-agencies, the Office of Refugee Resettlement (ORR) and the Division of Unaccompanied Children’s Services (DUCS); and the Executive Office for Immigration Review (EOIR), or Immigration Court, which is part of the Department of Justice.

The roles and responsibilities of these agencies with respect to Mexican UACs are as follows:

- **CBP** is responsible for the apprehension, TVPRA screening, and temporary holding of Mexican UACs along U.S. borders;
- **ICE** is responsible for the physical transportation of Mexican UACs, including for changes in agency custody and repatriation;
- **ORR** is responsible for the custody and care of Mexican UACs, while their custody status remains pending;
- **USCIS** is responsible for the assessment and adjudication of asylum and other immigration relief applications submitted by Mexican UACs once removal proceedings have been initiated; and
- **EOIR**—or Immigration Court—is responsible for conducting immigration removal proceedings.

As further detailed below, each agency has implemented rules, policies, practices, and procedures aimed at addressing challenges unique to Mexican UACs in determining appropriate custody and next steps regarding immigration status or repatriation.

CBP:

CBP is responsible for three main activities related to Mexican UACs: apprehension, temporary holding, and TVPRA screening.

119. See U.S. Department of Homeland Security, *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 Federal Register 44932 (Aug. 23, 2019).

120. See *Flores v. Barr*, 407 F. Supp. 3d 909 (C.D. Cal. 2019), aff’d in part, rev’d in part on other grounds, sub. nom. *Flores v. Rosen*, 948 F.3d 720 (9th Cir. 2020).

121. Edvard Pettersson, “Settlement Over Housing of Immigrant Minors Gets OK from Judge,” COURTHOUSE NEWS SERVS, July 29, 2022.

122. *Flores v. Garland*, 2:85-cv-04544-DMG-AGR, Doc. No. 1288 at 2 (C.D. Cal. Sept. 23, 2022).

Apprehension and Temporary Holding:

After an individual (of any age) is apprehended by CBP, they are brought to a CBP facility for screening and temporary holding until a decision is made about whether they will be repatriated or transferred to another agency.

There have long been concerns about the treatment of UACs while they are in the federal government's care. This resulted in the *Flores* Settlement and subsequent monitoring efforts, as described above. In 2017, the judge overseeing the *Flores* Settlement appointed a CBP Juvenile Coordinator ("JC"), who is responsible for overseeing CBP's compliance with the *Flores* Settlement and the TVPRA.¹²³ Additionally, in 2019, CBP established the Juvenile Coordinator's Office to work with the JC to oversee and regularly inspect CBP's compliance with relevant standards pertinent to UACs in their custody. This work includes unannounced site visits and interviews with children and parents.¹²⁴

Despite these efforts, CSOs remain concerned about the treatment of Mexican UACs throughout their interactions with CBP, reporting within the past year that the treatment of minors by CBP, in general, is "not great." While transparency as to what is actually happening within CBP facilities is lacking, CSOs reported accounts from children that they were held in cells in rooms that were extremely cold, were given bad food, and sometimes were not allowed to shower. For these reasons, CBP facilities have sometimes been known as "ice boxes" ("hieleras") or "dog cages" ("perreras").¹²⁵

CSOs interviewed for this investigation have also reported conversations in which CBP front-line officers have stated that they do not want to be babysitters, and that they do not have the right facilities, training, capacity, or support to care for children.¹²⁶ Other organizations have found that children rarely have a voice while interacting with CBP. One CSO noted that some CBP officials are aggressive and even violent with children, calling them names and wrestling children to the ground. Another CSO noted that teenage boys receive particularly poor treatment, as they are often viewed as a threat and are treated aggressively.¹²⁷

There does appear to have been recognition in recent years of some of these problems, and CBP has undertaken new measures, though it is likely too early to determine how effective these measures will be. For example, in fiscal year 2022, Congress provided approximately \$14.55 million to CBP to secure the services of a minimum of two full-time, state-licensed child welfare professionals in each CBP station along part of the U.S.-Mexico border.¹²⁸ A CBP report from early 2022—which reported on spending under fiscal year 2021's appropriations—indicated that 252 child welfare medical professionals and 12 pediatrician child welfare professionals had been hired and posted along the U.S.-Mexico border.¹²⁹ It also outlined plans for hiring of child caregiver positions across the border, though in all locations except El Paso and Rio Grande Valley, hiring had not yet occurred at the time of the report.¹³⁰ CBP indicated in their 2023 interview that this hiring process has begun.¹³¹

123. Congressional Research Service, *Unaccompanied Alien Children: An Overview* (Sept. 1, 2021) (p. 9), available at <https://sgp.fas.org/crs/homesecc/R43599.pdf>.

124. *Id.*

125. Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (Feb. 28, 2018), available at <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

126. As noted above, nearly all the U.S. NGOs interviewed participated with the understanding that the specific information they shared would remain anonymous.

127. Even though the organizations that provided this information requested to remain anonymous, it is important to highlight that this situation has also previously been denounced by child rights organizations in the U.S. See ACLU Border Litigation Project, *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection* (May 2018), available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1001&context=ihrc>.

128. Joint Explanatory Statement, Division F, Department of Homeland Security: Child Welfare Support at CBP Facilities, Consolidated Appropriations Act, 2022. Pub. L. No. 117-103.

129. CBP, *Child Welfare Professionals – Fiscal Year 2021 Report to Congress* (Feb. 3, 2022), available at <https://www.dhs.gov/sites/default/files/2022-04/CBP%20-%20Child%20Welfare%20Professionals.pdf>.

130. *Id.*

131. Interview held on January 19, 2023, with representatives of U.S. Customs and Border Protection.

In addition, CBP shared that their facilities are being revamped and noted a pilot program modeled on day care centers. Through this program, UACs will be supervised with daycare personnel who receive special training.¹³² Part of these improvements include “trauma-informed holding practices” such as trainings for CBP officers, informing children about the immigration process, child-centric activities within holding centers when possible, keeping families together when possible, and improved access to necessary sanitation activities, like showers.¹³³ CBP reported that their trauma-informed care program was developed in consultation with internal and external subject matter experts.¹³⁴ DHS also noted that they have recently expanded medical units within CBP facilities, with 90 in-facility medical units with 24/7 access to care currently in place, and expectations that this number will increase.¹³⁵

Some CSOs strongly contend, though, that CBP facilities will never be an appropriate environment for children—as CBP is a law enforcement agency and its mission is misaligned with the goal of protecting children—so funds are better diverted to agencies that are equipped to care for children.

CBP also indicated that they have built a system for children to report violations of the TVPRA and to report mistreatment. These reports will go to an internal investigations officer within CBP, who is also charged with independently investigating potential violations. The investigations officer is responsible for any subsequent action taken in response to violations. Children are informed of their right to report through an initial briefing and through “posters” on the walls of the holding facility. CBP also employs a blind-complaint box for tips regarding potential violations. Allegations leading to investigations may also come from the *Flores* attorney monitoring group,¹³⁶ referrals from ORR, the CBP information center, or from news articles or any other source.¹³⁷

TVPRA Screening

Once CBP has confirmed that a foreign national apprehended at the U.S. border (i) is under the age of 18, (ii) lacks U.S. lawful immigration status, and (iii) is unaccompanied by a parent or legal guardian, CBP classifies that person as a UAC. As described above in Section 4.3.1.1, the TVPRA requires that “the Secretary of Homeland Security” provide Mexican UACs with TVPRA screening related to risk of trafficking and persecution in the home country within 48 hours of apprehension.¹³⁸ It is important to note that Mexican UACs do not have any right to counsel during this process.

CBP remains the agency that conducts this screening, though the CBP officer who apprehends a child is not, by policy, the same officer who conducts the TVPRA screening.¹³⁹ CBP reported that TVPRA screenings are taking place in CBP facilities, but that DHS is revamping many facilities to include more child-friendly environments.¹⁴⁰ This effort is described in more detail above.

CBP uses Form 93 to screen UACs and ultimately make the necessary TVPRA findings. This form was revised in March 2019.¹⁴¹ The instructions and description of the form, as provided by the U.S. government, are attached as Appendix A. The instructions include summaries of CBP officers’ duties to provide the screenings, to screen for fear of return using both verbal and non-verbal information from the child as well as their own independent judgment, and to screen for human trafficking based on the totality of the circumstances, as opposed to simple yes or no answers.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. For more information on the services provided by this group, see National Center for Youth Law, *Enforce the Flores Settlement Agreement*, available at <https://youthlaw.org/initiatives/enforce-flores-settlement-agreement>.

137. Interview held on January 19, 2023, with representatives U.S. Customs and Border Protection.

138. TVPRA § 235(a)(1).

139. Interview held on January 19, 2023, with representatives of U.S. Customs and Border Protection.

140. *Id.*

141. *Id.*; See also UAC Screening Guide / CBP Form 93 (Revised) (Mar. 4, 2019), available at <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/CBP-93%20%2BRevised%29%20Training.pdf>.

The instructions also include a presumption that children 14 years of age and older have the capacity to “make an independent decision,” and that children under 14 do not, but that officers must consider the “totality of each UAC’s individual circumstances.”¹⁴² The questions themselves have been redacted, so it was not possible for us to make any assessment of the revised Form 93 itself.¹⁴³

If the screening reveals that there is no risk of trafficking or fear of persecution, and that a child is capable of making an independent decision regarding return, CBP may request that the child sign a voluntary departure form, known as Form I-770 Notice of Rights and Request for Disposition. While DHS issued rules in 2019 to make it clear that Form I-770 must be “provided, read, or explained to the minor or UAC in a language or manner that the minor or UAC understands,” this does not appear to be happening with any consistency. According to a study published in 2020, about half of the repatriated Mexican UACs surveyed did not understand the forms they were asked to sign and said that the CBP officers did not explain the forms.¹⁴⁴ In addition, one U.S. CSO which requested to remain anonymous reported that Mexican UACs “very rarely” sign voluntary return forms, and some children are illiterate and cannot read the forms if they are even given to them.¹⁴⁵

CBP noted that agents have annual training requirements and online trainings, which include training on TVPRA processing requirements and new processes.¹⁴⁶ As part of CBP’s new “trauma-informed holding practices,” training also includes how to recognize survivors of human trafficking and sexual assault, as well as how to identify trauma in UACs.¹⁴⁷

Despite the efforts to provide training to CBP officers, it appears that TVPRA screening often does not occur or is insufficient. CSOs have reported anecdotes of speaking with CBP front-line officers who are not aware that they are legally required to screen Mexican UACs under TVPRA and/or who believed the screening requirement was suspended during the period of border closure policies such as MPP and Title 42. In other instances, “backpack kids”—who have tried to enter the U.S. multiple times and are known to CBP officers—are reported to be returned automatically with no screening.

Finally, while CBP is required to collect and enter the identifying information of all UACs into DHS electronic databases, CBP reported that there are no tracking mechanisms for TVPRA screening, specifically, but that any data collected and that can be shared with the public is made available through CBP’s website or FOIA requests.¹⁴⁸

It is reported that many Mexican UACs are returned without any record or processing, even though these children might have viable asylum claims.

ICE

ICE is responsible for physically transporting Mexican UACs, including from CBP custody to ORR custody, and for repatriation purposes.

142. Interview held on August 10, 2022, with Acting Chief of Staff, U.S. Customs and Border Protection; *See also* Appendix A UAC Screening Guide / CBP Form 93 (Revised).

143. *See* Appendix A; *See also* UAC Screening Guide / CBP Form 93 (Revised) (p. 2) (Mar. 4, 2019), *available at* <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/CBP-93%20%28Revised%29%20Training.pdf>.

144. Kiera Coulter et al., *A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection*, *Journal on Migration and Human Security* (2020), *available at* <https://journals.sagepub.com/doi/full/10.1177/2331502420915898>.

145. At the request of the organization that provided this information, we are keeping its name confidential.

146. Interview held on January 19, 2023, with representatives of U.S. Customs and Border Protection.

147. *Id.*; “Trauma-informed care” is an approach that recognizes the overall impact of trauma on development and health, applies this understanding of trauma and its consequences when working with affected populations, and actively seeks to prevent re-traumatization. *See* KK Miller, CR Brown, M Shramko, MV Svetaz, *Applying Trauma-Informed Practices to the Care of Refugee and Immigrant Youth: 10 Clinical Pearls*, *Children (Basel)*, 2019, *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6721394/>.

148. KK Miller, CR Brown, M Shramko, MV Svetaz, *Applying Trauma-Informed Practices to the Care of Refugee and Immigrant Youth: 10 Clinical Pearls*, *Children (Basel)*, 2019, *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6721394/>.

ICE must comply with the TVPRA and the *Flores* Settlement, as well as certain minimum standards for coordination with foreign governments to mitigate potential human trafficking-related risks associated with repatriation, including (i) ensuring handoff of minor children to appropriate foreign government officials, (ii) ensuring repatriation occurs within “reasonable business hours,” and (iii) requiring that foreign border personnel receive training on minimum standards for repatriation.¹⁴⁹ To implement these requirements, ICE has established policies and standards for repatriation of UACs, including:

- Returning UACs only during daylight hours;
- Recording transfers by ensuring that receiving government officials or designees sign for custody;
- Returning UACs through a port designated for repatriation;
- Providing UACs the opportunity to communicate with a consular official prior to departure for the home country; and
- Preserving the unity of families during removal.¹⁵⁰

In addition, ICE ensures that its policies provide for agreement with all foreign authorities to provide standards and policies for repatriation, and local government policies to comply with such agreements.¹⁵¹

For any repatriation involving airplane travel, ICE’s policies ensure that ICE officers accompany UACs.¹⁵² When a Mexican UAC agrees to voluntary departure and returns to Mexico via plane, ORR, ICE, and the Mexican consulate will coordinate to obtain a travel document for the child, contact family members and reunite the children with their families when they arrive by plane. At least one CSO has reported that this coordination has typically worked well, and that the Mexican consulate has been helpful and active.¹⁵³

Repatriation at the border appears to be a different story. The U.S. and Mexican governments have signed nine Local Repatriation Agreements that cover ports of entry along the U.S.-Mexico border and require that ICE notify the Mexican Consulate whenever a Mexican UAC is to be repatriated.¹⁵⁴ Despite these written policies and agreements, there are still problems with how Mexican UACs are treated during repatriation at the border. Some CSOs have indicated that the status of family reunification at the border is unclear. Others have reported instances of Mexican UACs being returned to a border point where there is no DIF officer *and that is far from the child’s family*.¹⁵⁵

As described in Section 3.4, Mexican authorities have reported that ICE has returned Mexican UACs at irregular border points, such as the Palomas border point in Chihuahua, that are not covered by one of the Local Repatriation Agreements¹⁵⁶ and that do not possess appropriate infrastructure to properly receive children.¹⁵⁷ This makes family reunification difficult and is dangerous for the children. In addition, there were reports from CSOs interviewed for this report that treatment of children varies from border point to border point, with more favorable accounts regarding practices at the California border points, and particularly negative accounts about the treatment of children at Texas border points.¹⁵⁸ Even in the best of circumstances, though, there is agreement that the process is not child-friendly.

149. 8 U.S.C. §1232(a)(2)(C).

150. William A. Kandel, Congressional Research Service, *Unaccompanied Alien Children: An Overview* (p. 9) (Sept. 1, 2021), available at <https://sgp.fas.org/crs/homesecc/R43599.pdf>.

151. *Id.* at 10.

152. *Id.*, citing e-mail correspondence between ICE and Congressional Research Service on ICE practices and policies with respect to plane travel.

153. *Id.*

154. See U.S. Department of Homeland Security, *Updated U.S.-Mexico Local Repatriation Arrangements* (May 31, 2022), available at <https://www.dhs.gov/publication/updated-us-mexico-local-repatriation-arrangements>.

155. These CSOs requested that we maintain their anonymity.

156. In order to strengthen the bilateral framework for the protection of Mexican citizens who are returned to Mexico by the United States immigration and border control authorities, nine repatriation agreements have been entered into between the U.S. government and the Mexican government. These agreements apply to repatriations from Brownsville, Del Rio, El Paso, Laredo, McAllen, Nogales, Presidio, San Diego, and Yuma. For more information, see U.S. Department of Homeland Security, *Updated U.S.-Mexico Local Repatriation Arrangements*, available at <https://www.dhs.gov/publication/updated-us-mexico-local-repatriation-arrangements>.

157. SIPINNA report: SEGOB/SIPINNA, Commission for the Comprehensive Protection of Migrant Children and Adolescents and Applicants for Refugee Status, Report 2019–2020 (pp. 16–17) (December 2020).

158. These NGOs requested that we maintain their anonymity.

ORR

Pursuant to the TVPRA, ORR's mandate, as a sub-agency of HHS, is to provide custody and care of UACs in a manner that allows for UACs to "be promptly placed in the least restrictive setting that is in the best interest of the child."¹⁵⁹

ORR then makes a determination on initial placement of UACs within shelter facilities, foster care or group homes, staff secure facilities, secure care facilities, residential treatment centers, or other secure care facilities, whether such facilities are staffed by ORR or third parties. ORR's responsibility is to administer determinations on placement, with the best interest of the child as its guiding principle. To do this, they take into account considerations such as the following: (i) trafficking or other safety concerns; (ii) special needs; (iii) prior sexual abuse; (iv) sexual orientation or gender identification; (v) location; (vi) status of siblings in ORR custody; (vii) behavioral or criminal background; (viii) danger to self or the community; (ix) escape risk; (x) age; and (xi) length of stay.¹⁶⁰

After making an initial placement determination, ORR communicates the placement to DHS, and ICE transports the child to the designated ORR facility. ORR then performs its own intake process, which includes a medical examination of the UAC, collection of background biographical information, assessment of why the child came to the U.S., past trauma, medical needs, and whether any family members are in the U.S.¹⁶¹

Based on the determination of initial placement, ORR is to reassess, at least every 30 days, the level of care and facility placement of UACs to assess the appropriateness of the UAC's level of care, considering factors such as the foregoing, and the UAC's behavior while present in ORR's facilities.

After the initial placement, ORR then determines whether the child may be released to a relative or sponsor in the United States or another placement such as long-term foster care.¹⁶² The *Flores* settlement establishes a hierarchy of preference for sponsors to which ORR must adhere when placing UACs: parents hold the greatest priority, whereas an adult or entity approved by ORR holds the lowest. When a UAC is to be reunited with a parent or sponsor, the parent or sponsor is required to provide certain documentation to ORR regarding their willingness and ability to provide care for the UAC's physical and mental well-being.¹⁶³ While lack of immigration status does not disqualify a parent or sponsor, it should be noted that ORR does conduct background checks, which may reveal immigration status. ORR states in its own policy guide that it "does not use or share any information for immigration enforcement purposes."¹⁶⁴ When a sponsor or parent is not identifiable, ORR is required to provide for long-term care for a UAC while the UAC's status remains pending.¹⁶⁵ In some instances, UACs may be referred to private agencies for long-term care, such as the Young Center.¹⁶⁵

One improvement from 2011 reported by ORR is the agency's improved understanding of indigenous language needs and ability to provide appropriate language services.¹⁶⁷ ORR noted that while they endeavor to provide interpretation to all indigenous language speakers, there are still indigenous languages for which it is difficult to find consistent interpretation resources.¹⁶⁸

159. TVPRA § 235(a)-235(d); 8 U.S.C. §1232(c)(2).

160. U.S. Department of Health and Human Services, Office of Refugee Resettlement, *ORR Unaccompanied Children Program Policy Guide* (July 19, 2021) (hereinafter *Policy Guide*), available at <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.1>.

161. Interview held on August 15, 2022, with Senior Policy Advisor, Office of Refugee Resettlement.

162. *Id.*

163. *Policy Guide*, *supra*, note 156.

164. *Id.* at 2.6.

165. *Id.*

166. Interview held on August 15, 2022, with Senior Policy Advisor, Office of Refugee Resettlement.

167. *Id.*

168. *Id.*

As discussed in more detail in Section 4.3.2.2, ORR also has specialized divisions that provide additional services where it is determined that a UAC has been a victim of sexual assault (the Prevention of Sexual Abuse Division) or has been a victim of trafficking (the Office on Trafficking in Persons).¹⁶⁹

Additionally, ORR provides post-release services to UACs who were entrusted to their care.¹⁷⁰ For instance, ORR operates a national help line that fields calls from UACs and their families to connect them with community-based resources or handle reported concerns.¹⁷¹ However, only about 25% of UACs currently receive these post-release services, and ORR officials contend that additional funding is needed so that the agency can expand these services.¹⁷²

CSOs have reported that, in contrast to CBP, when minors are placed in ORR custody in standard facilities, they are generally treated well and provided with education, medical assistance, and legal services through legal service providers, and that ORR works quickly to reunify children with their families. While the agency states that they are trying to improve the case management and data collection processes and would like to expand post-release services, they have made improvements over the past decade in language access, cultural competency, staff training around trauma, and expansion of legal services.¹⁷³

Influx Care Facilities and Emergency Intake Sites

Despite the more positive impressions of the care provided to UACs by ORR, there have been significant problems reported in temporary ORR facilities, which are used when ORR does not have sufficient capacity to immediately accommodate all UACs under CBPs custody. As described in greater detail in Section 8.3.2.1, a variety of factors, including the COVID-19 pandemic and changes in U.S. policy led to a decrease in ORR capacity followed by a surge in UACs entering the United States. This led to ORR housing UACs in two types of unlicensed facilities: Influx Care Facilities (ICFs) and Emergency Intake Sites (EISs):

- **ORR** is empowered to open an ICF “when [ORR’s] licensed care provider network does not have sufficient bed space available to provide shelter and services during an influx or emergency.”¹⁷⁴ ICFs are intended to be a temporary solution, so they are not required to be licensed or may be exempted from licensing requirements by state or local licensing agencies.¹⁷⁵ Nonetheless, ICFs must “meet ORR policies and . . . comply to the greatest extent possible with state child welfare laws and regulations.”¹⁷⁶
- **EISs**, in contrast, are a new type of care provider facility introduced by ORR in 2021 to reduce the number of children in DHS custody while expanding ORR’s capacity.¹⁷⁷ They are: (1) meant to be short-term facilities, generally opened for less than six months; and (2) not licensed by any state. EISs are opened in the event of a severe bed shortage in ORR’s licensed care provider network and ICFs. A severe bedding shortage is defined as an event where ORR is unable to accept referrals of children for placement in state-licensed facilities and ICFs, which would result in children remaining in DHS custody for more than 72 hours without a placement designation. HHS designates three operational tiers of EISs: (1) EIS open for 0-120 days; (2) EIS open for 121-180 days; and (3) EIS open for 181 days or longer. Based on the tier into which an EIS falls, the facility is expected to provide different levels of services to migrants within its custody.¹⁷⁸

169. *Id.*

170. *Id.*; See also *Policy Guide*, *supra*, note 156. *Id.*

171. *Id.*

172. Interview held on August 15, 2022, with Senior Policy Advisor, Office of Refugee Resettlement.

173. *Id.*

174. U.S. Department of Health and Human Services, *Office of Refugee Resettlement’s Influx Care Facility and Emergency Intake Sites Did Not Adequately Safeguard Unaccompanied Children From COVID-19* (p. 3) (June 2022), available at <https://oig.hhs.gov/oas/reports/region6/62107002.pdf>.

175. *Id.* at 3.

176. *Id.* at 3.

177. Office of Inspector General, Health and Human Services, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children* (Sept. 2022) (hereinafter *HHS OIG Report*), available at <https://oig.hhs.gov/oei/reports/OEI-07-21-00251.pdf>.

178. U.S. Department of Health and Human Services, Office of Refugee Resettlement, *Field Guidance #13-Emergency Intake Site (EIS) Instructions and Standards* (Oct. 2022) (p. 2).

At the onset of the COVID-19 pandemic, ORR determined that “additional capacity was needed to manage the increasing numbers of unaccompanied children referred from DHS and to implement COVID-19 mitigation strategies.”¹⁷⁹ Accordingly, “ORR reactivated one ICF and, in conjunction with the Federal Emergency Management Agency, the Department of Defense, and HHS, opened a total of 14 temporary EISs along the U.S. southern border and in the interior of the country.”¹⁸⁰ As described in Section 4.3.2.1, there were outcries over the reports of inadequate facilities and services for the children held in these facilities, and a government investigation ensued, resulting in the issuance of a report and recommendations to prevent future failures.¹⁸¹

USCIS

USCIS processes applications for immigration relief, including asylum, submitted by UACs and other immigrants.

USCIS also conducts credible fear interviews for detained adults and families who express a fear of return to their home countries when seeking entry to the United States without authorization. Because evaluating an asylum application or the existence of a credible fear of persecution is a complex legal question which requires a deep understanding of statutory, regulatory, and case law, all USCIS asylum officers receive specialized, ongoing training and guidelines for conducting interviews with individuals seeking protection and in adjudicating asylum claims.¹⁸²

In addition, USCIS recognizes that individuals seeking protection may have experienced trauma or have other vulnerabilities, so additional specialized training and care in conducting interviews and evaluating the cases these individuals is vital. For example, USCIS guidelines provide that officers conduct “child-appropriate interviews taking into account age, stage of language development, background, and level of sophistication.”¹⁸³ Moreover, pursuant to USCIS guidelines, the USCIS asylum officer must consider age in assessing an asylum statement, given the possibility that a child may have more limited knowledge of events or whether harm suffered may amount to persecution.¹⁸⁴ If a determination has been made by a USCIS officer that a UAC is not eligible for a grant of asylum, and the UAC does not have another form of lawful immigration status, the USCIS officer will refer that UAC back to EOIR—i.e. Immigration Court.

It is also important to note that, while everyone has a right to hire a lawyer to represent them in applications before USCIS, no one has a right to have free, appointed legal counsel before USCIS, not even UACs.



179. *HHS OIG Report*, *supra*, note 173, at p. 2.

180. *Id.* at 3.

181. *Id.* at 3.

182. See 8 C.F.R. 208.1(b); See also U.S.C.I.S., *Asylum Division Training Programs*, available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-division-training-programs>.

183. See, e.g., *Refugee, Asylum and International Operations, Asylum Division Officer Training Course* (Mar. 31, 2012), available at <https://www.aila.org/infonet/uscis-releases-raio-training-course-on-affirmative>.

184. Joseph E. Langlois, “Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS”, Interoffice Memorandum (Aug. 14, 2007); see also Joseph E. Langlois, “Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children,” Interoffice Memorandum (Mar. 29, 2009).

EOIR

EOIR is a division within the Department of Justice—often referred to simply as “Immigration Court”—that administers removal proceedings and adjudicates immigration cases.

EOIR is the forum through which the U.S. government may charge that a UAC is removable, and the UAC, on the other hand, may seek relief from removal. EOIR has a written policy from 2017 that provides guidance to immigration judges in adjudicating the cases of UACs, and which generally encourages child-friendly practices and access to counsel.¹⁸⁵

However, the 2017 policy is actually a walk-back from a 2007 policy that contained stronger language on child rights. Much of what was suggested in the 2017 policy is not implemented in practice, as many of the suggestions are subject to caveats, such as “to the extent that resources and time permit.”¹⁸⁶ Additionally, CSOs report that immigration judges, unlike USCIS officers, do not receive any specialized training around adjudicating the cases of UACs, and advocates widely decry the fact that Immigration Court is not a child-friendly environment. And, as with USCIS, all individuals in removal proceedings have a right to hire a lawyer to represent them, but there is no right to appointed counsel for those who cannot afford a lawyer, not even for children.¹⁸⁷ As a result, many UACs still remain unrepresented in Immigration Court. Advocates have called for universal representation for UACs in Immigration Court, much like public defenders in criminal court.

4.3.2.1 Recent developments

As described in Section 4.1, federal policy towards migrants crossing the U.S.-Mexico border has been subject to frequent and substantial change since 2011, particularly since 2016. While these policy changes did not directly target Mexican UACs, they nonetheless affected the experience of Mexican UACs entering the United States. Even where federal policy explicitly excepted Mexican nationals or UACs, as was the case with MPP and, at certain times, Title 42, the implementation of these policies caused substantial confusion at the border and affected Mexican UACs who sought shelter in the United States.



185. MaryBeth Keller, U.S. Department of Justice, Executive Office for Immigration Review, Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (December 20, 2017). This memorandum updates OPPM 07 -01 from May 22, 2007.

186. Sarah Bronstein, CLINIC, *EOIR Revises Guidance on Immigration Court Cases Involving Juveniles* (Feb. 1, 2018), available at <https://cliniclegal.org/resources/childrens-issues/eoir-revises-guidance-immigration-court-cases-involving-juveniles>.

187. These NGOs requested to remain anonymous.

Metering & Remain in Mexico Policy

Though U.S. law requires that any person who arrives at the border be given the opportunity to seek asylum, in 2016, CBP implemented a process known as “metering,” which “limit[ed] the number of individuals who [were] permitted to access the asylum process each day at ports of entry across the border.”¹⁸⁸ In practice, the use of metering stranded thousands of asylum seekers in Mexico as they waited to begin the asylum process.

Relatedly, in January 2019, the Trump Administration took further action to prevent asylum seekers from entering the U.S. through the MPP program, colloquially known as the “Remain in Mexico” program.¹⁸⁹ MPP required asylum-seekers to wait in Mexico pending the resolution of their U.S. asylum claims.¹⁹⁰ Notably, the policies expressly did not apply to Mexican citizens of any age or to UACs of any nationality.¹⁹¹ Yet media reports at the time found “that Mexicans and unaccompanied children were forced to wait in Mexico under metering or had simply been turned back without being permitted to apply for asylum.”¹⁹² In addition to the media reports, several CSOs with whom we spoke noted instances of Mexican UACs being turned back during MPP without appropriate screening, potentially due to so many new policies (including MPP and Title 42) being implemented at the border and the resulting confusion among CBP officers.

While the practice of metering is no longer in place,¹⁹³ the termination of MPP has proven to be a more complicated issue. While the Biden Administration attempted to terminate the program—and new MPP enrollments are not taking place—the fate of the program is still in the hands of the courts.¹⁹⁴

Title 42 Expulsions

In March 2020, in response to COVID-19, the Centers for Disease Control and Prevention (CDC) issued an interim final rule prohibiting the “introduction” into the United States of certain individuals entering the United States from Mexico or Canada, regardless of whether they were in need of asylum protection.¹⁹⁵ UACs, including those from Mexico, were subject to this order until January 2021, when the Biden Administration issued an exception to the Title 42 expulsion process for UACs.¹⁹⁶ The Title 42 Policy ended on May 11, 2023, when the federal COVID-19 public health emergency declaration ended.¹⁹⁷ In 2020, the year following the implementation of Title 42, there was a considerable reduction in CBP referrals to ORR, as fewer UACs entered the country.¹⁹⁸

188. American Immigration Council, *Metering and Asylum Turnbacks* (Mar. 8, 2021) (hereinafter *Metering and Asylum Turnbacks*), available at <https://www.americanimmigrationcouncil.org/research/metering-and-asylum-turnbacks>.

189. U.S. Department of Homeland Security, *Secretary Kirsten M. Nielsen Announces Historic Action to Confront Illegal Immigration*, (Dec. 20, 2018).

190. U.S. Department of Homeland Security, Memorandum from Kirsten M. Nielsen, *Sec’y of Homeland Sec., Policy Guidance for Implementation of the Migrant Protection Protocols* (Jan. 25, 2019).

191. U.S. Department of Homeland Security, *Customs & Border Protection, MPP Guiding Principles* (Jan. 28, 2019).

192. *Metering and Asylum Turnbacks*, *supra*, note 184.; see Molly Hennessy-Fiske & Wendy Fry, *Mexican Asylum Seekers at Multiple Border Crossings Grow Frustrated with Waiting*, L.A. Times (Sept. 30, 2019), available at <https://www.latimes.com/world-nation/story/2019-09-30/u-s-customs-blocking-mexican-asylum-seekers-at-multiple-border-crossings>.

193. In November 2021, CBP rescinded the metering policy. U.S. Department of Homeland Security, Memorandum from Troy A. Miller, Acting Comm’r, U.S. Customs and Border Protection, *Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry*, at 2 (Nov. 1, 2021), available at <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf>.

194. See *State of Texas v. Joseph R. Biden*, 2:21-cv-00067 (N.D. Tex. 2021).

195. Control of Communicable Diseases, Foreign Quarantine: Suspension of Introduction of Persons into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 16,559 (March 20, 2020) (codified as 42 C.F.R. § 71), available at <https://www.federalregister.gov/documents/2020/03/24/2020-06238/control-of-communicable-diseases-foreign-quarantine-suspension-of-introduction-of-persons-into>.

196. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination, 86 Federal Register 9942, February 17, 2021.

197. See Statement of Administration Police, H.R. 382 (a bill to terminate the public health emergency declared with respect to COVID-19) and H.J. Res. 7 (a joint resolution relating to a national emergency declared by the President on March 13, 2020) January 30, 2023, available at <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>.

198. See U.S. Department of Health and Human Services, Unaccompanied Children Fact Sheet” (January 27, 2023), available at <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf> (noting that ORR received 50,000 fewer referrals of unaccompanied children between FY 2019 and FY 2020).

After UACs were exempted from the policy in January of 2021, there was a considerable uptick in referrals of UACs to ORR from CBP as the number of UACs arriving at the U.S. border increased.¹⁹⁹ While the exact numbers are unknown at this time, some advocates and news reports have observed that the exemption of UACs from the Title 42 policy has led to family separation, as desperate parents sent their children ahead alone in hopes that they would be classified as UACs and permitted to enter the United States.²⁰⁰

Reduction in ORR Shelter Capacity and Use of Emergency Intake Sites

During the Trump Administration, Title 42 resulted in a substantial decrease in referrals from CBP to ORR, as UACs were summarily expelled from the United States without an assessment of their asylum claims.²⁰¹ As demand for ORR's services decreased, capacity was reduced accordingly.²⁰² ORR's capacity was then further decreased after the outbreak of the COVID-19 pandemic when social distancing measures were put in place to protect the health of UACs under their care.²⁰³ Consequently, ORR capacity was very low when the Biden Administration lifted the Title 42 expulsion policy for UACs, and UACs again began entering the U.S. en masse again. Because ORR did not have the space or staff necessary to welcome and care for all the UACs now being referred to them by CBP, CBP was forced to retain custody of UACs at its own facilities for timelines far beyond those permitted by statute.²⁰⁴ In response to this disaster, the Biden Administration engaged FEMA to run an interagency effort to accommodate the influx of UACs, which resulted in the opening of 14 temporary ORR emergency intake sites (EISs) along the border.²⁰⁵ There were outcries over poor case management and treatment of children at the EISs, resulting in a 2022 report by the Office of the Inspector General. The report noted lack of preparation and deficiencies in the EISs, and made several recommendations related to services that must be offered to children in these facilities, as well as measures that should be taken now to prepare for surges in the future.²⁰⁶

4.3.2.2 Support to survivors of human trafficking and other kinds of violence and/or trauma

Where it is determined that a UAC is the victim of sexual assault, either prior to or after the minor's arrival in the United States, the Prevention of Sexual Abuse division of ORR investigates and addresses incidents.²⁰⁷ Likewise, where a child is identified as having been a victim of trafficking, ORR is required to notify the Office on Trafficking in Persons within HHS.²⁰⁸ Additionally, if a sponsor for a UAC has been identified by a victim of trafficking, ORR must take additional steps to vet the sponsor to whom the UAC is set to be released.²⁰⁹ It is important to reiterate, however, that few Mexican UACs are actually getting access to ORR services, as the vast majority do not receive proper TVPRA screening and are returned to Mexico immediately.

199. Growing Numbers of Children Try to Enter the U.S., TRAC IMMIGRATION (June 28, 2022).

200. See Adam Isacson, *Weekly U.S.-Mexico Border Update: Title 42 Ruling, Family 'Self-Separations,' More Drownings, Haiti Expulsion Flights*, WOLA (May 27, 2022), available at <https://www.wola.org/2022/05/weekly-u-s-mexico-border-update-title-42-ruling-family-self-separations-more-drownings-haiti-expulsion-flights/> (noting that "[a]bout 33 times per day in 2021 . . . an expelled family in Mexico . . . self-separated"); Camilo Montoya-Galvez, *12,212 Migrant Children Reentered U.S. Border Custody Alone in 2021 After Being Expelled*, CBS News (May 20, 2022), available at <https://www.cbsnews.com/news/immigration-migrant-children-us-border-custody-unaccompanied-minors-2021/> (identifying "one of the unintended consequences of the Title 42 policy" as "migrant parents opting to 'self-separate' from their children to allow them to enter the U.S. as unaccompanied minors").

201. See Samantha Artiga & Drishi Pillai, *Title 42 and its Impact on Migrant Families*, KAISER FAMILY FOUNDATION (May 26, 2022).

202. *Id.*

203. Mark Greenberg, *Hampered by the Pandemic: Unaccompanied Child Arrivals Increase as Earlier Preparedness Shortfalls Limit the Response*, MIGRATION POLICY INSTITUTE (Mar. 2021).

204. U.S. Department of Homeland Security, *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border* (Mar. 16, 2021).

205. *HHS OIG Report*, *supra*, note 173.

206. *Id.*

207. Interview held on August 15, 2022, with Senior Policy Advisor, Office of Refugee Resettlement.

208. *Id.*

209. *Policy Guide*, *supra*, note 173.

ORR also provides post-release services to UACs who were entrusted to their care.²¹⁰ For instance, ORR operates a national help line that fields calls from UACs and their families to connect them with community based resources or handle reported concerns.²¹¹

In a similar vein, ORR also maintains a call center where released children may report suspected incidents of sexual abuse or sexual harassment that occurred at ORR care providers.²¹² However, ORR officials contend that additional funding is needed so that the agency can expand these services.²¹³ CBP has “trauma-informed holding practices,” which include keeping families together, informing children of the immigration process, and providing child appropriate activities.²¹⁴ CBP provides training to its frontline agents which focuses on human trafficking, sexual assault experiences, and trauma.²¹⁵ Medical personnel have specific training to identify psychological and mental trauma in UACs and provide annual training to CBP officers on how to identify trauma in UACs.²¹⁶



210. *Id.*

211. *Id.*

212. *Id.*

213. Interview held on August 15, 2022, with Senior Policy Advisor, Office of Refugee Resettlement.

214. Interview held on January 19, 2023, with representatives of U.S. Customs and Border Protection.

215. *Id.*

216. *Id.*

Migrants of 2014, and the Law on the Rights of Children and Adolescents of the State of Tamaulipas of 2015. In the case of **Nuevo León**, there is the Law on the Protection of the Rights of Children and Adolescents for the State of Nuevo León, published in 2006

5. INSTITUTIONAL RESPONSE FOR THE PROTECTION OF MEXICAN CHILDREN AT THE BORDER

5.1 Response from the Mexican State

5.1.1. Assessment of Advances in Care and Protection Policies and Procedures

As noted in the legal chapter of this report, in Mexico there have been significant regulatory advances for the protection of migrant children in recent years. The approval of the LGDNNA and its Regulations in 2014 and 2015, respectively, established a more protective approach for children and brought Mexican regulations and institutions closer to the principles of the United Nations Convention on the Rights of the Child. Importantly for the purposes of this report, these steps provide greater protection for migrant children and focus on the child as a rights holder.

The regulatory frameworks of most of the border states of northern Mexico, including Baja California, Chihuahua, Coahuila, and Sonora, reflect the advances under the LGDNNA regarding the rights of children and migrants. There is also legislation pending in states such as Nuevo León and Tamaulipas, which currently only have a CAA Rights Law, to advance their respective regulatory frameworks.²¹⁷

State laws continue to emphasize family reunification as the preferred option for the care and placement of repatriated children. Several of these state laws merit review and updating to reflect the principles of the LGDNNA and the responsibility of the Prosecutor's Offices for the Protection of Children and Adolescents to provide care for migrant children. Despite this, advances in state regulatory frameworks certainly represent a breakthrough and an important starting point for the protection of UACs.

These advances have also clearly affected the government services offered to migrant children who live in or pass through Mexico. For example, there have been developments in the area of alternative care for UACs, including the standardization of policies for and conditions in shelters in Social Assistance Centers (SAC), according to regulations issued by the DIF System.

As discussed in Section 4 of this report, the government has created the Prosecutor's Offices for the Protection of Children and Adolescents. This office, which provides legal representation and oversees the rights of at-risk children, may be key in establishing a framework for determining the best interest of the child that has more guarantees, is more comprehensive, and provides for the full restoration of child rights.

The necessary process of conforming these new regulatory and governmental frameworks with other legislation affecting children has been slow but is progressing.

Harmonizing these frameworks is particularly important in the area of migration. The harmonization of the Immigration Law and the International Refugee and Protection Act took more than 6 years, finally coming into force in February 2021.

217. **Baja California** has the Law for the Protection of Rights and Support for Migrants of the State of Baja California published in 2014, in which mention is made of family reunification in cases of unaccompanied migrant CAA according to their best interest (Art. 29, Sect. II); as well as the Law for the Protection and Defense of the Rights of Children and Adolescents of the State of Baja California of 2015. **Chihuahua** has the Law on the Protection and Support of Migrants for the State of Chihuahua published in 2022, in which reference is made to its state regulations for the protection of CAA, the Law on the Rights of Children and Adolescents of the State of Chihuahua, published in 2012, a couple of years prior to the publication of the LGDNNA. **Coahuila** has the Law on the Care and Protection of Migrants and Human Migration for the State of Coahuila de Zaragoza of 2019, as well as the Law of the State System for the Guarantee of the Human Rights of Children of the State of Coahuila de Zaragoza, published in 2014. **Sonora** has the State Immigration Law of 2009 and the Law for the Protection of the Rights of Children and Adolescents published in 2015. For its part, **Tamaulipas** only has an Internal Regulation of the Tamaulipas Institute for

Despite resistance, this has allowed the effective application of principles enshrined in the LGDNNA, such as non-detention and the granting of provisional immigration status to foreign children to ensure their cases are adequately investigated, as well as the establishment of legal bases for alternative care models where institutionalization is used as only a last resort.

As an example of the results and challenges of this harmonization, child protection authorities have reported that the best interest of the child was determined—and a plan for the restitution of the child’s rights developed—for only 712 foreign children out of a total of 64,224 processed by immigration authorities in Mexico from January 2018 to July 2019. In other words, the requirements of the LGDNNA were only met for approximately 1.1% of these children, and there is no indication that any of the small number of those who benefitted were displaced Mexican children.²¹⁸

To help governmental entities adopt an appropriately protective framework, international bodies and CSOs are championing children’s rights in Mexico, paving the way for legal and institutional advances in the field. This is especially striking because an adequate public budget has not been allocated to carry out these changes. Examples of these are:

- SIPINNA created a dedicated commission in 2015 to address the needs of migrant and refugee children in the country. With the support of UNICEF, the commission developed and approved a comprehensive path for the protection of migrant and refugee children.²¹⁹

- Since 2016, UNICEF and the SNDIF have taken advantage of the regulatory and institutional changes precipitated by the LGDNNA to generate an accessible procedural toolbox and practical guide²²⁰ for the protection and restitution of child rights, giving officials highly operational tools to comply with the principles of the LGDNNA.²²¹
- With the support of UNICEF, the Secretariat of Foreign Affairs expressed their approval of the *Protocol for the Consular Care of Unaccompanied Migrant Children and Adolescents* in 2015, which aims to strengthen the consular mechanisms of Mexico abroad and ensure compliance with comprehensive UAC protection obligations.²²²
- The push for federal operating protocols, such as the *Care Protocol for Unaccompanied or Separated Migrant Children and Adolescents Sheltered in the DIF Facilities*, published in 2015, has increased the possibility that these child protection protocols will be approved in at least some states.
- Following harmonization of the Immigration Law and the LGDNNA in November 2020, UNICEF, IOM, and the United Nations High Commissioner for Refugees (UNHCR) in Mexico have provided technical and financial support to state, local, and federal Prosecutor’s Offices to create multidisciplinary teams more capable of developing the comprehensive procedures established in Article 112 of the Law for the Care of Migrant Children.

218. Díaz Prieto Report, *supra*, note 46.

219. National Comprehensive Protection System for Children and Adolescents, *Comprehensive protection path for the rights of children and adolescents in migration. Progress of the proposal of the Work Group of the Comprehensive Protection Commission of Migrant Refuge-Seeking UAC*, available at https://www.gob.mx/cms/uploads/attachment/file/577003/Ruta_versio_n_final_editada_definitiva_II__1_.pdf.

220. UNICEF and the Comprehensive System for Comprehensive Family Development, *A practical guide for the protection and restitution of the rights of children and adolescents. Toolbox*, First Edition (Aug. 2016), available at <https://www.unicef.org/mexico/media/1256/file/Caja%20de%20Herramientas.pdf>.

221. *Id.*

222. Secretariat of Foreign Affairs and UNICEF, *Protocol for Consular Care of Unaccompanied Migrant Children and Adolescents. General Directorate for the Protection of Mexicans Abroad* (2018), available at <https://www.gob.mx/sre/documentos/protocolo-para-la-atencion-consular-de-ninas-ninos-y-adolescentes-migrantes-no-acompanados-13061>.

- In support of the SNDIF and PFPNNA, UNICEF has also promoted a new model of alternative care based on international guidelines that seeks more family and community-based approaches and rejects the use of detention centers for migrant children. Development of this model is supported by various agencies in different states of the Mexican Republic, with financial and technical contributions from IOM, UNHCR, and UNICEF.
- There have been attempts by different countries in the region, including Mexico, to promote transnational care mechanisms for migrant children. Forums such as the Conferencia Regional Sobre Migración (Regional Immigration Conference or CRM) have adopted regional protection guidelines, and Mexico and several Central American countries have entered into a memorandum on repatriation, although a rights-based approach is absent in many of these efforts.

Similarly, several organizations we interviewed in connection with this report highlighted best practices for the care and protection of the best interest of the child in forced migration that have been promoted through inter-institutional collaboration, political will, and active participation of key governmental entities, courts, international agencies, and non-governmental organizations:

“At the local level what has advanced a lot is the participation of civil society, which has been coordinating certain work groups on certain issues, which has permitted for the immediate response of various institutions. At the local level, there is more awareness of this approach of working together to try to resolve cases. This is a strength.”

(Save the Children México)

Along the same lines, Amnesty International, among others, highlighted that Mexican and United States border and immigration authorities have collaborated with different international partners to facilitate the reunification of Central American children and, to a lesser extent, unaccompanied Mexican children, with their relatives residing in the United States. These achievements have occurred especially in the cities of Tijuana and Ciudad Juárez and, in certain cases, at ports of entry in other border cities.²²³ This has been possible due to work on the specialized care of migrant children carried out by the Mexican authorities with UNHCR, UNICEF, and Kids in Need of Defense (KIND).

As an example of a best practice, since September 2019, KIND has coordinated with Mexican authorities, ORR, and UAC sponsors regarding the transfer process of UACs from Mexico to sponsoring families in the United States, often as the child’s legal representative.²²⁴ This is a great example of facilitating the implementation of binational mechanisms for the protection of the best interest of the child. There are very few cases, however, of Mexican children benefitting from such efforts due to the infrequency of this type of coordination and the short time that Mexican UACs remain in United States custody before being repatriated to Mexico without a thorough assessment of their circumstances or any opportunity for the intervention of non-governmental organizations on their behalf.

Mexico and the United States have entered into cooperation agreements for the repatriation of Mexican children, although with significant setbacks and in the absence of any rights-based approach or respect for the best interest of the child.

223. *Amnesty Report*, *supra*, note 50, at p. 44.

224. *Id.* at 45.

“There were significant inter-institutional and bi-national advances in Arizona between Mexican judges and authorities, as well as local zone repatriation agreements. However, these advances fell through with the pandemic, and repatriation agreements no longer apply due to Title 42, because, ‘due to public health reasons’ what occurs are not repatriations, but rather expulsions, and times and delivery points, as well as the involvement of vulnerable groups such as children, pregnant women, and older adults, are not taken into consideration.” (Kino Border Initiative, Nogales, Sonora)

Thanks to judicial intervention, recent advances have also been made in the protection of migrant children. In its Order AR 302/2020, the First Chamber of the SCJN reacted to claims filed by CSOs with respect to non-public agreements between the U.S. and Mexican governments regarding the treatment of migrants,²²⁵ identifying administrative omissions in the decisions and agreements of the two countries. The court identified administrative failings by various authorities in the implementation and official, public notice of Mexico’s policy regarding the return of migrants affected by the United States’ MPP program. The SCJN indicated that these omissions “violate the rights of migrants, especially children and women, regarding access to justice, legal certainty, and to legal representation.” The “Effects” section of this order established the obligations of the authorities to take specific actions that may be useful.²²⁶

This report highlights important changes and improvements in the Mexican governmental response to migrant children. Certainly, some of these advances suggest that respect for children’s rights can be realized in accordance with international rules of protection. As explained in more detail below, however, there are still important challenges and gaps between these improvements in institutional policies and their implementation—**especially due to the lack of specific application and development with respect to Mexican children**—and there remains a need to strengthen government institutions and political will to bring these policy improvements to fruition.



5.1.2. Main Challenges and Gaps to Ensure the Protection and the Best Interest of Mexican UACs

Despite the significant legislative advances regarding the protection of migrant children in general, we reiterate that **the greatest challenge identified throughout this investigation is the effective implementation of existing regulations, particularly for Mexican UACs**. This must occur primarily through the technical, political, and budgetary strengthening of the Federal Prosecutor’s Office for the Protection of Children and Adolescents, with greater urgency in the State and Municipal Prosecutor’s Offices for Protection of Children and Adolescents in border states and cities of northern Mexico. Also, the DIF system needs to be strengthened at the national, state, and local levels to implement greater professionalization and a rights-based approach. The focus of this implementation must be an increase in protection for UACs of all nationalities, but in particular for Mexican UACs, who, even with regulatory advances, are returned to their country and/or state of origin without adequate protection of their best interests.

The most significant challenges that our investigation has encountered, summarized in the Findings Section and accompanied by concrete recommendations, are the following:

225. For more information on the claims of Mexican civil organizations before the Supreme Court of Justice of the Nation, see Guerrero, Karla, *Imumi asks SCJN to reject policies that limit asylum in Mexico* (June 24, 2021), available at <https://www.milenio.com/politica/migracion-mexico-imumi-pide-rechazar-politicas-limiten-asilo>.

226. The court order is not yet published, but the expected version can be consulted through the Amparo under Review 302/2020, available at https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2022-09/AR-302-2020-090922.pdf

Excessive use of institutionalization and return of UACs to their places of origin as the only option, without proper evaluation and determination of UAC's best interest.

At the institutional level, a paternalistic, welfare-dependent, and adult-centric approach still permeates the treatment of migrant children. This deprives children of agency and treats them as service recipients, rather than as rights holders. In practice, this has resulted in the standard practice of institutionalizing Mexican UACs expelled from the United States before returning them to their places of origin, without any further assessment of their circumstances or their desires. Alternatives for family reunification in the United States, in line with the best interest of these UACs, are also generally not considered. This is a violation of the UACs' rights to international protection and the consideration of their best interest. This was referred to on several occasions by different actors interviewed for the purposes of this report:

“
There is a clear and well-established path that is effectively carried out with UACs from other nationalities. However, this does not happen with Mexican UACs, who are deported daily, and there is a gap in identifying their need for protection. Attention to the needs of these UACs is usually based on adult-centric thinking, not on their best interest. The Mexican authorities take action for them, without considering their opinions. And the solutions are determined mechanically (...) There is no binational path for family reunification of Mexican children, and that alternative is almost always completely ruled out. (YMCA homes)
”

This situation has been identified by international and child protection agencies, like Amnesty International in its 2021 report, as well as through the efforts of the individuals who were interviewed as part of this report, who expressed concern about migrant children being deprived of their liberty in closed-door shelters managed by the DIF.²²⁷ According to interviewees, these shelters often provide inhumane conditions,²²⁸ and children within these facilities are often subjected to various human rights violations.²²⁹ Assessing and determining the best interest of these minors is considered too time consuming, in part due to a lack of understanding of the important role state institutions play in the protection of this population.

Weak institutional coordination for guaranteeing the best interest of migrant children

Our investigation uncovered several concerning observations regarding the Mexican government's response to UACs, namely (i) a lack of institutional coordination and shared responsibility among government authorities at both the state and national levels, and (ii) confusion and lack of clarity about each state actor's role in ensuring the implementation of a comprehensive framework to protect the best interest of the returned children. This often results in serious omissions by the Mexican government and harm to the children who are automatically returned to their places of origin.

This conclusion is borne out in the interviews of various actors who participated in this investigation. It was detailed by the Save the Children Mexico field teams based on their fieldwork at various points on the northern border of the country, in the States of Chihuahua, Tamaulipas, Baja California, and Sonora:



227. *Amnesty Report, supra*, note 50.

228. Mosso Castro, Rosario, *Brutality at DIF BC, FG investigates three cases of sexual abuse and another of torture inside the shelters*, Zeta Tijuana (Aug. 8, 2022), available at <https://zetatijuana.com/2022/08/brutalidad-en-dif-bc/>.

229. Guerra, Alejandra, *CEDHBC investigates the situation in shelters in Mexicali and Tijuana, Baja California* (Sept. 11, 2020), available at <https://alfredoalvarez.mx/investiga-cedhbc-situacion-en-albergues-de-mexicali-y-tijuana/>.

“
There is a gap in communications between the INM and the Prosecutor's Offices, as well as with the Mexican consulates in the United States, which should advise and represent children, but allows them to be returned to Mexico in a matter of hours. There are challenges in the coordination with the Prosecutor's Offices of Hermosillo, Nogales, Tijuana, Mexicali, Matamoros, and Reynosa.
”

This situation was confirmed by information we received through our public information requests. For example, some State Prosecutors' Offices for Protection of Children and Adolescents, such as the Prosecutor's Office in Coahuila,²³⁰ responded that they do not have jurisdiction over the protection of Mexican UACs, while the Prosecutor's Office for the State of Nuevo León said that it had no knowledge about its powers as an entity responsible for the protection of UACs, and suggested that we direct questions to the National Immigration Institute as the responsible authority.²³¹ Some of the responses provided by the State of Nuevo León are set forth below:

A.- *The State Prosecutor's Office for the Protection of Children and Adolescents is not the agency that serves unaccompanied Mexican children repatriated from the United States. For those cases, since 2007, the National Immigration Institute (INM), has been responsible for promoting the safety of minors who migrate to Mexico through Oficiales de protección a la infancia (Children Protection Officers) (OPI);... (DIF Nuevo León)*

A.- *The State Prosecutor's Office for the Protection of Children does not maintain any specific procedures for the care of, and does not provide protective services for, unaccompanied migrant children who are repatriated from the United States. (DIF Nuevo León)*

This situation is of great concern, as it is not only contradictory to the regulatory advances indicated above, but also demonstrates a total ignorance of the powers and responsibilities proposed by the LGDNNA for the Prosecutor's Offices for the Protection of Children at the federal, state, and local level. It is evidence of State Prosecutor's Offices' failure to fulfill their responsibility to ensure the protection of these children.

On the other hand, the Directorate of the Vulnerable Population Care Unit rejected our request for an interview and stated that the Care Unit “does not collect, aggregate or maintain the data required” on the subject in question.²³² This was repeated in the Care Unit's response to the INAI, in which they stated that “this General Directorate does not have information that meets the requested conditions, based on the understanding that the Vulnerable Population Care Unit, such as the General Directorate of Coordination and Policies for Early-Childhood, Families, and Populations in Vulnerable Situations, are not responsible for the administration or operation of the Centers of this Agency and do not directly serve the population subject of the request.”²³³ **Therefore, there is a lack of understanding by the responsible authorities regarding their respective powers, as well as an unwillingness to assist, as evidenced through efforts to avoid responding to our requests for information and data as institutions in charge of ensuring the care and protection of migrant Mexican children.**

230. Response received by the Prosecutor's Office for Children and the Family of the State of Coahuila in Official Letter Number PRONNIF/UAT/121/2022, dated May 11, 2022, in which it expresses that it has no jurisdiction with respect to the subject in question.

231. Response received by the System for Comprehensive Family Development of the State of Nuevo León via File No. 460/SDJ/2022, dated May 18, 2022, where the aforementioned responses are set forth.

232. Response received through the electronic communication issued on July 5, 2022, in the name of the Head of the Vulnerable Population Care Unit in response to the invitation to participate in an interview on unaccompanied Mexican migrant children at the border between the United States and Mexico, within the framework of this investigation.

233. Response provided by the SNDIF to the request for official letter No. 330028822000199 through Official Letter 208.003.02/728/2022, dated May 20, 2022 (p. 20).

In 2019, REDIM stated that the Prosecutor's Offices for the Protection of Children and Adolescents were acting unilaterally when evaluating and determining the best interest of migrant children, without institutional coordination or clarity regarding the procedures to be implemented. REDIM then suggested that "[such] isolated practices require a clear and established methodology and procedures that can be replicated nationally, because there is still a lack of knowledge regarding their responsibility to ensure full access to rights for migrant children."²³⁴

Notwithstanding the important role of the State Prosecutor's Offices for the Protection of Children and Adolescents in providing comprehensive care and protection of Mexican children who have been forcibly displaced or expelled from the United States, there is still a need for additional measures, such as long-term reintegration mechanisms and systems to ensure that the rights of expelled children are upheld.

The binational working group for the protection of migrant children in Mexico and the United States,²³⁵ which convened in July 2022, represented an opportunity to manage inter-institutional coordination at the binational level and provide more efficient responses to improve the protection of migrant children at the border. However, it is not yet known how the binational working group, or consultation and engagement mechanisms of non-governmental organizations, will operate in practice.

Throughout this investigation, we observed that high staff turnover within the child protection and care agencies and insufficient budgets at the local level added to the continuation of this problem.

Poor application and lack of knowledge of care and protection protocols for returned UACs

Despite the progress in the creation of the Protocols for the Care of Unaccompanied or Separated Children, which both the National DIF System and the Secretariat of Foreign Affairs have had since 2015, this investigation found that these Protocols are either not implemented, implemented poorly, or are simply unknown to those individuals who should be implementing them. For example, throughout our research, including in our requests for public information, we did not find data on the use of said Protocols (e.g., how many children were cared for under the protocols, in what places, protection results, etc.).

In the case of the Care Protocol for Unaccompanied or Separated Migrant Children and Adolescents Sheltered in DIF Facilities, it is noteworthy that no General Directorate of the SNDIF made any mention of the Protocol in the different responses received through the INAI public information request. For example, the General Directorate of Social Integration of the SNDIF, through the Directorate of Social Assistance Centers for Children and Adolescents, responded, "There is no intervention model or protocol for the protection of unaccompanied Mexican migrant children who have been returned or repatriated from the United States; however, the services of the Social Assistance Centers, under the umbrella of the SNDIF, follow a comprehensive care model, which seeks, through multidisciplinary actions, a restoration of the violated rights of children, regardless of nationality, place of origin, race, religion or economic situation."²³⁶ The General Directorate of Legal Representation of the SNDIF only referred to the Comprehensive Care Protocol for Victims of Crime in Vulnerable Conditions,²³⁷ noting that there are no results or impact assessments regarding the application of that Protocol and that there was no "collaboration with other institutions for the preparation of the Protocol in question."²³⁸

234. *Díaz Prieto Report*, *supra*, note 46, at p. 13.

235. National Immigration Institute, The Government of Mexico is enlisting a binational working group for the protection of migrant children in Mexico and the United States, Joint Communication No. 351/2022 (July 23, 2022), available at <https://www.gob.mx/inm/prensa/gobierno-de-mexico-alista-grupo-de-trabajo-binacional-para-proteccion-de-menores-en-situacion-de-movilidad-en-mexico-y-estados-unidos-309329>.

236. Official Letter 208.003.02/780/2022 prepared by the SNDIF on May 30, 2022, in response to request 330028822000208 (p. 16).

237. Official Journal, National System for Comprehensive Family Development, Extract from the Agreement issuing the Comprehensive Care Protocol for Children and Adolescents Victims of Crime and in Vulnerability Conditions. Published in the Federal Official Gazette on July 1, 2020, available at <http://sitios.dif.gob.mx/normateca/wp-content/uploads/2020/05/Protocolo-NNAVV-FIRMADO.pdf>.

238. Response received from the SNDIF to the request for official letter No. 330028822000199 through Official Letter 208.003.02/728/2022, dated May 20, 2022 (pp. 12-13).

It is evident that the Care Protocol for Unaccompanied or Separated Migrant Children and Adolescents Sheltered in the DIF Facilities, prepared in 2015 by the National DIF System itself, in collaboration with IOM, UNICEF, and UNHCR, is not actually used by DIF for the care of unaccompanied or separated migrant children. This lack of implementation of the Protocol is especially concerning on the northern border of Mexico as it has an impact on how returned Mexican UACs—a particularly vulnerable group—receive care from state and local agencies. Only the State of Tamaulipas reported having an Action Protocol for the Care of Unaccompanied Migrant and Repatriated Children as part of state law.²³⁹ The rest of the states only indicated having manuals, procedures, policies, or internal operating protocols, without further details or reference to the official Care Protocol for Unaccompanied or Separated Migrant Children and Adolescents Sheltered in DIF Facilities.

Additionally, interviews with various Mexican consular officials in the United States revealed that, although the Protocol for Consular Care of Unaccompanied Migrant Children and Adolescents is employed in their work with Mexican children detained by the Border Patrol in the United States, there are several circumstances that prevent its proper application, including the refusal of U.S. authorities to provide adequate spaces within CBP facilities to conduct the interviews required by the Protocol. This was noted by a Mexican consular official in the Rio Grande area:

“
A minimal interview to notify family members is conducted, although the Protocol interview is longer and CBP does not allow the opportunity to conduct the interviews. For example, Border Patrol units are filled with people coming in and out and there are not adequate areas to conduct the interviews at Border Patrol stations.”

Greater coordination between the federal and state Prosecutor’s Offices for the Protection of Children and Adolescents, the Mexican consulates in the United States, and U.S. authorities is needed for the effective protection of Mexican children in need of international humanitarian protection. This is an urgent priority and is necessary **to avoid repatriation as the only option for UACs, with the Mexican government serving merely as the repatriation manager for Mexican UACs who are automatically detained and returned by U.S. immigration agents.**

There are still significant gaps with respect to the involvement and role that the Prosecutor’s Office for the Protection of Mexican Children and Adolescents should play, creating an urgent need for the implementation of binational mechanisms for the protection of unaccompanied migrant children of Mexican nationality in close coordination with the Mexican consular network. This would permit the management and implementation of protection mechanisms outside of Mexico if required for the best interest of the child.

Lack of any unified, effective national information system relating to migrant children

In its 2011 report, Appleseed observed that, although the Mexican government collects and maintains significant data about migrant children, there was no mechanism for the Secretariat of Foreign Affairs, the INM, and the DIF to share access to their databases. This not only hinders the implementation of effective protection mechanisms for children repatriated from the United States, but also further victimizes the children because they must endure being interviewed and reinterviewed by at least three different agencies, one after the other, regarding the same topics.²⁴⁰ One of the recommendations from the 2011 report was the development of a comprehensive and shared database of UACs, with appropriate security and privacy measures, to record the history of all repatriated children and to identify those who make repeated attempts to cross the border, with the goal of improving the state’s approach to protecting these children.

239. *Action Protocol for the Care of Unaccompanied Migrant and Repatriate Children and Adolescents*, Official Gazette of the State of Tamaulipas (June 4, 2015) (pp. 51-90), available at https://www.gob.mx/cms/uploads/attachment/file/109332/Protocolo_-_ING_.pdf.

240. *Appleseed 2011 Report*, *supra*, note 1, at p. 20.

The General Law on the Rights of Children and Adolescents contemplates the design, integration, management, and updating of a national, shared information system that would collect quantitative and qualitative data and permit for the monitoring of progress in fulfilling the rights of children.²⁴¹

This shared system must include information about migrant children provided by the National Immigration Institute and the Secretariat of Foreign Affairs to ensure the availability of appropriate social services and protection²⁴² and facilitate the Prosecutor's Offices for Protection of Children and Adolescents' work to fully restore the rights of migrant children.

The National DIF System created the Registro de Niñas, Niños y Adolescentes en Contexto de Movilidad Humana (Registry of Children and Adolescents During Human Migration) in October 2022.²⁴³ This registry aggregated information regarding protection of the rights of migrant children during their journey through or stay in Mexico, yet it left a large gap for Mexican children detained in the United States and returned to Mexico, as information from the Secretariat of Foreign Affairs was not yet included.

Throughout this investigation, we found that the information recorded by the National Immigration Institute and the Secretariat of Foreign Affairs on repatriated children does not match. According to the publicly available information provided online by the Secretariat of Foreign Affairs, from 2018 to 2021, the Comprehensive Consular Protection System handled the cases of 34,690 repatriated UACs,²⁴⁴ while the National Immigration Institute recorded 47,828 repatriation events of Mexican UACs during that same period of time.²⁴⁵ This discrepancy means that at least 27.5% of returned Mexican UACs were not registered. Therefore, it would appear that such UACs were not handled under the Comprehensive Consular Protection System.

In addition, it should be noted that the information published by CBP on Mexican UACs detained, deported, or expelled from the southern border of the United States also does not coincide with the figures for repatriations of UACs registered by the National Immigration Institute.

CBP reported a total of 55,428 encounters with Mexican UACs between October 1, 2018 (FY2019) and September 30, 2021 (FY2021).²⁴⁶ During the same time period, the INM registered 36,101 UACs repatriated to Mexico,²⁴⁷ a difference of 35%. As discussed in Section 3.2, U.S. authorities have not provided publicly available data on numbers of Mexican UACs returned to Mexico since FY 2020, though during the prior decade there was a return rate of 89%, with 11% of UACs remaining in the U.S.

241. See Migratory Policy Working Group, GTPM, *Migrant children and adolescents*, available at <https://gtpm.mx/ninez-y-adolescencia-migrante/>.

242. Ley General De Los Derechos De Niñas, Niños Y Adolescentes, Última Redorma DOF 11-12-2023, December 4, 2014, available at <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA.pdf>.

243. National DIF System, *SNDIF presents the Registry of Children and Adolescents During Human Migration* (Oct. 11, 2022), available at <https://www.gob.mx/difnacional/es/articulos/sndif-presenta-registro-de-ninas-ninos-y-adolescentes-en-contexto-de-movilidad-humana>.

244. Secretary of Foreign Affairs, *SRE. Publicly available data. Cases of unaccompanied minors repatriated at the U.S. border*, available at <https://datos.gob.mx/busca/dataset/atencion-a-poblacion-vulnerable-ninas-ninos-y-adolescentes-no-acompanados-atendidos-por-la-red->.

245. In reality, the total number of repatriation events of unaccompanied Mexican migrant children from the United States totals 47,841 UAC between 2018 and 2021. However, in that time period, 23 minors were repatriated to their home communities through the Procedimiento de Repatriación al Interior de México (Repatriation Procedure within Mexico) (PRIM), which began operations on December 19, 2019, as part of the commitments set out in the "Coordination Memorandum" signed by the Secretariat of State of Mexico and the U.S. Department of Internal Security, so that the transfer of repatriated Mexicans to their home communities is shorter. Therefore, repatriation flights within Mexico have been implemented at various airports, in addition to those operating in Mexico City. Therefore, repatriations of UAC made directly to Durango, Jalisco, Michoacán, Nuevo León, Puebla, Querétaro, and Tabasco are contemplated. Information collected through the UPM and the Statistical Bulletins by year, available at http://www.politicamigratoria.gob.mx/es//PoliticaMigratoria/Boletines_Estadisticos.

246. U.S. Customs and Border Protection, Southwest Land Border Unaccompanied Children (0-17 years old) Encounters. Encounter data includes U.S. Border Patrol (USBP) Title 8 Apprehensions, Office of Field Operations (OFO) Title 8 Inadmissibles, and Title 42 Expulsions, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters/usbp-sw-border-apprehensions>.

247. Monthly data pulled from the UPM statistical bulletins and matched with the U.S. fiscal year, available at http://www.politicamigratoria.gob.mx/es//PoliticaMigratoria/Boletines_Estadisticos.

This gap points to a lack of sufficient coordination by Mexican authorities among themselves and with United States authorities for the care and protection of UACs who cross Mexico's northern border. It also **highlights the urgent need for a unified, national registration and data system for migrant Mexican children that also works as a binational mechanism to prevent Mexican UACs from being returned without sufficient protections and adequate assessment of their best interest.**

To address this gap, REDIM has proposed implementing a transnational comprehensive protection mechanism for migrant children between the institutions of the United States, Mexico, and the countries of Central America and the Caribbean, which would activate and strengthen the national comprehensive protection systems of each country.²⁴⁸

In particular, it is important that any such mechanism take into account Mexican child victims of cross-border trafficking circuits, and include a standardized national information system to identify these victims and provide adequate protective measures and restitution plans that would allow them to exit the cycle of exploitation. This, in turn, could influence the design and implementation of public policies aimed at preventing risks faced by young children in Mexico²⁴⁹ that make them more vulnerable to capture and exploitation by these organized criminal networks.

Neglect of root causes displacing Mexican children

The Mexican Government has an urgent obligation to address the root causes that force thousands of children across Mexico to migrate each day, whether accompanied or not. Forced migration of children and families mainly occurs because of criminal, structural, or gender-based violence and forced recruitment of minors by organized crime groups.

So far, no policy on forced displacement has been adopted in Mexico. In light of this legal vacuum, there is little clarity on the powers and responsibilities of various government agencies to prevent forced displacement and protect the most vulnerable victims, including children. Therefore, it is imperative that the approval of the General Law on Forced Displacement²⁵⁰ be expedited and that the rights of displaced persons be guaranteed.

5.2 Response from the U.S. Government

5.2.1. Evaluation of U.S. Policies and Procedures for the Care and Protection of Mexican UACs²⁵¹

As described earlier in this report, the laws and basic process that Mexican UACs encounter upon entering the United States have not changed since the 2011 report: Mexican UACs (1) encounter CBP either at a port of entry or between ports of entry, (2) are (ostensibly) screened by CBP under the TVPRA within 48 hours, and (3) are then either (a) transferred to ICE and then ORR custody if a TVPRA risk factor is detected or (b) repatriated to Mexico in coordination with Mexican officials. In all events, the Mexican consulate is to be notified whenever a Mexican UAC is in the custody of the U.S. government.

Since 2011, CSOs continue to report that CBP is not consistently or effectively providing TVPRA screenings, Mexican UACs are still being "voluntarily" returned either without screening or upon signing I-770 forms they do not understand, and Mexican UACS continue to be repatriated with poor and inconsistent coordination and communication with Mexican authorities. There have, however, been some changes in the past 13 years that warrant attention.

248. 2021 Annual Balance Sheet, *supra*, note 37.

249. José A. Moreno Mena and Rosa María Avedaño Millán, *Arrinconados por la realidad: Menores de circuito (Cornered by Reality: Circuit Minors)*, *Border studies, new period*, Vol. 16, No. 31 (pp. 207-238), available at <http://sitios.dif.gob.mx/cenddif/wp-content/uploads/2016/08/Arrinconados-por-la.pdf>.

250. *Statement of the Collective of Victims of Forced Displacement and Accompanying Organizations before the visit and preliminary observations of Cecilia Jimenez-Damary, Special Rapporteur on the human rights of internally displaced persons of the UN* (Sept. 10, 2022), available at <https://serapaz.org.mx/posicionamiento-visita-relatora-desplazados-internos/>.

251. Please note, this Section provides a large-scale summary and evaluation of the U.S. government's response to the protection needs of Mexican UACs. Citations to specific data points and information in this Section are available in the earlier, detailed portions of the report.

Recent Efforts to Improve CBP Facilities and Care

In recent years, CBP has begun an effort to provide better care to children at its facilities, as noted in Section 4 of this report. This includes hiring child welfare medical professionals and caregivers and improving their facilities to more closely resemble daycare facilities. CBP is also providing special training to CBP staff in these roles. These improvements also include “trauma-informed holding practices,” such as trainings for CBP officers,²⁵² informing children about the immigration process, providing child-centric activities within holding centers when possible, keeping families together when possible, and improving access to necessary sanitation facilities (e.g., showers). CBP also noted in interviews that they have recently expanded medical units within CBP facilities, with 90 in-facility medical units with 24/7 access to care currently in place and expectations that this number will increase. These efforts are in progress, and it will be important to measure the success of these changes.



Efforts to Improve CBP Training

In interviews, CBP noted that annual training requirements and online trainings are made available to CBP officers, including training on TVPRA processing requirements. Training also includes education on recognizing survivors of human trafficking and sexual assault, as well as how to identify trauma in UACs, as part of CBP’s new “trauma-informed holding practices.” More detailed information about this training was not provided, and, unfortunately, this training does not appear to be working consistently based on frontline reports that CBP officers were not aware of TVPRA screening requirements or thought they were suspended during recent years due to passage of the Migrant Protection Protocols and Title 42.

In 2019, DHS issued a new rule that Form I-770 must be “provided, read, or explained to the minor or UAC in a language or manner that the minor or UAC understands,”²⁵³ though this does not appear to be happening consistently. As described earlier in this report, in many cases, Mexican UACs are either not signing these forms or do not understand what they mean.

CBP Form 93 may have also been updated. It is now part of an online system, and although the introduction and instructions for the form were provided—and appear at Appendix A of this report—almost the entirety of the form itself was redacted. This makes it impossible to provide any assessment of (1) whether the form itself has been revised since 2011 and (2) whether those revisions are helpful.

Violation-Reporting System

CBP also indicated that they have built a system for children to report both mistreatment and violations of the TVPRA. These reports are sent to an internal investigations officer within CBP, who is also charged with independently monitoring for violations. Children are informed of their right to report through an initial briefing and through “posters” on the walls of the holding facility.

252. Homeland Security, U.S. Customs and Border Protection, *Establishment of Trauma Training at CBP, Fiscal Year 2021 Report to Congress*, available at <https://www.dhs.gov/sites/default/files/2022-01/CBP%20-%20Establishment%20of%20Trauma%20Training%20at%20CBP%20%281%29.pdf>.

253. Apprehension, Processing, Care, and Custody of Alien Minors and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44392 (Oct. 22, 2019) (to be codified at 8 C.F.R. § 212, 8 C.F.R. § 236 and 45 C.F.R. § 410).

CBP also employs a blind complaint box for tips regarding potential violations. Allegations leading to investigations may also come from the *Flores* attorney monitoring group, referrals from ORR, the CBP information center, news articles, or any other source alleging potential violations. This is a positive development and should be continued, though more information is needed on the efficacy of the current reporting system and how well UACs understand it and their right to report without retribution.

Enforcement of Flores Settlement

As described in Section 4.3.2 of this report, in 2017, a CBP Juvenile Coordinator (JC) was appointed to oversee CBP's compliance with the *Flores* settlement and the TVPRA.²⁵⁴ Additionally, in 2019, CBP established the Juvenile Coordinator's Office to work with the JC to oversee and regularly inspect CBP's compliance with relevant standards pertinent to UACs in their custody. This work includes unannounced site visits and interviews with children and parents.²⁵⁵ This is a positive step towards additional transparency and oversight and should continue.

Efforts to Provide Additional ORR Services²⁵⁶

CSO reports about the care provided in standard ORR facilities have generally been positive, especially when compared to CBP facilities. As discussed in prior Sections, ORR also now provides services to children who have experienced sexual abuse or trafficking by referring them to the Prevention of Sexual Abuse Division and Office on Trafficking in Persons. ORR also reported that they now have a better understanding of indigenous language needs and endeavor to provide interpretation to all indigenous language speakers, though there are several rarer indigenous languages for which it is difficult to find consistent interpretation resources.²⁵⁷ In addition, ORR provides post-release services, including a national help line where UACs can report concerns and access community-based resources, as well as a call center where UACs can report abuse that occurred at ORR facilities or in their post-release placement. However, only 25% of UACs currently receive these services, so steps should be taken to expand these post-release services to all UACs.²⁵⁸

Use of Non-Standard ORR Facilities - EISs and ICFs

Unlike standard ORR facilities, there have been many concerns about the care provided in non-standard facilities, such as Influx Care Facilities (ICFs) and Emergency Intake Sites (EISs)—a new type of facility—that are used to house and care for UACs during border “surges.” As described in detail earlier in the report, these facilities were used in 2021 when significantly decreased ORR capacity collided with a large uptick in the number of UACs crossing the southern border. There were many well-founded concerns about the standard of care provided in these facilities, which prompted an investigation and report by the Office of the Inspector General that highlighted the failures at these facilities and provided recommendations to address existing issues.²⁵⁹

5.2.2. Challenges and Gaps

While these positive changes should be applauded and continued, significant challenges and gaps in U.S. efforts to protect Mexican UACs remain.

254. William A. Kandel, Congressional Research Service, *Unaccompanied Alien Children: An Overview* (Sept. 1, 2021) (p. 9), available at <https://sgp.fas.org/crs/homesecc/R43599.pdf>.

255. *Id.*

256. It is important to remember that only a small percentage of Mexican UACs “pass” the TVPRA screening and are transferred to ORR. The vast majority are repatriated and never interact with ORR.

257. Information obtained during an interview held on August 15, 2022, with a Senior Policy Advisor at ORR.

258. *Id.*

259. *HHS OIG Report, supra*, note 173.

Lack of a National Framework for UAC's Rights and Adherence to International Standards

One of the most glaring and problematic challenges in providing protection to Mexican UACs (and indeed all children present in the United States, including American citizens) is the United States' failure to sign the United Nations Convention on the Rights of the Child (CRC). The United States is the only eligible country that is not a party to the CRC. Additionally, there is no single national body of law endowing children with a comprehensive set of rights in the United States. Rather, the protection of children is governed primarily by individual state laws and implemented by state agencies, resulting in significant variations in protections from state to state. This makes it difficult, if not impossible, to challenge the current TVPRA process through which UACs from contiguous countries experience a legal process that violates their fundamental rights as children (i.e., TVPRA screening by DHS followed by immediate repatriation if a risk is not identified), denying these children access to international protection by not recognizing the risks from which they are fleeing, and in this way putting them at greater risk.

Divided Political Climate

Another significant challenge is the near impossibility of passing any meaningful legislation to expand protections for migrants seeking safety in the United States, including Mexican UACs. The U.S. political climate is even more divided now than it was in 2011, with immigration holding a particularly partisan place within U.S. politics. Consequently, congressional action on immigration has ground to a halt. Because of this, the executive branch now plays an outsize role in immigration policy, which has vacillated substantially from administration to administration according to the priorities of the current president. The current political climate makes it an unlikely—or even risky—prospect to seek congressional action to change the TVPRA itself.

Challenges Related to TVPRA Screening

DHS still does not track any data related to TVPRA screening for Mexican UACs, which makes it difficult to know (1) whether TVPRA screenings are being conducted, (2) how thorough or competent the screenings are, and (3) whether proper agency action is taken as a result of the screening. Without this data, this process remains a “black box,” thwarting efforts to improve or evaluate how well the process is being implemented.

Furthermore, as in 2011, TVPRA screening remains the responsibility of CBP, a law enforcement agency charged with protecting the borders, not with caring for children or assessing claims for protection. Despite some recent, and laudable, efforts at improving training and making CBP facilities more child-friendly, a number of CSOs still report that treatment of UACs in CBP care is “not great,” and CBP officers (1) do not want to be “babysitters” and/or (2) do not know TVPRA screening is required or do not have adequate training to provide sufficient screening.²⁶⁰ Twelve years after the 2011 report, CBP is still not fulfilling the requirements of the TVPRA. It is time to acknowledge that tasking a law enforcement agency with care of children and evaluation of their protection claims is not a winning strategy. Rather, DHS should delegate screening responsibility to USCIS, a DHS agency that routinely evaluates protection claims and interviews individuals fleeing persecution as part of its primary mission. Similarly, care and custody of Mexican UACs during the screening period should be transferred to ORR, the agency with experience in, and a focus on, caring for children.

Custody and Care of Mexican UACs

Despite certain planned improvements, such as staffing child welfare professionals in CBP facilities and revamping CBP facilities to be more child-friendly, significant challenges remain regarding the custody and care of Mexican UACs.

260. As noted previously, this information was provided by U.S. NGOs on condition of anonymity.

Importantly, (1) we do not yet know whether CBP's new efforts will be effective; (2) some CSOs strongly contend that CBP facilities will never be an appropriate environment for children and that funds are better diverted to agencies that are equipped to care for children; (3) ORR showed itself to be woefully under-resourced to respond to what should have been expected influxes in UACs at the southern border; and (4) some of the agencies that come into contact with Mexican UACs—namely ICE and CBP—do not appear to have strong policies and training related to the care of particularly vulnerable UACs, including LGBTQ+ children, survivors of sexual and other forms of violence, and indigenous children. If such policies exist, they were not made available or mentioned during government interviews, and reports from CSOs indicate that, even if there are internal policies, there is not a strong awareness or implementation of those policies. For example, one CSO noted that CBP officers appeared to lack an understanding of how LGBTQ+ status might create risks of persecution or trafficking.²⁶¹

Family Reunification of Mexican UACs with Parents or Family in the U.S.

CSOs reported that the process for reuniting Mexican UACs who pass the TVPRA screening and are transferred to ORR with parents or other sponsors residing in the United States has functioned well in recent years. There has been some concern that ORR conducts background checks on parents or other potential sponsors before releasing UACs to them and that these background checks may reveal immigration status. While this is true, ORR has stated in its own written, official policy that it does not share immigration status information with other government agencies for immigration enforcement purposes.

This is certainly a good policy, though worries remain that a future administration could choose to change this policy and begin sharing information about undocumented parents or family members with ICE for enforcement purposes.²⁶² This again highlights the difficulties with the outsize role of the executive branch in current immigration policy in the United States.

Repatriation and Family Reunification in Mexico

Feedback on repatriation of Mexican UACs and binational communication has been mixed. For repatriation involving airplane travel, at least one CSO reported that this coordination has typically worked well, and that the Mexican consulate has been helpful and active. However, repatriation at the land border appears to be a different story. Despite the written Local Repatriation Agreements between the U.S. and Mexican governments described elsewhere in the report, there are still problems with how Mexican UACs are treated during repatriation at the border. At best, it is “unclear” what is happening with repatriation at the border, though some CSOs have reported instances of Mexican UACs being returned to a border point that has no DIF officer and is far away from the children's families. This makes family reunification in Mexico difficult and is clearly dangerous for the children.

²⁶¹ *Id.*

²⁶² ORR Unaccompanied Children Program Policy Guide, Section 2.6 (Aug. 8, 2023), available at <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2>.



6. FINDINGS AND RECOMMENDATIONS FOR CHILD PROTECTION AT THE BORDER

As in 2011, the purpose of this updated report is not only to evaluate and provide a comparative analysis of the situation of children, especially unaccompanied Mexican children, at the Mexico–United States border, but also to provide policy recommendations at the Mexican, U.S., and binational levels to better protect the rights of Mexican migrant children on both sides of the border.

The investigation’s findings and resulting recommendations are summarized below. These are primarily aimed at government institutions responsible for the care and protection of migrant children both in Mexico and in the United States. The findings and recommendations are binational in nature, as institutions on both sides of the border have an important role to play.

These proposals seek to strengthen the roles of public entities, civil society organizations, and international bodies on these issues, while calling for strong binational action to protect and restore the rights of impacted children.

Some recommendations from the previous Appleseed report have not yet been implemented and have been updated and included here again, along with several new recommendations.



6.1 Recommendations for Mexico

FINDING 1.

Violence committed by organized crime, often in collusion with or due to the inaction of the authorities, is the primary cause of the forced displacement of Mexican children and families.

Poverty, the need for family reunification, and myriad other factors have long been push factors for migration, including in states like Michoacán or Guerrero, which have long been the states of origin of many Mexicans seeking to migrate to the U.S. Since the 2011 report, though, significant increases in organized criminal violence in these states, and others, including Jalisco, Veracruz, Chiapas, and border states like Tamaulipas and Chihuahua, have resulted in a rapid increase in the forced displacement of families and entire communities seeking to escape such violence and the threats of organized crime.

This criminal violence, and its resulting sociopolitical and territorial conflict violence, was cited throughout this investigation as the most common cause for the displacement of Mexican families and children.²⁶³ The Internal Displacement Monitoring Center estimated that the total population of people displaced in Mexico due to armed conflicts and violence amounted to 345,000 people by the end of 2019. Of the 345,000 displaced people, 31% were minor children who were forcibly displaced.²⁶⁴ This situation was echoed in the experiences shared by the children who took part in this investigation through focus groups, who reported fleeing due to threats and attacks against their families. Children and their families consistently referred to the complicity of state and local government agents with criminal groups, demonstrating how organized crime has co-opted state institutions.

While there are many causes that contribute to forced displacement, the main impetus for many to migrate from their homes is now, without a doubt, criminal violence and the impunity of those who commit it.

RECOMMENDATIONS.

- **Strengthen the capacities and protection mechanisms of the Prosecutor's Offices for the Protection of Children and Adolescents and other federal, state, and local institutions responsible for the care of children in the origin states of children who experience internal forced displacement.**
- **Support public institutions and social and academic entities studying the causes of forced displacement in Mexico.**
- **Approve and implement, with the appropriate budget and focus on children, gender, and ethnic-cultural factors, the draft Law on Forced Displacement²⁶⁵ in Mexico that is being considered in Congress as of the date of this report.**

263. Pérez Vázquez, Brenda Gabriela; et al., Episodios de desplazamiento forzado en México (Forced Displacement Episodes in Mexico), Report 2020, Comisión Mexicana de Defensa y Promoción de Derechos Humanos (CMDPDH), available at <https://www.cmdpdh.org/publicaciones-pdf/cmdpdh-episodios-de-desplazamiento-interno-forzado-en-mexico-informe-2020.pdf>.

264. Internal Displacement Monitoring Center (IDMC), *Briefing paper. Number of IDPs by age at the end of 2019* (Apr. 2020), available at <https://www.internal-displacement.org/sites/default/files/publications/documents/202004-age-disaggregated-IDP-data-paper.pdf>.

265. Chamber of Deputies LXV Legislature, Note No. 6521, The General Law on Internal Forced Displacement Will Solve a Serious Legal Gap: Rocío Barrera (Sept. 29, 2020), available at <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2020/Septiembre/29/6521-Ley-General-sobre-Desplazamiento-Forzado-Interno-solventara-grave-laguna-juridica-Rocio-Barrera>.

FINDING 2.

Violence committed by organized crime takes different forms based on gender, with boys suffering an increased risk of forced recruitment, and girls facing heightened risks of violence and sexual exploitation.

Violence resulting in the forced displacement of Mexican children is not homogeneous; there are differences in the source of the violence and how it impacts its victims. Insights from interviews with relevant stakeholders and collected testimonies reveal that organized crime primarily targets boys for recruitment into criminal activities, while girls are most likely to be subjected to sexual violence by these criminal networks.

This concerning situation has recently been exposed by Red por los Derechos de la Infancia en México (REDIM), which highlighted the existence of cases in which boys are forcibly recruited by criminal groups to perform work as informants or *halcones* for the movement of illegal goods, or even to carry out kidnappings or homicides. Meanwhile, girls are recruited for sexual exploitation.²⁶⁶

These differentiated impacts are also observed in the violence children may suffer during their migration to the United States. For example, there has been a resurgence of distinct violence perpetrated against migrants of different genders, ethnicities, and ages. Unfortunately, the government lacks adequate mechanisms to identify the differentiated violence and provide support and protection to these children.

This situation is even more concerning because, from 2015 to 2018 alone, the Inter-American Commission on Human Rights (IACHR) indicated an increase from 30,000 to 460,000 children under 18 years of age captured by criminal groups in Mexico.²⁶⁷ This is a 14-fold increase in just three years.

RECOMMENDATIONS.

- **Generate and implement public policies and regulatory frameworks aimed at identifying and addressing the gendered aspects of forced displacement of children and families in Mexico**, with adequate budget and mechanisms for forcibly displaced children.
- **Reform and reinforce the General Law on the Rights of Children and Adolescents of Mexico to better address sexual violence and the forced recruitment of children.**
- **Reinforce the capacities and mechanisms of the Prosecutor's Offices for the Protection of Children and other agencies in the country at all three levels—federal, state and local—of the Mexican government to prevent forced recruitment and sexual and gender-based violence (SGBV).**
- **Carry out the necessary legal actions to classify the recruitment of children by criminal groups as a crime.** Additionally, it is essential to implement regulatory actions to promote the separation of recruited child victims from criminal organizations, the physical and psychological recovery of such children, **and the reintegration of these children into society.**

266. REDIM and Observatorio Nacional Ciudadano de Seguridad, Justicia y Legalidad *Reclutamiento y utilización de niñas, niños y adolescentes por grupos delictivos en México. Acercamiento a un problema complejo (Recruitment and Use of Children and Adolescents by Criminal Groups in Mexico. Approach to a Complex Problem)*, First edition 2021, available at https://issuu.com/infanciacueta/docs/reclutamiento.v.digital-6_sept-final.

267. REDIM and Observatorio Nacional Ciudadano de Seguridad, Justicia y Legalidad, *Reclutamiento y utilización de niñas, niños y adolescentes por grupos delictivos en México. Acercamiento a un problema complejo (Recruitment and Use of Children and Adolescents by Criminal Groups in Mexico. Approach to a Complex Problem)* First edition 2021, available at https://issuu.com/infanciacueta/docs/reclutamiento.v.digital-6_sept-final.

FINDING 3.

Child victims of cross-border trafficking circuits (“circuit children”) are criminalized and lack protection, while the root causes of this victimization and the impact it has on these children remain unrecognized and neglected.

One of the most at-risk groups of migrant Mexican children are the so-called “circuit children.” These minors are the victims of forced recruitment and are co-opted by organized crime groups to be part of cross-border trafficking circuits. They are forced to make multiple crossings for the transfer of people and drugs, among other things. These are typically boys between the ages of 14 and 17, who were born or have lived for years in the peripheries of the border cities of northern Mexico in unsafe districts and hailing from situations of family disintegration, negligence, addiction, and instability.²⁶⁸ Given these risks, these children easily fall prey to drug and human trafficking networks. Additionally, through the interviews conducted during this investigation, we identified that this population is not only unprotected, but also constantly criminalized and stigmatized by society and by state institutions and agents in Mexico and the United States. This makes it almost impossible for these children to escape the dynamics of exploitation and violence and results in psychological and physical harm to these children, who do not receive state protection.

Appleseed’s 2011 report already highlighted the vulnerability of these children, but, over a decade later, no measures have yet been undertaken by Mexican or U.S. authorities to implement restorative justice mechanisms for these children. On the contrary, because these children are minors, they cannot be prosecuted in the United States and are returned to Mexico where they receive no interventions to protect their rights. There is also no accurate data on these children, despite repeated border crossings and constant contact with Mexican and U.S. authorities. The vulnerability of these children is accepted and normalized, and only a few social organizations care about their situations and try to break the cycle of violence to help them recover and develop normally into adulthood.

RECOMMENDATIONS.

- **Change the term used to refer to this group of children from “circuit children” to “child victims of cross-border trafficking and violence circuits.”**
- **Request the protective intervention of the Mexican Consular Network in coordination with the Mexican Prosecutor’s Offices for the Protection of Children,** particularly the Federal Office and that of the state of origin of the children, in cases of border-crossing recidivism.
- **Strengthen binational coordination between Mexican and U.S. authorities on effective protection for child victims of cross-border traffic and violence circuits.**
- **Develop and implement, in coordination with the child protection authorities of Mexico and the United States, a notification system for the identification and protection of these children** as victims of cross-border violence.

268. *Díaz Prieto Report, supra*, note 46, at pp. 7-8.

FINDING 4.

Mexican authorities do not actively promote Mexican children’s access to international protection in the U.S., despite the fact that the primary cause of their forced displacement is violence and a lack of protection from the Mexican government.

This report, along with others from different social and international entities, has documented the current level of forced displacement of Mexican children and families and the root causes of forced displacement (particularly violence), while the Mexican State fails to provide adequate protection. This situation forces children to rely on international protection. These same reports and official detention and return statistics, however, confirm that U.S. authorities continue to intercept Mexican children and deport them almost immediately without analyzing the reasons for their forced displacement or informing them of viable protection options. Similarly, Mexican authorities are not acting to protect these children’s rights to international protection measures in the U.S.

Despite a continued increase in the forced migration of Mexican children to the United States in response to violence and other forces, the number of Mexican children who are able to receive asylum in the U.S. is considerably lower than other nationalities because they do not receive proper TVPRA screening and are immediately returned to Mexico. This means that, although CBP encounters with Mexican UACs increased by 93.22% from 2019 to 2021, the percentage of Mexican UACs who received appropriate TVPRA screening and were then permitted to remain in the U.S. to pursue whatever protection options were available to them decreased from 10.34% to just 4.7% during that same period of time.

The failings of the U.S. authorities and recommendations appear in the next Section on U.S. findings. On the Mexican side, there is a lack of a concerted effort by Mexican consulates that become involved when these children are detained or deported to highlight and emphasize the dangers that these children will face upon return. Because of this, it is **practically impossible for Mexican children to access international protections or family reunification in the United States, as would be appropriate according to their best interest, at the time of crossing to the United States.**

RECOMMENDATIONS.

- **Evaluate and reinforce consular protocols and capacities for identifying credible fear and risks** associated with UACs returning to their home communities.
- **From the Mexican side, collaborate with U.S. CSOs—as a way to obtain subject matter expertise—to develop strategies for impact litigation and legislative or policy advocacy that would guarantee the rights of Mexican UACs to access international protection in the U.S.**
- **Request that the United Nations reevaluate the role that violence and displacement in causing UACs to need international protection.**

FINDING 5.

Family separation at the border has increased as a survival strategy in the face of hardening U.S. immigration laws and the inaction of the Mexican government, creating increased risks for children during their crossing.

Over the past five years, human rights organizations have observed a shift in the profile of family units arriving at the Mexican border with the United States as they flee from criminal violence at home. These families are forced to travel across the border for protection and to apply for asylum in the United States.

Through this investigation, we identified that, given the toughening of the detention and expulsion policies imposed by the United States, the number of Mexican UACs crossing the border has increased as families are faced with the difficult decision to send their children to cross unaccompanied, given the impossibility of crossing together and the scarce options to receive joint protection. Even with all the risks unaccompanied children face during the crossing, families feel that they must undertake this heart-wrenching decision because the risks the children face if they remain are even greater. This solo crossing, followed by detention and—most often—immediate expulsion to Mexico results in significant physical, emotional, and psychological harms to these children.

RECOMMENDATION.

- **Strengthen the capacity of federal, state, and local Prosecutor's Offices for the Protection of Children to identify high-risk situations for families in Mexico.** To this end, support from specialized social organizations that help these families should be developed.

FINDING 6.

SIPINNA's Comprehensive Protection Path for the Rights of Migrant Children and Adolescents must be effectively implemented and extended to Mexican children to strengthen inter-institutional coordination for protecting forcibly displaced and returned Mexican children at the national and binational level.

The 2014 LGDNNA and the creation of the SIPINNA and the Prosecutor's Offices for the Protection of Children and Adolescents strengthened the Mexican system for protecting all children in the country, regardless of the child's origin or status. This progress included the development of protocols and operational mechanisms to make LGDNNA's main provisions a reality, including the development of a Comprehensive Protection Path for the Rights of Migrant Children and Adolescents, which was approved by the SIPINNA in 2015. The preparation of this policy, which was supported by international bodies, contains all key elements and steps for the adequate protection of children, and ensures an adequate and comprehensive procedure for evaluating and determining the best interest of the child.

However, there is still significant technical and operational work required for the Procedures to be implemented efficiently to facilitate determinations of best interests of UACs. **In particular, with respect to its application to migrant Mexican children**, the Procedures' ineffectiveness was noted in the stakeholder interviews for this report, public information requests, and statistics collected by the DIF and the Prosecutor's Offices for the Protection of Children at all three government levels. Overall, there is concern about the lack of inter-institutional coordination and shared accountability among the authorities responsible for this population, both at the national and binational level. There is also a lack of understanding, clarity, and knowledge regarding the functions each party is responsible for to ensure that the Comprehensive Protection Path is implemented and the best interests of migrant children are respected.

RECOMMENDATIONS.

- **Activating the binational working group for the protection of migrant children in Mexico and the United States,²⁶⁹ with participation by both governments**, to strengthen the coordination and cross-border protection of migrant children who require international protection.
- **Increase the capacities of the institutions for childcare in Mexico (INM, PPNNAs, DIF) and implement, in an interdisciplinary manner, SIPINNA's Comprehensive Procedures for the Care for Migrant Children.**
- **Develop inter-institutional and binational mechanisms for the effective protection of migrant Mexican children within the framework of the state and local SIPINNAs of the northern border.**
- **Review and reinforce the procedures for determining the best interests of the child used by the Mexican Northern States' Prosecutor's Offices for the Protection of Children** in order to avoid automatic returns of children to their places of origin without proper protections.

269. National Immigration Institute, *Government of Mexico is enlisting a binational working group for the protection of migrant children in Mexico and the United States*, Joint Communication No. 351/2022 (Jul. 23, 2022), available at <https://www.gob.mx/inm/prensa/gobierno-de-mexico-alista-grupo-de-trabajo-binacional-para-proteccion-de-menores-en-situacion-de-movilidad-en-mexico-y-estados-unidos-309329>.

FINDING 7.

U.S. practice is to immediately return Mexican UACs without a proper evaluation of their best interest or protection needs. In Mexico, the government's automatic practice is the excessive use of institutionalization followed by returning the UAC to their place of origin without offering alternatives based on the best interests of the child, such as family reunification in the United States or other care options.

When UACs are returned, they are almost immediately institutionalized, usually in a DIF public shelter, while a decision for their well-being is made. Alternative care possibilities that could better protect children are not explored. The situation that returned children experience is concerning because, as a practical matter, they are deprived of their freedom in the closed-door shelters managed by the DIF under conditions that may violate their human rights. In addition to the institutional violence that UACs experience on both sides of the border, there has been an abject failure to address the physical and psycho-emotional impacts on the returned children, except through the psycho-social support work carried out by certain non-governmental organizations, which is affected by the limited contact these CSOs have with these children.

After institutionalization, the authorities typically return UACs to their states of origin, despite the known high rates of violence by organized criminal groups and a lack of accountability for that violence in these locations. This is done without any standard process or coordination between the DIF systems of the northern border states and the child's state of origin that would allow authorities to consider whether conditions in the home state are safe for the child's return. In many of these cases, as has already been identified by human rights organizations such as Amnesty International, the system focuses excessively on the reunification of UACs with their families in their places of origin but not on the needs of the children themselves or their expressed fear of return.²⁷⁰ There are many cases where returned UACs have family in the United States, but no widespread, binational-coordinated policies or actions have been undertaken to explore possibilities for family reunification, even if it is in the best interest of the UAC. Only a very small number of at-risk UACs have benefited from such reunification and only with significant support and advocacy by child protection CSOs on both sides of the border.

RECOMMENDATIONS.

- **Limit the use of institutionalization for Mexican children who are returned from the United States** and seek alternative family and community care options that are more protective.
- **Strengthen the application of procedures to determine of the best interest of migrant Mexican children,** with interdisciplinary evaluations that explore the possibilities of supervised or monitored family reunification, either in Mexico or in the U.S.
- **Increase the capacity and coordination of child-related authorities at all government levels to carry out evaluations determining the best interest of the child with the technical support of social organizations and specialized international bodies.**
- **Continue to develop and increase, where possible, family reunification alternatives in the U.S. for Mexican children, as required by the child's best interest.**

270. *Amnesty Report*, *supra*, note 50, at p. 28.

FINDING 8.

There is a documented lack of capacity, inconsistent data, and weak inter-institutional coordination between the Mexican Authorities for the protection of children and the consular network, leading to ineffective protection of Mexican children in forced migration.

Through interviews with consular authorities and Mexican child protection institutions and information received in public records requests, it is apparent there is weak coordination among the various authorities charged with providing care and protection to migrant Mexican children, especially when detecting at-risk Mexican children in the custody of U.S. immigration authorities. Testimonials from human rights organizations confirm this lack of comprehensive attention and coordination, while UACs' detention and deportation statistics from the United States substantiate that these are near-immediate returns without time to clearly establish the causes that motivated the children to migrate and their differentiated protection needs. All of this has persisted despite documented situations of high risk and violence in various Mexican states that have resulted in the forced displacement of children.

It should also be noted that, despite the recent creation of the Registry of Migrant Children and Adolescents by the SNDIF, an effective, unified national information system on migrant children that includes returned Mexican children is still lacking. During this investigation, we found that the information recorded by the National Immigration Institute and the Secretariat of Foreign Affairs on repatriated children do not match and that 27.5% of Mexican UACs repatriated from the United States recorded by the INM between 2018 and 2021 were not recorded by the Comprehensive Consular Protection System.

In addition, during our research, it was very difficult to identify any specific processes used by Mexican governmental authorities in cases of Mexican children with international protection needs. It also does not appear that government institutions maintain a registry related to the implementation and results of the Protocols for the Care and Protection of Returned Mexican UACs. That being said, it was still possible to learn through public records requests that the protocols are applied poorly or in a limited manner, simply not used, or remain unknown to the authorities charged with implementing them.

Additionally, while we discovered during our interviews with various Mexican consular officials in the United States that the Protocol for Consular Care of UACs is consulted when working with children detained by CBP, CBP is often not able to follow the protocol because U.S. authorities do not provide adequate facilities and conditions—such as interview spaces—necessary to implement the protocol. It is urgent that this protocol be implemented to better facilitate the identification of child victims of cross-border trafficking circuits and the transnational coordination mechanisms for their protection.

Likewise, greater coordination is needed between the state and federal Prosecutor's Offices for the Protection of Children and the consular authorities of Mexico in the United States. This is necessary to prevent repatriation from being the only option, with the Mexican government serving merely as the repatriation manager for Mexican UACs.

RECOMMENDATIONS.

- **Review and update the consular care protocols for migrant children in all key elements of the protection process** (place, interview format, etc.) to provide greater clarity and rigor in detection and protection processes and to improve the coordination between the Mexican child protection authorities and the Mexican consular network in the United States.
- **Increase the coordination between child-related authorities (DIF and PPNAs) and the Consular Network** to strengthen the care of at-risk Mexican migrant children in the United States.
- **Promote and create local and national coordination agreements between the authorities of both countries** to reinforce the identification and protection of migrant children, including recognition and implementation of differentiated and intersectional approaches (gender, ethno-cultural, disability, age, among others).
- **Design and implement a comprehensive binational protection mechanism between the U.S. and Mexican child protection institutions** to generate adequate protection measures and restitution plans for migrant Mexican children.
- **Implement a national information system for the registration and identification of migrant children, including Mexican children in the U.S. and those returned to Mexico.**



6.2 Recommendations for the United States

After interviewing numerous stakeholders in preparing this update, it is clear that many of the recommendations in the 2011 report are still relevant. Those, along with some changes and additional recommendations, are as follows:

FINDING 1.

CBP is not properly implementing TVPRA screening, resulting in Mexican UACs being denied access to international protection.

On-the-ground reports from CSOs indicate that at least some CBP officers are not even aware that TVPRA screening is required and have not received sufficient training for interviewing children, including children with special vulnerabilities or those who have experienced trauma. In addition, the number of UACs crossing the border has increased the workload of CBP, placing pressure on a system that is already not working. This has resulted in the near automatic repatriation of most Mexican UACs, including many children with legitimate needs for international protection, including asylum.

As reported in 2011, CBP remains the wrong agency to conduct TVPRA screening for three reasons:

- CBP is a law enforcement agency whose mission is not aligned with child protection;
- After a decade CBP training on TVPRA, screening remains insufficient, resulting in inadequate implementation of TVPRA screening; and
- There is another DHS agency with the appropriate skills and mission to provide accurate TVPRA screening and assure that Mexican UACs have access to international protection: USCIS.

RECOMMENDATIONS.

- **Transfer TVPRA screening responsibilities to USCIS (a continued recommendation from the 2011 Report):** DHS should assign responsibility for TVPRA screening to USCIS, an agency that provides its officers with specialized training and guidelines around interviewing children and people with special vulnerabilities. While training and implementation of trauma-informed and child-friendly practices at USCIS (or anywhere) can always be improved, it is the one DHS agency with routine experience in interviewing and evaluating whether individuals are at risk of persecution or trafficking. USCIS is already assigned to provide credible fear interviews to individuals apprehended at the border and placed in ICE custody, so it would make sense to engage USCIS in TVPRA screening of Mexican UACs. If screening responsibility is to remain with CBP, even during a period of transition while a plan is created to transition those duties to USCIS, a special unit should be formed to be specifically focused on performing this function.

- During our interviews with U.S. government officials, we learned that efforts are being made across DHS organizations to improve child welfare training for immigration staff and to hire child welfare professionals to aid in the process. It is recommended that the the United States continue to allocate and even expand funding for these efforts, and that the funding be directed towards agencies, such as USCIS and ORR, that are better equipped to handle issues relating to UACs, rather than primarily towards CBP.
- **Ensure that all personnel determining status of Mexican UACs have appropriate training, experience, and resources (continued and updated recommendation from 2011 Report):** All personnel involved in the determination of the status of Mexican UACs should be trained and qualified to interview children; identify juvenile victims of trafficking, sexual assault, and other forms of abuse; identify fears of future persecution; understand and explain available U.S. immigration relief; speak Spanish fluently; and demonstrate some understanding of the culture and geography of Mexico.
- In addition (new related to 2011 report), **ensure all personnel also have access to interpretation services for indigenous Mexican languages and receive training** in culturally sensitive treatment of these children.



FINDING 2.

CBP facilities continue to be inappropriate environments for the holding or interviewing of children.

Appleseed notes CBP's recent efforts to improve its facilities, hire child welfare professionals and caregivers, implement "trauma-informed holding practices," and provide its staff—including front-line officers—with training on working with children and trauma survivors. However, it is too soon to tell how effective these programs will be, and it is unclear what policies or practices are being implemented for the special care of particularly vulnerable groups, such as LGBTQ+ children, indigenous language speakers, survivors of sexual assault, etc. Additionally, as a law enforcement agency, CBP is not the appropriate agency to hold children for any period of time. As discussed in the report, while there are certainly issues with ORR facilities, including the emergency facilities operated by FEMA and DOD during border surges, ORR is still better equipped to care for children than CBP.

RECOMMENDATIONS.

- **CBP should transfer Mexican UACs to ORR custody upon identification as UACs (new):** If USCIS is assigned to conduct TVPRA screening—as the agency with the appropriate mission and skillset—CBP would then have no need to hold Mexican UACs during the TVPRA screening process. Rather, CBP should transfer all Mexican UACs to ORR care as soon as they are identified as UACs to ensure specialized care for the most vulnerable children, including LGBTQ+ children, speakers of indigenous languages, and survivors of sexual assault. ORR would then retain custody throughout the TVPRA screening process. Appropriate funding should be allocated to ORR for this additional role.
- **ORR must provide care that complies with the *Flores* settlement in all facilities, including temporary or emergency facilities (new):** As noted in the report, there were significant problems with the care and services provided to UACs in emergency ORR facilities during recent border surges. As large numbers of UACs continue to seek entry into the U.S., the government must acknowledge this reality, make appropriate plans for surges, and allocate all necessary funding, support, and other resources to ORR to ensure that children in ORR custody receive adequate care and that their rights are preserved.²⁷¹
- **CBP should continue—and report on—its recent efforts to improve its facilities and training (new):** While it is recommended that all UACs be transferred to ORR custody as soon as they are identified as UACs, it is still unavoidable that they spend some limited time within CBP's care between apprehension, identification as a UAC, and transfer to ORR. Because of this, CBP should continue its recent efforts to improve its facilities, hire child welfare professionals and caregivers, implement "trauma-informed holding practices," and provide its staff—including front-line officers—with training on working with children, vulnerable groups, and trauma survivors. CBP should also provide public, detailed reporting on the efficacy of these efforts.
- **CBP should supplement new improvements with specific policies for the treatment of the most vulnerable children, if such policies do not exist (new):** Even though Mexican UACs should only be held by CBP long enough to make a UAC determination under Appleseed's recommendations, policies and training should be implemented to ensure that the most vulnerable children are adequately served during their interactions with CBP, including LGBTQ+ children, speakers of indigenous languages, and survivors of sexual assault.
- **Provide safe, secure, and child-friendly environments for TVPRA interviews (continued recommendation from 2011 Report):** ORR should provide a safe, child-friendly environment for USCIS to conduct TVPRA interviews with children. This will be a new role for ORR, and they should create standards for the interview spaces within the existing requirements of the *Flores* Settlement, and appropriate funding should be allocated to facilitate implementation of this new role.

271. See HHS OIG Report, *supra*, note 173. The Office of the Inspector General, HHS, provides specific recommendations to ensure improved care during future surges in its September 2022 report.

FINDING 3.

The form CBP employs during the TVPRA screening process likely remains insufficient.

While DHS has implemented a new screening tool (CBP-93), the entire tool—except for the instructions and introduction—has been redacted, so there is no way to assess whether it is an improvement from the prior form. However, based on the consistently low number of Mexican UACs referred to ORR, it is likely the form remains insufficient.

Furthermore, DHS issued improved guidelines in 2019 requiring that Form I-770 (Notice of Rights) be read to all UACs in a language and manner they understand, not just those under 14 years of age. However, there have been reports that this is not actually happening.

RECOMMENDATION.

- **Improve forms and guidance to elicit sensitive information from UACs and to ensure that a child's decision to return is independent and voluntary (continued recommendation from 2011 report).** Appleseed repeats its prior recommendation to improve the forms, provide language access, and supplement any explanation of rights with a short video presented in child-friendly language. These forms and the video should be developed with the assistance of child welfare experts and immigration CSOs and supplemented with substantial written guidance and training.

FINDING 4.

Communications and coordination between U.S. and Mexican authorities around Mexican UACs is mixed, though it largely remains insufficient to protect all Mexican UACs.

In some instances, there are reports of good communication around, for example, repatriation of children to Mexico via air, whereas, in other instances, there are reports that Mexican UACs are simply returned at the land border with no DIF officer present and no notification to the Mexican Consulate.

RECOMMENDATION.

- **U.S.-Mexico communications concerning UACs should promote the best interest of the child and comply with international law (continued):** Appleseed continues its recommendation that DHS enforce the requirement that the Mexican consulate be notified upon initial apprehension and upon any change in the custodial status of a Mexican UAC. All staff responsible for the welfare of a Mexican UAC should be trained in the tracking of these children and procedures for notification the Mexican consulate.

FINDING 5.

While DHS is required to collect and enter the identifying information of all UACs into DHS's electronic database, DHS still does not track any information related to TVPRA screening of Mexican UACs.

RECOMMENDATION.

- **Track and publish data on UACs screened pursuant to the TVPRA (continued).** Appleseed recommends that more fulsome data for all detained UACs be captured in a national database, including biographical information, previous detentions, adults that have accompanied the minor, sites of apprehensions and locations, confirmation of TVPRA screening and outcome, and information related to the child's repatriation or placement in an ORR facility. Within the biographical information, it would be helpful to include information related to sources of enhanced vulnerability, such as LGBTQ+ status, indigenous background, primary speaker of a less common language, and status as a survivor of past violence or trafficking.

FINDING 6.

Mexican UACs—like all individuals seeking protection before USCIS or defending against removal before EOIR—do not have any right to a free, appointed lawyer if they cannot afford one. As a result, many children, including many Mexican UACs, face the complex U.S. immigration system on their own and do not obtain the protection the law affords them.

RECOMMENDATION.

- **All UACs should have access to a free lawyer to represent them before USCIS and/or EOIR if they cannot afford one.** Appleseed recommends that all UACs who cannot afford a lawyer be appointed a free lawyer to represent them before USCIS and/or EOIR, so they may pursue whatever claims of relief are available to them.

FINDING 7.

As an overall conclusion, the need to protect Mexican UACs is urgent. The current process for apprehending, screening, and—where required—repatriating Mexican UACs places those children at immediate risk, and immediate action must be taken. So, it is important that DHS move swiftly.

RECOMMENDATION.

- **DHS should move swiftly to put new policies into effect (continued).** While immediate, system-wide improvement would be best, any method that will allow DHS to move swiftly to implement, evaluate, and improve existing and new policies and programs to protect Mexican UACs is encouraged. Appleaseed repeats its recommendation from 2011 to use pilot programs to test out new policies in specific border locations or among smaller cohorts where immediate, system-wide change is not feasible.



6.3 Binational Mexico–United States Recommendations

BINATIONAL FINDING 1.

There is insufficient coordination among Mexican and U.S. government authorities, CSOs in both countries, and international organizations to guarantee the protection of Mexican migrant children.

There is insufficient binational coordination between Mexican and U.S. governmental authorities, as well as between those governmental authorities and the CSOs and international entities that engage in child protection work on both sides of the border. We heard again and again during our interviews that migrant children are not receiving adequate protection. In addition, child victims of cross-border trafficking networks are particularly invisible, misunderstood, and underserved by these organizations, and significant steps must be taken at the national, binational, and international levels to protect these children from the global forces that have led to them being exploited by criminal organizations.

Authorities and entities on both sides of the border do communicate, but there does not appear to be a consistent mechanism for this coordination. While the working group for the protection of migrant children in Mexico and the United States was formed in 2022,²⁷² it is unclear whether this group is active or if anything has been accomplished. And, so far, the participation of non-governmental organizations and the consular network is very limited and lacks transparency.

RECOMMENDATIONS.

- **Promote the binational working group’s initiative to protect migrant children in Mexico and the United States.**
- **Increase transparency of the working group’s initiatives and the publication of its agreements and results,** as well as in the active and effective participation of non-governmental organizations with deep knowledge and experience with migrant children.
- **Evaluate the results generated by consular and other binational care protocols that have been formulated in recent years** and readjust what is necessary for their effective implementation to protect children.
- **Promote communication, coordination, and joint initiatives between international bodies and civil society organizations working to protect migrant children on both sides of the border.**
- In light of the reality that human trafficking is a matter of profound concern for all nations, and of particular concern for Mexican UACs who are frequently victimized by cross-border trafficking networks, there should be an effort to **initiate a more robust, coordinated, and multilateral investigative approach to address these issues, including further investigation into the financial models that underpin it.**

272. National Immigration Institute, *Government of Mexico is Enlisting a Binational Working Group for the Protection of Migrant Children in Mexico and the United States*, Joint Communication No. 351/2022 (Jul. 23, 2022), available at <https://www.gob.mx/inm/prensa/gobierno-de-mexico-alista-grupo-de-trabajo-binacional-para-proteccion-de-menores-en-situacion-de-movilidad-en-mexico-y-estados-unidos-309329>.

BINATIONAL FINDING 2.

Family separation at the border has increased as a survival strategy in the face of hardening U.S. immigration laws and the inaction of the Mexican government.

Over the past five years, human rights organizations have observed a shift in the profile of family units arriving at the Mexican border with the United States as they flee from criminal violence at home. These families are forced to travel across the border for protection and to apply for asylum in the United States. Through this investigation, we identified that given the toughening of the detention and expulsion policies imposed by the United States, the border crossing of Mexican UACs has increased, as families are faced with the difficult decision to send their children across the border unaccompanied because of the impossibility of crossing together and the scarce options for receiving protection as a family. Families feel that this is their only viable option, as they are aware of the ongoing risk they face in view of daily dangers at the border.

While problematic policies like MPP and Title 42 are over, ongoing hardening of U.S. immigration policies continues to force families to make difficult choices to protect their children, and the reality of family separation at the border will likely continue in various iterations.

RECOMMENDATIONS.

- **Strengthen and streamline coordination between Mexican and United States authorities** to promote access to international protection for families displaced by violence who reach the border and prevent artificial creation of Mexican UACs.
- **Advocate with U.S. governmental authorities to analyze whether new immigration policies will artificially create Mexican UACs** and recraft policies to protect family unity and provide open access to international protection.
- **Strengthen the capacities of the federal, state, and local Prosecutor's Offices for the Protection of Children in Mexico, including for identifying high-risk situations for families in the country.** To this end, the support of specialized social organizations that help these families should be developed.



Picture. Human Trafficking in México 2 HIP Report

7. APPENDIX

APPENDIX A:

CBP Form 93 (Revised)/UAC Screening Guide



UAC Screening Guide / CBP Form 93 (Revised)

Produced: March 4, 2019

1

CBP-93 Unaccompanied Alien Child Screening Addendum

This screening tool provides a mechanism for officers/agents to consistently and thoroughly screen unaccompanied alien children (UAC). This tool contains sections relating to the UAC's fear of return to their country of nationality or last habitual residence as well as indicators of human trafficking. For UAC who are nationals or habitual residents of a contiguous country, it also addresses the UAC's ability to make an independent decision to withdraw their application for admission.

This form's use is consistent with the requirements of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).



U.S. Customs and
Border Protection



Enforcement
Systems Division

CBP-93 **UAC Screening Tool Reference Guide**

Objectives:

- Form Purpose & Overview**
- Assessment of UAC's Ability to Make an Independent Decision**
- Fear of Return Screening Questions**
- Human Trafficking Questions**
- Determination**



U.S. Customs and
Border Protection



Enforcement
Systems Division

Form Purpose & Overview

The CBP-93 was designed to serve as a screening tool for UACs to determine:

- A UAC's ability to make an independent decision to withdraw his/her application for admission into the U.S.
- Fear of return
- Past trafficking or risk of future trafficking



U.S. Customs and
Border Protection



Enforcement
Systems Division

Form Purpose & Overview

The CBP-93:

- Provides standardized documentation across all sectors
- Provides streamlined decision making
- Facilitates appropriate screening of all UACs
- Is clear and easy to use



U.S. Customs and
Border Protection



Enforcement
Systems Division

To Access the CBP-93

To access the CBP-93, access e3 NextGen Processing by clicking the Intake icon on the e3 Homepage.



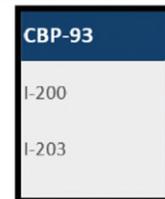
Query your subject or create a new event. Be sure “Unaccompanied” next to the Subject’s age is selected.



Click on the Disposition tab, or continue to enter information until you reach the Disposition section. The UAC must have a disposition of WA/NTA or VR for the CBP-93 form to populate under the Forms tab.



Continue to process the Subject, or click on Forms. The CBP-93 will be the first form on the right side menu under the Forms tab.



U.S. Customs and Border Protection



Enforcement Systems Division

APPENDIX A:

Assessment of UAC's Ability to Make an Independent Decision

Note: This section is only required for UACs who are nationals or habitual residents of a contiguous country

Officers/Agents should use this section to determine whether a UAC has the ability to make an independent decision. It does not, for the most part, present direct questions to be asked of the UAC, rather Officers/Agents shall ask appropriate questions, as needed, to obtain the information necessary to make a determination.

CBP-93: UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM

Default Values Applied

Date of Birth: 01/01/2007

Country of Habitual Residence: _____

Use Country of Habitual Residence as the main Residential Country:

Assessment of UAC's Ability to Make an Independent Decision

Note: This section is only required for UAC who are nationals or habitual residents of a contiguous country.

Officers/Agents shall consider, but are not limited to, the following questions.

Was the UAC able to answer basic biographical information questions? Yes No

Note: Although UAC 14 years and older are considered presumptively able to make an independent decision, the totality of each UAC's individual circumstances must inform your particular decision.

Although UAC under 14 years of age are considered presumptively unable to make an independent decision, the totality of each UAC's individual circumstances must inform your particular determination.



U.S. Customs and Border Protection



Enforcement Systems Division

Assessment of UAC's Ability to Make an Independent Decision

If, at the end of the section, an Officer/Agent determines that the UAC is unable to answer questions pertaining to Fear of Return or Human Trafficking, the form will automatically remove those questions and direct the Officer/Agent to the section prompting a determination.

If the Officer/Agent leaves the boxes unchecked, they will be prompted to continue the questions in the next sections.

Note: The following two sections contain questions which are directed to the UAC unless otherwise indicated. If an officer/agent determines that the UAC is likely to be unable to answer the questions contained in these sections due to age or impairment, the officer/agent may determine not to ask the questions. However, the officer/agent must indicate the basis for not asking these questions by checking one or more of the boxes below and then the UAC must then be referred to HHS:

- The UAC is too young to understand or appropriately respond to the questions.
- The UAC is impaired to such a degree that he/she cannot respond to the questions.

Fear of Return Screening Questions



U.S. Customs and Border Protection



Enforcement Systems Division

Fear of Return Screening Questions

A UAC from a contiguous country may not be permitted to withdraw their application for admission and voluntary return to their country if the UAC indicates a fear of return, *whether verbally or non-verbally*, or if an *officer/agent identifies a fear of return is likely to exist*.

If the UAC indicates a fear of returning to their country of nationality or last habitual residence, then the UAC will be issued a Notice to Appear for his/her removal proceedings under section 240 of the INA and transferred to HHS.

The officer/agent should **NOT**:

- Judge or review the nature of the fear
- Attempt to adjudicate a claim of fear or state the likelihood of success of a claim
- Determine whether or not the fear is credible or if the UAC is eligible for asylum



U.S. Customs and Border Protection



Enforcement Systems Division

Human Trafficking Questions

Identifying red flags or indicators of human trafficking can be a complex process that may require follow-up questions and Officer/Agent judgement.

It is important to note that in some cases, the person has not yet been exploited in their country of nationality or country of last habitual residence, may not identify as a victim of trafficking, or may have little or no information on the crime itself.

Potential Human Trafficking Indicators		
• Disorientation or confusion	• Signs of mental or physical abuse	• Fear, timidity, or submissiveness
• Coached responses	• Few or no personal possessions	• Inconsistent/changing story
• Sexualized style of dress	• Behavior inappropriate for age	• Signs of unexplained money/gifts
• Isolation	• Does not have access to identity documents	• Heightened distrust of authority
• Has engaged in prostitution/commercial sex acts	• Overly aggressive	• Signs of maltreatment



U.S. Customs and Border Protection



Enforcement Systems Division

Human Trafficking Questions

Trafficking Assessment:

Officers/Agents must consider the totality of the circumstances when completing the trafficking assessment. The determination should not be based on a specific total of yes or no answers.

The screenshot shows a digital form titled "Human Trafficking Questions" with a "Subjects" sidebar on the left and a table of contents on the right. The table of contents lists various question codes: I-200, I-203, I-215B, I-247A (highlighted), I-265, I-286, I-385, I-770, and I-836. The main form area contains three questions under the heading "Family:":

- Who did you live with in MEXICO and where are they now?

500 characters left
- Where are your parents?

500 characters left
- Does your family know where you are or where you are going?



U.S. Customs and Border Protection



Enforcement Systems Division

Make a Determination

Whether the UAC is or is not a national or habitual resident of a contiguous country will be checked based on the biographical information input at the beginning of the form. If the second box is selected, Officers/Agents must select one of the three boxes under that statement.

The form will not save successfully if there are errors on the form. You will be prompted to review and remedy any errors in order to save and continue.

Officers/Agents must read the entire statement per box. Each box may require multiple conditions to be met or only one condition to be met.

The screenshot shows a web-based form titled "Determination" with a "Subjects" sidebar on the left. The main content area contains the following text and options:

After reviewing the circumstances noted at the time of apprehension or encounter, the information provided to me by the UAC during the interview, and based on my training and experience as a CBP Officer/Border Patrol agent, I have determined that:

The UAC is not a national or habitual resident of a contiguous country and will be referred to HHS; or

The UAC is a national or habitual resident of a contiguous country; and

There is no credible evidence demonstrating that the UAC has been a victim or is at risk for being potential victim of a severe form of trafficking in persons upon return to the UAC's country of nationality or last habitual residence; the UAC has not indicated during questioning (either verbally or non-verbally) a fear of returning to his/her country of nationality or last habitual residence; and the UAC

The right sidebar shows a list of subjects: CBP-93, I-200, I-203, I-215B, I-247A, I-265, I-286, I-385, I-770.



U.S. Customs and Border Protection



Enforcement Systems Division

Summary

The CBP-93 is a UAC Screening Tool Reference Guide used for Officers/Agents to assess a UAC's ability to make an independent decision to withdraw his/her application for admission to the U.S., fear of return, and past trafficking or risk of future trafficking.

Officers/Agents are required to screen all UACs.

If the UAC is a national or a habitual resident of Mexico or Canada, they may withdraw their application for admission and return to their country of habitual residence or nationality if CBP determines all three criteria are satisfied:

- The UAC is able to make an independent decision to withdraw their application for admission to the United States and be voluntarily returned to their country of nationality or last habitual resident AND
- The UAC does not have a fear of returning to their country of nationality or last habitual residence owing to a credible fear of persecution AND
- The UAC has not been a victim of a severe form of trafficking in persons, and there is no credible evidence that the UAC is at risk of being trafficked upon return to their country of nationality or last habitual residence



U.S. Customs and
Border Protection



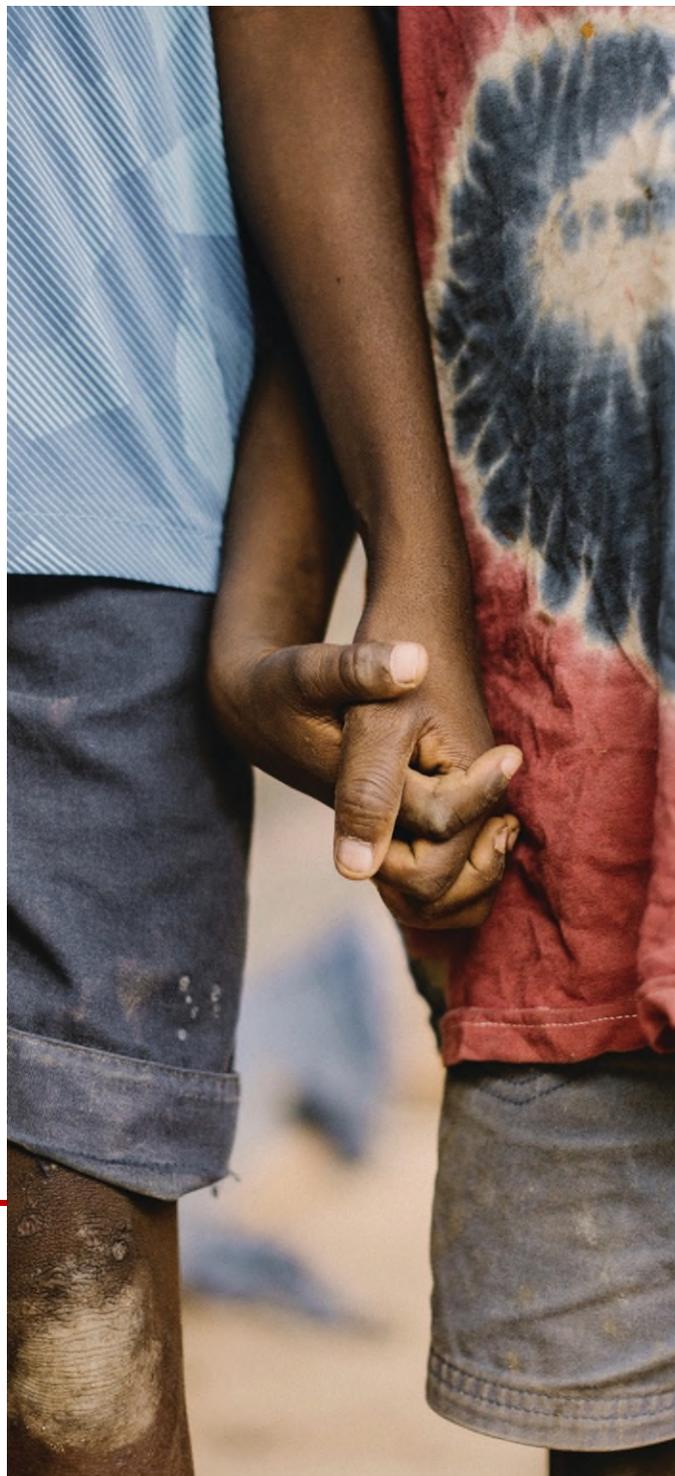
Enforcement
Systems Division

APPLESEED MEXICO REPORT 2023 CHILDREN AT THE BORDER

Children at Risk at the Border:
Evaluation of the Protection
and Care of Unaccompanied
Mexican Migrant Children

2023 Update

Appleseed
Sembrando la semilla de la justicia
México



Appleseed
Sembrando la semilla de la justicia

<https://appleseedmexico.org/>