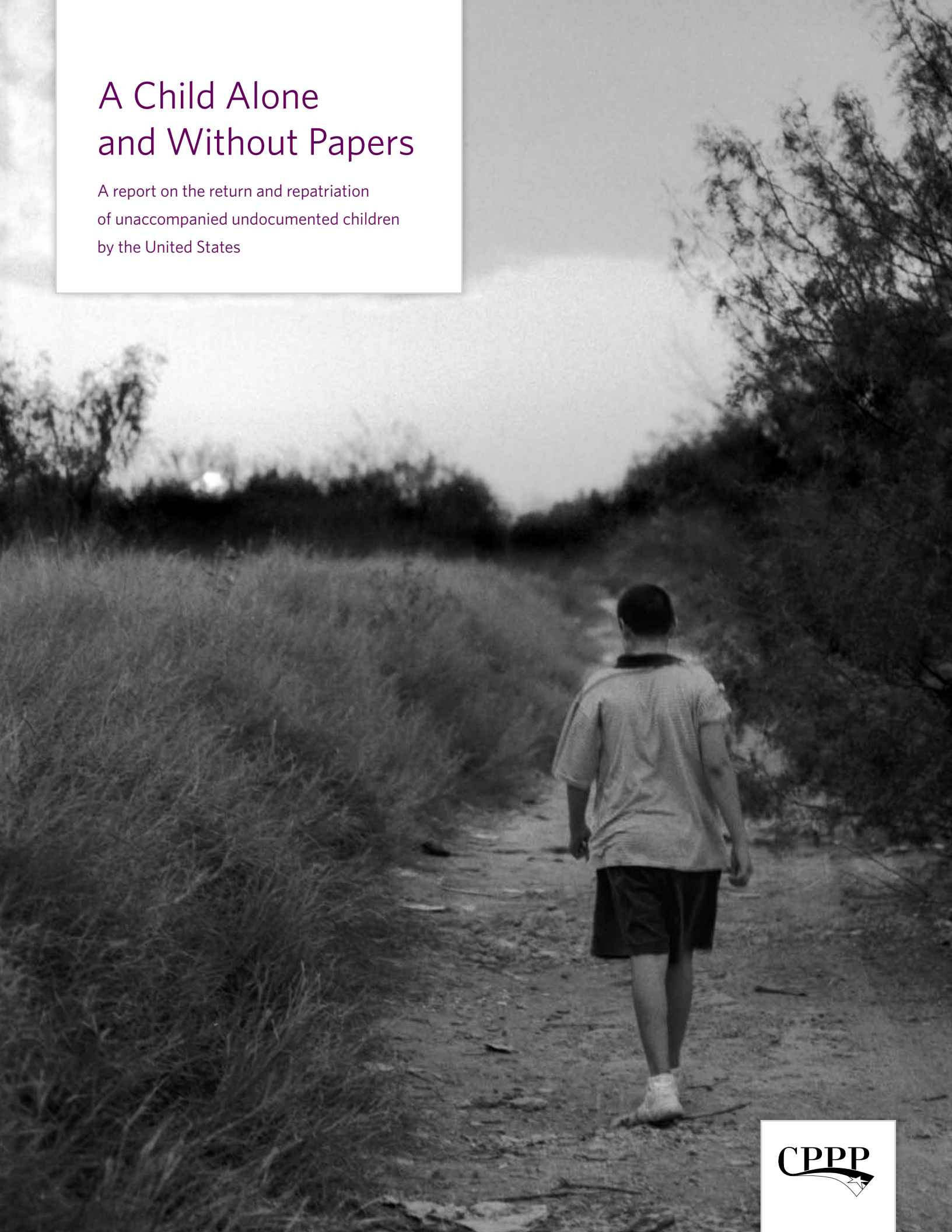
A Child Alone and Without Papers

A report on the return and repatriation of unaccompanied undocumented children by the United States



CPPP

Center *for* Public Policy Priorities

900 Lydia Street
Austin, TX 78702
(512) 320-0222
(512) 320-0227 (fax)
www.cppp.org

The Center for Public Policy Priorities is a 501(c)(3) nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. We pursue our mission through independent research, policy analysis and development, public education, advocacy, coalition building, and technical assistance. CPPP is home to the Texas KIDS COUNT project.

Since 1993, Texas KIDS COUNT has provided sound and reliable data on child well-being as a way to enrich local and state discussions and ensure better futures for all children.

Principal Author:
Amy Thompson, Policy Analyst*
**Ms. Thompson left the center August 08, 2008*

Primary Editorial Support:
Frances Deviney, PhD, KIDS COUNT Director

Graphic Design:
Adam Fortner

Art provided by:
Alan Pogue, photography
Molly O'Halloran, maps
Amy Thompson, photography

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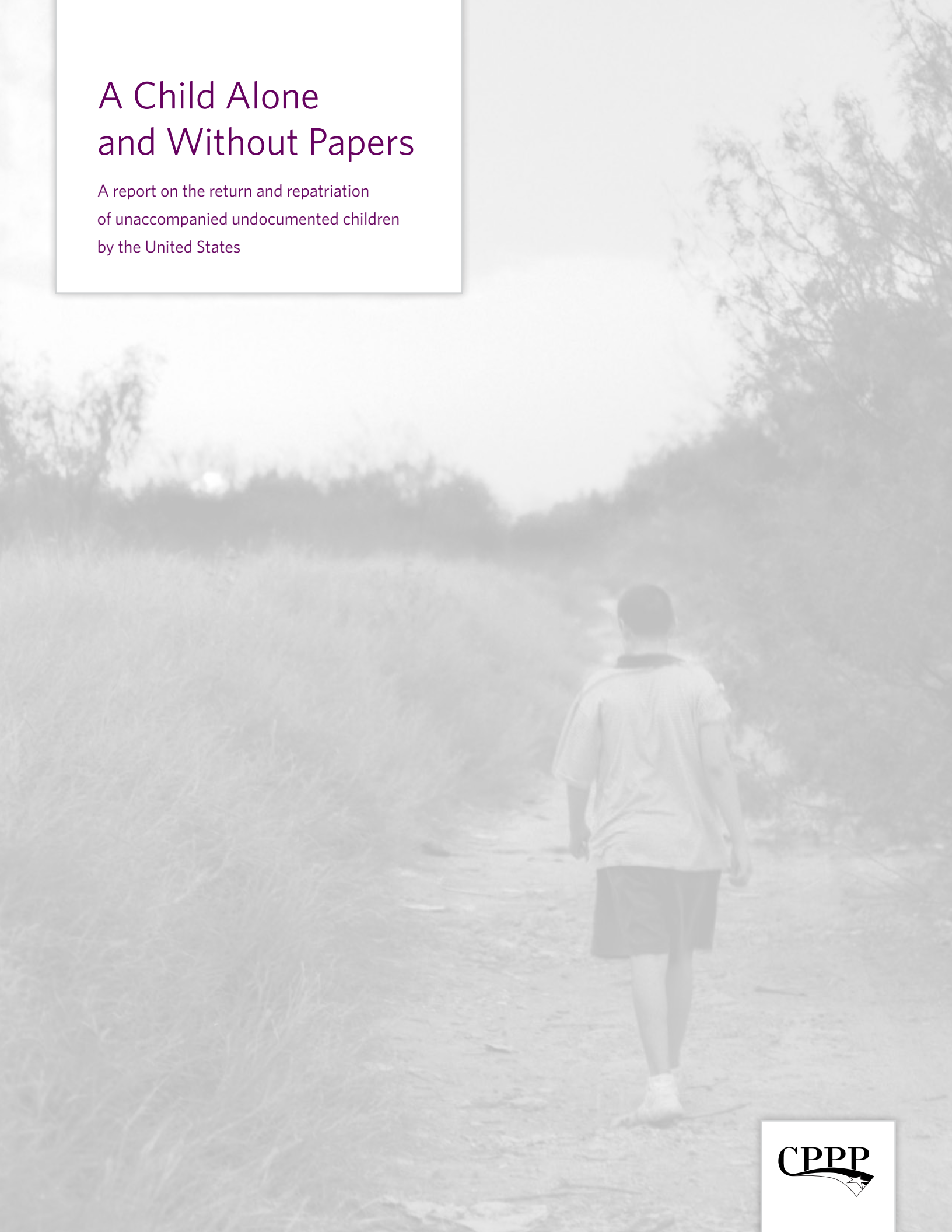

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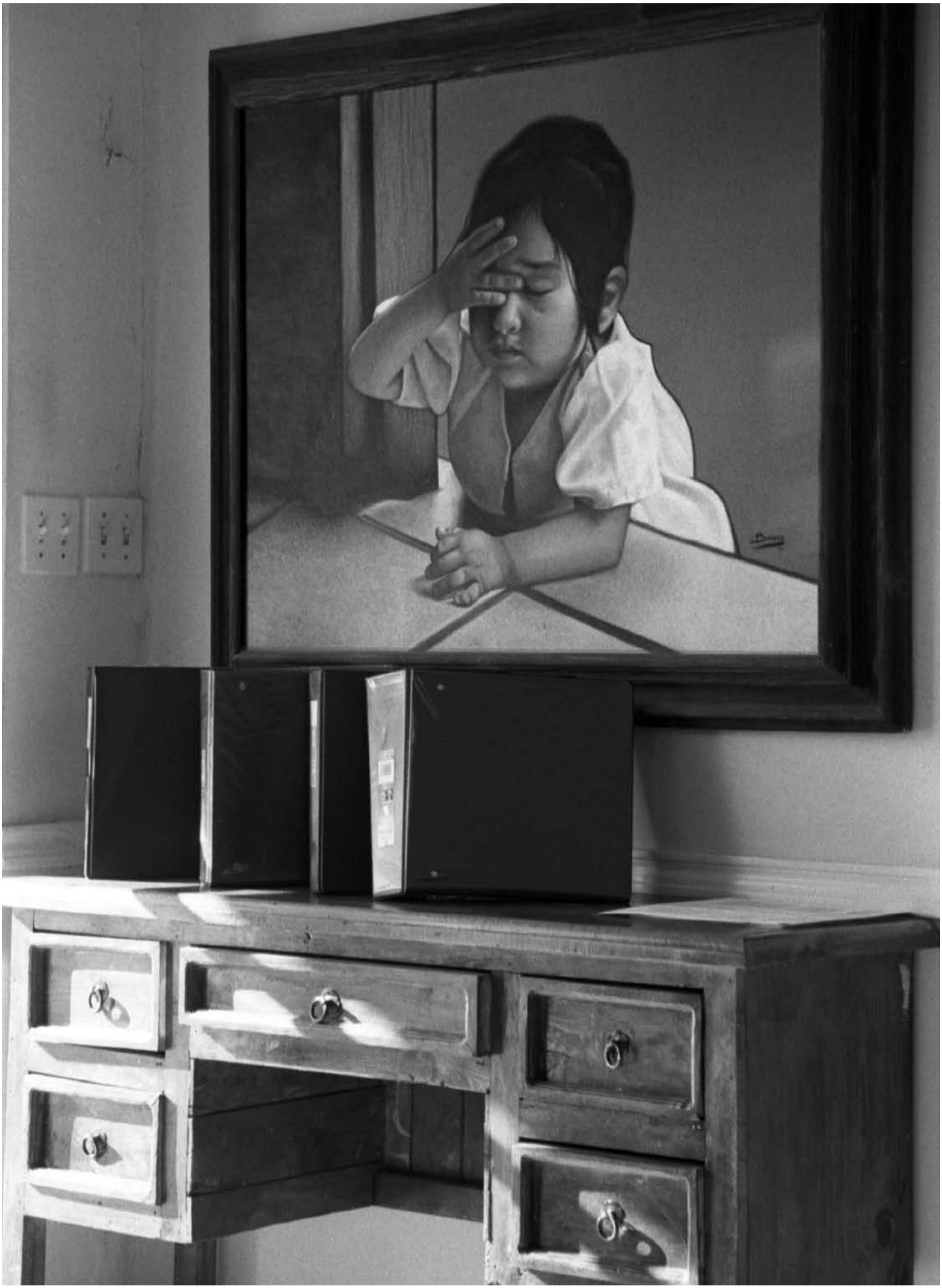


Executive Summary

Every year, the United States apprehends tens of thousands of undocumented children under the age of 18—many of whom travel to this country unaccompanied, without their parent or legal guardian. Some of these children come to the U.S. to flee violence or the sex trade, others poverty. The children's motivations are complex, their stories unique.

Most of the unaccompanied undocumented children who come into custody are removed from the U.S. by federal authorities and repatriated to their country of origin. Repatriation, for the purposes of this report, begins at the point that the United States relinquishes physical custody of the child in his native country.

Given the circumstances that lead to child migration and the inherent vulnerabilities of children, removal and repatriation can prove detrimental to the child when not carefully regulated. As such, it is essential that U.S. immigration policies and procedures recognize our child welfare standards, for both the good of the individual child and to preserve our core values regarding the treatment of all children. It is also essential for the United States to have clear, transparent, and consistent mechanisms for removal and repatriation in order to avoid undue risk to the child's safety and well-being.

What really happens to the estimated 43,000[1] unaccompanied undocumented children who are removed from the United States? And what is the effect of repatriation on these children? *A Child Alone and Without Papers* explores these issues via analyses of U.S., Mexican, and Honduran policies, interviews with 82 personnel from these countries, and interviews with 33 undocumented and unaccompanied Mexican and Honduran children. In Mexico, we interviewed eight girls and 18 boys, ranging from age seven to 17; in Honduras: seven boys, ranging from age 15 to 17. Mexico and Honduras were selected as they are the most common countries of origin for unaccompanied children and are representative of the two divergent systems for the removal of unaccompanied children: neighboring versus non-neighboring country systems.[2]

1 We derive these estimates from two sources. The estimate that over 35,000 children from neighboring countries (Mexico and Canada) are immediately returned each year is based on statistics available through the National Institute of Migration in Mexico. See http://www.inami.gob.mx/index.php?page/Estadistcas_Migratorias. For information in English, see Appendix A – *2007 INM Data on Unaccompanied Children*. The estimate that roughly 8,000 unaccompanied minors are officially entered in the U.S. immigration system, most of whom are from non-neighboring countries, was provided by Susana Ortiz-Ang, Deputy Director of the Division of Unaccompanied Children's Services (DUCS) within the Office of Refugee Resettlement, via e-mail 4.28.08.

2 We selected Mexico as a case study site because it is the country of origin for the majority of undocumented and unaccompanied children apprehended. According to a study by the National Autonomous University of Mexico, an estimated 150,000 minors attempt to cross the U.S. border annually (approximately 60,000 are returned; apprehended unaccompanied children are a subset of this population). We selected Honduras as a case study site as it is the leading country of origin among unaccompanied children from non-neighboring countries. According to the National Forum on Migration in Honduras, an estimated 80,000 Honduran children attempt to migrate to the U.S. each year.

REMOVAL

If we extended the ideals rooted in the U.S. child welfare system, undocumented children would be returned to their countries of origin through a "safe return" system which would prioritize the child's safety and well-being. The child would have access to a lawyer, and a child welfare expert would determine whether and how return might pose a risk to the child. The expert would arrange or review the child's return plan to ensure its compliance with child welfare standards and the best interest of the child. Detention would occur only in the least restrictive setting necessary.

In actual practice, removal operates as a law enforcement mechanism for transporting apprehended unaccompanied undocumented children back to their countries of origin without consideration of the child's best interest. Undocumented children do not typically benefit from standards afforded to children in domestic child welfare cases, or even those guaranteed children facing criminal charges. U.S. repatriation policies do not reflect international conventions on children's rights, despite the fact that the international standards applying "the best interest of the child" trace their origins back to standards developed in U.S. child protective systems. Based on our observations, interviews, and research on the issue, there is no uniform process for what happens to an unaccompanied child once he is apprehended, including whether he will have access to an attorney, how long he will be detained, and how he will be treated while in U.S. custody. As a result, the rights, safety, and well-being of children are often compromised.

The report finds the following:

Removal Finding #1: Lack of clear policy and procedure to govern the process of removal and repatriation of children leads to highly inconsistent practices and lack of attention to child safety.

At least 15 different federal agencies can be involved in the detection and apprehension of an unaccompanied child.[3] State and local authorities may also be involved in the initial detection of undocumented children through child welfare or protection services, juvenile corrections, and emergency response. Yet, beyond broad statutory frameworks establishing the general mandates of each department,[4] and one section in the Code of Federal Regulations addressing several aspects of juvenile detention and release,[5] very little written agency policy exists to guide the actions and decisions throughout the repatriation process. There are no statutes designed to require or promote the child's safe and secure removal and repatriation; nor does any statute designate any authority as responsible for the child's safe and secure removal and repatriation.

Law that is on the books is insufficient. U.S. immigration law, as codified in the Immigration and Naturalization Act, does not address how children should be treated throughout the course of federal custodianship. Statutes on the rights and treatment of children in federal and state care do exist, but are codified in child welfare doctrine and are traditionally applied to child protection and juvenile proceedings at the state level.

International agreements are underutilized, not recognized, or non-existent. While written agreements on return and repatriation between the U.S. and Mexico do exist, they are dated, in need of official re-

3 Bhabha, Jacqueline & Susan Schmidt. (June 2006). *Seeking Asylum Alone*. President and Fellows of Harvard College.

4 For DHS see Homeland Security Act of 2002, §§442, 451; for EOIR see Homeland Security Act of 2002, §§ 1101-02; for ORR see Homeland Security Act of 2002, §462.

5 See 8 CFR §236.3. Federal immigration policy often refers to all minors as juveniles, irrespective of age or whether they have committed an offense.

view, and are not included in the training of on-the-ground immigration agents. There are no clear and enforced written agreements between the U.S. and Honduras detailing protocols for the safe return of children. As a result, there is significant variation in the practice of advance notification of a child's return.

Removal Finding #2: Children experience maltreatment by U.S. immigration authorities.

In clear violation of international and U.S. child welfare standards, our interviews with the Mexican and Honduran children uncovered troubling claims of child abuse and maltreatment by U.S. Border Patrol officers, including:

- Inattention to repeated requests for medical attention;
- No access to water while in the border patrol station;
- Having to sleep on the floor without a blanket in a heavily air conditioned cell;
- Not being given any or enough food;
- Not being allowed to contact family;
- Being struck and knocked down by agents;
- Being handcuffed; and
- Being transported "like dogs," in kennel like compartments.

The children did not identify the following as maltreatment, which speaks to the children's inability to seek protection:[6]

- One boy described being locked in bathroom at a border patrol substation for hours until transferred;
- Several children mentioned being laughed at by the Border Patrol who apprehended them;
- One girl said she was threatened at gun point by Border Patrol; and
- Of the six participants who reported being handcuffed[7] only one described the experience as maltreatment.

Removal Finding #3: The current system of removal places the burden of triggering protective services on children. Unaccompanied children are ill-equipped to assume this responsibility.

The removal system holds the individual child responsible for triggering protective services. For example, children are not systematically assessed by U.S. authorities to detect whether they have been forced into indentured servitude or trafficked. Thus, it falls to the child alone to make his or her condition/situation known so that relevant protections (such as the application for protective status or the attainment of counsel) may be put into place.

However, we observed unaccompanied children to have limited or no understanding of the legal implications of their migration. Of the 33 Mexican and Honduran children interviewed, we identified only one child with demonstrable understanding of his rights and the alternatives he had under the U.S. immigration system.

6 The children who suffered these conditions did not characterize them as abuse or mistreatment, but were in no way indifferent to the experience. Based on our observations, the children were scared, angry, embarrassed, or said that it hurt. Yet, they did not define the treatment as abuse, nor blame U.S. authorities for their treatment. Most children were unable or unwilling to advocate for themselves, or unaware of their ability to do so.

7 Two of the participants who were handcuffed appeared to have been initially apprehended by DEA patrols along the border, rather than Border Patrol. U.S. authorities determined that neither child was involved in criminal activities.

Removal Finding #4: Children are commonly denied access to a lawyer.

With the exception of the relatively few Mexican children entered into Office of Refugee Resettlement (ORR) care, none of the unaccompanied children from Mexico with whom the author met had received legal assistance or even the opportunity to request legal counsel to contest their immediate removal.[8] Currently there is no standard requirement or mechanism to assess a child's eligibility for protective status or family reunification if that child is from a neighboring country. As a consequence, children from neighboring countries may be returned to dangerous situations and separated from any family that they may have in the U.S.

Based on a 1997 class-action agreement with the Immigration and Naturalization Services, while all children from non-neighboring countries who are officially entered into immigration proceedings should have access to legal counsel and an assessment of their rights, the reality is that 50 to 70 percent of detained unaccompanied children who face an immigration judge lack legal representation.[9] For children who are unable or unwilling (e.g., due to a lack of eligibility, or a lack of trust) to present sufficient cause for immigration relief to an attorney, the most likely result of their immigration case is an order of removal to their country of origin.

Removal Finding #5: U.S. fails to implement international conventions denying many children access to their consulate.

The Vienna Convention on Consular Relations, one of the most fundamental laws of international relations, provides that all persons detained by a country that is not their own have the right to contact their consulate. Moreover, if the individual is an unaccompanied child, the Convention states that the detaining country must notify the child's consulate immediately. However, our interviews indicate that the Vienna Convention's provisions are not regularly applied to either neighboring or non-neighboring children in removal proceedings.

Removal Finding #6: Non-neighboring children are detained for unreasonable amounts of time.

Most neighboring children are returned to their country of origin almost immediately, and are detained—only briefly—in Border Patrol stations.

Non-neighboring unaccompanied children are not supposed to be detained by Department of Homeland Security (DHS) for more than 72 hours.[10] However, in practice, Honduran case study participants endured prolonged detentions with DHS (e.g., some children were detained up to 14 days) subsequent to receiving their order of removal.

8 None of the children interviewed in Mexico reported having had legal counsel in the U.S. In Texas, we did meet with several Mexican children in ORR care who were initially apprehended outside of the border region. These children either were apprehended in areas that did not have specific agreements with the Mexican Consulate, or were remanded to the care of ORR when federal authorities were unable to contact the Mexican Consulate. One boy was apprehended over the Fourth of July. According to the records provided to his attorney, the Mexican Consulate was closed for the holiday. The child was transferred to a Border Patrol facility near the border and then placed in ORR care.

9 The estimate of the current rate of representation was provided by Michelle Brané, Director of the Detention and Asylum Project of the Women's Commission on Refugee Women and Children, via e-mail 4.11.08. Previous studies cite 90%. See Nugent, Christopher. (2006). *Whose Children are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*. Public Interest Law Journal.

10 Haddal, Chad. (March 1, 2007). CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues. Congressional Research Services.

Removal Finding #7: With no regulations that ensure safety, the U.S. creates unsafe transportation conditions for children being returned.

The methods and procedures of returning children to Mexico and Honduras—Mexican children via covered trucks and Honduran children via commercial flights—are unsafe. We also found no regulations related to the escort-to-child ratio on the part of either U.S. or Mexican authorities. In addition, we found that the U.S. regularly fails to give advance notice of the arrival of unaccompanied children, meaning that the Mexican and Honduran authorities are ill prepared to meet the children and that parents often have to make multiple, long, expensive trips to pick up their children.

Removal Finding #8: Children are returned to unsafe conditions.

Children from both Mexico and Honduras are returned to unsafe conditions. Mexican authorities from more than one port of entry expressed concern that children are being repatriated in the middle of the night, including to ports of entry not specified in regional agreements, and that sometimes even consulates are not notified of a child's apprehension and removal. U.S. immigration system databases that could be used to detect children caught in a trafficking cycle or ensnared in organized criminal activities are used solely to identify children with multiple crossings for purposes of imposing stronger enforcement measures. In addition, it was rare that a Honduran child was asked whether he was fearful to return home, which increased the potential for returning a child to an unsafe situation.

REPATRIATION

The repatriation process begins at the point when the United States relinquishes physical custody of the child to his country of origin. Ideally, throughout the process, authorities should always consider the best interest of the child. When children are repatriated, their safe and secure return to a situation that nurtures their well-being and provides the permanency (i.e., stability) necessary for their development should be the priority.

The reality is that repatriation is undersupported by the United States. No clearly designated authority under U.S. law or regulation is responsible for ensuring that repatriation of children to their countries of origin is safe. In both Honduras and Mexico, a lack of funding, political will, and stability compromises the extent to which country of origin authorities can ensure a child's safe and complete reintegration. Just as with the U.S. agencies involved with the removal process, our research revealed a lack of coordination among country of origin agencies; lack of policies and procedures; potentially abusive situations; and a lack of organized repatriation services.

Repatriation Finding #1: A lack of policies and procedures is prevalent.

Repatriation by Mexico and Honduras is marked by the absence of explicit and consistent policy and procedure. No employees of the Mexican shelters (where the children stay until they can be returned home) interviewed in the study were able to provide written policies, procedures, or guidelines. While some representatives hinted that there were no written policies, it was unclear whether written policies did not exist, or whether staff instead did not have access or clearance to share the materials. The variations in procedures and services available substantiate a lack of standardized policies in actual practice, if not in print. Honduran authorities reported frustration over the lack of a written agreement with the United States regarding protocols for the return of children, as well as inconsistencies with their own internal procedures, putting the safety of children at risk.

Repatriation Finding #2: Agencies' policies and procedures exhibit regional variations and lack of coordination.

In both Honduras and Mexico, local and regional variations in the collection and sharing of data on the repatriated child, variation in the practices surrounding the release of the child, and even variations in the parties involved in the process confound standardization of the repatriation process, and in turn, the safety of the child.

Repatriation Finding #3: Repatriation services vary in availability and efficacy.

Repatriation services exist in Mexico, but the range of services available to children varies substantially by region. While some shelters provide a bare minimum of a few days' shelter and the facilitation of family contact, others have begun to develop mechanisms such as a network of adult and child services (and linkages to other health and human service programs) to assess and address the original reason for the child's migration and to promote the permanent reintegration of children repatriated locally.

In Honduras, no services exist to facilitate the reintegration of Honduran children. We also found no resources available to facilitate the child's return to his hometown. Families interested in reunification must struggle to secure their child's safe and expedient return due to geographic, infrastructure, and economic barriers.

Repatriation Finding #4: There is a lack of formal structures to prevent abusive treatment or to ensure application of child welfare standards.

We uncovered potential for abuse in both Mexico and Honduras. In Mexico, agency guidelines prioritized family reunification over the safety of the child. In Honduras, we found evidence of discrimination against disabled children and cruel and degrading detention conditions.

RECOMMENDATIONS

The decision to return an unaccompanied child to his country of origin—in a manner that secures his safety and rights and serves to curb the threat of repeated migration—is a matter of determining what is in the best interest of the child. A simple standard would hold that no child should be returned to his country of origin without confirmation of a secure and sustainable plan for his safe placement in a family environment and a mechanism for ensuring that plan's implementation. Yet, as our research has found, no such plans exist.

The current U.S. systems for removing unaccompanied children from the United States often fail to provide these children with basic rights. In implementation, the current system disregards the protections included in numerous international agreements, returns children to unsafe conditions, and does not take proactive measures to deter increased future child migration. This reality erodes our nation's moral authority and undermines international relations.

The U.S. and its agencies have a responsibility to raise the standard for the humane treatment of unaccompanied children from neighboring countries. Our immigration systems are currently not equipped to properly receive, assess, and return children. Until the United States commits to a return policy that consistently recognizes the vulnerability of migrant children as children and considers their best interest, children will continue to be at risk for removal to unsafe situations and the United States will be implicated in any related misfortune or instance of repeat migration.

To view the accompanying Appendices and Backgrounders, please visit www.cppp.org/repatriation

Specifically, the United States should:

- Guarantee unaccompanied, undocumented children the right to counsel;
- Institute child welfare authority review of all immigration court decisions to remove an unaccompanied child from the U.S.;
- Mandate consistent assessment and planning for the return of all unaccompanied children under a new "best interest of the child and safe repatriation" paradigm;
- Establish transparent and consistent standards and protocols for removal and repatriation;
- Collect consistent statistics and documentation on all unaccompanied children and establish interagency information sharing;
- Establish limits on the number of children who can be returned during a specified period of time, in accordance with country-of-origin protocols and the capacity of country-of-origin authorities to receive the children safely;
- Discontinue transportation methods that place children at unnecessary risk;
- Provide reintegration assistance to facilitate the child's transition from removal by U.S. authorities to repatriation by country-of-origin authorities; and
- Establish bi-national standards and mechanisms for data collection and sharing related to repatriation of unaccompanied children, starting with the countries with the largest numbers of repatriated children.

More detailed recommendations are included in the full report and backgrounder materials found on our website at www.cppp.org/repatriation.

Additional Background Information Available

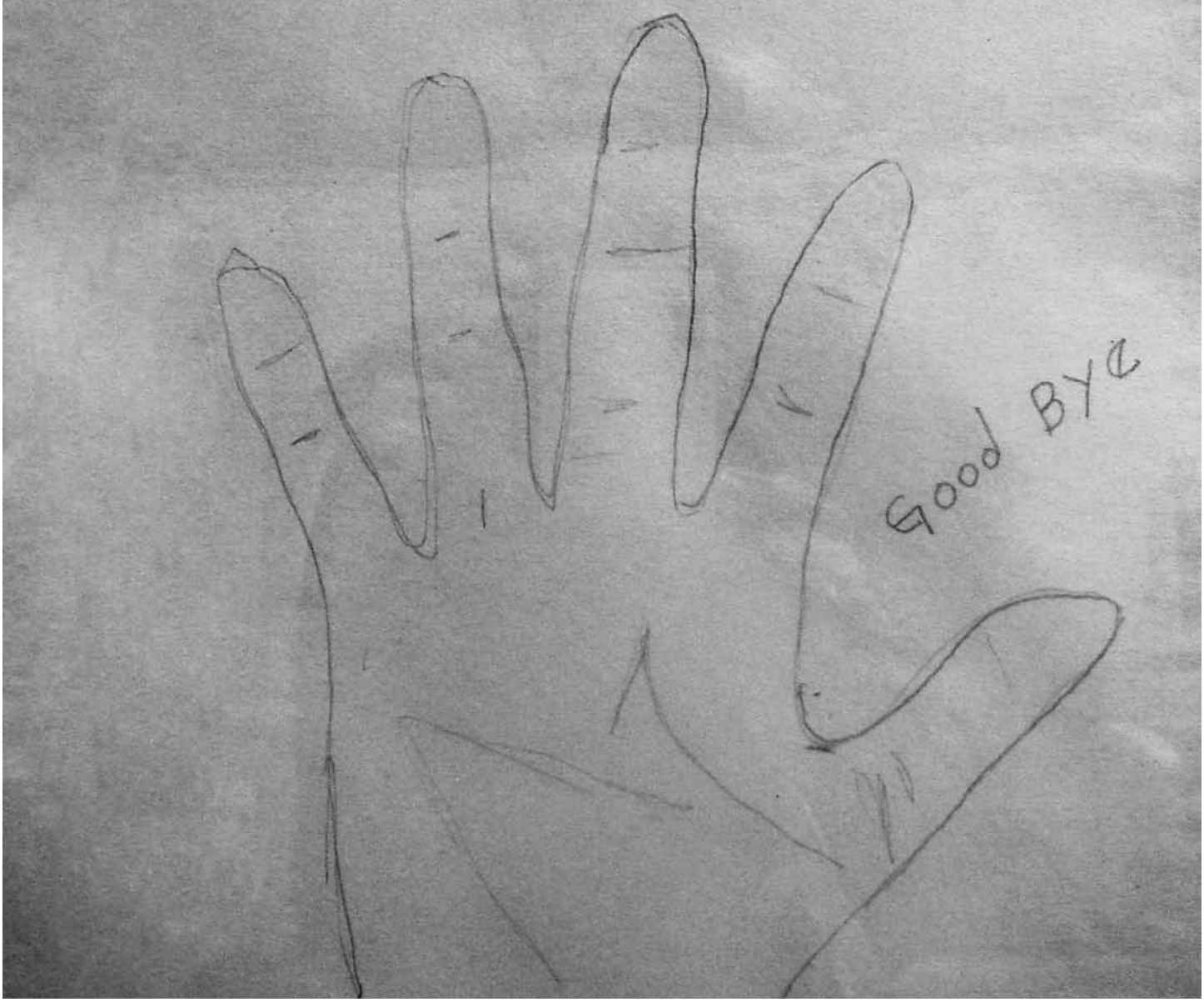
This report presents an overview of the most pressing concerns surrounding the removal and return of unaccompanied undocumented children and proposes policy solutions related to the child's safe return to his country of origin. Because return and repatriation are complex and multilayered issues, we have prepared the following series of backgrounders to give interested readers more information about each area, as well as to provide additional detail on the research design and methodology used in developing this report. To view the backgrounders, please visit our website at www.cppp.org/repatriation.

- Recent Reviews of U.S. Policy on Unaccompanied Children
- Apprehension and Custody of Unaccompanied Migrant Children
- Related Federal Code and Legal Precedent
- The Intersection Between State and Federal Agencies
- Report Methodology
- Complete Mexico and Honduras Case Studies
- Alternative Models of Return

Que Triste as un a Dios
mas Trita que un a Dios
no hay nada en asta vida
as inmenso al dolor que
en my se Horisino al
Dasir a Dios. que Triste
as un a Dios. a Dios

*"Goodbyes are so sad.
In this life there's nothing
sadder than a goodbye.
It's immense the pain that
formed inside me when
I said goodbye. Goodbyes
are so sad.. Goodbye."*

A poem by an unaccompanied
child, written prior to his
deportation from ORR custody



Introduction

The Best Interest of the Child: Bridging the Gap between Immigration and Child Welfare

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration...

Excerpt from the Preamble and Article 3 (1) of the
United Nations Convention on the Rights of the Child, 1989.

Every year the United States apprehends tens of thousands of undocumented and unaccompanied migrant and immigrant children under the age of 18.[11,12] Many of these children travel alone, with siblings, other children, or with adults who they may not know. Children traveling without their parent or legal guardian are known as *unaccompanied*. Although the majority of unaccompanied children come to the United States from Mexico or Central America, children from all over the world manage to reach the United States unaccompanied. Some children flee violence, the sex trade, or poverty.[13] Others cross to reunite with their parents[14] or to find a better life with more financial and educational opportunities. Their motivations are complex, and each of their stories unique.

Once in U.S. custody, most unaccompanied undocumented children are removed from the United States and returned to their countries of origin. **Removal** refers to the expulsion of a child from the United States by federal authorities based on the child's immigration status. **Repatriation**, for the purposes of this report, refers to the reintegration of the child into his or her country of origin. Repatriation begins at the point that the United States relinquishes physical custody of the child to his country of origin.

Universally, society recognizes children as bearing special rights. As such, society has a duty to provide and protect children's rights because of the vulnerabilities inherent to being a child. Numerous international agreements define the rights to both assistance and protections that are specific

11 Haddal, Chad. (March 1, 2007). *CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues*. Congressional Research Services

12 This study's use of both terms, migrant and immigrant, in describing this population is to clarify that many of these children may simply be traveling without the intent to settle in the United States. This is especially true of children living in border communities, who might have family and friends on both sides of the border.

13 Bhabha, Jacqueline & Susan Schmidt. (June 2006). *Seeking Asylum Alone*. President and Fellows of Harvard College. *Combating Child Trafficking: A Hand Book for Parliamentarians*. (2005). UNICEF.

14 Nazario, Sonia. (September 2003). *Enrique 's Journey: The Boy Left Behind*. The Los Angeles Times. See http://www.latimes.com/news/specials/enrique/la-fg-firstsoniasep29,0,5050178.story.

The inscription on the wall of CAMR's reception area for adult deportees in Tegucigalpa, Honduras, reads, "Era migrante y me recibieron," citing Matthew 25:35. In English, the inscription means, "When I was a migrant, you welcomed me." CAMR provides limited repatriation services to adults (employment services, transportation, shelter, cash to get home) but not children.

to children (See *Related Federal Code and Legal Precedent* backgrounder). Through U.S. recognition of international treaties and our own child welfare standards, the United States as a whole has recognized its responsibility to protect the rights of all children within its borders. U.S. child welfare standards for the best interest of the child are defined in federal law as prioritizing the safety, permanency, and well-being of the child in all proceedings involving children.[15]

In contrast, U.S. federal immigration policy and procedural implementation remain behind the curve in recognizing widely-held norms concerning the rights of children. Even though unaccompanied undocumented children in the United States are in a "particularly precarious position" at the intersection of two populations—children and non-citizens[16]—that are highly vulnerable due to their lack of power, they do not typically benefit from standards afforded to children in domestic child welfare cases, or even those guaranteed children facing criminal charges. Research suggests that U.S. repatriation policies do not reflect international conventions on children's rights, despite the fact that the international standards applying "the best interest of the child" trace their origins back to standards developed here, in U.S. child protective systems.[17]

15 Under the Adoption and Safe Families Act, children's well-being refers to factors in addition to safety and permanency that relate to a child's current and future welfare most notably, the child's educational achievement and mental and physical health. See http://www.courtsandchildren.org. Safety refers to the child's right to physical security. Permanency refers to the child's need for stability.

16 Mason, Ani. (2005). Untitled and unpublished report on the situation of unaccompanied children in the United States developed for UNICEF.

17 Hernandez-Truyol, Berta and Justin Luna. (Spring 2006). *Children and Immigration: International, Local, and Social Responsibilities*. Boston University Public Interest Law Journal.

As regards the application of the tenets of child welfare (safety, permanency, and well-being) to the services available to unaccompanied children, we are just beginning to address safety, have no mechanisms yet to meaningfully address permanency, and have not even begun to consider well-being.

Julianne Duncan, Director of Children's Services for the U.S. Conference of Catholic of Bishops, via email 6.17.08.

Given the circumstances that lead to child migration (e.g., escaping harsh or dangerous conditions in the county of origin) and the inherent vulnerabilities of children, removal and repatriation can prove detrimental to the child when not carefully regulated. As such, it is essential that U.S. immigration policies and procedures recognize our child welfare standards, for both the good of the individual child and to preserve our core values regarding the treatment of all children. Moreover, it is also essential for the United States to have clear, transparent, and consistent mechanisms for repatriation in order to avoid undue risk to the child's safety and well-being.

If we extended the ideals rooted in our U.S. child welfare system to the return of unaccompanied children, our priority would be to return children safely to an environment that would nurture their well-being and provide the permanency (i.e., stability) necessary for their development. Under a system which fails to incorporate these ideals, *A Child Alone and Without Papers* explores what really happens to the estimated 43,000[18] unaccompanied undocumented children who are removed annually from the United States and repatriated. Special attention is given to the effect that this experience has on the children. We explore these issues via analyses of U.S. and country-of-origin policies, and interviews with 82 U.S. and country-of-origin agency personnel.[19] We also interviewed 33 undocumented and unaccompanied children from Mexico and Honduras as they are both the most common countries of origin for unaccompanied children,[20] and are representative of the two divergent systems for the removal of unaccompanied children: neighboring versus non-neighboring country systems.[21] How the United States assesses and responds to the needs of unaccompanied children reflects the values and priorities of our nation and its people.

18 We derive these estimates from two sources. The estimate that over 35,000 children from neighboring countries (Mexico and Canada) are immediately returned each year is based on statistics available through the National Institute of Migration in Mexico. See http://www.inami.gob.mx/index.php?page/Estadistcas_Migratorias. For information in English, see the table 18 Repatriations of Unaccompanied Mexican Children in Appendix A – *2007 INM Data on Unaccompanied Children*. The estimate that roughly 8,000 unaccompanied minors are officially entered in the U.S. immigration system, most of whom are from non-neighboring countries is based on data provided by Ortiz-Ang, Susana, Deputy Director of the Division of Unaccompanied Children's Services (DUCS) within the Office of Refugee Resettlement, via e-mail 4.28.08.

19 In addition to the formal interviews, we also had conversations with a wide variety of professionals in the field who informed our understanding of the issues surrounding return and repatriation. In both formal and informal conversations, government personnel in all three countries expressed fears of reprisal. Therefore, the names (and in some cases titles) of interviewees with direct involvement in policy implementation are not included in this report.

20 Haddal, Chad. (March 1, 2007). *CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues*. Congressional Research Services.

21 We selected Mexico as a case study site because it is the country of origin for the majority of undocumented and unaccompanied children apprehended. According to a study by the National Autonomous University of Mexico, an estimated 150,000 minors attempt to cross the U.S. border annually (approximately 60,000 are returned; apprehended unaccompanied children are a subset of this population). We selected Honduras as a case study site as it is the leading country of origin among unaccompanied children from non-neighboring countries. According to the National Forum on Migration in Honduras, each year an estimated 80,000 Honduran children attempt to migrate to the United States.

The United States should provide all unaccompanied children in immigration custody access to counsel.

The generally shared view is that when the government seeks to restrain your liberty, you need a lawyer to defend you. Thus, a person has the right to counsel when an action is brought to lock them in prison, commit them to a mental hospital, or quarantine them for a communicable disease.

But when it comes to deportation, the law is less clear. Most immigration cases are administrative violations and are processed using civil, not criminal, procedures. An immigration action, however, has much of the jeopardy of a criminal conviction but has none of the protections. Despite the long-term ramifications of the immigration court's decision, the majority of children entered into immigration proceedings may not gain access to a lawyer (see Removal Findings #3 and #4 for more details).

Children have special need for a lawyer because they have even less ability to understand their circumstances and defend themselves. For this reason, in both child protection and juvenile delinquency cases, states provide children lawyers.[22] Likewise, in immigration cases, the federal government should ensure that children have lawyers.

22 The Child Abuse Prevention and Treatment Act requires states to provide a guardian *ad litem* to children in court proceedings in order to make recommendations to the court concerning the best interest of the child. Many states interpret this measure to provide for the child's right to counsel. The Supreme Court mandates the provision of counsel to children in juvenile proceedings, Kent v. United States, 383 U.S. 541 (1966). The Immigrant Children's Advocacy Center in Chicago is currently conducting an ORR funded pilot project to provide ad litems to unaccompanied children in federal detention. If Congress were to pass the Unaccompanied Alien Child Protection Act, it would provide for a national program. For more information, see Byrne, Olga. (2008).Unaccompanied Children in the United States: a Literature Review. Vera Institute of Justice. See http://www.vera.org/publication_pdf/478_884.pdf. See also, text of the proposed legislation at http://www.govtrack.us/congress/bill.xpd?bill=s110-844.

Design And Methodology

FREEDOM OF INFORMATION ACT REQUESTS

In an attempt to analyze policies, procedures, and statistics pertaining to the removal and repatriation of unaccompanied children from Mexico and Honduras, we submitted seven Freedom of Information Act (FOIA) requests to the Department of Homeland Security (DHS). These requests, submitted in June 2007, ranged from inquiries regarding basic statistics to training materials for immigration staff to international agreements.

Six requests were either denied or responses were extended well beyond the publication of this study. Various reasons were given for the denial of a request or the delay in a response. For example, the department combined four separate unrelated requests under one FOIA case number and then responded that the request was too long to respond to within the standard time limits.[23]

One request was closed for reasons that are unclear.[24]

INTERVIEWS AND CORRESPONDENCE WITH AGENCY PERSONNEL

In the United States

We also sought interviews from Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) within DHS; the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services; and the Executive Office on Immigration Review (EOIR) within the Department of Justice, for clarification on agency policy. The aforementioned agencies are the main bodies involved in the apprehension, care, or return of children.[25]

ICE, CBP, and EOIR denied interviews without providing a reason, though the Department of Homeland Security, home to ICE and CBP, eventually offered to respond to direct written requests, outside of the FOIA process. After delays and the intervention of a U.S. Congressman, ICE responded to our direct written inquiries. As this report went to press, CBP had not responded to any of the study's written requests, which were submitted in November 2007.

23 For information on each request and denial, see Appendix B – *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies*.

24 We received two closure letters related to this request. One letter stated the information did not exist, the other stated that it was available on the CBP website, yet no direct link was provided. The agency did not respond to our requests for assistance to locate the information.

25 While ORR does not consider itself to have an official role in the child's removal, ORR is the child's custodian while removal logistics are made. It is typically the only child welfare authority intimately involved in the cases of unaccompanied children removed by federal agencies. As such, any call for the application of U.S. child welfare standards to the processes of returning and repatriating unaccompanied children would necessarily involve an increased role for ORR.

However, through the assistance of the Women's Commission for Refugee Women and Children[26] and the Mexican Consulate, we toured the facilities for unaccompanied children at two Customs and Border Protection stations in Texas and interviewed CBP agency staff routinely involved in the removal and repatriation of children.

The Office of Refugee Resettlement was initially responsive and supportive of this study. ORR granted requests for access to children held in detention facilities and interviews with agency staff. In addition, the agency provided available statistics on children in the agency's custody, but stated that some information was simply not available (e.g., statistics on the methods of removal applied to children in ORR care). The agency neglected to respond, however, to a written inquiry (originally submitted to executive staff on November 20, 2007) for detailed information on agency procedures and data related to removal of children. Public information officers directed the author to the ORR website; however, none of the requested information is available online (see Appendix B – *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies* for copies of the written inquiries submitted to the Department of Homeland Security agencies and ORR).

In the Countries of Origin

We also sought information on the policies and procedures of country-of-origin agencies, as knowledge of the reality of a given country's repatriation services is critical to informing the United States' responsibilities to the children it removes. This study does not, however, seek to analyze or offer recommendations for country-of-origin policy.

Once on site in the countries of origin, we collected procedural and quantitative data from country-of-origin government officials and contractors, and non-government and non-profit entities providing human services (such as the Center for Repatriated Migrants in Honduras). Additional data from country-of-origin agency publications are interpreted and reproduced in this report, with permission.

While we received some statistics through agency requests, field interviews with individual agents and administrators comprise much of the information related to current repatriation policies and practices of the countries of origin.[27]

INTERVIEWS WITH REMOVED CHILDREN

We visited U.S. and Mexico detention facilities for unaccompanied children throughout the spring and summer of 2007. Interviews with Mexico case study participants were conducted from July to August. Additional site visits along the U.S.-Mexico border were conducted in October 2007 and January 2008. In-country interviews with Honduran case study participants were conducted from August to September of 2007.

We developed formalized country-specific interview scripts for returned children. The scripts were approved by an advisory committee that included both child welfare experts and country-of-origin representatives. (See Appendices C and D for the country-specific interview protocols.) The range of interview questions included:

26 The Women's Commission for Refugee Women and Children is an international non-governmental organization based in the United States.

27 Many requests for information submitted electronically to national offices went unanswered. This may, in part, be due to the digital divide; many professionals in Mexico do not routinely use e-mail in the workplace.

- Prompts related to the child's life before migration and their journey to the U.S.-Mexico border (in order to more fully understand the child's experience);
- Prompts related to the child's experience while in the custody of U.S. agents (in order to more fully understand how procedures are implemented and their effect on the child);
- Questions related to the child's own desires and sense of future (to enhance understanding of the child's perspective and level of autonomy); and
- Questions related to the child's situation subsequent to removal (for insight as to the effect of removal on the child's life, safety, and well-being).

To maintain confidentiality, we used photographs where children's faces were shielded and pseudonyms in place of their names in the stories. The photographs used in this report were taken by us in the filed, but do not include any images of the children interviewed.

MEXICO CASE STUDY (NEIGHBORING COUNTRY)

An unaccompanied girl is admitted to a DIF facility after her removal from the United States.

Through the Mexican Consulates, we obtained contacts for the agencies involved in repatriations and a general understanding of the process leading to the child's placement with Mexican child protective services. To learn about the process beyond that point, we obtained permission from Mexican authorities to speak with children in the custody of Mexican child protective services, prior to the children's reunification with family members. We also obtained permission from the Mexican consulates to witness their involvement with the removal process.[28]

Mexican subjects were identified from among the populations of children's shelters operated by Mexican child welfare agencies located in Mexico along the Texas-Mexico border. On days selected for the interview process, we gave all children located at shelters the opportunity to participate in the study. Thirty-three children from two shelters in Tamaulipas accepted. Of the 33 who accepted, 26 met qualification criteria and completed interviews.[29]

Of the 26 children who participated in the structured interview process, fewer than one-third (eight children) were girls.[30] The average age among the participants was 14 years old, with a range from age seven to age 17. Three of the children did not know their birthdates. Roughly one in five (5:26) of the children admitted to giving a false date of birth to the U.S. authorities. Children who provided

28 We sought permission from U.S. agency counterparts, as well. Repeated requests to local CBP public affairs officers and the agency's head office in Washington, D.C., yielded no substantive response even once permission from Mexico had been granted. We did not interview returned children whose removal was witnessed out of concern that our involvement may have altered the process, and therefore the child's experience, in immeasurable ways.

29 Five children turned out to be from Guatemala, Honduras, and El Salvador; one had misrepresented his age (he was five and claimed to be seven) and one was unable to respond to the questions.

false information had various motivations for doing so. Some sought to protect their identities. Some were told to do so but didn't understand why. One child had claimed to be an adult in order to not be separated from adult companions.

HONDURAN CASE STUDY (NON-NEIGHBORING COUNTRY)

A young girl stands before Honduran police following her deportation from the United States.

Honduran subjects volunteered from the population of ORR detainees in U.S. sites we visited. We interviewed only children fortunate enough to have a lawyer. All interviews with children in ORR facilities were conducted with their attorney's knowledge or presence. Fourteen children were approached with the request to interview them post repatriation and 12 (11 boys and one girl) consented. Of these, five had not received their travel arrangements for return to Honduras from DHS by the time of the field study, two months later. The contact information for another child was invalid.

We met and conducted interviews with seven Honduran boys, ages 15 to 17. Five of the boys were initially identified while in ORR custody and later interviewed at or in public spaces near their homes in Honduras subsequent to their repatriation. Two of the boys were identified in Honduras while in the custody of Honduran child protective services and interviewed at a Honduran National Institute for Families and Children (IHNFA) shelter prior to family reunification.[31]

One significant limitation of the information obtained through the Honduran children's interviews regards gender; though girls represent one-fourth to one-third of the unaccompanied Honduran minors in U.S. custody, the proportion of girls subject to removal appears to be smaller. In 2007, the Honduran government reported only 54 instances in which Honduran authorities received girls deported by the United States, compared to the receipt of 368 boys.[32] In the end, the participants in the Honduran interview included no girls, thus the results of the case study do not include a female perspective on the experience of removal.

30 According to statistics available through Mexican migration authorities, girls represented 44 percent of the children returned to Tamaulipas, Mexico by the United States in 2007 (1,759 girls and 2,233 boys), and 27 percent of all the children returned to Mexico by the United States that year (9,594 girls: 35,546 total). See http://www.inm.gob.mx/estadisticas/enedic07/repatriacion.mht.

31 We note that the fact that most of the interview subjects had returned to their original homes may limit the applicability of some of their experiences (such as detention and release from IHNFA custody) to children who have families and support systems.

32 These data were provided directly by the Honduran Department of Migration, Section on Deportations. For more information on Honduran statistics see Appendix E - *Honduras Statistical Data*. It is important to note that children deported more than once in a calendar year would be double counted by Honduran statistics. The initial list of subjects for interviews included one girl, but she had not been deported by the time of the field study. We did observe the repatriation of several very young girls returned on commercial flights in the company of their mothers and that of many young women returned on JPAT flights, but no repatriations involving unaccompanied girls were directly observed.

From Removal to Safe Return: A Paradigm Shift is Needed

None of the various ways in which unaccompanied children are removed by U.S. authorities requires or provides any mechanisms for consideration of the child's best interest in implementation of the child's return.[33] Currently, immigration courts do not recognize the best interest of the child as a factor in rendering decisions, and child welfare authorities have no authority over or review of removal decisions or procedures.

THREE ROUTES: HOW CHILDREN ENTER FEDERAL IMMIGRATION SYSTEM CUSTODY

Unaccompanied children enter federal custody through three primary routes, each related to a separate authority:

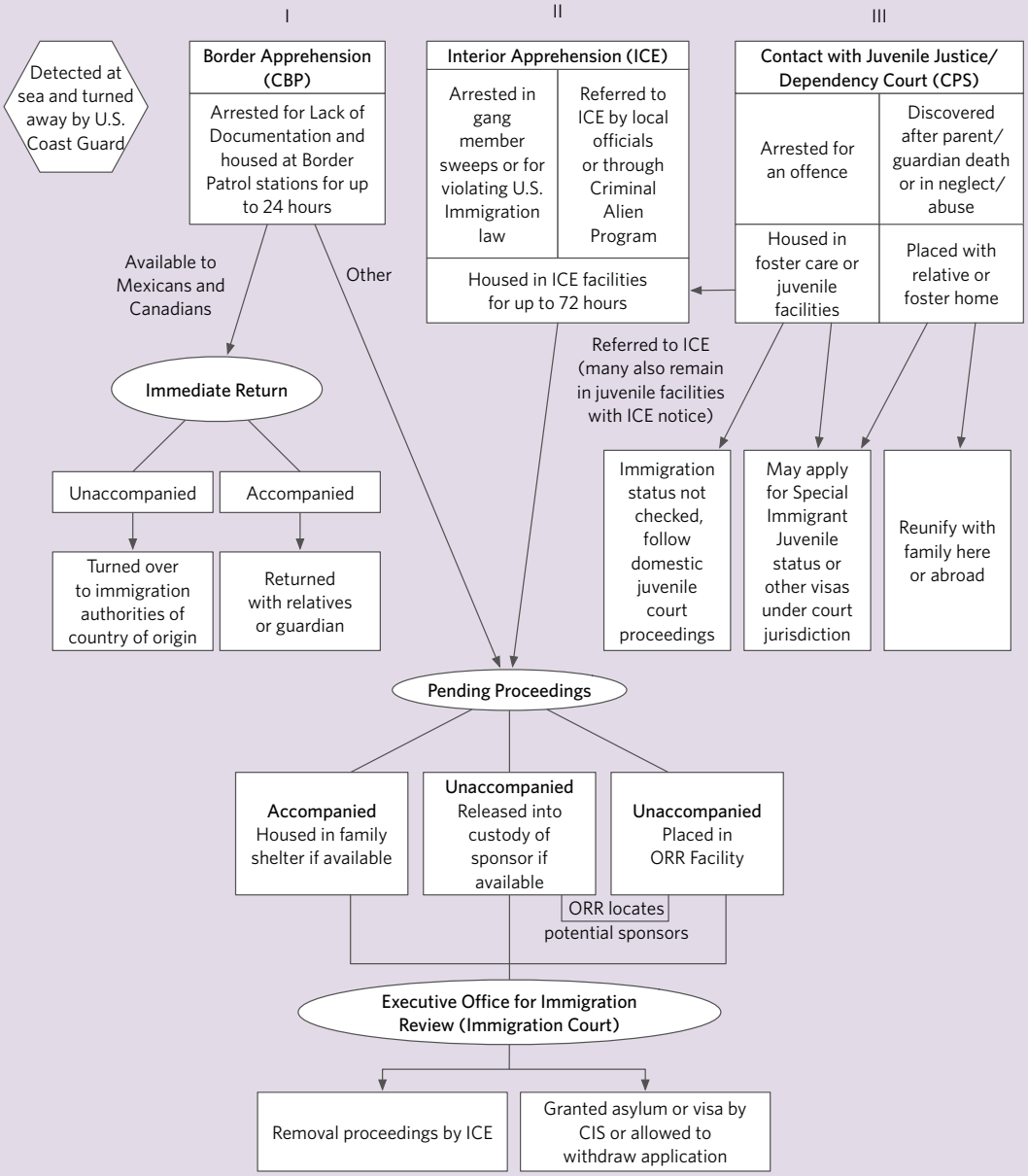
- Detection upon entry into the United States or in close proximity to a port of entry (typically by Customs and Border Protection);
- Detection within the interior of United States through raids and immigration enforcement operations (typically by Immigration and Customs Enforcement); and
- Detection within the custody of a non-federal agency (such as state child protection, juvenile justice authorities, or local law enforcement) with subsequent referral to or intervention from a federal agency.[34]

33 Models for the safe and secure return of unaccompanied children that take into account their best interest do exist. At the state level, child protective agencies routinely return non-citizen children to countries of origin when deemed in the child's best interest. Other industrialized countries, such as Italy, have adopted similar measures for the treatment of children in their immigration systems. See *Alternative Models of Return* backgrounder, for more information.

34 Unaccompanied children may also enter the federal immigration system from the custody of state or local authorities. In some instances this may involve inter-jurisdictional cooperation. In others, the child's entrance into removal marks the failure of cross-jurisdictional cooperation. Undocumented children detected within juvenile justice systems at the local or state level may be referred to ICE, or ICE may issue a detainer if the agency is aware of or involved with the child's apprehension. In such cases, youth may be required to serve out their sentences in the state facility prior to being transferred into ICE custody. Unaccompanied children sometimes enter the adult state corrections systems in states when children may be tried as adults. Undocumented children in the custody of state protective services in some instances are entered into removal proceedings when federal authorities fail to recognize state custody of an abused or abandoned child. Although immigration enforcement is a federal matter, state policy implementation can have a significant effect on the method and manner of a child's removal. For a review of cross-jurisdictional issues and their effect on a child's removal, see the *Intersection Between State and Federal Agencies* backgrounder.

Three Primary Routes to Removal

The majority of unaccompanied children come to the attention of immigration enforcement through three primary routes: apprehension upon entry (typically by a CBP agent at the border or a port of entry), apprehension within the interior of the country (by ICE), and identification while in the custody of a state or local authority. The manner and geographical location of their detection combined with their country of origin can determine the method of their removal.



CBP Customs and Border Protection **ICE** Immigration and Customs Enforcement

DRO Detention and Removal Office **ORR** Office of Refugee Resettlement

Source: Adapted from "Figure 1. General Process for Juvenile Aliens Involved with the Immigration and Juvenile Justice System." Haddal, Chad. (March 1, 2007). CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues. Congressional Research Services.

TWO FRAMEWORKS FOR REMOVAL: NEIGHBORING V. NON-NEIGHBORING COUNTRY OF ORIGIN

Once the unaccompanied child is placed in U.S. federal custody, whether the child faces immediate removal or has the opportunity to remain in the United States—even temporarily—is largely determined by the child's nationality.

The vast majority of unaccompanied children who are removed from the United States are children from Canada and Mexico—neighboring countries to the U.S. In 2007, over 35,000 children were removed to Mexico.[35] These children are not officially entered into the immigration system. Instead, they are typically removed at the nearest port of entry by Customs and Border Protection (CBP) within one business day, and without an opportunity to appear before a judge or to reunify with any family located in the United States. In other words, neighboring-country unaccompanied undocumented children are given no legal recourse or real opportunity to request asylum. Thus, even if these children are fleeing violence or persecution in their country of origin, in all likelihood they will be returned to their home country.

Most unaccompanied children from non-neighboring countries are transferred to the custody of the Office of Refugee Resettlement (ORR), a U.S. Department of Health and Human Services agency charged with ensuring consideration of the interest of the child, while their immigration cases proceed.[36] Children in the custody of the ORR are given the option of petitioning for immigration relief, such as asylum or, more typically, a special visa or status, such as Special Immigrant Juvenile Status.[37] If their petition for relief fails, or if they have no grounds for relief, these children are asked to choose their method of removal.[38] Regardless of the form of removal a child may select, the average amount of time a child spends in detention after making a decision is 45 days. However, instances of detention lasting up to three to four months are not uncommon.

VARIOUS FORMS OF REMOVAL APPLICABLE TO UNACCOMPANIED CHILDREN

Methods of Removal:[39]

The first three methods of removal described below are applied primarily to unaccompanied children from non-neighboring countries, while the fourth is applied to children for neighboring countries.

35 The estimate that over 35,000 unaccompanied children from Mexico are immediately returned each year is based on statistics available through the National Institute of Migration in Mexico. See http://www.inami.gob.mx/index.php?page/Estadistcas_Migratorias. For information on this data source in English, see Appendix A – *2007 INM Data Unaccompanied Children*.

36 There are some instances in which ICE will retain custody of an unaccompanied child throughout their involvement in immigration proceedings, see Giovanni's story. The Women's Commission on Refugee Women and Children is currently engaged in a study of this situation. Their report is forthcoming.

37 For more information on Special Immigrant Juvenile Status and other forms of available protection, see the *Intersection Between State and Federal Agencies* backgrounder. See also Bhabha, Jacqueline & Susan Schmidt. (June 2006). *Seeking Asylum Alone*. President and Fellows of Harvard College.

38 It is possible for unaccompanied children to be released from federal custody to a court-appointed guardian. In such instances, the child may receive an order of removal while outside of federal custody. For the purposes of this study, all discussion of removal procedures is specific to those related to children in federal custody.

Administrative departure is available to unaccompanied children from non-neighboring countries who are apprehended and placed in ORR care. In this option, the child signs away his right to go before an immigration judge. In exchange, the child does not receive a penalty on his immigration record and does not have to cover the cost of his return. This decision must be made prior to the Department of Homeland Security's release of the child's information to the immigration court—typically a matter of days. The use of administrative departure appears to be limited in practice to certain regions of the United States. It is also discouraged by some advocates who are concerned that children with viable claims for relief might hastily decide to return to dangerous situations rather than face months of detention, costs of return, and an unfamiliar system.

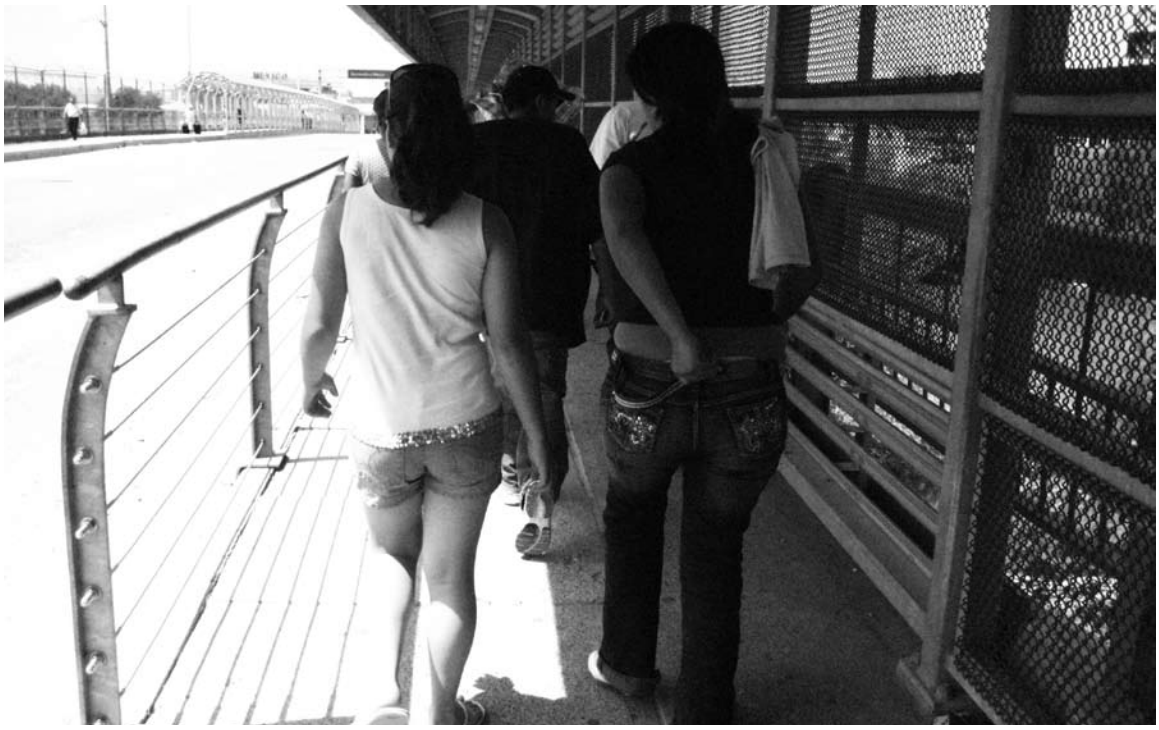
Voluntary departure is available to all unaccompanied children who have been officially entered into the immigration system (typically children from non-neighboring countries, and only rarely children from neighboring countries). In exchange for covering the cost of their return travel, children are not barred from entering the United States in the future. They are still afforded a hearing before an immigration judge. Immigration judges serve under the Office of the Chief Immigration Judge in the Executive Office of Immigration Review of the Department of Justice.[40] Immigration judges preside over removal cases to determine whether a child is "removable," and whether the child qualifies for voluntary departure or other forms of relief. The judges act independently in deciding cases, and their decisions are administratively final unless appealed or certified to the Board of Immigration Appeals within the Department.

Deportation for a child carries the same consequences as for an adult. The child is barred from entering the United States for 10 years and is subject to criminal proceedings if apprehended attempting to enter the country during this period. The child is not responsible for any fees associated with travel and receives a hearing before an immigration judge.

Expedited Removal is a process for the removal of individuals without judicial review, similar to administrative departure. For unaccompanied children, expedited removal is administered in two primary variations. One is the return of unaccompanied children by CBP agent discretion at the port of entry, before the child gains entry into the United States. The second and more common application is the return of unaccompanied children from neighboring countries to their country of origin, en lieu of official entrance into the immigration system.[41] In this case, the expedited removal of neighboring children results in the child's immediate removal to the nearest port of entry, typically occurring within hours of apprehension. (For more information about the removal process, includ-

39 The definitions presented in this section are the product of vigorous discussion among the author, advisory committee members, and legal scholars. These methods are not formally defined in U.S. code or in any publicly accessible procedure. Definitions and related rules appear to vary between federal regions. Legal experts cannot agree on definitions after months of deliberation, yet unaccompanied children are supposed to comprehend them quickly and make an informed choice among them. It is not clear which federal authority has the power to ultimately define or extend these options. The presumption is that the options are defined by the immigration enforcement authorities within the Department of Homeland Security. However, the extent to which the judiciary and Department of Justice may have a role in defining these options is not clear because access to DOJ authorities was limited (see *Report Methodology* backgrounder). Resources drawn on for the presentation of these definitions include: *Immigration and Naturalization Act* Sec. 238 1 (8 USC 1228); Vail, Joseph. (2006). *Essentials of Removal and Relief: Representing Individuals in Immigration Proceedings*. American Immigration Lawyer's Association.; *Asylum Seekers in Expedited Removal*. (February 2005) United States Commission on International Religious Freedom; Rosenbloom, Rachel E. (February 13, 2008) *Testimony before the U.S. Congressional Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law*. See http://judiciary.house.gov/media/pdfs/Rosenbloom080213.pdf.

40 For information on the role of immigration judges and DOJ structure, see http://www.usdoj.gov/eoir/ocijinfo.htm.



Two girls make their way across a bridge from the US to Mexico, accompanied by a single agent from the Mexican Consulate. One girl struggles with her belt, while trying to keep up.

ing the different processes that occur when unaccompanied children are coming from state corrections or child protective systems, please refer to the *Apprehension and Custody of Unaccompanied Migrant Children* backgrounder.)

If the rationale for offering various forms of removal is a concession to the unique circumstances of each child, or a means of lessening the administrative burden on the U.S. immigration system, in practice little is achieved towards either goal. Children who would benefit from a speedy removal process through administrative or voluntary departure (e.g. children with no claim for immigration relief who are anxious to return to their families) are denied that privilege. Furthermore, any cost savings by foregoing courtroom procedures or by charging the child for transportation costs is in practice offset by the prolonged costs of detaining children despite the fact that they are willing to return to their countries of origin.

REMOVAL AS IT SHOULD BE WITH RESPECT TO CHILDREN'S RIGHTS

Applying U.S. child welfare standards in cases involving unaccompanied undocumented children may provide solutions to many of the problems vexing our immigration system's treatment of these children. If children were returned to their countries of origin in a system in which concerns for their safety and well-being were primary, the process would depart from current practice in several important ways. First, the child would be represented by an attorney in the non-adversarial court-

41 This form of removal is commonly referred to in some regions as Voluntary Removal. This study rejects this terminology, however, as children from neighboring countries are routinely not offered an option to remain in the United States. Therefore, their removal cannot be defined as voluntary.

A US Border Patrol holding cell for children. There are no beds or blankets. A toilet is located behind the median.

room setting where he was determined ineligible for immigration relief or protective status. Next, a child welfare expert would determine whether and how return might pose a risk to the child. Detention would occur only in the least restrictive setting necessary. A child welfare agent would arrange or review the child's return plan to ensure its compliance with child welfare standards and the best interest of the child. This "safe return" paradigm would embody U.S. immigration practices that are in line with core American values related to the treatment of children.

REMOVAL AS IT CURRENTLY EXISTS: WITHOUT CONSIDERATION OF THE RISKS TO THE CHILD

In actual practice, removal is a law enforcement mechanism for transporting apprehended unaccompanied undocumented children back to their countries of origin. Depending on the child's country of origin, a child could be removed in one of several different ways, which allow varying degrees of access to a court hearing, financial responsibility for return, and legal penalty for future migration (see *Methods of Removal*, p. 25).

The reality, based on the author's observations, interviews, and research on the issue, is that there is no uniform process for what happens to an unaccompanied child once he is apprehended, including whether a child will have access to an attorney. Without specific guidelines, individual officers largely determine how a child is treated, with some treating them as adult criminal offenders and others respecting their vulnerability as children. In addition, children are treated in dramatically different ways depending upon their country of origin. For example, children from Mexico (a neighboring country to the United States) are returned almost immediately without the opportunity to con-

ICE Fails to Comply with Congressional Requests

... the Committee is concerned about the lack of repatriation services available for unaccompanied alien children who are removed from the United States to face uncertain fates in their countries of origin. The Committee directs ICE, in close consultation with the Department of State and ORR, to develop and implement policies and procedures to ensure the safe and secure repatriation of unaccompanied alien children to their home countries, including through the arrangement of family reunification services and placement with non-profit organizations that provide for orphan services.

ICE should brief the Committee within 90 days of enactment of this Act on actions it has taken to implement these changes.

From the FY 08 Homeland Security Appropriations Bill, HR 2638 passed on June 15, 2007.

As this report goes to print, over a year later, ICE has yet to respond to Congress's request.

tact family or counsel, whereas children from Honduras (a non-neighboring country to the United States) are formally entered into the immigration system and sometimes receive the opportunity to contact a lawyer.[42]

Law Enforcement Paradigm

"The job of ICE is law enforcement."

Virginia Kice, spokeswoman for Immigration and Customs Enforcement, quoted in a radio interview, May 12, 2008[43]

If the United States were to reconcile its regulation of immigration with its respect for children's rights, formalized immigration procedures would be based on child welfare standards ensuring recognition of the vulnerability of all unaccompanied children and their need for protection. The removal of children, however, is implemented strictly using law enforcement methods. As inherently law enforcement agencies, U.S. immigration enforcement systems lack the training or the institutional culture to apply U.S. child welfare standards.

No Statutes Define Process, Require Child's Safety, or Assign Accountability

Unaccompanied undocumented children are detected in the United States and along its borders by a variety of federal, state, and local authorities. At least 15 different federal agencies can be involved in

42 Advocates estimate that the current rate of legal representation among unaccompanied children in the ORR system is 30 to 50 percent. Brané, Michelle, Director of the Detention and Asylum Project of the Women's Commission on Refugee Women and Children, via e-mail 4.11.08. However, as described in this report, this representation can be incomplete or minimal. The most recent officially released data reflects only 10 percent of the population receiving representation. Nugent, Christopher. (2006). *Whose Children are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children.* Public Interest Law Journal.

43 Gonzalez, R. (May 12, 2008). *Immigration Raids Shake California Schools.* All Things Considered, National Public Radio. See http://www.npr.org/templates/story/story.php?storyId=90379927. (The quotation referenced was not made in direct relation to the situation of unaccompanied children, but explains how the agency defines its mission.)

the detection and apprehension of an unaccompanied child.[44] State and local authorities may also be involved in the initial detection of undocumented children through child welfare or protection services, juvenile corrections, and emergency response. Yet, beyond broad statutory frameworks establishing the general mandates of each department,[45] and one section in the Code of Federal Regulations addressing several aspects of juvenile detention and release,[46] very little written agency policy exists to guide the actions and decisions throughout the repatriation process. There are no statutes whatsoever designed to require or promote the child's safe and secure removal and repatriation; nor does any statute designate any authority as responsible for the child's safe and secure removal and repatriation.

The Department of Homeland Security's Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) are charged with apprehending and removing the children strictly in a law enforcement context, with no guidance or direction related to the acknowledgement of any special considerations owed to children. Significantly, unlike U.S. state and local law enforcement authorities, immigration enforcement officers have no mandate to protect the rights of those they apprehend. Furthermore, any protocols or training that may exist regarding the safe transport and escort of children are not subject to review by the public or any child welfare experts.[47]

The current policy situation begs for the clear designation of responsibility and a mandate of interagency cooperation to ensure the safe repatriation of children. Congress has made steps in this direction through the concerns addressed in recent appropriations bills.[48] The agencies involved, however, are not responding to these directives in a manner that reflects the urgency of the situation. An act of Congress may be required to ensure accountability, oversight, and sufficient resources for the establishment of a sound and sustainable system for the safe and responsible return of children to their countries of origin.

In the interim, the little relevant law that is on the books is insufficient to create any coherent standards for the safety or well-being of children in immigration agency custody. U.S. immigration law, as codified in the Immigration and Naturalization Act, does not address how children should be treated throughout the course of federal custodianship. Statutes on the rights and treatment of children in federal and state care do exist, but they are codified in child welfare doctrine and are traditionally applied to child protection and juvenile law at the state level.[49] As such, these statues are primarily applied to U.S. citizen children in state custody and not to unaccompanied children in federal custody.[50]

44 Bhabha, Jacqueline & Susan Schmidt. (June 2006) *Seeking Asylum Alone*. President and Fellows of Harvard College.

45 For DHS see Homeland Security Act of 2002, §§442, 451; for EOIR see Homeland Security Act of 2002, §§ 1101-02; for ORR see Homeland Security Act of 2002, §462.46

46 See 8 CFR §236.3. Federal immigration policy often refers to all minors as juveniles, regardless of age or whether they have committed an offense.

47 This information was included in ICE's response to our direct inquiries. See Appendix B – *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies*.

48 Re: FY 2007, see House Report 109-476; Re: FY 2008, see House Report 110-181.

49 Interestingly, conditions for the detention of children are also determined at the state level. The Flores Settlement Agreement, a landmark decision that establishes standards for the treatment of unaccompanied children in U.S. immigration detention, mandated that federal authorities adhere to state standards. It remains to be seen whether it will require another class action suit or an act of Congress to get federal immigration authorities to recognize federal and state policy on best interest (including the exclusion of children from *mens rea*; and the provision of legal representation).

50 Unaccompanied undocumented children may be availed of these rights if they are within the custody of child protective services or juvenile justice.

Why This Matters: Attributing Intent to Unaccompanied Children is Often Inappropriate

In their seminal work on children in the immigration system, Jaqueline Bhabha and Susan Schmidt found that unaccompanied children would benefit from policies that incorporate the three basic goals of the U.S. child welfare system—"ensuring safety, promoting permanency and enhancing the child's well-being"—and support the inappropriateness of applying *mens rea* to children. *Mens rea*[51] is a legal term for criminal intent. The notion imbedded in U.S. law that children are incapable of criminal intent comparable to that of adults is the basis in our legal system for the existence of separate juvenile justice systems and distinct penalties for the delinquent actions of children.

These protections and special considerations under U.S. law are not extended to children because of their U.S. citizenship, but rather because of their special needs as children. Child welfare norms should be extended to unaccompanied children in all legal proceedings, regardless of their immigration status, or in which agency's custody they are held.

Carolina's Story: Pre-School Criminal?

Carolina is a five-year-old girl from Honduras.[52] When she was an infant, Carolina's mother tried to cross with her into the United States, and both were caught and ordered deported. Several years after this initial deportation, Carolina's mother attempted once again to join her husband in the United States. This time Carolina and her mother crossed the border separately—Carolina by bridge with a false guardian and her mother by river—a common strategy for parents of young children, who wish to protect them from drowning. Both she and her mother were apprehended in the United States and detained separately.

U.S. Immigration authorities realized that Carolina had been ordered removed in the past—as an infant. Immigration agents consider this previous order of removal to mean that Carolina is ineligible to petition for legal immigration status or release to family in the United States. Carolina was placed with the Office of Refugee Resettlement. When ORR, unaware of Carolina's previous order of removal, reunified the child with her family in the United States, ICE agents referred to the incident as a "breach of national security." Given her age and circumstances, however, Carolina was clearly unable to have willingly violated U.S. administrative code in either instance of her entering the country. To hold Carolina accountable for immigration violations is either inconsistent with the U.S. application of the principle of *mens rea*, or a violation of the concept that children should not be punished for the crimes of their parents.

51 In criminal law, *mens rea*—the Latin term for "guilty mind"—is usually one of the necessary elements of a crime. The standard common law test of criminal liability is usually expressed in the Latin phrase, *actus non facit reum nisi mens sit rea*, which means that "the act does not make a person guilty unless the mind is also guilty." Thus, in jurisdictions with due process, there must be an *actus reus* accompanied by some level of *mens rea* to constitute the crime with which the defendant is charged.
52 Carolina's story was related by social workers from the ORR-contracted facility where she was detained.

Giovanni's Story: Our Immigration System Often Treats Children Like Criminal Adults

Giovanni, a 16-year-old Mexican national from Michoacan, did construction work in the Pacific Northwest for nearly six months. En route to work one day, his coworker had a minor collision, and called 911. Local law enforcement came to the scene. When Giovanni revealed his lack of documentation, the local authorities held him for three days until U.S. immigration (ICE) officials came to collect him. ICE then transported Giovanni to another state in shackles and detained him for days. A judge in a third state, before whom Giovanni never appeared, issued an official Order of Deportation in his name (a method of removal not typically applied to Mexican youth).[53] The order stipulated that Giovanni may not return to the United States for a period of 10 years. Giovanni was finally returned, again in shackles, to the U.S.-Mexico border (though not to the Port of Entry nearest to the place of his apprehension nor to his home). He was allowed to call his father for the first time only after he reached Mexico. He sobbed uncontrollably in the lobby of Mexican child protective services when he heard his father's voice.

53 Children from non-neighboring countries are either removed via a form of expedited removal (see Methods of Removal section on p. 25) if discovered near the border, or placed in the custody of ORR if discovered in the interior of the United States.

Removal Findings: A Broken System, Out of Touch with U.S. Values

We interviewed 82 representatives from immigration and child welfare agencies in all three countries, and 33 children involved in the removal process (in Mexico: eight girls and 18 boys, ranging in age from seven to 17; in Honduras: seven boys, ranging from age 15 to 17). These interviews, as well as our own observations, reveal the following problems with the removal system:

- Lack of written policy and procedure;
- Unclear communication between countries;
- Lack of U.S. awareness of conditions to which the child is returned;
- Failure to provide children with information about their rights or access to a lawyer or consulate;
- Failure to provide children with clear information;
- Abuse and mistreatment of the child while in U.S. custody; and
- Return of the child in an unsafe manner to an unsafe environment.

Except where otherwise noted, the findings below apply to removal experiences of children from both neighboring and non-neighboring countries.

Removal Finding #1: Lack of clear policy and procedure to govern the process of removal and repatriation of children leads to highly inconsistent practices and lack of attention to child safety.

There is simply not enough information to provide sufficient counsel when a child facing deportation asks "What's going to happen to me?"

Aryah Somers, immigration attorney representing unaccompanied minors and advisor to this study, via email 3.9.07

The lack of clear directives and policies on the return of unaccompanied children, as mentioned in the previous section, and the underutilization of existing bilateral agreements with the most common countries of origin lead to treatment of unaccompanied children that is inconsistent with U.S. child welfare standards or concerns.

There are no U.S. statutes designed to promote the child's safe and secure removal and repatriation; nor are there any statutes designating any authority responsible for the child's safe and secure removal and return to their country of origin.
Because there are no legal requirements or mechanisms to protect child-specific rights, children are instead removed in a law enforcement paradigm that varies from one regional authority to another,

and from one individual agent to another.[54] Removal of children is marked by a lack of consistent attention to the child's vulnerability, as well as fragmented and often adversarial agency-child interactions. Attempts to identify children in need of protection or implement their safe return are unsystematic and weakened by this absence of an overriding priority for the best interest of the child.

The lack of standards also leads to fragmented and repeated collection of personal information. This can prevent the identification of children in need of assistance, re-traumatize children, and erode their trust of authorities. Integrated and routine collection and analysis of data related to each child's migration experience could better inform the policies of all agencies involved, law enforcement and child welfare alike, and better identify the service needs of these vulnerable children. In practice, however, due to the absence of explicit protocols and agreements regarding the collection of information through child interviews, the manner and extent to which the child is interviewed varies by country of origin, point of return within the country, the various agencies involved in both countries, whether country-of-origin agencies were notified of the child's presence or arrival, and the personal perspective of the interviewer. Furthermore, due to a lack of protocols, information on children who do express fears or concerns is not systematically shared between service agencies or acted upon. Thus, the opportunity to establish a complete profile of the circumstances of removed and repatriated children is lost.

International agreements regarding return and repatriation are underutilized, not recognized, or non-existent.
In countries such as Mexico and Honduras, where the resources for receiving unaccompanied children are limited, advance notification of the child's arrival and adherence to formal protocols are essential to avoiding undue risk to the child's safe return.

While written agreements on return and repatriation between the United States and Mexico do exist, they are dated, in need of official review, and are not included in the training of on-the-ground immigration agents (see *Complete Mexico and Honduras Case Studies* backgrounder).
Prior to the Homeland Security Act of 2002, the United States Border Patrol and Immigration and Naturalization Services entered into bilateral agreements with the Mexican Consul and the Mexican National Institute for Migration for the safe and orderly return of Mexican nationals by the United States. A series of agreements between the United States and Mexico related to the repatriation of Mexican nationals culminated in the drafting of individual regional agreements between the parties.

The original agreements are cursory, addressing the specific needs and vulnerabilities of children, each having a limited chart of a half page or less. These basic charts stipulate the hours during which children may be safely repatriated. Some specify daylight hours only; others give a range (e.g., 6 a.m.-10 p.m.) that includes hours of darkness. The charts clarify the need for consular notification about all children in custody and in some instances specify the specific agency officials to be contacted (in all likelihood this personnel information is outdated), as well as which ports of entry may be used for the return of children to the proper Mexican authorities.

These protocols are often violated, knowingly or unknowingly, by U.S. agents. The author encountered numerous reports of U.S. officials failing to give advance notice of the return of children to Mexican au-

54 The experience, qualifications, and training of CBP staff assigned to the processing of unaccompanied children vary by region. At one station, we observed that all unaccompanied children were processed by a specialized Border Patrol Juvenile Coordinator, with special training in law enforcement procedures as applied to children. At another station, we observed that any and all agents were responsible for the processing and care of unaccompanied children, with only on-the-job training provided. These variations can affect the manner and safety of a child's return.

thorities. For example, some Mexican child welfare officials lamented that U.S. Border Patrol would return children at night or even to ports of entry with no existent child welfare authority to receive them.[55]

As non-binding agreements, the value of the local agreements relies on regular reaffirmation and revision between political administrations. According to Mexican officials, however, local operational level meetings between Mexican diplomatic authorities of the Secretary of External Relations (SRE) and U.S. immigration agencies were essentially suspended after September 11, 2001.

One Border Patrol supervisor with seniority and experience asserted that he was unaware of the existing written protocols for the repatriation of children to Mexico.[56] He doubted the existence of the bi-national agreement related to repatriation, and stipulated that his region functioned instead on the basis of oral agreements with Mexican consular officials. He also reported that these local oral repatriation agreements were not included in formal agent training, and that agents simply learned how to process children on the job.

In 2004, the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States (Mexico) and the Department of Homeland Security (DHS) of the United States of America entered into a memorandum of understanding (MOU) on the safe, orderly, dignified, and humane repatriation of Mexican Nationals. The 2004 MOU called for the revision and updating of all regional agreements pertaining to repatriation.

That same year, parties to the MOU developed an "action plan" to achieve the objectives of the agreement. The plan reiterated the need to update regional repatriation agreements and emphasized the need for both countries to collaborate on the repatriation of migrants to their place of origin within Mexico to ensure their safety. Four years later, a review of the regional agreements bears no evidence that this collaboration has been pursued.

The Mexican Consulate reports that there are 11 regional agreements currently in use: six along the border and five in the interior of the United States.[57] To date, the Mexican Consulate reports that only one of the agreements along the border has been revisited.[58] Mexican authorities in Texas and Arizona expressed concern for the need to update the remaining agreements along the border based on their experience of frequent deviations from the existing agreements.[59] According to SRE executives, DHS and SRE have developed a model agreement to be implemented in the future in every region of the United States. However, authorities have not made the model agreement a public document.

There are no clear and enforced written agreements between the United States and Honduras detailing protocols for the safe return of children.

55 Not all Mexican ports of entry have shelters or child welfare programs prepared to receive unaccompanied children.

56 Border Patrol staff interviewed, including two supervisors, requested anonymity to protect them from institutional reprisal.

57 The five agreements that cover interior regions are general agreements and not specific to, but include, issues of repatriation.

58 See Appendix F – *Local Agreements with Mexico* for sample text of the agreements. While most local agreements have not been revised, pilots of the newly developed model-agreement on repatriation have been implemented in cities such as El Paso and Chicago.

59 For example, one consulate was concerned that consulates were not always notified of Border Patrol's detention of a child, or the child's release to another authority. Several consulates raised concerns about children being returned after hours. These concerns parallel historic criticisms of the agency raised in Juvenile Repatriation Practices by Border Patrol Sectors on the Southwest Border. (September 2001) Department of Justice Office of the Inspector General. Report No. I -2001 -010. See http://www.usdoj.gov/oig/reports/INS/e0110/index.htm.

A seven-year-old boy makes a sign out of toilet paper (*comida* or 'food') on the window of the USBP cell in which he is held. No agent responds to his request.

Honduras and the United States have no formal written agreements or protocols for the children's return. As a consequence, there is significant variation in the practice of advance notification of a child's return. Honduran migration and child welfare officials reported that when the United States does give Honduras advance notice of flight manifests that include unaccompanied children, the date and times are often inaccurate.

Removal Finding #2: Children experience maltreatment by U.S. immigration authorities.

Participants reported treatment and conditions inconsistent with how U.S. and international law maintain children should be treated.

Children reported clear instances of abuse and maltreatment while under U.S. Border Control custody, including:

- Inattention to repeated requests for medical attention;
- No access to water while in the border patrol station;
- Having to sleep on the floor without a blanket in a heavily air conditioned cell;
- Not being given any or enough food;
- Not being allowed to contact family;
- Being struck and knocked down by agents;
- Being handcuffed; and
- Being transported "like dogs," in kennel-like compartments.

I asked and asked for water and they [CBP agents] did not give me any. Once they put me in the room they told me, 'There is water.' There was a jug but it had no water. And they entered, and I wanted to ask, but then they closed the door, so I went all night without having a drink of water. For that reason I am dehydrated right now.

Alejandra, 17, from Durango, Mexico

Children do not recognize themselves as victims and therefore cannot be relied upon to make an outcry.

A list of experiences that young participants described, but did not identify as maltreatment illustrates the inappropriateness of relying on a child's outcry to initiate an assessment for the child's need of assistance or protection.[60]

- One boy described being locked in a bathroom at a border patrol substation for hours until transferred;
- Several children mentioned being laughed at by the Border Patrol who apprehended them;
- One girl said she was threatened at gun point by Border Patrol; and
- Of the six participants who reported being handcuffed[61] only one described the experience as maltreatment.

The reason that children did not claim maltreatment in these instances is not certain. Whether a lack of self worth, a lack of faith in authorities, a deferential respect for adults, or any number of cultural barriers affected the child's understanding and decisions likely varies by the individual child. A study on the identification of trafficking victims, commissioned by the U.S. Department of Health and Human Services, stipulates that two primary impediments to the identification of victims are that neither the victim nor the law enforcement agent recognizes the individual as a victim of a crime.[62] Arguably, a similar dynamic is played out in the assessment of unaccompanied children, as child victims are less likely than adults to recognize themselves as such. The Department of State also explicitly takes this position in its 2008 report on human trafficking stating that, "victims should not be expected to identify themselves."[63]

60 The children who suffered these conditions did not characterize them as abuse or maltreatment, but were in no way indifferent to the experience. The children were scared, angry, embarrassed, or said that it hurt. Yet, they did not define their treatment as abuse, nor blame U.S. authorities for their treatment. Most children were unable or unwilling to advocate for themselves, or unaware of their ability to do so.

61 Two of the participants who were handcuffed appeared to have been initially apprehended by DEA patrols along the border, rather than Border Patrol. U.S. authorities determined that neither child was involved in criminal activities. Any protocols or training related to the safe apprehension of unaccompanied minors should be shared with all federal agencies that could possibly become involved, including the Drug Enforcement Agency and national park rangers.

62 See http://aspe.hhs.gov/hsp/07/humantrafficking/IdentVict/ib.htm#Defining

63 *Trafficking in Persons Report*. (June 2008). U.S. Department of State; The department further states that it considers the extent to which a government establishes formal systemic screening procedures to identify victims in its assessment of a nation's compliance with Trafficking Victims Protection Act standards.

Threatening Children with Violence

They [Border Patrol agents] ...took us with them and told us not to try to take off running because if we did we were going to get it and that they were going to pull their pistols out and then they were going to shoot us. We walked with one official. He made us walk around with him about another two-and-a-half hours because he was still looking for the others... There were like potholes full of mud and we were slipping and falling and the guy just laughed and told us, "Cut it out. Do you expect me to help you?" And he didn't help us. I tried to help the little girl and once we got to the car he told us to wipe the mud off on tree trunks so that we didn't mess up his patrol car.

Marianna, 15, from Guerrero, Mexico, relates her experience of apprehension by the Border Patrol. The girl she mentions is an unrelated seven-year-old girl whom Marianna found separated from her family during the confusion of apprehension.

Misinformation Used as a Method of Control

They [immigration authorities] have these freezers they put you into. They put people in there because, according to them, there's some kind of bacteria on your skin and they stick you in there to get rid of the bacteria, to burn off the bacteria.

Will, 17, from the outskirts of San Pedro Sula, Honduras, explaining his understanding of the detention cells that unaccompanied children are held in prior to transfer to ORR.

Interviewer: Is there any particular reason why it is so cold in the cells?

Border Patrol Supervisor: We keep it cold for microbes, germs and stuff like that. It has to be cold. And from experience...

Interviewer: What, is it to keep people quiet?

Border Patrol Supervisor: Yeah. All jails are like that. All jails are like that.

Excerpt from an exchange between a Border Patrol Supervisor and an advocate for children in detention.

The common experience of abusive and degrading treatment shared by many of the study's participants undermines the ability of the agencies engaged in the removal of children to gain a child's trust in authority, which in turn diminishes the likelihood that a child will request assistance or protection.

Why This Matters: Children Injured during Apprehension; Failure to Provide Timely Medical Attention

Alejandra, a slight girl of 13, from the Mexican state of Michoacan, was injured during her apprehension in the summer of 2007 when she was tackled by a U.S. official from an unidentified agency working in conjunction with Border Patrol. Alejandra suspected he was a drug enforcement agent (DEA) as she heard other migrants being asked about drugs.

The man apologized, so Alejandra decided not to press charges when asked by U.S. officials. Despite her age and her compliance, the agent refused to take off her handcuffs. She remained in restraints until Border Patrol took custody of her.

Alejandra had recently had surgery on her arm and the injury aggravated her old wound. She repeatedly asked for a simple pain reliever, but Border Patrol would not give her even over the counter medication.

When the Mexican consulate intervened on her behalf, CBP took her to the hospital.

In the end, however, the medical attention that she received appeared to be designed to respond to the threat of an allegation of abuse, rather than to meet her medical needs (this despite the fact that she repeatedly refused to press charges against the agent). After the medical screening she was subjected to, she never received the simple pain reliever she had requested.

"I told them where it hurt. The doctor felt around and said, 'We'll be right back.' Then another doctor told me, 'We're going to need to take a blood sample from you.' I didn't know what to say so I asked, 'What for?' 'To see if you're pregnant. If you are, we won't be able to do the X-rays.' I told them, 'No, I'm not pregnant,' but they said it was necessary anyway. All I could say was, 'Alright.'"

"After all that, my arm still hurts. It ended up they didn't give me any pills, nothing. The doctors took me in a wheel chair to do the X-rays. They took four or five. They never gave me [results from the tests]."

No medical records or incident reports were relayed to Mexican Child Protective Services (DIF) during Alejandra's transfer of custody from the United States to Mexico. She carried in her pocket a single slip of paper from the doctor's office verifying that they had taken blood and X-rays, but not documenting her symptoms, test results, or diagnosis.

Removal Finding #3: The current system of removal places the burden of triggering protective services on children. Unaccompanied children are ill-equipped to assume this responsibility.

The current system of removal holds the individual child responsible for triggering protective services. For example, children are not systematically assessed by U.S. authorities to detect whether they have been forced into indentured servitude or trafficked. Thus, it falls to the child alone to make their condition and situation known so that relevant protections (such as the application for protective status or the attainment of counsel) may be put into place. For example, CBP posters that target child trafficking victims and direct the child to make an outcry are in English only, relying on the child to read, understand, and act on the message.

Most unaccompanied children do not understand their situation or rights. Lack of understanding due to the child's natural cognitive and emotional limitations is compounded by the complexity, in-

consistency, and unavailability of relevant information. This translates into an unreasonable burden for children, in that it requires maturity, trust, and an *a priori* understanding of the complex U.S. immigration system and other public structures. In a "safe return" paradigm, children would not be solely responsible for determining their own need for assistance or protection. Instead, they would be individually assessed and given specific information to assist them in understanding their current situation, their rights, and their options.

Unaccompanied children were observed to have limited or no understanding of their situation, impairing their ability to ask for help.
Among the study participants, there was a significant range in the child's understanding regarding international relations and the individual's right to travel. Several children made comments indicating that they did not understand which geographic boundaries they had crossed, let alone the related geopolitical implications. While such comments were more commonly expressed by the younger participants, they were not exclusive to this age group. This lack of understanding likely arose both from children's developmental status and their educational background and opportunities.

One of the more common indicators of this phenomenon was frustration on the part of the child with any questions related to their time in the United States, when they did not recognize that they had ever been to the United States.

"I never made it to the United States; I was in Texas."[64]

Alex, 7, from Chiapas, Mexico

Participants also indicated a lack of understanding of what was required of them to be able to cross international borders with authorization. "Why didn't they let me cross? I answered all of their answers in English," said Gilberto, a 13-year-old boy from Mexico who attempted to cross at the official port of entry without papers.

It may seem unnecessary to illustrate how young children who are inherently developmentally unprepared to understand or independently navigate international boundaries and foreign systems are unable to do so. However, it is important to highlight the fallacy of the idea that children are expected to declare any need they may have for protection or assistance to complete strangers.

Current legal service resources are too limited to adequately inform children of their rights or options.
Children from neighboring countries who are subject to near immediate removal receive no access to legal counsel, though they are in theory entitled to seek counsel.[65]

Children in the custody of the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services (predominately non-neighboring children) may receive a "know your rights" presentation that explains the relative benefits of the different forms of removal. The children may also be screened for eligibility for certain types of relief. However, no single agency is

64 In such instances, all study questions related to experiences in the United States were rephrased to reflect the child's understanding; i.e. replacing such clauses as "While you were in the United States" with "While you were in Texas." In this particular instance, due to his level of understanding, the child was not able to participate in the formal interview process.
65 See the decision in the Perez-Fuñez case which ordered the INS to allow detained unaccompanied children from Mexico and Canada to contact their family or counsel by phone prior to removal from the U.S. *Perez-Fuñez v. INS*, 619 F. Supp. 656, 662 (CD Cal. 1985).

They [U.S. authorities] told me I had to sign some papers so they could deport me. That's what I understood, nothing else. Well, they explained that the only right I had was to be over here [Honduras] because over there in the U.S. I had no rights because I was an illegal. How was I going to ask [for permission to stay] if someone was already there to take me back? I wanted to stay there but they couldn't let me. They told me I had to be deported back.

Carlos, 16, from rural Central Honduras

responsible under statute for providing or coordinating these services, and no public funding has been made available for legal representation. ORR, EOIR, and the advocacy community have developed programs to provide these services, yet services are limited by the availability of funded staff or local pro bono legal service providers to present this information. As a result, presentations are often made to large groups and only on certain dates. The format and availability of these services are often inadequate to overcome the obstacles of understanding and mistrust that prevent children from asserting their needs and rights.[66]

We observed rights presentations and screenings in nine ORR facilities, while conducting field research. These services varied significantly in availability and quality. In some facilities, children were obligated to observe the rights presentations on a weekly basis, throughout the course of their detention. In other facilities, children observed the presentation just once, and sometimes only after they appeared in court. As a result, children are likely to make decisions about their removal with limited or no access to information on their options.

The quality of the presentations varied greatly, as well, with the experience and language skills of the presenters and screeners. In some instances services were conducted by professionals with educational or legal backgrounds. In other facilities services were provided by law students with little to no familiarity with Spanish or experience with children – or volunteers with no legal experience.

Between the two case studies, including 33 children, the author identified only one child with demonstrable understanding of his rights and the alternatives he had under the U.S. system.

We explicitly questioned the seven Honduran participants, all of whom were detained by ORR and stood before an immigration judge, regarding their access to information in their native language and information specific to their rights and options.

Two of the boys claimed that the Border Patrol did not provide any written or spoken information in a language they could understand (Spanish). A third boy claimed that he was provided information and materials in Spanish, but that the translation did not make sense.

Four of the Honduran boys stated that they did not understand the papers they signed while in Border Patrol custody. Two of the three who claimed understanding nevertheless made comments indicating they had an incomplete understanding. For example, one boy explained (incorrectly) that the papers he signed for the Border Patrol were simply to create a record of his presence in the event

66 In assessing the provision of informational materials to unaccompanied children, it is important to consider that most unaccompanied children have a limited educational background, and that immigration law is complicated. The child's original motivation for migration and the child's migration experience (i.e., escaping violence and abuse en route or in the United States, or involvement with trafficking), may also make it difficult for a child to trust or confide in authorities.

that he might choose to visit the United States in the future. Only one of the participants appeared truly capable of reading and understanding the context of what he was asked to sign.

Removal Finding #4: Children are commonly denied access to a lawyer.

Children from neighboring countries have no viable access to legal counsel.
With the exception of the relatively few Mexican children entered into ORR care, none of the unaccompanied children from Mexico with whom we met had received legal assistance or even the opportunity to request legal counsel to contest their immediate removal.[67] Currently, there is no standard requirement or mechanism to assess a child's eligibility for protective status or family reunification if that child is from a neighboring country. As a consequence, children from neighboring countries may be returned to dangerous situations and separated from their families. Family separation can occur when parents are detained separately from their children, have a legal immigration status that does not transfer to their children, or are located in the United States and are not apprehended.

The lack of legal representation for children who have spent the majority of their lives in the United States, yet are apprehended and removed without their families to a country they may not remember, is a particularly compelling tragedy. According to DIF (Mexico's Child Protective Services) representatives, there has been a recent increase in the incidence of Mexican citizen children who have grown up in the United States and are removed to Mexico without their families.[68] DIF staff described cases involving teenagers initially apprehended by local U.S. law enforcement for non-criminal acts, such as speeding, then removed once a background check failed to substantiate citizenship. In some instances, the children were reported to have lived in the United States since infancy and to have been unaware of their immigration status. These children sometimes have no family in Mexico to receive them, and are unfamiliar with Mexican culture and sometimes even language. DIF child welfare experts report that such cases are very difficult to serve, and that the children do not integrate well into Mexican society. Access to counsel potentially could provide options for relief to these children.

Children from non-neighboring countries receive inadequate access to counsel.
Somewhere between 50 to 70 percent of detained unaccompanied children who face an immigration judge lack legal representation.[69] Even those who have an attorney are not necessarily well represented. For children who are unable or unwilling (e.g., due to a lack of eligibility, or a lack of trust) to present sufficient cause for relief to an attorney, the most likely result of their immigration case is an order of removal to their country of origin.

We identified the Honduran interviewees with the assistance of their U.S.-based attorneys, thus skewing the pool of interviewed children in favor of those with legal representation. Several of the participants' comments on the topic of representation, however, are illustrative of the limitations

67 None of the children interviewed in Mexico reported having had legal counsel in the United States. In Texas, we did meet with several Mexican children in ORR care who were initially apprehended outside of the border region. These children either were apprehended in areas that did not have specific agreements with the Mexican Consulate, or were remanded to the care of ORR when federal authorities were unable to contact the Mexican Consulate. One boy was apprehended over the Fourth of July. According to the records provided to his attorney, the Mexican Consulate was closed for the holiday. The child was transferred to a Border Patrol facility near the border and then placed in ORR care.

68 From interviews with DIF staff along the U.S.-Mexico border. (March 2007 through January 2008).

69 The estimate of the current rate of representation was provided by Brané, Michelle. Director of the Detention and Asylum Project of the Women's Commission on Refugee Women and Children, via e-mail, 4.11.08. Previous studies state 90 percent of unaccompanied children lack representation. See Nugent, Christopher. (2006) *Whose Children are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*. Public Interest Law Journal.

of the current services available. One of the boys claimed that he had an attorney represent him in court, but that he had not been informed of his rights or options prior to court. Two other participants claimed that legal providers told them of their rights, but that they had no legal representation present with them in court.

Removal Finding #5: U.S. fails to implement international conventions, denying many children access to their consulate.

The Vienna Convention on Consular Relations, one of the most fundamental laws of international relations, provides that all persons detained by a country that is not their own have the right to contact their consulate. Moreover, if the individual is an unaccompanied child, the Convention states that the detaining country must notify the child's consulate immediately. (Other international conventions also speak to the situation of unaccompanied, migrant, and detained children. For more information on the Vienna Convention and other relevant international norms, see the Related Federal Code and Legal Precedent backgrounder.)

Responses by study participants indicate that the Vienna Convention's provisions are not regularly applied to either neighboring or non-neighboring children in removal proceedings. When the United States fails to honor the Convention in this manner, it seriously undermines our ability to demand compliance from other nations in their treatment of U.S. citizen children.

The manner in which foreign consulates are notified of a child's presence in U.S. custody and allowed to interact with that child is not uniform.
Consulates are at times advised by Border Patrol immediately upon the child's initial detention, but at other times are informed of the child's presence (either by BP or ORR) only immediately prior to the child's physical removal.[70] The vast majority of the children interviewed reported either that they had no contact with their consulate while in the United States, or that contact with the consulate was first established during the process of their physical removal (rather than immediately upon the child's detention). The reports of inconsistent practices are supported, in part, by the country-of-origin consulates. Mexican Consulates based in some border patrol regions reported only being allowed to speak to children immediately prior to their departure, while other consulates were informed early enough in the process to contact the child's family in sufficient time to allow them to receive the child following removal.

Neighboring Children Denied Access to Consulate. (Mexico: 18 boys, eight girls)
The Border Patrol, or ICE in cases involving children apprehended in the interior of the United States, is responsible for informing the Mexican Consul that there is an unaccompanied child to be removed. The consul is responsible for interviewing the child prior to his or her removal.

The manner in which consulates are notified of a child's presence in Border Patrol custody and allowed to interact with that child is not uniform. Consulates are advised by Border Patrol immediately upon the child's apprehension in some cases, and in others informed of the child's presence only immediately prior to the child's removal. And, in more than one region of Mexico, consulates and children reported instances in which consulate notification did not occur at all.

70 In one instance a Border Patrol agent commented that if a child claims to be emancipated from their parents that U.S. officials are under no obligation to notify the consulate of the child's detention. This is a clear misunderstanding of the requirements of the Vienna Convention.

Only six of the 26 participants recalled any contact with the Mexican consulate while in the United States. Five children reported that the consulate visited them while in U.S. Border Patrol custody, and the sixth said he was interviewed by the consulate over the phone. Most of the other 20 children either denied having any contact with the consulate, or specified that the extent of their contact with the consulate was when a representative from the Mexican Consulate physically escorted them across the bridge and delivered them to Mexican migration authorities.[71]

The neighboring-country child's lack of access to, or meaningful contact with, their consulate means there is no opportunity for the consulate to play a role in evaluating the child's situation prior to removal. This lack of consulate access, combined with the child's lack of access to legal counsel, places the child at great risk of separation from family or return to an unsafe situation, and fails to identify children eligible for and in need of special protection by the United States.

Non-Neighboring Children Denied Access to Consulate. (Honduras: seven boys)
The Honduran children, five of whom were in DHS custody for over a week, uniformly maintained that they had no access to their consulates while in the initial custody of enforcement agencies (e.g., CBP, ICE, or local authorities).

Five of the boys affirmed that they did have contact with their consulate while they were detained in ORR shelter care. Consular contact in ORR placement was not always immediate, however. One boy specified that he was in ORR care for over a month (and had already been to court and agreed to removal) before he was first put in contact with his consulate.[72] Another met with his consul only moments before his removal hearing. The two boys who recalled no contact were adamant that they were never in contact with their consulate while in the United States.

Removal Finding #6: Non-neighboring children are detained for unreasonable amounts of time.

Based on standards established in the Flores Settlement Agreement[73] and DHS's own policies, the non-neighboring unaccompanied children should not be detained by DHS for more than 72 hours.[74] However, in practice Honduran case study participants endured prolonged detentions with DHS and ORR subsequent to receiving their order of removal.

On average, the seven Honduran boys spent just under three days in the United States prior to apprehension. Six of the boys were interceded by the Border Patrol and held for over 72 hours. They spent a combined total of 53 days detained in Border Patrol Stations (just under nine days on average). They spent more time in United States custody than at large in the United States, even before transfer to ORR.

Two of the boys were transferred from one DHS facility to another during their initial detention, rather than being expeditiously transferred to the care of ORR. They experienced prolonged detention in CBP facilities under conditions inappropriate for children. The boys were subjected to inadequate provisions of food, a lack of access to their consulate, and uncomfortable facilities.

71 The same factors that make unaccompanied children poorly equipped to make decisions regarding their fate without counsel, or to identify themselves as victims of trafficking, also limit the accuracy of their self-reports.
72 The interview survey did not include a question about delay in contacting the consul once in ORR care (as a lack of contact with the consulate prior to placement with ORR is in itself a delay by Vienna Convention standards). Two boys self-reported on not having timely consular contact while in ORR care, but this information was not solicited from all participants.
73 A landmark decision that establishes standards for the treatment of unaccompanied children in U.S. immigration detention.
74 Haddal, Chad. (March 1, 2007). *CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues*. Congressional Research Services.

Unaccompanied boys in ORR detention wait for their turn to play ball. When ordered deported, these boys wait for prolonged periods as arrangements are made for their return to their country of origin.

Once transferred to ORR, the participants spent a total of 550 additional days in ORR care, for an average ORR placement of 79 days. Well over a third of this time was after the immigration judge's order of the child's removal (see table below), suggesting that delays result from both inadequate timely access to immigration courts and failure to expedite repatriation after children have been ordered removed.

Prolonged detention exposes children to stress and risks of institutionalization, and wastes public resources that—within a child welfare paradigm—could be better used to provide legal and protective services to children seeking relief or to facilitate repatriation services for those returning to their country of origin.

Account of Time Spent in the United States by Honduran Case Study Population

	Total	Average
Days in U.S. prior to Apprehension	20	< 3
Days in BP Custody*	53	> 8
Days in ORR Custody	550	79
Total Days in U.S.**	625	89
Total Days in Custody**	605	> 86
Days Spent in U.S. After Receiving Order of Removal	194	28
Estimated Cost of Detention Subsequent to Receiving an Order of Removal***	$22, 892	$3,815

* Response includes only six of the seven participants as one was held by local law enforcement prior to transfer to ORR

** Includes two days that one boy spent in local jail detention

*** Based on average per diem shelter care cost of $118 provided by ORR

A representative from the Mexican Consulate awaits the release of a group of unaccompanied children from a USBP perrera. He stands in the middle of an international bridge, between the two countries.

Removal Finding #7: With no regulations that ensure safety, the U.S. creates unsafe transportation conditions for children being returned.

Unsafe Transportation for Children Being Returned: Mexico.
Most unaccompanied Mexican children are apprehended near the border and are transported via Customs and Border Protection land vehicles to the nearest port of entry.

Once the child arrives in Mexico, a representative of the Mexican Consulate assumes custody and physically escorts the child to the INM office on the Mexican side of the border. In some areas where the port of entry involves a bridge, children are transported by Border Patrol to the middle of the bridge. There they are met by a Mexican official and the children are escorted the rest of the way across the bridge on foot, through traffic and mixed with the general population. Children are typically escorted by only one official from Mexico. This situation presents a number of risks to the immediate safety of the children. When U.S. officials release their custody of undocumented children, they return the child's personal belongings to them, including their shoelaces and belts, in full view of the public and potential predators. The children must then make their way through traffic and crowds, pulling up their pants, putting on their shoes, and carrying all of their valuables, with only one adult to protect them. While this arrangement may be adequate in cases where a single child is being returned,[75] in many instances the single consular agent is escorting multiple children. We found no regulations related to the escort-to-child ratio on the part of either U.S. or Mexican authorities.

75 Two of the study participants reported that, while under the escort of a single agent, one of the children included in their repatriation party ran away while crossing the international border. The agent was forced to choose between pursuing the child into the crowd—risking the safety of those that remained—or continuing to protect the rest of his charge.

In interviews with the author, Mexican officials from various agencies expressed extreme concern for the manner in which the U.S. Border Patrol transports children. Consular officials commonly referred to the Border Patrol's trucks, in which children ride in a covered bed, as dog kennels, or *perreras*. These trucks are regarded by Mexican officials as unsafe and undignified, an opinion shared by U.S. advocates for child safety.[76] There are no seatbelts and little overhead clearance to protect the child from injury when patrol vehicles are off road or on rough roads. Border Patrol agents ride in the truck's cab, leaving girls, boys, and unrelated adults commingled with no supervision.

The fact that the agents ride separately is also significant as regards the conditions of the truck beds, where the children ride. Beds have separate ventilation systems from the cabs. According to a Border Patrol supervisor this measure is meant to protect agents from airborne diseases. As a consequence, drivers are not aware of or affected by the passengers' conditions. We observed the transport of children in a Border Patrol truck with no rear functioning air conditioning unit, on a day when the temperature reached 100 degrees Fahrenheit. Moreover, the cargo or transport compartment, where the children rode, was caked in mud and smelled strongly of urine and waste. Four girls and a boy traveled inside.

Unsafe Transportation for Children Being Returned: Honduras.
The Honduran children who participated in the study were removed via commercial flights, either individually or in large groups.[77] ICE claims to also employ a separate means of transportation that is far more alarming.[78] ICE reports that it continues to transport unaccompanied children on Justice Department, or JPAT, flights. ICE charters Department of Justice planes to deport mixed populations of adults of both genders and both immigration and criminal offenders. Individuals returned via JPAT flights are shackled and handcuffed throughout the flight, and are uniformly treated as criminal offenders in every respect. They wear identification tags on their arms and their personal belongings are transported in clear garbage bags. The removal of children via JPAT chartered deportation flights is wholly unacceptable in consideration of the vulnerability of children.

The author observed children returned by ICE via commercial airlines. Honduran statistics confirm that many children are returned by this method (See Appendix E – *Honduras Statistical Data*). However, Immigrations and Customs Enforcement did not provide data to enable confirmation of which method of transport, commercial or JPAT, is more commonly used for non-neighboring children.

Removal Finding #8: Children are returned to unsafe conditions.

Neighboring Children Returned to Unsafe Conditions: Mexico.
Mexican authorities expressed concern that children were being removed from the United States and returned to unsafe conditions in their home countries. Mexican authorities from more than one port of entry expressed concern that children are being repatriated in the middle of the night, and that sometimes even consulates are not notified of a child's apprehension and removal. Mexican authorities also told of instances in which U.S. officials had repatriated children to ports of entry not

76 The American Academy of Pediatrics states that children should never be transported in the cargo area of covered trucks due to the lack of safety inherent to this type of transport. Enclosed cargo areas (camper shells) do not provide adequate protection against injury to occupants. In 1997, 14 percent of cargo area deaths of children and adolescents younger than 20 years were in enclosed cargo areas. Carbon monoxide poisoning, which may result in death, is an additional hazard to those traveling in the enclosed cargo area of a pickup truck. See http://pediatrics.aappublications.org/cgi/content/full/pediatrics; 106/4/857.
77 We observed the arrival of one flight with over a dozen children in the escort of a single ICE officer.
78 This information was included in ICE's response to direct inquiries. See Appendix B – *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies* for full text of ICE communication.

specified in the regional agreements, with the result that there was no appointed representative of the Mexican children's protective services agency (DIF) or immigration agency (INM) at the port of entry to receive the children.

Through interviews with both Mexican authorities and the child study participants, we encountered several scenarios in which children at extreme risk of involvement in a dangerous situation (including organized crime and repeated migration—an inherently risky scenario and a potential flag for identifying trafficking victims) were returned by the U.S. to Mexico without protective intervention from either country. Enhanced collaboration, data exchange, and interagency training could address this problem. For example, Customs and Border Protection could alert Mexican consular authorities when a child detained by CBP appears to have a history of repeated removals. Close attention to these cases from a child protection—as opposed to a law enforcement—perspective may reveal when a child is at serious risk and eligible for special services.

Non-Neighboring Children Returned to Unsafe Conditions: Honduras.
The U.S. Border Patrol operates a database that can determine if a child has been detected and removed in the past and at what point of entry. This information could be put to invaluable use in the detection of children caught in a trafficking cycle or ensnared in organized criminal activities. However, we found no indication that the data were ever used for the protection of children, but instead were used solely to identify children with multiple crossings for purposes of imposing stronger enforcement measures.

Only two of the seven Honduran children reported that any U.S. immigration authority asked whether they were fearful to return home. Only one of these two remembered being asked by the immigration judge ordering his deportation. Given that children are unlikely to independently assert themselves as victims, it is crucial that any fears they may have be solicited and considered, to ensure their safe return.

The consequences of not soliciting, assessing, and responding to a child's fear of return can be catastrophic, as illustrated by the story of Edgar Chocoy (his real name). Fleeing the violence and gangs in his hometown in Guatemala, 14-year-old Edgar arrived in the United States.[80] After a lengthy

Look, back in Honduras they…didn't let me study. Every time I went to night school, I got shot at because the gangs wanted me to join them. I told them no and so they wanted to kill me. They wanted to murder me and that's why I came here [to the United States]. To see if I could study here.

Daniel, 16. Originally from the outskirts of Tegucigalpa, Honduras, he relocated by himself to Guatemala.[79]

79 Daniel, a Honduran, was interviewed in Mexico after being incorrectly assessed by U.S. Border Patrol as Mexican and immediately removed from the United States. As he did not fall into the exact demographic of either case study, his responses are not included in either. We frequently encountered children from non-neighboring countries in DIF care, subsequent to their mistaken return to Mexico. U.S. immigration officials allow DIF 48 hours to identify and return these children to the United States. When the non-neighboring child's nationality is determined outside of this time frame, the child is subject to return to his country of origin by Mexican processes. This policy precludes the child's reunification with any family members located in the United States, and may result in the child's return to a country where he has no legal guardian. The United States should discontinue limits placed on the return of children to the United States after removal to a third country (i.e. not their country of origin).

Why This Matters : Due to Lack of Coordination, U.S. and Mexican Authorities Fail to Detect Children Stuck in the Cycle of Migration

Adriana, nine, left her home in Guanajuato, Mexico and traveled north with her mother and two brothers, ages seven and 13. They traveled for days on buses and trucks to the Texas border. They were traveling with her mother's good friend and her two young sons, ages seven and nine. Both women had husbands in the United States who had sent for them. When the two families reached the border, the mothers hired guides (*coyotes*) to take the children across the Rio Grande in rafts. Once the families reached the other side, the women found another guide to help transport the children to Houston, where their husbands lived. Adriana didn't understand why, but she, her youngest brother, and one of the boys they were traveling with were separated from their parents. The car that their guide was driving was pulled over by the authorities at a check point.

The children spent several hours in a border patrol station and were removed to a shelter in Mexico without their mothers, and with no idea where their other siblings were. As the children visited with us, they were certain that their mothers would come for them. Adriana pressed the wrinkles out of her purple cotton slacks while describing her dreams of one day becoming a teacher. Her brother cried softly, saying he wanted to go home. Their companion was anxious: unsure where his little brother was, and with whom. The children's worries were temporarily forgotten, however, by a turn on the trampoline.

Four days later and 30 miles away...

We found Adriana and her siblings in another DIF shelter after they attempted to cross the border a second time. The children's clothes, legs, and arms were now covered in mud. They smelled of urine. Their faces were swollen and red from crying and Adriana could not stop sobbing. Their mother did not come to pick her up; she stayed in the United States. DIF released Adriana, her brother, and their friend to Adriana's grandmother, who apparently then handed the children over again to the guides her mother had hired. This time the children were caught in the process of crossing the river. They had been chased by the Border Patrol and detained, soaking wet in a heavily air conditioned station, before they were returned to Mexico. The DIF shelter that received them had no access to the database and records of DIF shelters in other cities. DIF had no idea that the children's grandmother had previously returned them to traffickers.

If the children had had access to their consulate in the United States, the likelihood of their repeat migration may have been identified upon their second apprehension, and protective measures established.

If the U.S. authorities had noted their recent previous apprehension and alerted the local DIF shelter, DIF agents may have been able to identify a safe alternative for the children's placement, or to build a case against releasing the children to their grandmother.

The children were terrified that they would be made to cross again. In all likelihood, they would be.

detention by U.S. immigration authorities and a failed petition for asylum, Edgar was returned to the dangerous environment he had so desperately tried to escape. In order to avoid confrontation with gang members, Edgar hid inside his house for months. Eventually, he went outside and was shot dead within blocks of his home. Edgar's story is an extreme example, but not an isolated case. The author came across reports of similar cases in Honduras which resulted in the child's death or injury subsequent to removal from the United States.[81]

Why This Matters: Our Failure to Assess the Safety Needs of Neighboring Children and Provide Them Meaningful Access to Representation Results in Their Return to Dangerous Situations

Juan, 16, from Tamaulipas, Mexico grew up in a small community on the Mexico side of the Texas border that has a reputation for narcotics, crime, and violence. At an early age Juan was abandoned by his mother, and he barely knew his father. As a young homeless boy on the street he found protection and shelter by joining a local gang. As he grew older, he became both increasingly concerned about his personal safety and more spiritual. He dreamed of a life without violence, but feared the consequences of abandoning his gang. The nearest escape was just on the other side of the river.

"Wherever I am, I always tell everyone not to believe that joining a gang is a way to escape your problems. The only one that can take away your problems is He who's in heaven above. And if you have faith in Him... and tell your mother how much you love her because you only have one mother in this world."

At the age of 15, Juan relocated to the United States. After living here for six months, he was pulled over by local police for driving without a seatbelt. The police searched the vehicle and found marijuana. Juan was sentenced to juvenile corrections for a year. He claims that a judge informed him that he would be appointed counsel, but he never had the opportunity to meet with an attorney nor with his consulate. Consulate records from the region in which he was held confirm that they did not have contact with him during his incarceration and release.

continued ►

80 Edgar's real name is referenced here, as his story has received a significant amount of media coverage. See for example Campbell, Greg. (March 27, 2008). *Remembering Edgar Chocoy*. Fort Collins Now. See http://www.fortcollinsnow.com/article/20080327/NEWS/230019754. All other children's stories offered in this report rely on pseudonyms to protect the identity of the child.

81 In the course of interviewing non-neighboring children in ORR care, we also met with a non-neighboring child who had migrated to the United States twice to escape gang violence. The child's fear of return was ignored and he was returned both times. Like Edgar, after his second deportation the child hid in his home for months only to be attacked the first time he attempted to leave his home. The scars from this attack served to substantiate his fear of return upon his third attempt to seek protection in the United States.

After serving his sentence he was released to U.S. immigration authorities. It is unclear to which branch he was released and without consular records there is little hope of confirming whether he was ever ordered deported by a judge, or was simply removed as other Mexican children. Once he was returned to Mexico he was placed in the custody of DIF.

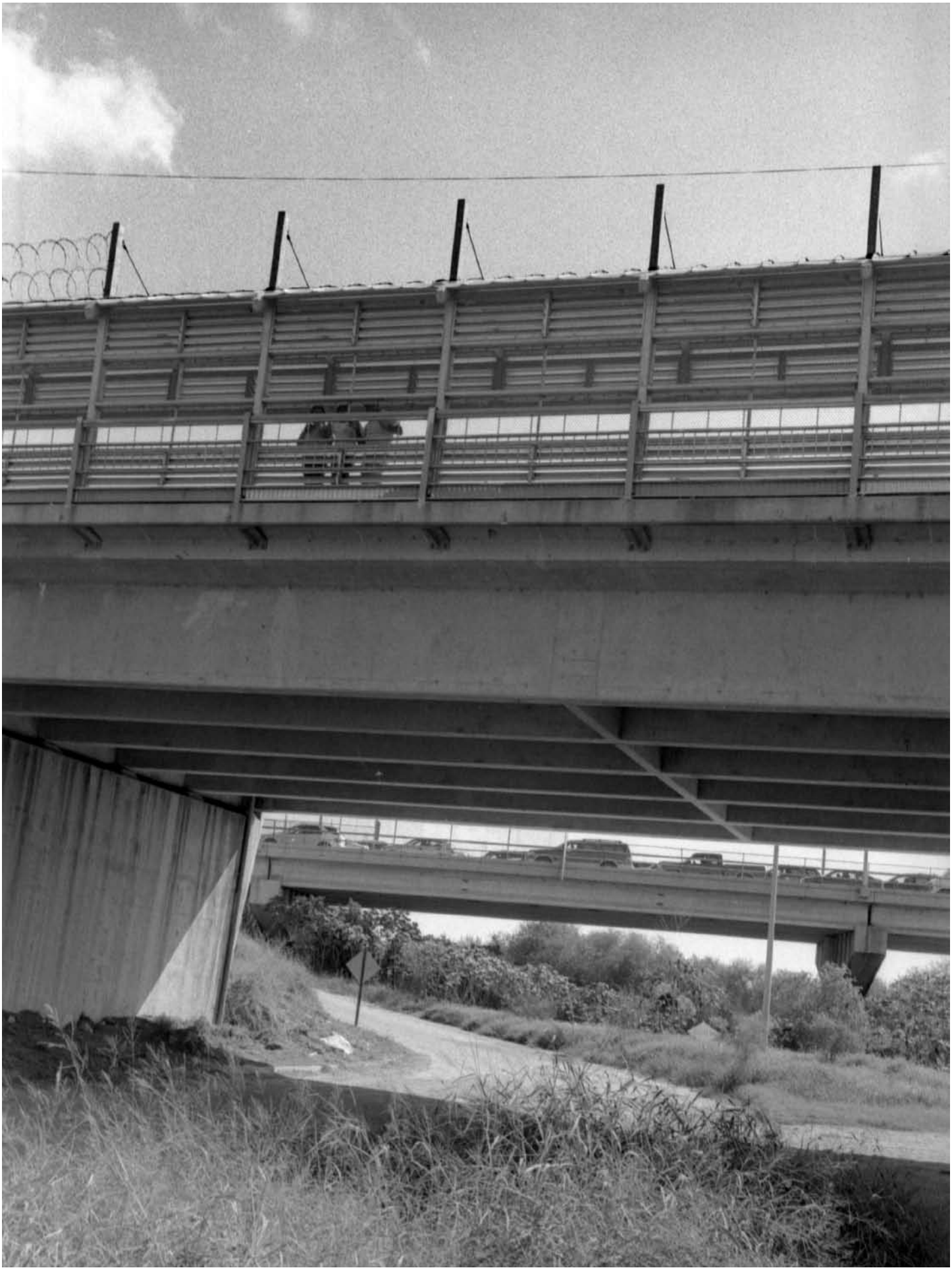
Ultimately, Juan was held in DIF facilities for over a week and then placed on a bus back to his hometown. The shelter coordinator explained that in instances where no family can be located, children are returned to their community of origin to be placed in the care of their local DIF. There is, however, no DIF shelter for children in Juan's home town. Nor would DIF accompany Juan to his hometown as it was assessed as too dangerous for the adult staff. Juan was last seen on a bus back to his hometown.

"The truth is, I'm not sure where God will send me, maybe far away. Maybe send me back to my mother because I'm really afraid the gangs might hurt her or kill her."

Children in at-risk situations need extra guidance to grasp their situation, understand the risks that face them and find alternatives. When the decision is left up to the children, without the provision of this support, they may choose to return to a dangerous, yet familiar situation.

How a "Safe Return" Paradigm Could Have Changed Juan's Story

- Had Juan been provided adequate representation by counsel, his potential eligibility to remain in the United States for his own protection under special immigrant juvenile status (SIJS) might have been recognized and pursued.
- Had Juan been placed in touch with his consulate, in accordance with the Vienna Convention, he might have received further assistance in locating his relatives or in securing competent counsel.
- Had the law enforcement officials who initially discovered his immigration status paid attention to or asked about the visible bullet wound scar on his 15-year-old body, Juan might have been referred to child protective or victim's services instead of simply to the correctional and immigration systems.
- Had Juan been referred to the Office of Refugee Resettlement—the presumed standard procedure for children released to the immigration system from the juvenile justice system—he could have shared his story with social workers and sought legal representation.
- Finally, had Juan been a U.S. citizen with a similar personal history and a nearest living relative in Mexico, the primary focus of resolving his case would have been the pursuit of his safety, permanency, and well-being. Instead, as an unaccompanied child from Mexico, his custodians in the United States were simply focused on getting him out of the country.



Repatriation

REPATRIATION AS IT COULD BE

The repatriation process begins at the point that the United States relinquishes physical custody of the child to his country of origin. Throughout the process, the U.S. always should consider the best interest of the child. When children are repatriated, their safe and secure return to a situation that nurtures their well-being and provides the permanency (i.e., stability) necessary for their development should be the priority.

REPATRIATION AS IT IS: UNDERSUPPORTED BY THE UNITED STATES

There is no clearly designated authority under U.S. law or regulation responsible for ensuring that repatriation of children to their countries-of-origin is safe. ICE currently maintains that country-of-origin consulates are responsible for the child's safety and reintegration.[82] But, if this means that U.S. authorities can knowingly place children in the custody of consulates not equipped or prepared to protect the safety and best interests of the child, then this practice is, at the very best, unreasonable. At worst, the practice is reckless and fails to live up to core American values on the treatment of children and youths.

The reality in both Honduras and Mexico is that a lack of funding, political will, and stability can and often do compromise the extent to which country-of-origin authorities can ensure a child's safe and complete reintegration. Just as with the U.S. agencies involved with the removal process, our research revealed a lack of coordination among country-of-origin agencies; lack of policies and procedures; unsafe conditions for transporting children; potentially abusive situations; and a lack of organized repatriation services.

General Repatriation Finding: Because U.S. authorities lack understanding of, and do not consider, country-of-origin public structures and capacity, children are returned to unsafe conditions and situations.

In both Mexico and Honduras, returning children can face significant challenges to their safety, well-being, and short-and long-term reintegration. These challenges include the threat of violence, poverty, and dangerous work conditions, and lack of educational opportunities and protective public structures.[83] The United States is not prepared to stop all returns of children to conditions of poverty and limited opportunity. But it is reasonable to expect U.S. authorities to recognize and consider how the conditions to which a child will return may effect the immediate safety and best interest of the individual child, to what extent the child is being placed in a dangerous situation, and the degree to which conditions at home create a substantial risk of attempted reentry into the United States.

82 This information was included in ICE's response to direct inquiries. See Appendix B – *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies*.

83 This is not an exhaustive list of concerns. It presents common themes from the two case studies that support this particular finding. Related issues, such as weaknesses within child welfare agencies, are addressed in the country-specific analysis to follow.

Why This Matters: Children Returned to the Very Same Circumstances That They Originally Fled, with No Support, Redress, or Attention, Will Likely Attempt to Return to the United States

Walter, 17, is from one of the roughest neighborhoods in Tegucigalpa, Honduras. Out of safety concerns, city buses and taxis will not travel within a half mile of his home. Walter dropped out of school in the second grade and has worked in manual labor ever since. When he was 15, his girlfriend became pregnant. The couple moved in together, got married, and began planning for the baby. The prolonged illness of a family member suddenly depleted the little savings he and his parents had.

Adamant that his son would be born in a hospital, Walter set out for the United States to build a nest egg before the baby arrived.

At the Texas border, Walter was apprehended. He was handcuffed and held by Border Patrol in a small cell with 17 other boys for nearly two weeks. Once transferred into ORR care, it was over two weeks before he saw a judge, and another month before he had any contact with his consulate.

We first met Walter at the ORR shelter in Texas, where he had already been detained for two months. He was extremely agitated, frustrated that in the shelter he was neither earning money for the baby nor supporting his wife. He was desperate to return as quickly as possible and was terrified of missing the birth of his son. He explained that had he not been caught and had been able to work, then the sacrifice of missing his son's birth would be worth it. Not being of use to his family and not being there for his wife and son was more than he could bear.

Walter returned to Tegucigalpa just two weeks before his son's birth. The hospital bill was hundreds of dollars, and he was unable to pay up front.

"Here [Honduras] everything's expensive. It's all about money. If you don't have the money, you can't have the little one. They keep it in the [hospital] until you pay the bill. I need money to help her [my wife]. And I also need money to go work on the other side because I want to give a lot to my family. I want the best for my child."

While the United States cannot attempt to solve all of the problems of the children that it returns, it can take steps to connect children returning to countries with inadequate public structures with the alternative support services, and to promote the development of public structures serving children in the most common countries of origin. Connecting children with resources in their countries of origin and supporting those resources could curb the tide of child migration and reduce repeat migrations. In the end, repeat migration subjects the child to innumerable physical and emotional risks and burdens the U.S. immigration system.

As described in this section, a strong body of evidence from respected sources documents the hazardous conditions that can face repatriated Mexican and Honduran children if they lack family or institutional supports on their return. Conditions such as extreme poverty, while not always life-threatening, are critical factors that can create a strong likelihood of repeated migration attempts, which are often in and of themselves life threatening for children.

Violence

In 2006, the United Nations' Convention on the Rights of the Child Committee reviewed the situation of children in Mexico and reported concern over widespread domestic violence, use of corporal punishment in institutions, lack of laws and mechanisms to protect children from corporal punishment at home or in school, and the persecution of indigenous children.[84]

In 2007, the same Committee examined conditions in Honduras. Its findings include:[85]

- Lack of legal protections from both domestic and institutional violence;
- Discrimination against girls, indigenous, and disabled children (in access to services and in relation to correctional measures–e.g. children with mental health issues may be jailed instead of treated);
- High incidence of violent child deaths and a lack of protection (from all forms of abuse) by authorities in multiple public agencies; and
- Cruel and degrading detention conditions in both correctional and mental health treatment facilities.

Mirroring these concerns, the U.S. Department of State's Bureau of Democracy, Human Rights, and Labor's 2006 Honduran Country Report on Human Rights Practices reports:[86]

- High estimates of children (20,000) living on the street with limited access to social services, (e.g., only 240 government shelter beds for children in the capital city of Tegucigalpa);[87]
- The killing of homeless "street" children by vigilantes, military security forces, and even police;
- High incidence of gang violence; and
- Few legal remedies for child abuse. Of the 1,934 reports in 2006, only 116—about one in 20—were taken up by the courts.

Poverty

Mexico has a young and impoverished population. Nearly 37 percent of the population is under the age of 18.[88] According to the World Bank, while there is a growing middle class in Mexico, 45 percent of the population lives in moderate poverty and another 18 percent live in extreme poverty.[89] (For data produced by country-of-origin sources, see Appendix G – *Mexico Kids Count Data*.)

84 Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Mexico. (June 8, 2006). United Nations Committee on the Rights of the Child. UN Doc. No. CRC/C/MEX/CO/3. See http://www.universalhumanrightsindex.org/documents/829/922/document/en/doc/text.doc.

85 Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Honduras. (May 3, 2007). UN Committee on the Rights of the Child. UN Doc. No. CRC/C/HND/CO/3. See http://daccessdds.un.org/doc/UNDOC/GEN/G07/415/06/PDF/G0741506.pdf?OpenElement.

86 Country Reports on Human Rights Practices: Honduras 2006 (March 6, 2007). Department of State Bureau of Democracy, Human Rights, and Labor. See http://www.state.gov/g/drl/rls/hrrpt/2006/78896.htm.

87 During field research, the author visited several government shelters for abused and abandoned children. These visits were initially delayed, however, as a strike by IHNFA (child service) workers essentially shut the shelters down for over two weeks. In response to inquiries, no one at the agency could speak to the situation in the shelters during this period (i.e., whether they were closed completely or staffed by a skeleton crew).

88 *La Infancia Cuenta en México*. (2006) Red por los Derechos de la Infancia en México. For more information on this data source in English see Appendix G – *Mexico Kids Count Data*.

89 Mexico Country Brief. The World Bank. See http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/MEXICOEXTN/0,,contentMDK:20185184~pagePK:141137~piPK:141127~theSitePK:338397,00.html.

Honduras has an even younger and poorer population.[90] Over 40 percent of the nation's seven million inhabitants are under the age of 15. A recent study by the World Bank defines 50.7 percent of the Honduran population as poor, subsisting on roughly $50 a month, and 23.7 percent as extremely poor, subsisting on roughly $25 a month.[91]

Dangerous and Exploitive Work Conditions

In Mexico, children are often involved in dangerous and exploitive work situations. Advocacy organizations estimate that roughly 95 percent of children ages 12 to 17 years old are employed at some level—although most are not paid a salary—and nearly 15 percent work more than 48-hour weeks.[92] Twenty percent of the 3.1 million migrant agricultural workers within Mexico are children ages six to 14.[93] These children work long hours, often in the presence of dangerous equipment and chemicals.

As might be expected, given the age and means of the general population in Honduras, many children participate in the workforce. Many of these children work in agriculture and industry. Although data comparable to that available from Mexico is not available, the common occurrence of child labor combined with the country's noted lack of public structures for oversight and protection raises concerns for the young workforce.

Limited Access to Education

Nationally, Mexico has a primary school dropout rate of 25 percent.[94] In poorer states, where many migrant children originate, this dropout rate can reach 30 to 40 percent.

According to the Honduran government, more than one in five children ages five to 12 did not receive any schooling in 2006.[95] The World Bank ranks education as the single most important tool to reversing poverty in Honduras,[96] and finds that the state of poverty in Honduras is largely self-perpetuating. The general lack of resources results in extremely high rates of child malnutrition and low levels of educational attainment. The stunted development of children, both physical and educational, negatively affects their ability to perform in the workforce, effectively preventing them from escaping poverty.[97]

Given that the effects of poverty and a lack of opportunity were common motivations for migration among many of the study's participants, promoting educational opportunities would likely serve to prevent future and repeat child migration.

90 Background Notes: Honduras. Department of State. See http://www.state.gov/r/pa/ei/bgn/1922.htm.

91 *Honduras Poverty Assessment Attaining Poverty Reduction. Volume 1: Main Report*. (June 30, 2006). The World Bank. Report No. 35622-HN.

92 *La Infancia Cuenta en México*. (2006) Red por los Derechos de la Infancia en México.

93 Sanchez Venegas, Adolfo (June 21, 2007). *La Pobreza obliga a ninos a dejar sus comunidades en la Montana de Guerrero*. La Cronica de Hoy; This article relates the incident of an eight-year-old boy killed by a tractor while picking tomatoes in a field.

94 *La Infancia Cuenta en México*. (2006). Red por los Derechos de la Infancia en Mexico.

95 Country Reports on Human Rights Practices: Honduras 2006 (March 6, 2007). Department of State Bureau of Democracy, Human Rights, and Labor. See http://www.state.gov/g/drl/rls/hrrpt/2006/78896.htm.

96 Honduras Poverty Assessment Attaining Poverty Reduction. Volume 1: Main Report. (June 30, 2006). The World Bank. Report No. 35622-HN.

97 Ibid.

Trafficking

Trafficking is a term that is not consistently applied and therefore challenging to define. The U.S. Trafficking Victims Protection Act attempts only to define "severe" forms of trafficking, including:[98]

A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Aside from obvious objections to sex trade, illegal child labor and conditions amounting to servitude or slave labor, it is also important to recognize that children trafficked to the United States—presumably by adults—may be at very high risk of being coerced by those adults into attempted re-entry and to the related risks to the life and safety of the child. A serious and inevitable consequence of the U.S. failure to mandate consistent and routine evaluations of the risks associated with each child's removal and repatriation is that children involved in trafficking will not be detected and the opportunity to intervene on their behalf will be missed.

None of the children in the case studies identified themselves as victims of sex trade, but several were brought to the United States for commercial purposes. Of the 10 children who said the decision to migrate was made for them by an adult, four were sent to work.

Because many of the children were uncertain as to the finances surrounding their migration, exact numbers of how many children face a related debt or indentured servitude (e.g., as a means of repaying their transport into the United States) is not possible. The responses offered by a few children, however, raise concerns for the vulnerability of the general population of unaccompanied child migrants.

At least two of the children interviewed were sponsored by a third party for commercial purposes (e.g., someone other than a parent paid for their transport, with the agreement that the child would work off the debt once in the United States). Neither of these children was able to answer whether they would still be obligated to pay back this money or to attempt to cross again.

At least three other children were uncertain if there was a debt. Given that the participants were children, it is possible that some who said for certain that neither they nor their parents had a debt associated with their migration, may actually be unaware of any obligations to a third party.

A 2008 report, *Trafficking in Persons* by the U.S. Department of State, found that Honduras and Mexico are both countries with significant trafficking industries and no public mechanisms for the identification of victims among vulnerable populations.[99] Collaboration between U.S. immigration enforcement agencies and U.S. and country-of-origin child welfare agencies could serve to address this issue for unaccompanied children.

98 Trafficking Victims Protection Act (2000); Sec 103 (8).

99 *Trafficking in Persons*. (June 2008). U.S. Department of State.

Why It Matters: Expedited Removal to the Arms of Her Traffickers?

Alejandra, 17, lived with her widowed mother in Durango, Mexico. Last year, she was nearly finished with her secondary education. She did not want to leave her home, but when a woman from the United States came to her home looking for domestic help, the decision was made for her.

"When I left Durango, it was because a woman in Texas came to get me to work in her home – to help her invalid mother. She brought me here [to the border] with another girl and she left us. Later another guy came to take us across."

When asked if she had a debt related to her travel, Alejandra answered that the woman from Texas owed nothing. She did not appear to understand, however, whether she would owe the woman any money, or be obligated to cross again.

"The woman picked out the *coyote*. She paid him. They charged $300 here and once we got over there they were gonna charge us another $300. If we had made it, the lady would have paid the other $300, but since we didn't get across there is no debt.

"I only have 120 pesos, that's not enough to get me anywhere. The lady here [at DIF] asked me if I was released how I would arrange transport. I told her that I guessed if no one came for me that they would send authorization [for me to leave] and that they would send me money too. If not, how will I leave?

"I hope that someone comes to take me back to Durango. I don't want to cross the river again."

The DIF shelter was prepared to release Alejandra to anyone who her mother designated, including the U.S. citizen who had previously attempted to traffic her into the United States. Staff admitted to having previously released children to known coyotes with parental permission. The staff lamented the situation, but felt that their hands were tied by both a lack of resources and a mandate to respect the parents' wishes.

Collaboration between DIF and the Border Patrol could lead to the identification of children who are repeatedly migrated as a result of potential trafficking situations. Without it, children like Alejandra have no safety net.

The Repatriation Process In Mexico

The Mexican federal agency responsible for oversight of children's protective services is the Desarollo Integral de Familia (DIF). DIF is traditionally headed by the wife of the top elected official; usually the wife of the president is the president of DIF at the national level, the wife of the governor heads DIF at the state level, and the wife of the mayor leads the local DIF. Along with other areas of child welfare, DIF is responsible for the well-being and reintegration of children returned by the United States. To this end, it has developed programs specific to the needs of repatriated children and has forged collaborative agreements with other federal Mexican agencies to promote the protection of children throughout the repatriation process.

While DIF recognizes the importance of prioritizing services for this vulnerable population, both the agency's funding and the structure of its administration can present obstacles to the standardization and implementation of viable policies. There are 32 state-level DIF agencies and 2,440 municipal level incarnations of the agency, each with different funding and resources depending upon political affiliation and power. Thus, it is not unexpected that the availability and quality of repatriation services available to children returning from the United States can vary greatly within the same Mexican state and city.

Mexico Repatriation Finding #1: A lack of policies and procedures is prevalent.

As was observed with U.S. removal procedures, repatriation by Mexico and Honduras was also marked by the absence of explicit and consistent policy and procedure. No employees of the Mexican shelters participating in the study were able to provide written policies, procedures, or guidelines. While some representatives hinted that there were no written policies, it was not clear whether written policies did not exist or whether staff instead did not have access or clearance to share the materials. The variations in procedures and services available substantiate a lack of standardized policies in actual practice, if not in print.

Mexico Repatriation Finding #2: Agencies' policies and procedures exhibit regional variations and lack of coordination.

Variations in the collection and sharing of data on the repatriated child, variation in the guidelines surrounding the release of the child, and even variations in the parties involved in the process confound standardization of the repatriation process, and in turn, the safety of the child.

We observed significant variations in data collection in the three Mexican states visited. Some DIF local authorities utilized a standardized intake form, while others ad-libbed the in-take process based on the individual counselor's experience and perception of the child. Some DIF facilities had no computerized database. Others had extensive databases integrated locally, and in one instance, statewide.[100] Similar regional variations were observed in the procedures implemented by the Mexican Consulate. This lack of coordination prevents the identification of children at risk of repeat migration and trafficking.

Guidelines for releasing a child also vary by region. Some DIF facilities require the provision of extensive documentation to substantiate a guardian's relationship to the child prior to release and will release children only to proven parents or legal guardians. Others will release the child to any party designated by their parents, accepting faxed requests as authorization. Parents who have sent for their children may willingly grant their release to known traffickers. In addition, there are no protocols or guidelines for determining the authenticity of faxed requests, which can leave the child vulnerable to traffickers or result in violations of custodial orders.

At most ports of entry, children are placed in public shelters under the administration of DIF. In Tamaulipas and Chihuahua, the DIF shelters are administered by the local DIF offices. In other Mexican border states, cities may have DIF shelters run by the state and others run by local administrations. In these instances, the child's assignment to a particular shelter may depend the child's age and/or gender. In consideration of the lack of intra-agency communication, this is a concern as it may lead to more children slipping through the cracks of an already limited protection system.

It would not be reasonable or even justifiable to conceive a system that would prohibit or discourage the repatriation of children based on economic hardship. However, when the economic situation of a child or family places a particular child's safety or well-being at risk and the public structures of that child's country of origin are not prepared to protect or assist the child, then special consideration must be given to whether repatriation will result in the child being homeless or falling prey to criminals.

Mexico Repatriation Finding #3: Repatriation services vary in availability and efficacy.

The range of services available to children while in DIF care varies substantially by region. While some DIF shelters provide a bare minimum of a few days' shelter and the facilitation of family contact, others have begun to develop mechanisms to assess and address the original reason for the child's migration. In Matamoros, for example, the previous local DIF administration (2004-2007)

100 One example of an area where efforts are duplicated is in the attempt to develop an integrated database. Separate DIF authorities, at both the state and local level, have developed prototypes for sophisticated database systems to enhance needs assessments and policy analysis. DIF Matamoros (municipal), DIF Sonora (state), and DIF National have developed three separate database prototypes. Each could enable significant data collection, networking between jurisdiction, and data analysis. Any one of these models could be used to develop the data required to identify children at risk of trafficking or recidivism, as well as to inform policy. None of these efforts appear to be coordinated, however. As a consequence, the potential for progress in integrated communications is unrealized.

A boy recently removed from the United States considers his future in a DIF shelter on the Mexico side of the border.

developed a network of adult and child services (and linkages to other health and human service programs) to promote the permanent reintegration of children repatriated locally. These services include:

- Outreach to local schools to educate children on the risks of unauthorized migration;
- Assessment and provision of family needs and services (including individual and family therapy and vocational training for adults and older children) to address the root causes of migration:
- Ongoing case management services;
- Substance dependency rehabilitation services; and
- Assistance to support the child's reintegration into the school system.

However, in 2008 a new administration assumed authority of the local DIF.[101] Whether these services will be continued or expanded by the new administration remains to be seen.

Mexico Repatriation Finding #4: There is a lack of formal structures to prevent abusive treatment or to ensure application of child welfare standards.

While many of DIF's child welfare professionals are highly dedicated to the protection of unaccompanied children, agency regulations may at times prevent them from prioritizing the safety of the child in all decisions. The director of one of DIF's centers for unaccompanied children stated that she once had to place a child with a known gang member. The child's adult brother identified himself as a member of an infamous gang and had actually threatened the director and the shelter staff with physical harm and vandalism. Initially, the shelter refused to release the child to the brother.

101 DIF administrations are typically replaced after an election cycle (even when, as in this instance, the same party maintains power).

Why This Matters: Children May Experience Maltreatment

Barajas, 16, from Tamualipas, Mexico, told U.S. authorities that he was an adult in order to remain with his adult companions. The United States removed him as an adult, based on this claim. Upon release in Mexico, police interrogated him for two days before transferring him to DIF. The boy claimed he was mistreated by the Mexican authorities.

"They [the local police in Mexico] asked me if I worked on the other side. And when they asked if I helped wetbacks cross over and I said 'yes' they took me away and that's when they beat me."

Barajas, 16, Tamaulipas, Mexico

However, when he presented documentation proving his relationship to the child, the director's understanding of DIF's guidelines required her to prioritize family reunification.

If a family member is unable to collect the child because of a lack of resources, DIF has some funding to arrange for the child to be sent on his own to his place of origin within the country. Children travel alone in buses, and their itinerary may necessitate a transfer. In such instances, DIF offices in other states or cities along the child's route may be unavailable to assist them at the station. We received various responses from DIF staff as to the fate of orphaned or abandoned, unaccompanied children. Generally, there was some reported mechanism for transferring the child to DIF adoption services at the state level. The most common response, however, was that such things (children being abandoned or orphaned) never happen.

Interestingly, children voluntarily compared the conditions of their confinement in Mexico and in the United States. Almost all related that treatment in Mexico was significantly better, and none found it to be worse than the United States—including the boy who claimed to have been beaten by Mexican police. Common variables influencing the children's favorable assessment of their treatment by Mexican authorities were: the provision of better and more food, access to contact family members, and a sense that the children's custodians cared for them.

The Repatriation Process in Honduras

The Honduran National Institute for Families and Children (IHNFA) is the government entity responsible for the provision of services to and protection of children. It is headed by the first lady of Honduras, who appoints an executive director to administer policy. Traditionally, the organization functions at the national level under the authority of the wife of the president, supported by Regional Directors. The UN Committee on the Rights of the Child has found that IHNFA is considerably understaffed, undertrained, and underfunded.[102]

The UN Committee on the Rights of the Child has cited concerns related to IHNFA's lack of a centralized data collection system to track and assess the provision and efficacy of services provided. Transitions between federal administrations significantly affect the organization's structure, and political conflicts between jurisdictions can impede the flow of resources. In order to expand the services available to children in at-risk situations, the IHNFA contracts with dozens of non-profit, non-government organizations. IHNFA partnering organizations, however, have significant funding limits, which result in stringent eligibility criteria that can create service gaps that exclude many of the children at risk of migration.[103]

Honduras Repatriation Finding #1: A lack of policies and procedures is prevalent.

According to the Honduran Minister of Foreign Relations, the proper protocol for notification of the arrival of an unaccompanied child is as follows:

- The United States informs the Honduran Consul in the U.S.;
- The Consul notifies the Ministry of Foreign Relations in Honduras;
- The Ministry in turn notifies the migration officials[104] at the airport; and
- The Ministry and the migration officials then notify IHNFA.

102 *State Party Examination of Honduras' Third Periodic Report: Session 44 of the Committee on the Rights of the Child* (January 19, 2007). United Nations Committee on the Rights of the Child.
103 For example, one of the few non-profit shelters available to orphans and street children does not accept children over seven years of age, due to the increased need for resources among older children in similar situations.
104 Two types of officials may be involved: migration officials and border police.

In practice, however, both IHNFA and the Honduran migration officials, who have the authority to initially receive custody of the children from ICE, say that little to no advance notice is given of a child's arrival.[105] Moreover, when flight manifests are provided by ICE in advance, they are often inaccurate (e.g., children do not arrive on the specified flights). According to IHNFA personnel, this is a relatively recent problem, and prior to 2002 U.S. officials regularly informed IHNFA in advance.[106]

The lack of advance notice of a child's arrival, combined with IHNFA's limited staff and resources, has resulted in IHNFA's practice of waiting to receive confirmation of a child's arrival from immigration police prior to sending a representative to the airport. Children arrive in one of two cities: Tegucigalpa or San Pedro Sula. In Tegucigalpa, a child is held in police custody an average of about four hours until IHNFA arrives.[107] According to the immigration police in San Pedro Sula, their common practice is to simply release children to their own devices without IHNFA involvement. There are no available secure waiting room facilities in the San Pedro Sula airport, and no staff to wait with the children until IHNFA arrives.

In interviews, IHNFA representatives expressed frustration over the lack of a written agreement with the United States regarding protocols for the return of children. A lack of understanding of U.S. agency roles on the part of Honduran authorities may further confuse communications, obstruct Honduran efforts to resolve problems with repatriation, and point to the need for explicit policies. During the author's interviews with agency staff, representatives from all three Honduran authorities (the ministry, IHNFA, and the migration officials) referred inaccurately to the "American Embassy," not ICE, as the custodian of unaccompanied children on U.S. flights. This confusion likely stems from the fact that ICE offices are located in the embassy building, and ICE officers are treated as diplomats at immigration check points.

Honduras Repatriation Finding #2: Agencies' policies and procedure exhibit regional variations and lack of coordination.

IHNFA's two national offices in Tegucigalpa and San Pedro Sula are responsible for the receipt of children repatriated by both land and air. Children returning on flights from the United States arrive in these two cities, but children returning from other countries by land are released at Ocotepeque and Puerto Cortes, Guatemala border cities. Honduran officials located in the national IHNFA offices, in the country's interior, are in charge of receiving both populations. Logistically, this proves problematic, as the IHNFA offices are located hours away from their respective border cities. Tegucigalpa is one day's travel from Ocotepeque, and the trip from San Pedro Sula to Puerto Cortes can take hours in traffic. The IHNFA representatives charged with the repatriation of children have the unmanageable task of attempting to serve thousands of children a year with scarce transportation resources that must also be used for other agency responsibilities.[109]

105 Interviews with executives and staff from both IHNFA and Honduran migration agencies (August through September 2007).
106 Interviews with IHNFA executives and staff (August through September 2007).
107 Waiting times can range from one hour to all day. Almost all flights arrive in the early morning, security staff at Tegucigalpa report that sometimes children are not retrieved by IHNFA until well into the night.
108 We made repeated attempts to contact the ICE representative in Tegucigalpa and embassy representatives to obtain their perspective on relations with local authorities related to repatriations. Neither ICE nor the Department of State responded.
109 Interviews with executives and staff from IHNFA offices across the country. (August through September 2007). We interacted with various IHNFA personnel while touring seven IHNFA shelters and correctional facilities for children in Tegucigalpa and San Pedro Sula.

Given the limited staffing and transportation resources, when the IHNFA representative serves one returning group of repatriated children, it is at the expense of another. The buses returning unaccompanied children from Mexico arrive almost every day. According to the IHFNA office in San Pedro Sula, Mexican officials notify IHNFA days in advance of each bus' manifest and estimated time of arrival. In contrast, flights returning children from U.S. custody arrive frequently, but irregularly, making resource allocation planning and timely care for arriving children difficult.

Of greater concern, the United States does not consider this bifurcated system of return for children (to either Tegucigalpa or San Pedro Sula) in relation to either the child's ultimate destination or his fear of return to a specific region. This situation complicates family reunification and can place the child at unnecessary risk. A child's experience can vary greatly depending on where in Honduras the child is repatriated (see *Complete Mexico and Honduras Case Studies* backgrounder for a narrative description of the dual repatriation processes and related issues). For example, if a child is repatriated to Tegucigalpa, the child is met with standard intake forms that solicit information on the child's migration experience and living situation in Honduras. In contrast, the San Pedro Sula IHNFA office has no standardized forms and relies on an improvised assessment of the child's situation, though more often than not—because of the need to travel to collect children arriving at the border—IHNFA does not attend to children returning to San Pedro. Based on observations in the field and the information available through Honduran agencies, it is unclear in either city what happens to or what services are available to children arriving without family able or inclined to retrieve them.

All of the boys interviewed were repatriated via Tegucigalpa, despite the fact that three of them were from towns on the other side of the country, closer to San Pedro Sula. This presented an additional logistical obstacle for reunification with parents, as travel by land within Honduras is difficult, expensive, and can be dangerous. From villages less than 100 miles away, it can take an entire day to reach the capitol by bus, and the fare can cost more than a week's wages. One of the boy's fathers had to make the sacrifice twice as ICE changed the travel plans for his son's return but did not notify him of the change.

Honduras Repatriation Finding #3: Repatriation services vary in availability and efficacy.

Neither IHNFA nor any other Honduran agency provided any of the boys with information about services available to facilitate their reintegration; indeed, we found no indication that such services are available through Honduran public agencies.

Also, no resources exist to facilitate the child's return to their hometown. Families interested in reunification are challenged to secure the child's safe and expedient return due to geographic, infrastructure, and economic barriers.

Honduras Repatriation Finding #4: There is a lack of formal structures to prevent abusive treatment or to ensure application of child welfare standards.

While touring children's correctional facilities in Central and Northern Honduras, we observed instances of discrimination against disabled children (e.g., lack of access to services and placement in solitary confinement). These observations were indicative of the "cruel and degrading" detention conditions referred to in the 2007 UN Commission on the Rights of the Child Committee report.

While facilities in some regions attempted to rehabilitate children and provide for their needs by providing vocational and educational resources, others treated children by standards that have not been tolerated in the United States for decades (see *Complete Mexico and Honduras Case Studies* back-

Young boys play in the courtyard of an IHNFA facility that houses victims of abuse, juvenile offenders, and children deported from the United States together.

grounder). At one juvenile detention facility, we encountered a 15-year-old girl who had been incarcerated since the age of 11 for a charge of prostitution.[110] The girl was not only assessed as mentally unstable, but was also HIV positive—though there was no indication that she was receiving treatment for either diagnosis. At the time of our visit, she was being held in solitary confinement in a barred cell so narrow that she could not lie down. The staff's acceptance of this disturbing situation illustrates a willingness to assign guilt to children for situations beyond their control and a profound lack of understanding of mental health needs and services.

When unaccompanied Honduran children are repatriated to Honduras, they are returning to a government system that offers few resources and fewer protections to secure their basic rights. The dangers inherent to returning an unaccompanied child to such a situation heightens the United States' obligation to evaluate the risks faced by, and ensure the safety of, repatriated children.

110 This child was not a member of the migrant community but her situation has bearing on the type of public structures to which returned migrant children with similar backgrounds may be subject.

Conclusion

The decision to return an unaccompanied child to his country of origin—in a manner that secures his safety and rights and serves to curb the threat of repeated migration—is a matter of determining what is in the best interest of the child. No child should be returned to his country of origin without confirmation of a secure and sustainable plan for his safe placement in a family environment and a mechanism for ensuring that plan's implementation. Unfortunately, no such plans exist.

Our current U.S. systems for removing unaccompanied children from the United States often fail to provide basic rights. In implementation, the current system disregards the protections included in numerous international agreements (see related *Federal Code and Legal Precedent* backgrounder), returns children to unsafe conditions, and does not take proactive measures to deter increased future child migration. This reality erodes our nation's moral authority and frustrates and potentially jeopardizes international relations.

The United States and its agencies have a responsibility to raise the standard for the humane treatment of unaccompanied children from neighboring countries. Our immigration systems are currently not equipped to properly receive, assess, and return children. Until the United States commits to a return policy that consistently recognizes the vulnerability of migrant children as children and considers their best interest, children will continue to be at risk for removal to unsafe situations and the United States will be implicated in any related misfortune or instance of repeat migration.

There have been shocking reports by advocates and the media of unaccompanied children facing perilous circumstances upon deportation, including death. Without any repatriation services and effective oversight, children face the possibility of abuse and trafficking upon return to their countries of origin.

Testimony of Christopher Nugent, pro bono attorney for unaccompanied children and advisory committee member to this study, before the Inter-American Human Rights Commission, October 12, 2007.

U.S. commitment to end child trafficking requires addressing repatiration

The United States has committed itself to combating human trafficking. The situation, vulnerability, and innocence of unaccompanied children are very much analogous to, when not one in the same as, that of trafficking victims. As such, U.S. measures to protect these populations should be coordinated similarly. By actively pursuing our mission to end trafficking in the world and overcoming the impediments that we have identified to this end, we would simultaneously strengthen the protections available to unaccompanied children as a whole.

U.S. Should Meet Standards it Sets for Other Countries

"Source and destination countries share responsibility in ensuring the safe, humane and, to the extent possible, voluntary repatriation and reintegration of victims. At a minimum, destination countries should contact a competent governmental body, NGO, or international organization in the relevant source country to ensure that trafficked persons who return to their country of origin are provided with assistance and support necessary to their well-being. Trafficking victims should not be subjected to deportations or forced returns without safeguards or other measures to reduce the risk of hardship, retribution, and re-trafficking."

U.S. Department of State account for why the agency includes review of a country's approach to repatriation in assessing its commitment to the elimination of human trafficking.[111]

U.S. Should Meet Standards it Sets for Itself

"The U.S. government should continue its focus on actionable research—research that helps target investigation and prosecutions and provides precise data on the industries, types of establishments, and geographic areas in which trafficking victims are frequently found.

"The U.S. Government should increase cooperation among U.S. agencies to maximize efficiency in services provided, program development, and information dissemination. The U.S. government should cooperate with multilateral bodies to demonstrate U.S. Government commitment to leading the fight against trafficking in persons."

Recommendations from the Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons FY2007.[112]

111 *Trafficking in Persons*. (June 2008). U.S. Department of State.

112 For full report, see http://www.usdoj.gov/ag/annualreports/tr2007/agreporthumantrafficing2007.pdf.

Recommendations

This report makes no recommendations regarding country-of-origin procedures and policies. As the report's focus was an assessment of U.S. policy and procedure, recommendations are limited to this arena. Information on country-of-origin structures and policy is included to the extent that it informs an assessment of U.S. obligations, and is not intended as complete review of the resources in those countries. For state and local specific recommendations, visit the *Intersection Between State and Immigration Agencies* backgrounder.

This report's broader recommendations include:

ACTIONS NEEDED BY U.S. AGENCIES

- **Guaranteed Right to Counsel.** The long-standing practice of denying representation to unaccompanied immigrant children held in U.S. detention should be re-examined. Criminals in custody, children in custody of child welfare systems, U.S. citizens in civil custody facing mental health commitment proceedings, and U.S. citizens in civil custody related to communicable disease quarantines all are held to have a right to counsel. Our failure to provide children and youth in custody of U.S. immigration officials the same protections is inconsistent with core American values related both to the treatment of children and rights of due process in law.

- **Oversight by Child Welfare Experts.** All immigration court decisions to remove an unaccompanied child from the United States should be subject to review by an independent child welfare expert and eligible for appeal if a safe and sustainable placement cannot be identified.
  - There is a need for comprehensive and standardized policy development and training on interviewing children, detecting child trafficking victims, and treating and transporting children in custody.
  - The development of standardized protocols and trainings must be reviewed and overseen by child welfare authorities.
  - Policy development should include language that acknowledges children as children and encourages agencies to adopt a culture of sensitivity to this reality both in language and actions.

- **Mandatory Assessment and Planning for Child's Safe Return.** The United States must transition the return of unaccompanied children to their country of origin from the current law enforcement removal approach to a new paradigm based on the best interest of the child and safe repatriation.
  - An individual pre-removal assessment of the child's situation and needs is necessary to ensure the child's safe return and to prevent repeat migration. A central authority must be designated as responsible and accountable for developing and executing the pre-return assessment and the plan for the child's physical return and repatriation.

- The United States should not return any child to his country of origin without first confirming a secure and sustainable plan for their safe placement in a family environment and a mechanism for ensuring that plan's implementation.

- **Transparent and Consistent Standards for Removal and Repatriation.** The United States must establish clear, transparent, and consistent standards, practices and protocols for both removal and repatriation in order to avoid undue risk to the child's safety and well-being. Protocols should be public and identify the proper authority and chain of communication in custody, removal, and repatriation processes.

- **Standardized Inter-Agency Data Collection and Sharing.** The United States should begin to collect consistent statistics and documentation on all unaccompanied children. A reliable record of the circumstances (before and after repatriation) of children returned is critical for the assessment of individual cases for child protection purposes, to identify trafficking victims, and for enhanced policy analysis and development.
  - Uniformity of fields and terms in agency record keeping would facilitate the availability of information to all stakeholder agencies and interagency collaboration.
  - Immigration enforcement agency records on detection, detention, and removal should allow for the analysis of information specific to the class of unaccompanied children.
  - Information should be available to the public and actively shared with stakeholders, including country-of-origin counterparts.

CHANGE U.S. PRACTICES TO PROTECT SAFETY OF CHILDREN

- **Establish Safe Child Escort Protocols.** The United States should establish limits on the number of children who can be returned during a specified period of time, in accordance with country-of-origin protocols and the capacity of country-of-origin authorities to receive the children safely. These limits must include establishing a child-to-escort ratio appropriate to the mode of transportation.

- **Establish and Enforce Safe Transportation Standards.** The United States must discontinue policies that place children at unnecessary risk, such as:
  - The use of covered pick-up trucks for transport;
  - The return of unaccompanied children on JPAT flights; and
  - The return of children to their home countries without advance notice and confirmed acknowledgement by those countries.

- **Return Children to Port-of-Entry Nearest to Home.** Children should be returned to the port-of-entry closest to their ultimate destination to encourage family reunification and prevent returning the child to an unsafe environment.

- **Commit to protecting unaccompanied children through treaties and legislation.** The United States Congress should commit to the safety of all children by ratifying the UN Convention on the Rights of the Child and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. Congress should also pass the Unaccompanied Alien Child Protection Act.

Child clients of Arte Acción, a non-profit that gives Honduran youth alternatives to violence and poverty through art training and internships, parade on the outskirts of Tegucigalpa. Their sign reads "Families are strengthened through the creativity and art of their youth." Investment in such country-of-origin programs could provide repatriated youth with alternatives to migration.

COORDINATE WITH FOREIGN AUTHORITIES

- **U.S. Role in Referrals to Repatriation Services in Country of Origin.** The United States should provide reintegration assistance to facilitate the child's transition from removal by U.S. authorities to repatriation by country-of-origin authorities.
  - One mechanism for providing this assistance would be the development of country-of-origin-specific databases of available services and service providers.

- **Establish Bi-National Standards for Data Collection and Sharing.** The United States should establish bi-national standards and mechanisms for data collection and sharing related to repatriation of unaccompanied children, to facilitate enhanced cooperation among U.S. immigration and child welfare agencies and their international counterparts. Data collected by U.S. agencies will be far more useful if the record is completed with information on the status of repatriated children after return to the country of origin.

- **Prioritize Most Common Countries of Origin.** Efforts to develop these databases of services and resources for repatriated children and to create bi-national data collection and sharing protocols should begin with the countries with the largest numbers of repatriated children.

A mural designed by a local scout troop brightens the walls of a DIF shelter for unaccompanied shildren. The young girl in the picture proclaims, "We are leaving this world better than we found it."

MESSAGES TO THE PEOPLE OF THE UNITED STATES

At the end of the interview process, children were asked if they had any messages for the people of the United States about what they had experienced.

"Yes, it's very risky to go down that path [to ride the trains to the United States], but if you don't take risks you can't win and I risk my neck, I take the chance that something might happen to me along the way so that I can help my family. I want to...I mean, I don't want my family to suffer any more, I want to help them, you know?"

Walter, 17, Honduras

"Don't treat us like dogs. They treat us like dogs."

Gilberto, 13, Mexico

"They took away the dream I had about being there [in the U.S.]."

Maynor, 16, Honduras

Glossary of Government Agency and Related Acronyms

BP (United States) Border Patrol; the office within CBP that is responsible for the apprehension of immigrants who cross the U.S. border without inspection by U.S. immigration authorities.

CAMR (Honduras) Centro de Atención al Migrante Retornado; a non-governmental organization that receives adult Honduran citizens returned from abroad and provides them with repatriation services.

CBP (United States) Customs and Border Protection; an agency within the Department of Homeland Security responsible for enforcing immigration laws at U.S. borders and ports of entry.

CIS (United States) Citizenship and Immigration Services; the agency within DHS responsible for all processes and procedures related to affirmative applications for immigration relief, asylum, and citizenship.

CPS (United States) Child Protective Services; a generic term for the state agency responsible for the protection of abused, neglected, and abandoned children.

CRC (United Nations) Convention on the Rights of the Child; one of the most universally accepted conventions on human rights, it establishes the best interest of the child as a primary consideration for all maters concerning children. The U.S. is the only country in the United Nations, aside from Somalia, that has yet to ratify the convention.

DIF (Mexico) El Sistema Nacional para el Desarrollo Integral de la Familia; a child welfare agency that exists at the national, state, and local levels, and is responsible for the receipt and repatriation of unaccompanied children.

DHS (United States) Department of Homeland Security; the federal department that houses all federal agencies involved in the apprehension and physical removal of unaccompanied undocumented children.

DOJ (United States) Department of Justice; the federal department that is home to both the Office of the Chief Immigration Judge and the Executive Office of Immigration Review; prior to the Homeland Security Act of 2002, DOJ was also home to the former immigration law enforcement agency, Immigration and Naturalization Services.

DOS (United States) Department of State; the lead federal department for the security of international relations and the conduct of foreign policy.

DUCS (United States) Division of Unaccompanied Children's Services; the division within ORR that is responsible for all matters concerning the sheltered detention of unaccompanied minors.

EOIR (United States) Executive Office for Immigration Review, within the DOJ; an office under the Attorney General of the United States that is responsible for the adjudication of immigration cases. The EOIR's Legal Orientation and Pro-Bono Program has supported programs through which unaccompanied children in immigration detention receive legal services, in tandem with ORR and advocacy community efforts.

FONAMIH (Honduras) Foro Nacional Para Las Migraciones en Honduras; a coalition of non-government and faith-based entities that collaborate with government agencies in the assessment and pursuit of migration related issues, initially developed by Caritas.

ICE (United States) Immigration and Customs Enforcement; an agency within DHS responsible for the enforcement of immigration laws, including removal, within the interior of the United States.

IHNFA (Honduras) Instituto Hondureño para la Niñez y la Familia (Honduran National Institute for Children and Familias); the child welfare oriented agency that is responsible for the receipt of unaccompanied children removed from the United Status.

INM (Mexico) Instituto Nacional de Migración; similar in purpose to U.S.' CIS, INM administers migration policy and maintains related statistics.

JPAT (United States) Justice Prisoner and Alien Transport; a government operated passenger airline system managed by the U.S. Marshals. JPAT flights are contracted by DHS for the transport of deported individuals to their countries of origin.

ORR (United States) Office of Refugee Resettlement, within the Department of Health and Human Services; the child welfare oriented agency charged with the custodianship of children facing removal proceedings by U.S.

SIMMON (Mexico) Sistema de Información de Menores Migrantes por Origen y Nacionalidad; a database developed by Solo por Ayudar, a nonprofit agency dedicated to improving services for unaccompanied Mexican children removed by the United States.

SIJS (United States) Special Immigrant Juvenile Status, a form of immigration relief available to abandoned or abused children.

SRE (Mexico) Secretaria de Relaciones Exteriores, Secretary of External Relacions; the home agency of the Mexican Consulate, similar in purpose to the U.S. DOS.

VCCR (International) Vienna Convention on Consular Relations; an international convention establishing the duties of all countries to notify foreign consulates of the detention of any citizen under the age of 18 years.

Appendices

Appendix A – *2007 INM Data on Unaccompanied Children*

Appendix B – *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies*

Appendix C – *Mexico Interview Format*

Appendix D – *Honduras Interview Format*

Appendix E – *Honduras Statistical Data*

Appendix F – *Local Agreements with Mexico*

Appendix G – *Mexico Kids Count Data*

To view the Appendices, visit www.cppp.org/repatriation.

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Editorial and Other Support provided by CPPP Staff:

F. Scott McCown, Executive Director

Anne Dunkelberg, Associate Director

Frances Deviney, PhD, Texas KIDS COUNT Director

Lynsey Kluever,* Communications Director

Lesley Ramsey, Outreach Director

Tiffany Roper,† Policy Analyst

Florencia Gutierrez, Texas KIDS COUNT Intern

**Ms. Kluever left the center on July 31, 2008.*

† Ms. Roper left the center on March 31, 2008.

Additional research and transcription support provided by:

Carmen Andreu

Jane Castro

Susana Castro

Jonathan Cole, translation

Belinda Mora

Megan Scarborough

CPPP Center *for* Public Policy Priorities

900 Lydia Street • Austin, TX 78702
(512) 320-0222 • (512) 320-0227 (fax)
www.cppp.org