

Recent Reviews of U.S. Policy on Unaccompanied Children

No Consensus Between Child-welfare (ORR) and Law-enforcement (DHS) Agencies on Handling Kids

For more than a decade, advocacy for the rights of children in the immigration system has centered on the conditions of detention and access to counsel.

Until 2001, the U.S. Immigration and Naturalization Services (INS) was the primary agency presiding over the return and repatriation of unaccompanied undocumented children. Under the INS structure, unaccompanied children were apprehended, detained, tried, and deported by the same agency. With INS functioning as the police, prosecution, and warden for this population, there was no attention to the child's needs and perspective. The extreme nature of the conditions of treatment under the agency, such as detention of unaccompanied children in adult criminal facilities, had become a source of concern to advocates for the rights of children in the immigration system.¹

With the dissolution of the INS through the Homeland Security Act of 2002, children's advocates and federal agencies made significant strides towards ensuring the safety and well-being of children in the custody of immigration agencies, improving the conditions for detention for unaccompanied children.² The Act disbanded the INS, placing the functions of border security and immigration services under the umbrella of the Department of Homeland Security (DHS) via the Bureau of Border Security³ and the Bureau of Citizenship and Immigration Services, respectively.⁴ In addition, the Act resolved conflicting policies related to the opposing functions of the former INS as both custodian and prosecutor of unaccompanied children, transferring responsibility for the care and custody of unaccompanied children in immigration proceedings to the Department of Health and Human Services' Office of Refugee Resettlement (ORR), while leaving authority to detain, prosecute, and remove unaccompanied children to Immigration and Customs Enforcement (ICE) within DHS.⁵

¹ For background on historical criticisms of U.S. treatment of unaccompanied children, prior to the HSA, see: *Slipping Through the Cracks, Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service*. (1997). Human Rights Watch. <http://www.hrw.org/reports/1997/uscrcks/>; Why Am I Here? Children in Immigration Detention. (June 2003) Amnesty International, USA.

http://www.amnestyusa.org/refugee/usa_children_summary.html; For an overview of recent advocacy community successes and continuing initiatives related to the situation of unaccompanied children, see: Nugent, Christopher. (2006). *Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*. Public Interest Law Journal; Several sources have documented the evolution of policy regarding the detention of minors via implementation of the Flores settlement agreement, as well as the restructuring of related federal agencies and their authority post September 11, 2001. See especially Haddal, Chad. (March 1, 2007). CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues. Congressional Research Services. Bhabha, Jacqueline & Susan Schmidt. (June 2006). *Seeking Asylum Alone*. President and Fellows of Harvard College.

² Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2153.

³ See Homeland Security Act of 2002, §§441-46. The organization of border security was slightly altered again when DHS renamed the Bureau of Border Security, the Bureau of Immigration and Customs Enforcement (ICE), and consolidated various other border agencies into a new Bureau of Customs and Border Protection. Border Reorganization Fact Sheet, January 30, 2003, available at http://www.dhs.gov/xnews/releases/press_release_0073.shtm.

⁴ See Homeland Security Act of 2002, §§451-61.

⁵ See Homeland Security Act of 2002, §462.

Under the Homeland Security Act, ORR's responsibilities include ensuring that the interests of the child are considered in decisions relating to the care and custody of unaccompanied children in federal custody, making placement determinations, and implementing policies with respect to the care and placement of unaccompanied children.⁶ The HSA further establishes that ORR and DHS are expected to collaborate on decisions affecting placements.⁷ However, beyond the broad division of authority between DHS as enforcer and ORR as caretaker, the Homeland Security Act does not provide detailed guidance for carrying out the day-to-day tasks involved in the detention, transfer, housing, and repatriation of unaccompanied children.

The ORR's welfare-oriented mission,⁸ as contrasted with DHS's emphasis on border security and immigration enforcement,⁹ has led to inter-agency disagreements regarding the handling of unaccompanied children. Attempts by DHS and ORR to draft a Memorandum of Understanding to delineate their respective roles and responsibilities ended in stalemate.¹⁰ In 2004, the two agencies signed a Statement of Principles that generally reiterates the overarching departmental responsibilities of each agency, but does not establish detailed guidance for the care, treatment, and release of unaccompanied children.¹¹ This leaves in question how and whether these two agencies can meet their respective mandates while effectively coordinating their related responsibilities.

All Agency Reports Reveal Lack of Coordinated System

Since 2001, numerous internal and congressional reviews of the agencies charged with the custody and transport of unaccompanied immigrant children identified deficiencies in federal policy related to the custody of unaccompanied children. Several of these deficiencies affect the potential for a child's safe return to his country of origin. A review of agency reports illustrates the long-standing recognition of the need for clearly defined roles and responsibilities, protocols for safe transport and escort, and the collection and availability of reliable data. Despite this recognition, little progress has been achieved regarding these issues.

Department of Justice. In 2001, the Inspector General of the Department of Justice (DOJ) issued a report, *Unaccompanied Juveniles in INS Detention*, assessing the situation of unaccompanied children in INS detention and providing 28 recommendations to improve related INS policies and procedures.¹² These recommendations included the development of procedures to ensure the safe and appropriate escort and transport of unaccompanied children. At the time that the Homeland Security Act placed the majority

⁶ *Ibid*

⁷ *Ibid*

⁸ ORR mission statement available at <http://www.acf.hhs.gov/programs/orr/about/mission.htm>.

⁹ *Endgame: Office of Detention and Removal Strategic Plan, 2003-2012*. (June 27, 2003).

Immigration and Customs Enforcement. <http://www.fas.org/irp/agency/dhs/endgame.pdf>.

¹⁰ *A Review of DHS's Responsibilities for Juvenile Aliens*. OIG-05-45 (June 2005). Department of Homeland Security Office of the Inspector General..

[http://www.dhs.gov/xoig/rpts/mgmt/Copy_\(6\)_of_editorial_0334.shtm](http://www.dhs.gov/xoig/rpts/mgmt/Copy_(6)_of_editorial_0334.shtm)

¹¹ *Statement of Principles Between the Department of Homeland Security and the Department of Health and Human Services, Unaccompanied Alien Children Program*, April 4, 2004.

<http://www.acf.hhs.gov/news/press/2004/principles.htm>

¹² <http://www.usdoj.gov/oig/reports/INS/e0109/index.htm>

of INS's responsibilities with DHS, these recommendations had yet to be fully implemented and were still under OIG review.

Department of Homeland Security. In 2005 the Office of the Inspector General for DHS evaluated DHS's progress on the incorporation of eight of the original 28 recommendations to the INS into DHS agency policies and procedures. While the implementation of any one of these recommendations could arguably affect the outcome in a child's immigration case, three of these recommendations would directly affect the implementation and further development of policies related to the child's removal, including:

- Recommendation #1 – DHS should ensure that the lists of free legal service providers (made available to unaccompanied children in U.S. Border Patrol detention) are current and accurate. Updated lists should be distributed on a regular basis to all Border Patrol stations and ports of entry.
- Recommendations # 7 – DHS should ensure that all Customs and Border Patrol (CBP) and ICE employees whose duties bring them into contact with unaccompanied children understand (through training) and comply with the terms of the Flores Settlement Agreement.¹³ The training should be standardized and participation centrally documented.
- Recommendation # 8 – DHS should implement record-keeping procedures that require sufficient detail to enable accountability for all instances involving the transportation and detention of unaccompanied children by DHS.

The DHS Inspector General's report¹⁴ found that a centralized system for documenting the transport and custody of unaccompanied children was still lacking.¹⁵ According to the report, an official from the Detention and Removal Office maintained that a revised escort policy would be included in an update of the Juvenile Protocol Manual. These proposed revisions would directly address concerns raised in the original DOJ recommendations, such as the escort of unaccompanied children by officers of the same gender as the child. A 2007 version of the Juvenile Protocol Manual did not reflect the addition of these procedures.¹⁶

Health and Human Services. In 2008, the U.S. Department of Health and Human Services (HHS) Inspector General issued an assessment of ORR's compliance with its role and responsibilities to unaccompanied children, as defined under both the HSA and

¹³ The Flores Settlement Agreement is the result of a class action suit against the INS related to the detention of unaccompanied minors. The settlement of the case produced standards of care for the treatment of unaccompanied children while in detention.

¹⁴ *A Review of DHS's Responsibilities for Juvenile Aliens*. OIG-05-45 (June 2005). Department of Homeland Security Office of the Inspector General. http://www.refugees.org/uploadedFiles/Advocate/OIG_05-45_Sep05.pdf

¹⁵ The report found that various DHS agencies and offices across the country implemented a range of record keeping techniques, including hand written, that preclude agency-wide procedural oversight, data collection and analysis. Our observations in the field reflect this lack of standardized data collection and analysis. Without these capabilities it is impossible to assess the agencies' current practices and to accurately project resource needs for the continuation and improvement of related activities/ services.

¹⁶ Though we were unable to obtain a copy of the Juvenile Protocol Manual through official requests (see Methods), we were permitted access to a 2007 version of the manual, obtained from legal professionals while in the field. In every instance where we witnessed the escort of unaccompanied girls and mothers with young children, whether by ICE or by CBP, there were no female agents present.

the Flores Settlement Agreement. The HHSC OIG's case study indicates that nearly two-thirds of ORR's clients were released to sponsors within the U.S., and that more than one-third were removed to their country of origin. While the Inspector General found that ORR has extensive mechanisms for screening potential sponsors for a child, including multiple background checks for family members petitioning a child's release, the agency does not provide continued case management for children who are placed outside of the agency's care (e.g. children either released to a family member in the U.S. or remanded to DHS custody for removal). The report acknowledges that current policy does not indicate that either ORR or DHS has a continued responsibility to ensure the child's well being after release, but it argues a need for the assignation of such responsibility to ensure that the child is released to a safe situation. The OIG maintains the lack of a formal agreement between DHS and ORR, as discussed above, places unaccompanied children at risk of abuse subsequent to release. The OIG's expressed concern for the safety of unaccompanied children following release from U.S. custody (i.e. without continued placement case management/ follow-up these children might be vulnerable to traffickers or abusers) focuses only on those children released to caretakers within the United States.(i.e. Without continued placement case management/ follow-up child might be more vulnerable to traffickers or abusers). The report makes no recommendations for the 34 percent of ORR's clients returned to their country of origin. Many countries of origin lack child protection systems with adequate resources to fully protect children facing these risks.

Congressional Research Service (CRS)

In 2007, CRS reviewed the policies and historic political tensions related to the treatment of unaccompanied children by the U.S.¹⁷ The 33-page report includes just two paragraphs dedicated to the issues surrounding removal and repatriation. The first paragraph presents the claims from advocates that DHS agencies remove children using unsafe procedures, and do not always notify foreign officials. The paragraph also includes a brief mention of Congressional concerns related to the "dearth of repatriation services".¹⁸ In its fiscal 2007 report on DHS Appropriations, Congress urged the Departments of State and Homeland Security to collaborate with ORR in the development of policies that protect the child throughout the repatriation process.¹⁹

The second paragraph on repatriation of the CRS 2007 report relates DHS's position that the safety of repatriations is the responsibility of the child's consulate. As a law enforcement agency, DHS has no mechanisms to consider the continued safety of the child and is concerned only with the child's removal.

¹⁷ "Unaccompanied Alien Children: Policies and Issues"; CRS 2007

¹⁸ H.Rept. 109-476.

¹⁹ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_record&docid=cr28se06-150;

In fiscal 2008, Congress strengthened the language in the budget by including a requirement that ICE report on progress made towards the development of a safe repatriation policy within 90 days of the passage of Homeland Security Appropriations FY2008 House Report 110-181. This language was later included in the omnibus fiscal 2008 appropriations bill passed by Congress in December, 2007. According to U.S. Rep. Chet Edward's office, ICE has not yet responded to the committee's direction. Personal email correspondence with Megan Swearingen (May 5, 2008).

The current policy situation requires clear designation of responsibility and a mandate of interagency cooperation to ensure the safe repatriation of children. Congress made steps in this direction in recent appropriations bills. Thus far, attempts to encourage greater attention to the child's safety through language tied to DHS's budget have failed.

In fiscal 2007 and again in fiscal 2008 the House Appropriations Committee included directives to DHS to develop safe repatriation procedures for unaccompanied children in collaboration with other federal departments and agencies. The agencies involved, however, are not responding to either internal or external directives in a manner that reflects the urgency of the situation. Given the resistance of agencies to involve themselves without funding or mandate, an Act of Congress will 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.

Child welfare entities with access to unaccompanied children through the jurisdiction of ORR have neither the budget nor the mandate to intervene. While we observed individual social workers attempt to ease the return of an unaccompanied child through collaboration with the child's family and consulate, other ORR personnel have maintained that as long as removal is strictly conducted as a punitive law-enforcement measure that the perceived validation of such a system through the support of Health and Human Services personnel would be inappropriate. Until the U.S. develops a repatriation policy based serving children in need, rather than treating children like criminals, this tension will remain unresolved.

Summary

Current policies affecting the unaccompanied child conspicuously lack attention to the safety and needs of the individual child. Although advocates for the rights of immigrant children have made great gains towards securing the well-being of children and problems within the system have long been recognized, resistance to change within the related institutions necessitates congressional action. The lack of a cohesive policy and coordinated systems jeopardizes the child's detention conditions, access to counsel, and safe repatriation. The U.S. should secure basic protections for this vulnerable population through the development of a clear national policy that identifies and funds responsible parties and mandates coordination and collaboration with country-of-origin partners.

APPREHENSION AND CUSTODY OF UNACCOMPANIED MIGRANT CHILDREN

There is no uniform process for what happens to an unaccompanied child once apprehended. Unaccompanied undocumented children are detected in the United States and along its borders by federal, state, and local authorities. At least 15 different federal agencies can be involved in the detection and apprehension of an unaccompanied child.¹ 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. Immigration enforcement, however, remains strictly a federal role. As the return of unaccompanied children to their countries of origin is currently understood as an enforcement measure, the U.S. Department of Homeland Security (DHS) immigration enforcement agencies of Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) alone are responsible for the *removal* and *repatriation* of unaccompanied children in the federal immigration system.²

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 U.S.—even temporarily—is largely determined by the child's nationality. Unaccompanied children from immediately neighboring countries who are apprehended at or near the border of their country of origin (i.e., Canada or Mexico) are typically removed at the nearest port by CBP within one business day and without an opportunity for a court hearing. In contrast, most unaccompanied children from non-neighboring countries are transferred to the custody of the Office of Refugee Resettlement (ORR), a Department of Health and Human Services (HHS) agency charged with ensuring consideration of the interest of the child, while their immigration cases proceed.³

The vast majority of apprehended unaccompanied children are from neighboring countries and are almost immediately returned to their country of origin.⁴ This policy, developed through a series of bi-national agreements with Mexico,⁵ means that children from Mexico and Canada are not officially entered into the immigration system and are not presented with the opportunity to appear before a judge or reunify with any family located in the U.S.. Therefore, any child fleeing violence or persecution in a neighboring country will, in all likelihood, be returned to that country.

Roughly 8,000 unaccompanied minors *are* officially entered into immigration proceedings and are detained, at least initially, by federal authorities. Most of these children are from non-

¹ Bhabha, Jacqueline & Susan Schmidt. (June 2006) *Seeking Asylum Alone. President and Fellows of Harvard College.*

² Haddal, Chad. (March 1, 2007). *CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues.* Congressional Research Services.

³ There are some instances in which ICE will retain custody of an unaccompanied child throughout their involvement in immigration proceedings (see Giovanni's story in the main report). The Women's Commission on Refugee Women and Children is currently engaged in a study of this situation. Their report is forthcoming.

⁴ Haddal, Chad. (March 1, 2007). *CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues.* Congressional Research Services.

⁵ The U.S. and Mexico signed bi-national agreements related to the repatriation of Mexican nationals from the U.S. in 1996, 1998, and 2004. See the Mexico Case Study backgrounder and Appendix F for further details. There are no written agreements with Canada specific to the repatriation of children, nor was the Canadian consulate able to identify a formal process for receiving unaccompanied children, when contacted by the author. The Canadian Consulate does not maintain statistics on the return of Canadian citizens.

neighboring countries, although a small number of children from neighboring countries are entered into immigration proceedings and detention for exceptional reasons.⁶

The table entitled *ORR/DUCS Unaccompanied Children Admissions by Fiscal Year and Type* illustrates that more than 20 percent of all unaccompanied children officially entered into immigration proceedings are eventually, if not immediately, removed to their assessed country of origin.⁷ More than 57 percent of unaccompanied children discharged from ORR care are released to a sponsor in the U.S., or “reunified”; approximately 9 percent age out of ORR care, or achieve “adult status” and are placed in DHS adult detention; and less than 2 percent are granted immigration relief (percentages based on fiscal year 2007 totals). The fact that more children are placed with ORR than discharged annually reflects that placements can span more than one fiscal year.

⁶ The majority of children from neighboring countries that are apprehended are found at or near a port of entry. Neighboring children who are officially entered into the immigration system are typically apprehended within the interior of the U.S., and may be brought to the attention of immigration official via non-federal agencies (e.g., through state juvenile justice systems). Children from neighboring countries officially entered into immigration proceeding and in the custody of ORR are the exception and not the rule. In 2007, ORR held only an estimated 740 unaccompanied Mexican children in its custody (the author extrapolated this number from the data provided by ORR: 8212 Unaccompanied children in their care and the Mexican children comprised 9 percent of the population. By comparison, the 740 children referred to ORR appear to make up only 2 percent of the 35,000 returned to Mexico annually.). The author spoke with several Mexican Consulate Protection Officers, responsible for providing services to unaccompanied children in the U.S., who were unaware of the separate ORR system for unaccompanied children. See the Complete Mexico and Honduras Case Studies backgrounder for more information on country-of-origin perceptions of U.S. policy.

⁷ See also Nugent, Christopher. (2006) “Whose Children are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children.” *Public Interest Law Journal*.

| ORR/DUCS Unaccompanied Children Admissions by Fiscal Year and Type | | | | |
|---|--------------|--------------|--------------|--------------|
| | FY 04 | FY 05 | FY 06 | FY 07 |
| Number of Placements | | | | |
| Referred from DHS | 5238 | 7100 | 7766 | 7399 |
| Transferred from DUCS | 1233 | 915 | 394 | 828 |
| Total Placements | 6471 | 8015 | 8160 | 8227 |
| Number of Children by Type of Discharge | | | | |
| Reunified | 3120 | 4518 | 4803 | 4218 |
| Returned To Country | 1021 | 1478 | 1870 | 1974 |
| Adult Status | 357 | 564 | 692 | 633 |
| Imm. Status Changed | 15 | 14 | 119 | 138 |
| Ran Away | 62 | 110 | 140 | 124 |
| Unknown | 180 | 31 | 4 | 12 |
| Material Witness | | | 2 | 4 |
| Total Discharges | 4755 | 6715 | 7628 | 7103 |

Source: Provided to the CPPP by Susana Ortiz-Ang, Deputy Director of the Division of Unaccompanied Children's Services (DUCS) within the ORR, via e-mail 7-30-08.

Federal Custody

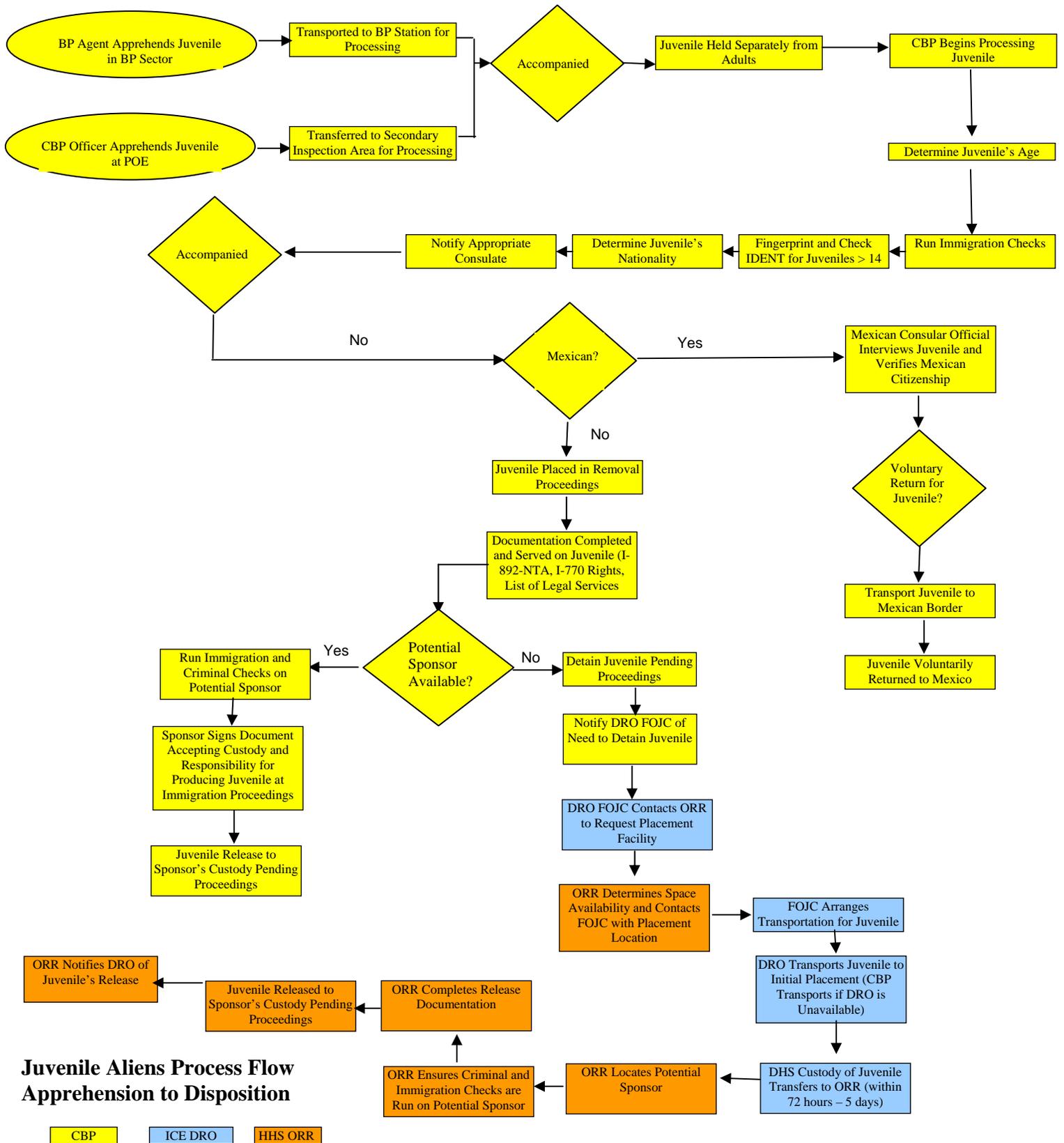
The figure below depicts U.S. Custom and Border Patrol's very complex and bifurcated process for either entering children into removal proceedings or returning them to a neighboring country. The figure highlights several key aspects of the effect of an agency's culture on the implementation of policy:⁸

1. This streamlined process identifies no mechanism for the child's petition to remain in the U.S. In contrast, children officially entering immigration and removal proceedings receive some assistance in identifying legal counsel.
2. The figure, as well as the Congressional Review from which it was drawn, only refers to children as juveniles—a term with law enforcement connotations that implies criminal action and disassociates children from the special considerations they should be afforded.
3. There is no identified juncture to allow either population of children to contact their families or legal counsel. Placed in an adversarial environment without guidance and opportunity, children are unlikely to request resources.

⁸

The process for returning children to neighboring countries is defined as the process for Mexican children.

General Customs and Border Protection Process for Unaccompanied Children: Juvenile Aliens Process Flow Apprehension to Disposition⁹



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

⁹ It should be noted that juvenile in this context refers simply to a child under age 18, and should not implicate the minor as a ward of the juvenile justice system.

The culture and jurisdiction of the originating custodial relationship that ultimately leads to a child's entrance into the removal process can significantly impact the child's ability to contact legal counsel and family and the child's experience of removal.

Removal From Federal (ORR) Custody

ORR detains children officially entered into immigration proceedings in three types of facilities: shelter care, staff secure, and secure.¹⁰ Children should be assigned to a level of care based on their behavior and record. In reality, however, availability of space can be a key determining factor in where a child is detained. This can lead to the placement of children who have no behavioral issues in staff secure or secure facilities. While the children's basic needs met by ORR and its contractors, their immigration cases continue to move through the immigration courts.

State and Local Custody

State Child Protection Services

Undocumented children may come into state custody through abuse or abandonment cases and, depending on the determination of the child welfare court, may qualify as an unaccompanied child. If detected by U.S. immigration (through either the state's pursuit of legal immigration status for the child or through routine traffic stops, see the *Intersection Between State and Federal Agencies* backgrounder for more information) the child may be entered into immigration proceedings while in state custody (possibly culminating in the child's removal). Whether state agents are aware of the child's right to contact their consulate or need for an attorney can effect whether the child's case will end in removal.

As a positive alternative to law enforcement-based removal, however, many states have processes for repatriating child clients directly to country-of-origin child protective services, avoiding the risk of exposing abused or abandoned children to a punitive system (see *Alternative Models* backgrounder).¹¹

State and Local Law Enforcement

Undocumented children apprehended at the local or state level for a suspected act of delinquency may be referred to ICE, or ICE may issue a detainer (a notation within the child's file that requires case referral to ICE upon local jurisdiction's closure) if the agency is aware of or involved with the child's apprehension. In such cases, youth may be required to serve out a sentence in the state facility prior to being transferred into ICE custody.

In theory, any child in ICE custody, including children from neighboring countries remanded by state correctional authorities, should be put in contact with their consulate and placed in the

¹⁰ http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm

¹¹ While children repatriated through state child welfare services are not always undocumented, nor technically unaccompanied in the U.S., the factors and concerns affecting their safe return are analogous to the situation of unaccompanied children. (i.e. the availability of a safe placement and adequate public structures to support their basic rights) Child-welfare guidelines require the identification and assessment of these factors, and provide for the child's safe transport and transition from one country to another.

custody of ORR.¹² In practice, however, some children from neighboring countries released from correctional facilities may be removed by ICE or CBP without consular notification or ORR placement.

Mexican child protection officers told us of cases involving clients located in the interior of the U.S. who were held in juvenile facilities past their sentences pending removal by immigration authorities. There was no indication from the available documentation that these children had been placed in touch with the Mexican consulate or in the care of ORR. In one instance, two teenage boys were held two months past their sentence before being removed to Mexico.

Local Jurisdictions

Through the Criminal Alien Program, DHS may compel non-federal authorities to routinely provide information on undocumented individuals in custody. This information can include children who may have committed an administrative offense (such as truancy from school) or delinquent act or may have themselves been victims of a crime. Once in the custody of immigration officials a child may be placed in removal proceedings (or returned to Mexico) as an unaccompanied child, even if their parents remain in the U.S. Mexican consular representatives and child protection experts interviewed for this study contend that this scenario is not uncommon in regions where local law and enforcement and courts collaborate with immigration agencies.

Summary

Unaccompanied children come to the attention of immigration authorities via all levels of government. The extent to which the agency that initially refers the child to immigration is aware of the needs and rights of children can affect the child's access to legal and protective services, ultimately affecting the result of the child's immigration case.

Without clear policies and directives guiding the development of safe repatriation policies, immigration law enforcement agencies draw on their institutional culture to develop procedures. The lack of attention to the needs and rights of the children involved results in an inherently punitive system.

Although immigration proceedings are a federal matter, state policy implementation can significantly effect the method and manner of a child's removal. For more information, see *The Intersection Between State and Federal Agencies* backgrounder. At this juncture, collaboration between state and local officials and federal immigration agencies is voluntary. Any community considering such collaboration should consider possible risks to undocumented children.

¹² It is not clear whether current guidelines stipulate that Mexican children in correctional facilities should be referred to ORR or whether they should simply be transported to the nearest port of entry for removal.

RELATED FEDERAL CODE AND LEGAL PRECEDENT

Federal Written Policy on Removal of Unaccompanied Children:

Minimal, Unclear, and Unavailable

Agency Policies and Procedures

Very little publicly available written agency policy exists pertaining to the repatriation of unaccompanied children. During the repatriation process, unaccompanied children come into contact with a variety of governmental agencies and departments, including the immigration enforcement divisions of the Department of Homeland Security (Immigration and Customs Enforcement, ICE, and Customs and Border Protection, CBP), the Executive Office of Immigration Review (the immigration adjudication arm of the Department of Justice), and the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS). Beyond broad statutory frameworks establishing the general mandates of each department,¹ and one section in the Code of Federal Regulations addressing several aspects of juvenile detention and release,² there appears to be little written guidance to government agents involved in the repatriation process. Even experienced staff members are uncertain as to official policies and guidelines related to the repatriation of unaccompanied children. A Border Patrol supervisor with over 20 years experience informed CPPP, on various occasions, that he was unaware of any written protocols or agreements related to the removal of unaccompanied Mexican children, and doubted their existence.

To the extent that any agency has developed policies to guide the repatriation of unaccompanied children, this study finds that such policies are not widely disseminated, are not coordinated between government offices, and are not available to the public.³ The cumbersome Freedom of Information Act (FOIA) request process, described in the *Full Report Methodology* backgrounder, does not provide policy makers and advocates with an adequate mechanism for obtaining this information.

The Department of Homeland Security (DHS) has assigned its responsibilities related to minors—including the responsibility for apprehending, processing, and transporting unaccompanied children—to CBP and ICE.⁴ ICE occasionally apprehends children inside the U.S., but the majority of child apprehensions are carried out on the border by CBP (responsible for border control at Ports of Entry), and Border Patrol (a subdivision of CBP that patrols the border between the ports of entry). According to a 2005 report by the DHS's Office of Inspector General, both branches of DHS have authority for making arrests, administrative processing,

¹ 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.

² *See* 8 C.F.R. §236.3. Federal immigration policy often refers to all minors as juveniles, irrespective of age or whether they have committed an offense.

³ Through the FOIA process, this project attempted to obtain any written policies, procedures, training materials, or guidelines related to the removal of unaccompanied children that are available to DHS and DOJ personnel. These FOIA requests were not granted. *See* Report Methodology backgrounder and Appendix B for more information.

⁴ *A Review of DHS' Responsibilities for Juvenile Alien*. (Sept. 2005). U.S. Department of Homeland Security, Office of Inspector General. Report No. DHS OIG-05-45.

and initial enforcement determinations such as repatriations or release to family members.⁵ Both also provide transportation between processing centers and ORR child care facilities, although the report suggests that the Detention and Removal Office within ICE is primarily responsible for transportation to ORR and for removing children with expedited or adjudicated removal orders.⁶

The Inspector General's report references several policy and procedural manuals applicable to different immigration-related offices that supposedly contain guidelines relevant to some aspects of the repatriation process.⁷ However, these materials are not publicly available and previous studies in this area suggest that dissemination and training on such policy is inadequate. For example, administrative processing includes interviewing a child to determine name, age, citizenship, and whether he or she is accompanied or unaccompanied, but does not address questions of the child's motivation for migrating, which may be critical to protecting the child's best interest.⁸ Furthermore, despite definition in DHS' Juvenile Protocol Manual and in the Homeland Security Act, Border Patrol agents have been found unable to define unaccompanied or separated children or to describe the relationships that constitute family ties for purposes of determining whether a child is accompanied.⁹

The most notable finding of our review of U.S. federal policy and procedures regarding the removal of unaccompanied children is the lack of sufficient publicly available written materials on which to base a thorough analysis. There are no statutes designating any authorities responsible for the child's safe and secure removal and repatriation. DHS is charged with apprehending and removing the children, yet in a law enforcement capacity. Unlike our state and local law enforcement authorities, however, immigration enforcement officers have no dual mandate to respect the rights of those they apprehend. Furthermore, the protocols and training that may exist regarding the safe transport and escort of children are not available for review by child welfare experts. ORR is charged with detaining the children in a manner that respects their immediate interests, but considers their responsibility to do so limited by the enforcement aspect of removal.¹⁰ The agency takes the position that removal and return is a law enforcement act and therefore at odds with their position as child welfare professionals bound to uphold the child's best interest. Thus the agency does not routinely engage in the assessment of how repatriation would effect an individual child's safety, well-being, and placement in a permanent home. Nor does it facilitate continuity of services or case management (between U.S. and country-of-origin agencies/ organizations) for children whose need for support will not be resolved by their removal. While individual contractors or case managers may seek country-of-

⁵ DHS OIG-05-45. Release to family members refers to instances in which the child may be eligible for release to family member within the U.S

⁶ DHS OIG-05-45.

⁷ For example, according to the DHS OIG report, the *Detention and Removal Officers Field Manual* and the *Juvenile Protocol Manual* (November 2003) defines *accompanied* juvenile and include guidelines regarding the time a child can be held in CBP custody; the INS Detention Standard, *Hold Rooms in Detention Facilities*, includes guidelines for children in Border Patrol stations; *Secure Detention Procedures at Ports of Entry* (March 9, 2004) provides further guidance for reviewing decisions to hold children at CBP facilities and procedures for extending holding time beyond the guidelines; and the Deportation Officers Field Manual contains a section on *Enforcement Standards: Escorts* regarding methods and procedures in transport.

⁸ DHS OIG-05-45

⁹ Bhabha, Jacqueline & Susan Schmidt. (June 2006) *Seeking Asylum Alone*. President and Fellows of Harvard College. p. 31 (recounting interviews conducted in 2004 with Border Patrol agents).

¹⁰ Interview with Susana Ortiz-Ang, Deputy Director of the Division of Unaccompanied Children's Services (DUCS) at ORR. Interviewed by Amy Thompson. Washington, D.C. (September 26, 2008).

origin resources and support for a child that they acknowledge is at extreme risk, there is neither a mandate nor a procedural mechanism for doing so.

Currently, there is no clearly designated authority for securing the safe repatriation of children to their countries of origin. Even though the decision to remove children is an immigration enforcement decision, the *manner and terms* of their return is a matter for child welfare experts. However, ICE maintains that country-of-origin consulates are responsible for the child's safety and reintegration. If the consulate is not notified, equipped, or prepared to receive the child, this is an unreasonable and negligent approach. The return of children by a law enforcement agency (ICE) to a diplomatic agency (foreign consulate) circumnavigates any mechanisms for assessing and attending to the needs of the child, to protect them from further harm or repeated migration. A more responsible model of return is one that is based on the a child's return by child welfare experts to child welfare experts.

Based on multiple agencies' Inspector General reports,¹¹ all parties should be aware of the areas in their internal policies and procedures that require attention in order to improve unaccompanied children's immediate situation. These areas include, among others, the need for centralized data collection and analysis and the need for safe and gender appropriate escort and transportation protocols. In addition, simple changes to the language used to refer to children in written policy could encourage deference to the special consideration that they are entitled to as especially vulnerable individuals. DHS policies and procedures regarding unaccompanied children almost exclusively refer to children as juveniles, a term with very negative law enforcement connotations. Most of these children have not committed any delinquent behavior. By referring to children as juveniles, or even minors, policies mask the reality of their vulnerability and needs. Further policy development should include language that acknowledges the children as such and encourages agencies to adopt a culture of sensitivity both in language and actions.

The current policy situation requires clear designation of responsibility and a mandate of interagency cooperation to ensure the safe repatriation of children. Congress has made steps in this direction in recent appropriations bills. In fiscal 2007 and again in fiscal 2008 the House Appropriations Committee included directives to DHS to develop safe repatriation procedures for unaccompanied children in collaboration with other federal departments and agencies. The agencies involved, however, are not responding to either internal or external directives in a manner that reflects the urgency of the situation. Given the resistance of agencies to involve themselves without funding or mandate, an Act of Congress will 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.

The removal and repatriation of children is not clearly defined as subject to child welfare standards and considerations. In practice, the removal of children is implemented strictly in law in enforcement terms, because—unless otherwise instructed and trained—people do what they know. Immigration enforcement knows how to treat people like convicts, but not how to treat children like children. If the authority and responsibility for returning children is left obscure and therefore up to immigration enforcement, it will continue to be executed in a law enforcement paradigm. This situation demands the assignation of the responsibility of removal to a child

¹¹ Departments and Agencies whose OIG conducted reviews specific to their treatment of unaccompanied children include: the Department of Justice, DHS, and ORR. See *Recent Reviews of U.S. Policy on Unaccompanied Children* backgrounder for more information on these reports.

welfare authority or a mandate for immigration enforcement authorities to develop expertise in child welfare.

Federal Code

In addition to the structural reorganization under the HSA that affected the treatment of unaccompanied children in the U.S. immigration system, the Code of Federal Regulations contains one section governing the detention of children. Section 236.3 provides specific instructions regarding a child's right to communicate with a parent, and lays out the criteria for a child's stateside release to a family member. It also provides the child with the option to leave the U.S. voluntarily, without receiving a bar to future immigration.¹² Finally, the section requires that a child receive written notice of his or her rights and, if the child is under age 14 or unable to understand the notice, the notice should be read and explained in a language he or she understands.¹³ Section 236.3 is the only regulation that has been promulgated with respect to unaccompanied children, and it does clearly address standards for removal and repatriation. Moreover, there is very little legal precedent, and it contains few provisions relevant to return or repatriation of children.

Legal Precedent

Although the 1996 Flores Settlement Agreement is the most significant source of guidance pertaining to government treatment of unaccompanied children, the settlement's provisions are not specific to repatriation.¹⁴ The Flores Settlement Agreement emerged from a class action lawsuit filed in California in 1985 challenging the federal immigration authority's *release* policy and conditions of *detention* in regards to unaccompanied children.¹⁵ However, it was concerned principally with conditions of detention and release of minors to family members in the U.S., and contains few provisions relevant to return or repatriation of children.

The provisions of the Flores Settlement Agreement applicable to repatriation are contained in Exhibit 2 of the agreement, which advises federal immigration officers of agency policy regarding the way in which minors in federal custody are processed, housed, and released.¹⁶ Exhibit 2 establishes, among other things, that:

- A minor should be detained in the least restrictive setting appropriate to the minor's age and special needs;
- Facilities will have access to toilets and sinks, drinking water and food as appropriate, and adequate temperature control and ventilation;
- A minor will not be detained with an unrelated adult for more than 24 hours and, if placed in a juvenile detention facility, will be separated from delinquent offenders;
- A minor should be transferred from immigration enforcement custody to a licensed program within 72 hours; and

¹² 8 C.F.R. §236.3

¹³ *Ibid*

¹⁴ *Flores v. Meese*, Stipulated Settlement Agreement, Jan. 17, 1997, available at <http://www.aclu.org/immigrants/detention/28876lg119970117.html> (hereinafter "Flores Settlement Agreement").

¹⁵ *See Reno v. Flores*, 507 U.S. 292 (1993).

¹⁶ *Flores Settlement Agreement*

- A minor should be transported with all his/her possessions and should not be transported in vehicles with detained adults.¹⁷

While these provisions provide an important source of guidance for the treatment of unaccompanied children in government custody, they do not address many aspects of the repatriation process, such as identification of authority to which a child may be returned and how to assess whether the child's safe repatriation can be insured and implemented.

Child Protection Services

In 1974, Congress passed the Child Abuse Prevention and Treatment Act, which requires states to provide a Guardian ad Litem to children in court proceedings as a precondition for the receipt of federal funding.¹⁸ A 1996 amendment to the act further defined the role of the guardian by requiring guardians to make recommendations to the court concerning the best interest of the child. In addition to the provision of a guardian ad litem and consideration of their best interest, children in abuse and abandonment cases are also guaranteed the right to counsel.¹⁹ *States commonly interpret these acts as establishing a child's right to representation. In many states, children are provided a guardian in addition to an attorney. The guardian advises the court on the child's best interest, while the attorney represents this child's own wishes. States that provide for both forms of representation recognize that what a child wishes may not always be in their best interest, as they are by definition limited in their capacity to reason. This sophisticated approach to determining the child's best interest of children in our child welfare systems is in stark contrast to the reality faced by the vast majority of unaccompanied children in our immigration system, who do not receive basic legal representation.*

Juvenile Proceedings

Under U.S. law, cases involving youth accused of delinquent acts are held as civil—not criminal—procedure by U.S. courts. The Supreme Court has determined that children are incapable of criminal intent (*mens rea*) by virtue of not yet being fully mentally, emotionally, and morally developed. The Court also recognizes the special consideration that the state of childhood warrants and mandates the provision of legal representation to children implicated in delinquency cases, even though their cases are not criminal.²⁰ While the immigration violations that unaccompanied children may be accused of are administrative (and neither delinquent nor criminal in nature) the repercussions of these cases can be as severe as those faced by delinquent youth. Even so, unaccompanied children do not have viable access to counsel.

In their seminal work on children in the immigration system, Bhabha and Schmidt found that unaccompanied children would benefit from policies that incorporate the three basic goals of the national child welfare system—“ensuring safety, promoting permanency and enhancing the

¹⁷ *Ibid.*

¹⁸ Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(A)(xiii)

¹⁹ *In re Gault* 387 U.S. 1, 87 S.Ct.1428 (1967). The recent federal court decision of *Kenny A. v. Perdue*, 356 F. Supp. 1353 (N.D. Ga. 2005) affirms a child's right to legal representation in cases of abuse and neglect.

²⁰ *Kent v. United States*, 383 U.S. 541 (1966)

child's well-being." Bhabha and Schmidt support the inappropriateness of applying *mens rea* to children.²¹

These entitlements and special considerations are not extended to children because of their citizenship, but rather because of their special needs as children. If the federal government mandates a child's right to counsel and consideration of the child's best interest, irrespective of the child's immigration status, it can be inferred that this mandate should also be applicable to non-citizen children. If a child is incapable of *mens rea* because of age and capacity, this concept must apply to non-citizen children as well. To hold children accountable for immigration violations is either a misapplication of the principle of *mens rea* or a violation of the concept that children should not be punished for the crimes of their parents. For example, if it is acknowledged that the child is incapable of the ill intent yet still held accountable, then the child is in effect paying for the decision or situation that was made by an adult – in many instances the parent chooses for a child to migrate, or creates a situation in which the child is compelled to do so. Child welfare norms applied at the national level should be extended to unaccompanied children in all legal proceedings, regardless of their immigration status or custodial agent.

In a report on the legal protections afforded to unaccompanied children in the U.S., UNICEF researchers found unaccompanied children to be in a "particularly precarious position"—at the intersection of two traditionally marginalized populations in the U.S.: children and non-citizens.²² Illustrating this point are the report's findings related to the interpretation of the best interest of the child principle by immigration authorities. DHS Asylum Officers (the immigration officials charged with screening asylum applications) are cautioned not to let best interest of the child influence the determination of a child's substantive eligibility for relief, though the concept may be applied to the interview process—in essence, how they personally interact with the child.²³

Similarly, UNICEF's researchers found Department of Justice-issued guidelines for the immigration cases involving unaccompanied children stress that the child's best interest does not override the law or expand it.²⁴ Rather, the guidelines suggest that the application of the principle of best interest be relegated to the creation of a child-friendly atmosphere in the court room. In essence, the instruction given to federal immigration agents and immigration judges—to apply the concept of the best interest of the child to the child's immediate surroundings and not to the decisions that will shape his or her life permanently—is shortsighted. By prioritizing the child's short-term experience in the courtroom over his or her permanent long-term placement, the immigration system inverts more than 50 years of national child welfare standards and ignoring numerous international conventions.

Relevant International Conventions and Norms

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...

²¹ Bhabha, Jacqueline & Susan Schmidt. (June 2006). *Seeking Asylum Alone*. President and Fellows of Harvard College.

²² Mason, Ani. (2005). Untitled and unpublished report on the situation of unaccompanied children in the United States developed for UNICEF.

²³ *Ibid*

²⁴ *Ibid*

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

Numerous international agreements, including the United Nations Convention on the Rights of the Child (CRC), the Vienna Convention on Consular Relations (VCCR), and the Hague Convention on Child Protection define the rights to both entitlements and protections that are specific to children. The CRC establishes the principle of the best interest of the child as the primary consideration for weighing states actions in relation to children. The VCCR mandates the immediate notification of a child's consulate if a child is detained while abroad. The Hague Convention on Child Protection provides a framework for determining the authority best suited to protect an unaccompanied child, and provides for the cooperation and collaboration between host countries and countries of origin ensuring the protection of and sharing information on unaccompanied children.²⁵ These international conventions and norms provide a basis for the U.S. to assess its policies for compliance with global standards in recognizing the rights of the child.

United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) is commonly regarded as the leading international doctrine on children's rights. The UNCRC maintains that children are entitled to special care, including special legal protection.²⁶ It also establishes the consideration of the best interest of the child as the primary guideline for any actions affecting the child.²⁷ The U.S. played a significant role in the development of the convention. U.S. members of the UNCRC Working Group strove to ensure that the convention included essential U.S. child welfare standards, such as consideration of the best interest of the child.²⁸ Although the U.S. is the only nation that has not ratified the convention, as a signatory it is bound not to take any action that violates the intent of the treaty.²⁹ Moreover, the U.S. *has* ratified two of the optional protocols to the convention: the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography; and the Protocol on Children Involved in Armed Conflict.³⁰ Given U.S. involvement in the development of the convention, and its support of the optional protocols, continued resistance to ratification is inconsistent and indicative of the lack of political will to prioritize child protection and well-being for all children.

Articles 9 & 10 of the CRC are relevant to the review of removal policy implementation. Article 9 stipulates the child's right not to be separated from a parent, except when such separation is ruled in the best interest under judicial review. This concept is relevant to the situation of an undocumented child or parent who is separated from a documented parent or child by removal

²⁵ Davidson, Howard & Julie Gilbert Rosicky. (2007). "Overcoming Government Obstacles to the Proper Care and Custody of Unaccompanied and Separated Alien Minors". *Protecting Children*. American Humane. Volume 22. No. 2

²⁶ Convention on the Rights of the Child, Preamble

²⁷ Convention on the Rights of the Child, Article 3 (1)

²⁸ <http://www.childrightscampaign.org/crcabout.htm>; and our own understanding from conversations with Working Group member Cynthia Price Cohen

²⁹ Ani Mason p 5; See also, Vienna Convention on the Law of Treaties, Article 18(2), 1155 U.N.T.S. 331 and <http://untreaty.un.org/English/sample/EnglishInternetBible/partIchapterXXIII/treaty1.asp>

³⁰ <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty22.asp> ; <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty21.asp>

from the United States. Article 10 maintains that parties to the convention will respond to applications to enter or leave their territory for the purposes of family reunification expeditiously and humanely, and that families shall not be punished for the submission of such requests. The United States does not currently provide an affirmative application process to unaccompanied children seeking reunification.

Hague Conventions on International Child Abduction and on Child Protection

The Hague Convention on the Civil Aspects of International Child Abduction (HCCA)³¹

A review of the principles and application of the Hague Convention on the Civil Aspects of International Child Abduction, to which the U.S is a party, inform a more complete understanding of the U.S.'s responsibilities to the unaccompanied children it returns.

Article 3 of the convention defines as unlawful the removal of a child under age of 16 from their country of habitual residence and in violation of the custody of an individual or institution. The situation of long-term undocumented child residents of the U.S. who are detained and removed as unaccompanied even though their family continues to reside in the U.S. appears to be non-compliant with the HCCA's definition of abduction. (i.e., children in the custody of local or state authorities who are remanded to ICE are sometimes removed by themselves even if they have no family in and no recollection of their country of origin. One example would be a teenager who is pulled over for a traffic violation.) Increased awareness of the provisions of the HCCA by U.S. federal and local authorities may serve to protect children from family separation.

The U.S. State Department reviews reports on the compliance of all parties to the HCCA. In its 2007 and 2008 reports, State reported that Mexico exhibited patterns of non-compliance and listed Honduras as the only non-compliant country.³² These reports, which speak to the laws and infrastructure of countries' child protective services and family law, may inform the development of U.S. policy for the safe return of unaccompanied children.

The Hague Convention of Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (The Child Protection Convention)³³

Advocates for non-criminal solutions to the receipt and repatriation of unaccompanied children support the adoption of the Hague Child Protection Act by the U.S.³⁴ Arguments in support of this position include:

- that it would create a frame work for international cooperation in child location efforts;
- that it would facilitate the determination of which country's agencies are competent to provide protection;
- that it would provide a mechanism for the sharing of key information and establishing any necessary protective measures.

³¹ The U.S. Congress ratified the HCCA in 1988,
http://www.hcch.net/index_en.php?act=conventions.status&cid=24.

³² http://travel.state.gov/pdf/child_abduction_Compliance_Report.pdf;
<http://travel.state.gov/pdf/2008HagueAbductionConventionComplianceReport.pdf>.

³³ http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=70

³⁴ The presented arguments for the ratification of the Child Protection Act are drawn from Davidson, Howard and Julie Gilbert Rosicky. (November 2, 2007). "Overcoming Obstacles to the Proper Care and Custody of Unaccompanied and Separated Alien Minors." *Protecting Children*. 22:2. American Humane.

Perhaps most compelling, however, are the convention's provisions related to the transfer of children to another country's foster care or other institutional services (such as is presumed to occur during the repatriation of unaccompanied children). The convention would provide for an assessment of the situation that unaccompanied children would face, when returned to a country-of-origin institution. It would further require direct consultation with country-of-origin authorities, and documentation of the child's case and justification for the proposed placement. These requirements would guard against the risks of returning unaccompanied children to countries of origin with insufficient protections or services for the individual child's needs. The U.S. had not ratified this convention.

Vienna Convention on Consular Relations (VCCR)

The Vienna Convention on Consular Relations (VCCR) is arguably the most widely recognized and immutable international law. It provides clear protections for children traveling outside their country of origin.

Although not specific to the needs of repatriated children, the Vienna Convention sets forth a number of standards relevant to their situation as non-citizen detainees. The convention mandates that foreign nationals detained by a government official must be notified that they are entitled to contact their consulate.³⁵ This notification is mandatory whether the detaining authority is local or national and should occur "without delay." Moreover, when a child under age 18 is detained, the detaining authority must to notify the country-of-origin consulate of the child's presence.^{36, 37}

³⁵ 596 UNTS 261, TIAS 6820, 21 UST 77 (Article 36)

³⁶ 596 UNTS 261, TIAS 6820, 21 UST 77 (Article 37); The only possible exception to the application of this rule would involve instances where consular notification may adversely affect the child (i.e., in instances involving the threat of persecution).

³⁷ In addition, the U.S. is required to notify certain countries immediately based on bilateral agreements:

| | | |
|---------------------|-------------|--------------------------|
| Algeria | Guyana | Saint Kitts and Nevis |
| Antigua and Barbuda | Hong Kong | Saint Lucia |
| Armenia | Hungary | Saint Vincent/Grenadines |
| Azerbaijan | Jamaica | Seychelles |
| Bahamas, The | Kazakhstan | Sierra Leone |
| Barbados | Kiribati | Singapore |
| Belarus | Kuwait | Slovakia |
| Belize | Kyrgyzstan | Tajikistan |
| Brunei | Malaysia | Tanzania |
| Bulgaria | Malta | Tonga |
| China (not R.O.C.) | Mauritius | Trinidad and Tobago |
| Costa Rica | Moldova | Tunisia |
| Cyprus | Mongolia | Turkmenistan |
| Czech Republic | Nigeria | Tuvalu |
| Dominica | Philippines | Ukraine. |
| Fiji | Poland | United Kingdom |
| Gambia, The | Romania | |
| Georgia | Russia | Uzbekistan |
| Ghana | | Zambia |
| Granada | | Zimbabwe |

The U.S. has a responsibility to honor the Vienna Convention not only because it has signed and ratified it, but because the convention is accepted as customary international law. As such, the application of the rules of the convention is not confined to relations between signatories. The State Department takes this position explicitly:

Consular notification is in our view a universally accepted, basic obligation that should be extended even to foreign nationals who do not benefit from the VCCR or from any other applicable bilateral agreement. Thus, in all cases, the minimum requirements are to notify a foreign national who is arrested or detained that the national's consular officials may be notified upon request; to so notify consular officials if requested; and to permit consular officials to provide consular assistance if they wish to do so.³⁸

Other Relevant International Conventions

Other United Nations conventions relevant to the situation of unaccompanied children include the UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, and the UN Rules for the Protection of Juveniles Deprived of their Liberty. The Beijing Rules, a precursor to the UNCRC, stipulate that adjudications involving children should be guided by the child's best interest and that the child is entitled to legal representation.³⁹ The Rules for the Protection of Juveniles Deprived of their Liberty affirms the child's right to counsel and clearly states that the institutionalization of the child should be the course of last resort.⁴⁰

Perhaps of greatest relevance to the process of removing children from the U.S., however, are rules 24 and 26 of the Rules for the Protection of Juveniles Deprived of their Liberty:⁴¹

Rule 24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

Rule 26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions

http://travel.state.gov/law/consular/consular_744.html#ba

³⁸ http://travel.state.gov/law/consular/consular_744.html#36

³⁹ Beijing Rules, 14 & 15

⁴⁰ Rules for the Protection of Juveniles Deprived of their liberty, Rule 17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles. Rule18(a)

⁴¹ While the Beijing Rules speak to the adjudication of children, not all unaccompanied children in the United States are entered into legal proceedings. The Rules for the Protection of Juveniles Deprived of their Liberty, however, are relevant to all unaccompanied children in custody. The implementation of rules 24 and 26 speak to conditions that affect all apprehended children facing removal.

that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

A number of treaties not specific to the rights of the child are also of relevance to the return of unaccompanied children. As a party to the UN Convention Against Torture, the U.S. may not “expel, return or extradite” an individual to a country where they will likely experience severe suffering at the hands or instigation of a public official.⁴² While the convention is not specific to children, it does not exclude them either.⁴³ Greater transparency in the return process and greater attention to the repatriation practices of countries of origin would serve to protect children from such risks.

Regional Conventions: OAS and RCM

The conventions of regional authorities are also relevant to the policies of the United States affecting unaccompanied children. Specifically, the U.S. is a member of two such international authorities—the Organization of American States (OAS) and the Regional Conference on Migration—that have recently taken action on issues pertaining to the migration of unaccompanied children throughout the Americas (i.e., in Canada, the U.S., the Caribbean, and Latin America).

In 1994, the OAS drafted the Inter-American Convention on International Traffic in Minors to “ensure the protection of minors in consideration of their best interest” and “ensure the prompt return of minors who are victims of international traffic to the State of their habitual residence, bearing in mind the best interests of the minors”.⁴⁴ While the U.S. has not ratified this convention, 14 Western countries have, setting a regional precedent in this hemisphere for the application of best interest to removal and repatriation procedures.⁴⁵

In October 2002, the Regional Conference on Migration commissioned a study on migrant children in North America. The study’s methodology included a questionnaire on national migration policies issued to all member nations. The U.S. participated and several U.S. responses were published in the final document. The study’s recommendations to the conference and member states include the:⁴⁶

- Development of a forum for the regular exchange of information on the topic based on the Separated Children in Europe Programme;
- Establishment of a regional legal framework for the population based on the Beijing Rules and UNCRC;

⁴² Convention Against Torture, Article 3, as cited by Ani Mason.

⁴³ Advocates in the field have raised concerns related to the return of children to countries that are reported to have lower age limits for criminally responsible (10 years old in China/ Hong Kong – DOS report 2006; India). It is conceivable that, upon return to such countries of origin, children might be held criminally responsible for actions related to their migration and subject to punishment that could constitute extreme suffering.

⁴⁴ Inter-American Convention on International Traffic in Minors Article I(a) & (c) respectively.
<http://www.oas.org/juridico/English/treaties/b-57.html>

⁴⁵ For more information on each of the ratifying countries and how the CRC relates to each country in particular, click on the following links: [Argentina](#), [Belize](#), [Bolivia](#), [Brazil](#), [Colombia](#), [Costa Rica](#), [Ecuador](#), [El Salvador](#), [Nicaragua](#), [Panama](#), [Paraguay](#), [Peru](#), [Uruguay](#), [Venezuela](#);
<http://www.crin.org/Law/instrument.asp?InstID=1026>

⁴⁶ *Migrant Children: Human Rights, Protection and the Services in the Member Countries of the Regional Conference on Migration*. (2002). Regional Conference on Migration.

- Creation of standardized data collection systems to provide information necessary to support policy development;
- Promotion of transparency in the conditions under which children are removed and repatriated via an independent monitor, such as the Women's Commission for Refugee Women and Children; and
- Recognition and pursuit of the best interest of the child in all cases resulting in the child's removal and repatriation.⁴⁷

In April 2007, the Regional Conference on Migration convened in the U.S.. Member nations approved the "Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victim's of Trafficking." The guidelines hinge on the concept of applying the principle of the best interest of the child to all decisions and procedures related to the repatriation of child trafficking victims. The child's best interest is referred to 10 times in the 13 pages of recommendations, including in the definition of repatriation as "a protection mechanism that involves sending a child victim back to his or her country of nationality or residence, family and community, where deemed appropriate and in the best interest of the child."⁴⁸

Summary and Recommendations

Current written U.S. policy related to the return of unaccompanied children is insufficient. The U.S. should develop comprehensive legislation that clearly defines the roles and responsibilities in safely returning unaccompanied children to their country of origin. However, we should not develop these policies in isolation.

The migration of unaccompanied children is a global phenomenon. The issue of caring for and repatriating unaccompanied children is a task faced by many nations. International bodies provide a forum for addressing international challenges. By actively engaging the international community on this issue, the U.S. could help develop sustainable solutions to the international displacement of children for the benefit of all parties.

⁴⁷ *Migrant Children: Human Rights, Protection and the Services in the Member Countries of the Regional Conference on Migration.* (2002). Regional Conference on Migration.

⁴⁸ *Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victim's of Trafficking.* (2007). Regional Conference on Migration.

THE INTERSECTION BETWEEN STATE AND FEDERAL AGENCIES

The line between federal and state jurisdictions regarding the custody of undocumented youth is muddled. While federal immigration authorities enforce immigration law and state child welfare personnel are responsible for protecting the best interest of abused and neglected children, these jurisdictions can overlap in certain situations. Without clear and standardized guidelines, the resolution of these situations depends on the working relationships of the regional authorities and individuals involved.

CPS' Pursuit of Unaccompanied Child's Legal Immigration Status

Special Immigrant Juvenile Status (SIJS) is a form of immigration relief available to child victims of abuse or abandonment. SIJS is a temporary protective immigration status that allows non-U.S. citizen children to remain in the U.S. While children may apply for SIJS based on abuse or abandonment suffered in their country of origin, they may also be eligible for mistreatment experienced while in the U.S. Unaccompanied children in the custody of a state protective service often qualify apply for SIJS protection, yet it is not standard practice for states to pursue SIJS for their undocumented clients.

The extent to which states pursue SIJS for eligible children is determined by that state's internal child welfare policy and the state's child protective services policies and procedures. Depending on the given state, a state agency attorney may assist an unaccompanied undocumented child in the U.S. with an application for SIJS. A ward of the state who has a permanency plan that does not include family reunification, is not a legal U.S. resident, and whose best interest does not include repatriation may petition for SIJS.

Complicated or unclear age requirements for state jurisdiction and agency policy can affect a child's access to relief through SIJS. Further restricting the child's access, overburdened child welfare caseworkers may fail to recommend their eligible clients in a timely manner because: 1) they do not understand SIJS requirements in relation to their state's policy; 2) they are unaware that SIJS even exists; or 3) they prioritize the immediate safety and security of the child over the resolution of his immigration status. (e. g., Some workers may be resistant to ascertaining the child's immigration status for fear that the child might be removed, and thereby not effectively protected from his or her abusers.)

Failure by state child welfare services to recognize and acknowledge a child's immigration status could place SIJS eligible children at risk of aging out of the application requirements. If a child ages out of the SIJS criteria and then ages out of state care, their vulnerability would be twofold. Not only would they receive reduced, if any, support services (as are many children in child welfare), but they would be subject to the enforcement of immigration law as it regards adults, with no special consideration for their situation as a victim of abuse or their original entry into the state system as a child. Viewed as an undocumented adult, youth are subject to adult detention and deportation.

As neither state agencies nor the Department of Homeland Security (DHS) maintain statistics on the number of children in state care who qualify for or receive SIJS status, an accurate assessment of SIJS underutilization is not possible. However, Citizenship and Immigration Services (CIS) does report on the number of Child Protective Services (CPS) wards granted permanent status by some means in its annual data report, the *Yearbook of Immigration*

Statistics.¹ In 2006, 1912 immigrant children received immigration protection while under the dependency of state child welfare services. When these numbers, of which unaccompanied SIJS recipients in direct CPS custody would be a subset, are considered in the context of how many children are in state care nationally, the potential disparity constitutes a strong case for under-utilization.

At the federal level, it is unclear why department agencies do not keep statistics on this population, particularly since the need for improvements in the collection and availability of information related to unaccompanied children in the immigration system was identified prior to the HSA and Congress has repeatedly instructed the DHS to provide related data.² At the state level, there seems to be competing motivations for not collecting data on the number of unaccompanied or abandoned undocumented children in state care. The suppositions offered by child protection staff in states across the nation, include:

- Lack of infrastructure/resources within an already overburdened system;
- Fear that recognition of the fact that these SIJS eligible children in state care would politicize the situation at the state level, resulting in an interruption or suspension of services to abused and abandoned children based on nationality;
- General resistance to releasing any information to the public³ that might complicate relations with federal immigration agencies (either by increasing immigration enforcement's interest in children in state care, or by jeopardizing state and federal relations in areas where immigration enforcement and state agencies enjoy a level of cooperation); and
- Concern that the collection of these statistics might negatively affect overall federal funding for state services.

In regions where state and local authorities have a history of tension related to the jurisdiction over undocumented children and in areas where communities have adopted "anti-immigrant" legislation, these fears are not always unfounded. Still the advocacy and service for unaccompanied children will remain a challenge as long as the population remains invisible.

SIJS Access Often Limited Due to Delays

Children may also miss the opportunity to apply for SIJS due to administrative and legal delays within the system. A child's immigration case may be delayed at any stage by a multitude of judicial and administrative factors, including:

- Delays in transfer between (Department of Homeland Security) DHS agency custody and ORR;
- Transfer from one ORR facility to another (sometimes on the other side of the country);
- Transfer from the court where the child's proceedings were initiated;

¹ http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/OIS_2006_Yearbook.pdf

² *Unaccompanied Juveniles in INS Detention*(2001). The Department of Justice Office of the Inspector General; Haddal, Chad. (March 1, 2007). *CRS Report for Congress: Unaccompanied Alien Children: Policies and Issues*. Congressional Research Services; P.L. 109.295; H. Rept. 109-699; House Report 110-181; See also *Recent Reviews of U.S. Policy on Unaccompanied Children* backgrounder

³ Any data that a state agency collects is available to the public upon request, unless explicitly tied to security interests.

- Granting of extensions to obtain counsel and review options for relief⁴; and
- Any number of delays associated with a federal agency processing a petition.

The potential for substantial delays places older children who are eligible for relief at risk of aging out of both ORR care and, for those seeking SIJS, a chance to apply for legal status.

Aging Out: How Federal and State Definitions of Maturity Can Affect a Child's Chance to Stay or Decision to be Removed

Children in ORR Care

Under the Immigration and Naturalization Act Sec. 204.11 (c) (1) children and youth in the immigration system may seek and receive SIJS until their 21st birthday. However, children “age out” of ORR custody at age 18 and are remanded to the custody of ICE.

“Aging out” of ORR care means that on the morning of a child’s 18th birthday, DHS agents take him into custody and place him in an adult detention facility. These facilities are typically prison-like environments. When faced with the possibility of indefinite detention in an adult prison, some children choose not to pursue their claims for relief, opting for removal instead.

One of my teenage clients ultimately granted SIJS could not withstand protracted detention when he aged out and was placed in an adult detention facility and instead of pursuing adjustment of status to permanent residence before the Immigration Court decided to opt for removal to his Central American home country- where he immediately encountered subsequent threats by the same gang he had fled. Had he been placed in a transitional living program in the United States for youth 18-21 for example, he would have had the fortitude to remain and pursue his permanent residence. My pro bono client ultimately and tragically forfeited his relief options because of the dire conditions of adult detention.

Christopher Nugent, Unaccompanied Children’s attorney and advisor to this study. Via e-mail, October 16, 2008.

If a client chooses to remain in the U.S., state family law and child welfare policy can determine the child’s ability to proceed with a SIJS petition. (i.e. In states that allow dependency to continue past the age of 18, the applicant may continue to pursue SIJS.)

Children in CPS Care

A number of factors can determine the point at which a child ages out of a given state’s custody. A child might age out at age 18 (as is the case in Florida and California); at age 19 (as in Nebraska); or at age 21 or 23, the age in which many states will extend care and services in instances of special or transitional needs. From a list maintained by the National Child Welfare

⁴ While the child’s receipt of an extension from an immigration judge may seem favorable, it is indicative of the difficulties in obtaining counsel for unaccompanied children. In effect, an extension may just prolong detention as a child may receive an extension and ultimately a removal order without obtaining counsel.

Resource Center, the combination of instances in which a state extends child protective services or custody past a child's 18th birthday is unique to each of the 50 states⁵

These variations affect the ability of social workers and CPS attorneys to pursue SIJS (if it is in their clients' best interest), as well as the children in ORR care whose ability to obtain SIJS is tied to policies of the states in which they are detained. As required by the SIJS process, all applicants for SIJS (including those in federal custody) must obtain a ruling from a state court that substantiates their status as an abused or abandoned child. Thus the fact that some states will terminate a dependency ruling on a child's 18th birthday, while other states do not, results in a patchwork of SIJS eligibility requirements across regions.

State Juvenile Correctional Systems

States have considerable discretion in the development of their corrections systems and codes. The manner and extent to which state correctional authorities and facilities structure policy related to undocumented children have a direct impact on the child's ability to access consular or legal assistance.

The Texas Youth Commission (TYC), the state agency responsible for juvenile correction, has a written policy mandating the notification of ICE in cases involving undocumented children.⁶ The agency's legal department, however, has advised against the release of children's information to outside agencies as it is deemed a violation of the child's right to privacy. Likewise, TYC advises that confirming a child's immigration status through collaboration with outside agencies would also violate the child's right to privacy. Currently, the agency's policies are under review. TYC representatives confirm that it is common practice not to refer a child to ICE unless ICE has issued a detainer and maintains that it does not notify foreign consulates unless the child requests such contact. Some TYC agents will reportedly transport undocumented Mexican children to the border with Mexico, without notification of U.S. immigration authorities, if they express an interest in returning home following their release from custody. There is no indication, however, that this informal practice involves consular or parental notification either.⁷

Adult Correctional Systems

Unaccompanied children may also enter the adult state corrections systems in states where children may be tried as adults. The application of state procedures designed for adult inmates may conflict with international norms protecting children in detention. In Texas, the Texas Department of Criminal Justice (TDCJ) works closely with ICE and refers all foreign-born inmates to the agency for immigration status verification. ICE actually maintains offices within the state correctional facilities at Huntsville, one of the larger facilities, in order to facilitate the processing of immigration cases concurrent with the serving of sentences.⁸ In this manner, inmates may be deported immediately upon the completion of their sentence. The Texas state agency maintains a policy of not notifying consulates of the detention of any national, unless

⁵ http://www.nrcys.ou.edu/yd/state_pages/search.php?search_option=remain_after_18

⁶ All TYC related information is based on our conversations with TYC staff and open records act requests.

⁷ Staff mentioned that TYC is considering the development of reporting procedures that would mirror those in adult corrections. If this occurs, all non-citizen children would be referred to ICE, significantly increasing the likelihood of the child entering removal proceedings without consular notification.

⁸ Bozarth, Melinda. General Counsel for the Texas Department of Criminal Justice. Interview by Amy Thompson. Via telephone (April 11, 2008).

that national is sentenced to capital punishment. Under this policy, consulates would not be notified of any undocumented youth in TDCJ custody (unless sentenced to death row), and thus would be denied access to any assistance or services the consulate could offer. This policy is in clear violation of both Article 36 and 37 of the Vienna Convention on Consular Relations (VCCR) (see *Related Federal Code and Legal Precedent* backgrounder for more information).

State policies and procedures that do not ensure consular notification in accordance with the VCCR are in clear violation of both international convention and the best interest of the child. Delinquency on the part of children can be born of desperation brought on by abuse or abandonment. As such, an unaccompanied undocumented child may still be eligible for special protections, including SIJS, despite the child's assignment to the correctional system. State agency policies and procedures should not impede a child's access to relief through the legal system.

Inter-jurisdictional Relations:

Children in ORR Custody Often Must Go Before State and County Courts

State child welfare authorities and courts can affect the cases of children in the custody of immigration agencies. For a child to petition for Special Immigrant Juvenile Status (SIJS), a form of immigration relief commonly sought by ORR detainees, it must be determined that:

- The child is dependent on the state or in state custody due to abuse, neglect, or abandonment;
- There is no possibility for family reunification, and
- Return to the child's country of origin is not in the child's best interest.

A state judge must make these findings as an immigration judge lacks the necessary child welfare expertise and can not rule on the child's best interest. The extent to which state child welfare courts and judges are willing to entertain dependency hearings for children in the immigration system can have a direct impact on the ability of a child's attorney to successfully pursue a SIJS application.

In states without set or clear guidelines for child welfare courts on whether to allow dependency cases for children in ORR custody, the decision is left to the discretion of the judge. In turn, differences in the temperament and opinions of individual judges lead to variations in the access allowed to and overall experience of children in federal custody seeking a local court dependency determination. Thus the child's access to the child welfare court is determined by the judge to whom the children are assigned. In some cases a child's only hope of relief lies in the SIJS process—the barring of a child's access to court (i.e. a dependency hearing) is, in effect, an order of removal.

Although child welfare and family law judges routinely hear SIJS cases for children in state custody, they may be unwilling to hear the cases of children petitioning from ORR custody without clear guidance to do so. Some judges may view the required ruling as taking a position on immigration policy and feel unqualified to do so. However, if a child welfare judge finds the

child to be dependent⁹, an immigration authority will ultimately make the determination in regards to the child's immigration status. If a judge chooses not to make the necessary determination, however, the child is removed by default. By refusing to hear a case so as not to take a position on immigration, the judge may, in effect, be exercising immigration policy.

As many children in ORR care are in their late teens, the threat of aging out of state dependency eligibility requirements can also be a barrier. Advocates for abused and abandoned immigrant children in ORR custody struggle with navigating the variations in state limits for dependency hearings to determine if a child is a victim of abuse or neglect requiring state assistance. Without a reliable reference for which jurisdiction will allow youth over age 18 a dependency hearing and under what circumstances, attorneys are challenged to represent child clients who maybe transferred across state lines (i.e. from one ORR facility to another, a common occurrence). In some local districts gaining access to local child welfare courts is so cumbersome that children must seek a dependency determination from other courts, such as local probate courts. As a result of these regional variations and obstacles, the geographic placement of the child within the U.S. (determined largely by bed availability in ORR facilities) can , in effect, determine, a child's access to protection via the SIJS process.

DHS Recognition of State Child Protection Agency Authority:

Inconsistent and Contradictory

A History of Cooperation in the Southwest

In some regions of the U.S./Mexico border, Border Patrol (BP) has historically and actively sought the assistance of state child welfare specialists in caring for apprehended unaccompanied children and reunifying them with their families in the U.S. or Mexico.

Informal arrangements between BP and state agencies are implemented to varying degrees along the U.S./Mexico border.¹⁰ In some areas, BP releases unaccompanied children to local state child welfare services pending the child's release or removal. To varying degrees the state agency may assist consular efforts to identify family members for placement in either the U.S. or Mexico. The extent to which these agreements are utilized depends on the individual supervisor on staff and implementation can vary by shift. Reported benefits of the system include: children are not detained in overcrowded BP facilities; children receive greater attention to their immediate needs; and children are more likely to be reunified with families through the resources and expertise of CPS staff.

However, foreign consulates reported several concerns to us, including:

- Inconsistent application of BP/CPS cooperation can frustrate consular efforts to identify and assist children in a timely manner;
- Depending on whether they are in the care of state agencies, children may be at greater risk for reunification with smugglers; and

⁹ A dependency hearing is the process by which a judge determines whether a child is the victim of abuse or abandonment and in need of guardianship. This finding is requisite for the SIJS application process.

¹⁰ This information is based on our experience interviewing U.S. state and Mexican Consular representatives in communities throughout all four border states. While local opinions regarding the efficacy of BP/ state cps cooperation vary, no officials wished to report openly on the specifics of these agreements for fear that they might lose a valuable tool in protecting abandoned or abused children.

- The CPS system is overburdened, leading to an increased chance of children being lost in the system and consulates not being notified.

Occupied Texas

Despite evidence of historic BP and state child welfare cooperation at the local level, some regions report an increasing friction between federal immigration enforcement and state child welfare authorities. This trend is perhaps best illustrated by the current situation in South Texas, where all residents are subject to BP inspection during transit. Within border states, BP regulates travel not just internationally, but along state and federal highways, as well. BP establishes checkpoints on all byways leading from the border region into the interior of the state, in some instances hundreds of miles from the border. They also closely monitor domestic flights and bus lines. As a result, South Texans cannot leave their home communities without having to prove their authorized presence in the United States. One CPS judge refers to this situation as “occupied Texas”.¹¹

This situation creates an obstacle for state child welfare agencies to the extent that some BP divisions and supervisors refuse to acknowledge state custody of an undocumented child. Federal law prohibits the transport of undocumented individuals.¹² Generally, this is interpreted as a device to prosecute smuggling and harboring of fugitives. Some U.S. Customs and Border Patrol authorities interpret this law to apply equally to any agencies or authorities outside the U.S. immigration system.

State child protection authorities are challenged by this situation when their clients—abused and abandoned children—need mental health, medical, or placement services that are not available in the greater border area. In some areas, United States Border Patrol will not recognize state court orders authorizing a child’s transport and placement outside the border area.

For example, in the Rio Grande Valley area, state CPS agents have been detained by U.S. immigration authorities and threatened with prosecution for attempting to transport their clients to needed services. BP agents have taken custody of state wards, assuming the custody and care of abused children who they are not prepared to receive. In one instance, a girl who was a victim of sexual and physical abuse and had significant mental health needs was taken by BP without any heed to her condition. CPS learned of her fate weeks later, when contacted by an ORR contractor outside of Chicago. BP had transferred the girl to ORR care without notifying ORR of their involvement in the CPS system, her status as a ward of the state of Texas, the presence of her family in South Texas, or the girls’ immediate medical and mental health care needs. As our report goes to press, the girl has been in ORR care for more than a year, is still located in Chicago, and no plan for family reunification has been identified.¹³

¹¹ Flores, Roberto. Judge for the 139th Judicial District of Texas. Interview by Amy Thompson. Via telephone. (August 1, 2007).

¹² 8 U.S.C.A. § 1324

¹³ Rodriguez, Sandra. Border Liaison for Texas Department of Family Protective Services. Interviews by Amy Thompson. In Edinburg, Texas (July 25, 2007). Via telephone (October 17, 2008).

Summary

The disconnects that currently exist between state and federal agencies, as well as between law enforcement and child welfare agencies place vulnerable unaccompanied children at greater risk of disenfranchisement of their rights to representation and contact with their consulates. This, in turn, places unaccompanied children at greater risk of an unsafe return, by bypassing the few protections in place.

The U.S. must resolve the internal conflict between its commitment to the protection of all children and its perspectives on law enforcement. While the development of a comprehensive policy to ensure the safe repatriation of children should be the ultimate goal, federal law enforcement agencies must be ordered to respect the orders of state courts regarding children in state custody. State child welfare agencies, in turn, must ensure that their staff is sufficiently trained on their obligations to their clients under federal law regarding the service of undocumented children. State agencies should endeavor to secure regional agreements with immigration enforcement to address ongoing issues and inform policy development.

REPORT METHODOLOGY

Removal and repatriation can harm children if not carefully regulated because of the circumstances leading to child migration and the inherent vulnerability of children. The United States must have clear, transparent, and consistent mechanisms for repatriation in order to avoid undue risk to the child. Unfortunately, confusion about policies affecting repatriation frustrates the efforts of consulates, attorneys, and guardians ad litem to prepare child clients and ensure their safety. In the context of this situation, our study seeks to address two fundamental questions:

1. What happens to returned, unaccompanied children (i.e., what agencies participate in the process and what are their general policies and procedures); and
2. How does removal affect children?

To address these questions, we analyzed the status of U.S. public policy, identified relevant country-of-origin policies, interviewed federal and international agency personnel, and interviewed unaccompanied children about their removal experiences.

Mexico and Honduras were chosen as case studies in repatriation. Mexico was selected as it is the country of origin for most undocumented and unaccompanied children apprehended.¹ Honduras was selected as it is one of the most common countries of origin among unaccompanied children in federal detention.²

Countries of Origin of Unaccompanied Children in ORR (federal) Custody

| Countries of Origin | FY 04 | FY 05 | FY 06 | FY 07 |
|---------------------|-------|-------|-------|-------|
| El Salvador | 26% | 24% | 32% | 27% |
| Honduras | 30% | 35% | 28% | 29% |
| Guatemala | 20% | 23% | 26% | 29% |
| Mexico | 10% | 6% | 7% | 9% |
| Brazil | 3% | 3% | 1% | 0.8% |
| China | 2% | 1% | 1% | 0.6% |
| Ecuador | 2% | 2% | 1% | 1.4% |
| Nicaragua | 0.8% | 0.9% | 0.9% | 1.1% |
| Other | 6.2% | 5.1% | 3.4% | 3.2% |

Native Countries of Unaccompanied Children in ORR Care, FY07

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

² Unaccompanied undocumented Mexican children are rarely entered into federal custody. Rather, they typically are immediately delivered across the border between the U.S. and Mexico without access to official immigration proceedings.

Source: 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.

Data on Public Policy in the United States

Pervasive lack of existing or available written policies limited answers to Research Question One. We sought access to official written policies and procedures through the Freedom of Information Act (FOIA) request process. These requests were denied. To obtain information on common practices we interviewed with federal agency personnel and children in the removal process. The interviews conducted with the children provide insights for both Research Questions One and Two.

Freedom of Information Act Requests

To analyze policies, procedures, and statistics pertaining to the removal and repatriation of unaccompanied children from Mexico and Honduras, we submitted seven 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.

DHS denied six requests outright or delayed their responses beyond the publication of this study. DHS gave various reasons for the denial or the delay. For example, the department combined four unrelated requests under one FOIA case number and then responded that the request was too long to respond to within the standard time limits.

DHS closed one request for unclear reasons.³

In response to the denial of the FOIA requests, we made direct entreaties to Customs and Border Protection and Immigration and Customs Enforcement. DHS directed us to submit a list of the study's questions for departmental review to arrange for an interview. We submitted the list in November 2007. We received a response in January 2008 after contacting a U.S. Congressman's office for assistance. Within a day, an ICE FOIA officer contacted us and began processing the request. In February 2008, ICE submitted responses to several of the questions (see Appendix B *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies*). ICE forwarded outstanding questions to Custom and Border Patrol's FOIA officer. CBP has not responded to this inquiry.

Agency Interviews

We sought interviews from ICE, Customs and Border Protection (CBP), the Office of Refugee Resettlement (ORR), and the Executive Office on Immigration Review (EOIR) within the Department of Justice for clarification on agency policy and to compare accounts of the procedures described by children in the system.

³ We received two closure letters related to this request. One letter stated the information did not exist, while the other stated that it was available on the Customs and Border Patrol website. However, no direct link was provided. The agency did not respond to our requests for assistance in locating this information.

ICE: Public affairs officers and representatives from the Detention and Removal Office refused interviews at the regional and national levels.

CBP: No one in the CBP Washington public affairs office responded to our repeated requests. Through the assistance of the Women's Commission on Refugee Women and Children and the Mexican Consulate in Juarez, we toured the facilities for children at two Border Patrol stations in Texas and interviewed staff routinely involved in the apprehension and return of children.

ORR: ORR granted requests for access to children held in detention facilities and interviews with agency staff. The agency provided available statistics on children in the agency's custody, but claimed some information was unavailable (i.e., statistics on the methods of removal applied to children in ORR care). The agency neglected to respond to a written inquiry (originally submitted November 20, 2007, to executive staff) for detailed information on agency procedures and data related to removal. The submission of this request mirrored the requests made of ICE and CBP (for more information, see Appendix B *Freedom of Information Act Request Processes and Direct Entreaties to Federal Agencies*).

EOIR: The EOIR declined to grant us access to immigration judges involved in removal decisions without explanation.

State Agencies: We solicited information from representatives of state child welfare, juvenile correction, and criminal justice agencies on children removed from or repatriated to out-of-state custody. Greater detail is included in *The Intersection Between State and Federal Agencies* backgrounder, which discusses state jurisdiction.

Challenges to and Limitations of the U.S. Data Collection Process

Difficulties in collecting data reflect the lack of standardized systems for collecting and analyzing information on children in the immigration system. Inconsistent and insufficient data collection mechanisms were a noted historic weakness of the former Immigration and Naturalization System.⁴ ICE continues this legacy, particularly as regards unaccompanied children in federal custody. Since 2001, at least five government reports related to unaccompanied children noted these difficulties (for more information, see the *Recent Reviews of U.S. Policy on Unaccompanied Children* backgrounder).

A culture of secrecy and evasions further compounded the difficulty of obtaining federal data. In February 2007, we contacted the Border Patrol's public information office in Edinburg, Texas, to request access to facilities and information related to local policies and procedures. The office directed us to contact the national level public information authority for clearance, but requested, "Give me 15 minutes so I can warn them that you'll be calling." We left numerous messages at the number provided over the next three months, but never received a response. Subsequent requests to the Edinburg office resulted in our receipt of identical instructions, despite the obvious inefficacy of the process.

Data on Public Policy in the Countries of Origin

⁴ See DOJ OIG report summary in *the Recent Reviews of U.S. Policy on Unaccompanied Children* backgrounder.

To more fully address the study's two primary questions, we sought data on the policies and procedures of country-of-origin agencies. Understanding the reality of a given country's repatriation services is necessary to the extent that it informs the United States' responsibilities to the children it removes. This study does not seek to analyze or offer recommendations for country-of-origin policy.

In the course of conducting initial background research for the study, we visited Mexican consulates along the Texas/Mexico border and Office of Refugee Resettlement detention facilities throughout the state.⁵ Our purpose for these visits was to identify agencies involved and the points within the process where we could gain access to children involved in the process.

Once on site in the countries of origin, we collected procedural and quantitative data from country-of-origin government officials and contractors, 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 with permission in this report.

While Mexican Consulates and Mexican child protective services were very accommodating with the provision of local statistics and forms, quantitative data on a national level were difficult to obtain. Requests repeatedly submitted electronically to national offices went unanswered⁶

Prior to the initiation of field research, we were unable to obtain a response from the Honduran Consulate. We did, however, establish contact with Honduran foreign service agents, once we were able to meet with agency headquarters in Honduras.

Qualitative Data on the Child's Perspective

Identifying the Children and the Appropriate Point of Access

Through the Mexican Consulates, we obtained contacts with the Mexican agencies involved in repatriations and a general understanding of the process leading to the child's placement with Mexican child protective services. As access to children after this point in the process was uncertain, we obtained permission from Mexican authorities to speak with children in the custody of Mexican child protective services prior to their reunification with family members. We also obtained permission from the consulates to witness their involvement with the removal process.⁷

⁵ Little-to-no direct information was available regarding Mexican or Honduran agency procedures for receiving repatriated children and reuniting them with their families. Mexican studies on the issue were obtained in the field (i.e., Mexico). We obtained permission to visit the ORR facilities, interview ORR staff, and meet with children (with the child's attorney present) through office of the Director of Unaccompanied Children's Services. We repeatedly sought contact with the Honduran Consulates in the United States throughout the study, but did not make contact or gain access until we were already in the field (i.e., Honduras).

⁶ This may, in part, be due to the digital divide. Many professionals in Mexico do not routinely use e-mail in the workplace.

⁷ 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 conclusive response – even once permission from Mexico had been granted.

At the ORR detention facilities, we gained access to dozens of children from Honduras.⁸ Several of these children had experience with previous removals and also were able to inform the study regarding country-of-origin processes. In order to present a complete account of the child's experience, we interviewed children once they returned to their homes in Honduras. In subsequent visits to the same ORR facilities, we approached Honduran detainees with orders of removal for permission to contact them after their return.⁹ All interviews with children in ORR facilities were conducted with their attorney's knowledge and, when available, presence.

Development of the Interview Surveys

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 specific interview protocols.) The range of interview questions included:

- Prompts related to the child's life before migration and their journey to the border (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); and
- Questions related to the child's own desires and sense of future (to enhance understanding of the child's perspective and level of autonomy).

Additional Guidelines

In consultation with advisory committee members and in compliance with our understanding of best practices related to the interviewing of children, we adopted the following guidelines:

- We did not conduct scripted interviews with children under age seven.
- We did not conduct interviews with children who were visibly emotionally distressed.
- We did not interview children if we were able to observe their interviews with child welfare officials.
- We did not interview children who were present on any of the days that the project photographer was present in order to protect the identity of the interviewees.
- We conducted all formal interviews in the most private environment available.
- We digitally recorded and transcribed all interviews to ensure the accurate interpretation of the child's story.
- Children selected their own pseudonyms to protect their identities.

We implemented systematic methodologies in the collection of qualitative data. However, we also relate our more informal experiences in the field when appropriate and relevant to the research questions.

⁸ Several of these children had experience with previous removals and also were able to inform the study regarding country-of-origin processes.

⁹ Given that the direct removal of both girls and children under the age of 13 from ORR custody is less common, we consequently had limited access to these populations. Thus, the study's focus is limited to the experience of teenage boys to who we were granted access who had also received orders of deportation.

Mexico Study Participant Demographics

We recruited Mexican participants at children's shelters along the Texas/Mexico border. On days selected for the interview process, we gave all children located at the shelters who met our age and other selection requirements (see above) 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.¹⁰

We also visited with children residing in shelters in Chihuahua and Sonora. However, as private interviews could not be arranged at these sites due to facility limitations, we did not attempt to complete the interviews. Still, the concerns and perspectives of these children are included anecdotally, when relevant.

Of the 26 children who participated in the structured interview process, fewer than one-third (eight children) were girls. The average age among the participants was 14, with a range from age 7 to 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 U.S. authorities. Children who provided 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 Study Participant Demographics

As discussed above, Honduran subjects volunteered from the population of ORR detainees. Fourteen children were approached with the request to interview them post repatriation; 12 consented: 11 boys and one girl. Of these, five had not received their travel arrangements from DHS by the time of the field study two months later. The contact information for another was invalid. In the end, seven interviews were conducted: five from contacts through ORR and two with children identified in Honduran custody. Honduran interviews took place in public spaces near the children's homes with the exception of the two boys interviewed while in the custody of Honduran child protective services.

We met with seven Honduran boys, ages 15 to 17. Five of the boys were initially identified while in ORR custody and later interviewed at or near their homes in Honduras subsequent to their repatriation. Two of the boys were identified in Honduras and interviewed at a Honduran National Institute for Families and Children (IHNFA) shelter prior to family reunification.¹¹

The most significant limitation of the information obtained through the children's interviews is its limitation in regards to gender: though girls represent one-third to one-fourth of the unaccompanied Honduran minors in U.S. custody, proportionately fewer girls than boys appear to be subject to removal. In 2007, the Honduran government reported only 54 instances in

¹⁰ Five children turned out to be from other countries: Guatemala, Honduras, and El Salvador; one had misrepresented his age – he was 5 and claimed to be 7; and one was unable to respond to the questions.

¹¹ We note the fact that most of the interview subjects had returned to their original homes limits the applicability of some of their experiences (such as detention and release from IHNFA custody) to children with families and support systems.

which Honduran authorities received girls deported by the United States (see table below).¹² The initial list of subjects for interviews included one girl, but she had not been deported by the time of the field study.¹³ In the end, none of the participants in the Honduran interview included girls. As such, thus the results of the case study do not include the female perspective on the experience of removal.

**Honduran Unaccompanied Children Deported by the United States of
America
By Gender, 2007**

| Month | Boys | Girls | TOTAL |
|--------------|------------|-----------|------------|
| January | 39 | 7 | 46 |
| February | 34 | 6 | 40 |
| March | 4 | 6 | 10 |
| April | 6 | 5 | 11 |
| May | 25 | 2 | 27 |
| June | 61 | 0 | 61 |
| July | 31 | 3 | 34 |
| August | 44 | 4 | 48 |
| September | 18 | 6 | 24 |
| October | 43 | 4 | 47 |
| November | 29 | 6 | 35 |
| December | 34 | 5 | 39 |
| TOTAL | 368 | 54 | 422 |

Source: International Migration, Section for Deported Citizens, Office of Migration and Foreign Relations, Department

¹² According to Honduran the Honduran agency providing the data, though it is uncommon, a child may be repatriated more than once in a calendar. In such instances the child would be counted twice with no means of verifying repeated repatriations, unless recognized by migration authorities.

¹³ We observed 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.

COMPLETE MEXICO AND HONDURAS CASE STUDIES

“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 e-mail 3.9.07

The reality of return is invariably affected by the individual child’s country of origin. This study explored the processes for returning unaccompanied children to Mexico and Honduras, as the two most common countries of origin.

Mexico Case Study

Factors That May Influence Migration

A study by the National Autonomous University of Mexico estimates that 150,000 minors attempt to cross the U.S. border annually (60,000 are returned).¹ The study further estimates that one-third of the total population travel without a parent or guardian. Researchers find that unaccompanied children migrate for many reasons but that economics is almost always linked to the root cause. While there is a need for more research to better understand the causes of migration among children in Mexico, economic and social disparity, regional conflicts, and inconsistencies in the provision of essential services and protections may affect the child’s situation.

Mexico and the United States share roughly 2,000 miles of border.² Mexico is the 13th largest economy in the world, and an important source of trade with the United States. However, social and economic disparities within the country limit the opportunities and protections available to its young citizens. Mexico has a young and diverse population. Nearly 37 percent of the population is under age 18, and 30 percent is indigenous.³

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 lives in extreme poverty.⁴ Advocacy organizations estimate that roughly 95 percent of children ages 12 to 17 are employed at some level—although most are not paid a salary—and nearly 15 percent work more than 48-hour weeks.⁵ Twenty percent of the 3.1 million migrant agricultural workers within

¹ These numbers include both unaccompanied and accompanied children. Gomez Mena, Carolina. “Laboran en el campo mas de 132 millones de niños”. (June 13, 2007). *La Jornada*. (<http://www.jornada.unam.mx/2007/06/13/index.php?section=sociedad&article=043n2soc>).

² Background Notes: Mexico. Department of State. (accessed 3.14.08). <http://www.state.gov/r/pa/ei/bgn/35749.htm>

³ *Ibid* and *La Infancia Cuenta en México*. (2006). Red por los Derechos de la Infancia en México. <http://www.infanciacuenta.org/index.htm>

⁴ Mexico Country Brief. The World Bank. (<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/MEXICOEXTN/0,,contentMDK:20185184~pagePK:141137~piPK:141127~theSitePK:338397,00.html>).

⁵ *La Infancia Cuenta en México* (2006) Red por los Derechos de la Infancia en México. p 152,158,&160.

Mexico are children ages 6 to 14.⁶ These children work long hours in the presence of dangerous equipment and chemicals.

International Agreements

Mexico participates in both the United Nations and the Organizations of American States and has ratified both the United Nations' Convention on the Rights of the Child (UNCRC) and the Vienna Convention on Consular Affairs, which are voluntary agreements that establish human rights benchmarks under international law.⁷

As party to the UNCRC, Mexico is subject to periodic review of its legislation in relation to the principals of the convention. In 2006, the UNCRC Committee Report reviewed the situation of children in Mexico and raised concern over rampant domestic violence and the use of corporal punishment in institutions, a lack of laws and mechanisms to protect children from corporal punishment at home or in the schools, and the persecution of indigenous children.⁸

Advocates have also raised concerns over the criminalization of migrant children by Mexican authorities. According to Karla Gallo, a consultant with UNICEF, "They [migrant children] are branded as *maras* [gang members], delinquents, prostitute street children who assault or steal, and there is a growing tendency to penalize them for emigrating, putting them under arrest or behind bars."⁹

Basic Components of the Procedure to Remove Children from the U.S. to Mexico

In 2004 UNICEF, in collaboration with Desarrollo Integral de Familia (or DIF, Mexico's child welfare agency), produced a survey of the processes and procedures for the repatriation of Mexican children at 11 of the official ports of entry recognized by bilateral agreements between the U.S. and Mexico. In this investigation, UNICEF found a wide variety of procedures and organizations involved in the repatriation process (see *Report Methodology: Ports of Entry Flow Charts*) for reproductions of the flow charts detailing the variations in processes between ports of entry. These inconsistencies can have a dramatic effect on the return and repatriation process for unaccompanied children depending upon the port of entry through which they are returned.

Consular Contact

Despite the variations in implementation and standardization, the essential parties to the removal process are the same in every region. The Border Patrol (BP), or ICE in cases involving children apprehended in the interior of the United States, is responsible for contacting the Mexican Consul to inform them of an unaccompanied child to be removed. The consul is

⁶ Sanchez Venegas, Adolfo (June 21, 2007). "La Pobreza obliga a niños a dejar sus comunidades en la Montana de Guerrero". *La Cronica de Hoy*. This article relates the incident of an 8-year-old boy killed by a tractor while picking tomatoes in a field.

⁷ Gallo, Karla. (2004) *Niñez Migrante en la Frontera Norte: Legislación y Procesos*. UNICEF, Mexico.

⁸ 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 (<http://www.universalhumanrightsindex.org/documents/829/922/document/en/do/text.doc>). See especially paragraphs 35,36, 72 and 73.

⁹ Thompson, Barnard. (April 30, 2007). "Mexican Children are Migration Alone to the US". (<http://www.mexidata.info/id1343.html>).

responsible for interviewing the child prior to his or her removal and the Mexican National Institute for Immigration (INM) is responsible for initial receipt of the child at the port of entry. The manner in which these parties execute these roles and the extent to which state, municipal, and non-governmental entities are involved prior to removal and upon the repatriation of the child, vary considerably—even within regions.¹⁰ For example, the manner in which consulates are notified of a child's presence in BP custody and allowed to interact with that child is not uniform. Consulates may be advised by BP immediately upon the child's apprehension, or they may be informed of the child's presence only immediately prior to the child's removal. In more than one region consulates and children reported to us a range of instances in which consulate notification did not occur properly. Either United States authorities failed to notify the consulate in a timely manner, or they did not notify the consulate prior to the child's removal. In several instances consulates did not receive notification from US authorities of a child's removal, and discovered the removal had occurred through interaction with other Mexican agencies. The failure to properly notify the consulate of a child's return prohibits any assistance otherwise available to the child.

Agency Interviews with Child

No matter the order or extent to which the child comes into contact with the three basic parties [Department of Homeland Security (DHS), the Mexican Consulate (SRE), or the Mexican National Institute of Migration (INM)], all three parties interview the child to some degree. The extent to which the child is interviewed by each party can vary by geographic location, as well as by the individual involved.

Prior to his or her removal, the consul may be allowed, but is not guaranteed the opportunity, to interview the child in a private room within the BP station, via teleconference, or in the consulate itself.¹¹ In one instance, the Consul reported that the area designated for interviews with children was a "special" spot in the BP station parking lot.

The integrated and routine collection and analysis of data, at the national and international level, related to the child's migration experience could better inform the policies of all agencies involved and better identify the service needs of these vulnerable children. In practice, however, the fragmented yet repeated collection of personal information can re-traumatize children and erode their trust of authorities. Repeated interviews are of particular concern when children express fears or concerns regarding their return and the information is still not shared or acted upon.

Transfer of Custody Between Nations

In most instances observed by or reported to us, children were transported to the port of entry by the BP. At one port, Mexican Consul representatives reported that they previously had been allowed to transport unaccompanied children from the BP stations to the nearest port of entry for return to Mexico. While the general sentiment regarding the recent change in policy—to meet the children at the port of entry—was positive regarding the alleviation of liability for the Mexican consulate, Mexican officials expressed extreme concern for the manner in which the BP transports children. Consular officials commonly refer to BP's covered trucks as dog

¹⁰ Our experience from observing removals and repatriations and interviewing key parties in four US/Mexico border regions from March 2007 through January 2008.

¹¹ These variations are based on our observations at border patrol stations and on accounts provided to us by Mexican consulate staff.

kennels, or *perreras*. These trucks are regarded as unsafe and undignified. There are no seatbelts and little overhead. BP agents ride in the truck's cab, leaving girls, boys, and adults commingled without supervision.¹²

Once at the gate or bridge 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 BP 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 by foot, through traffic and mixed with the general population. Children are typically received 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 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. We found no regulations related to the escort-to-child ratio on the part of either U.S. or Mexican authorities.

In some areas, a Mexican Consul may only interview the child and a Customs and Border Protection agent may physically escort the child into INM custody. At other ports of entry the Consul may escort the child throughout the removal process—but only have access to the child once removal is eminent. The effectiveness of counsel provided immediately prior to a child's release is questionable and virtually eliminates any potential for reunification in instances where the child's parents are still in the United States. Though this practice may conform to the letter of the law in relation to the Vienna Convention, it certainly does not conform to the spirit. Moreover, to the extent that the practice actually expedites a child's removal from the country where his or her parents are located, it confounds the principles of internationally accepted standards on treatment of children. This is especially true in instances involving children who have grown up in the United States. The Hague Convention on Child Abduction, to which the United States is a party, defines the removal of a child from the country in which it "habitually resides" and away from the child's legal guardian as abduction. For more information on this and other relevant international norms, see the Related Federal Code and Legal Precedent backgrounder.

Methodological Inconsistencies in the U.S.

The lack of standardization in procedures and the lack of attention to the best interest of the child lead to inconsistencies and shortcomings in data collection, record keeping, treatment of the child, and agency staffing.

Data Collection

¹² The fact that the agents ride separately is also significant as regards the conditions of the truck beds, where the children ride. Bed's 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 there is a disconnect between the driver and the passengers' conditions. We observed the transport of children in a truck with no rear functioning AC unit, during the height of summer temperatures reaching 100 degrees Fahrenheit. Moreover the cab was caked in mud and reeked of urine and waste. Four girls and a boy traveled inside.

Border Patrol (BP) staff reported that their ENFORCE database is used to centralize the collection of data on unaccompanied children in their custody. However, agents in more than one region report that any analysis of the data that may occur at the regional or national level is not available to them at their stations. The ENFORCE system does enable agents to determine if a child has been detected and removed in the past and at what port of entry. This information could prove invaluable in the detection of children caught in a trafficking cycle or ensnared in organized criminal activities. We found no indication that the data were used at ports of entry for such purposes, other than one border patrol station's claim to identify children with multiple crossings for stronger enforcement measures.

Record Keeping

Given the lasting and significant repercussions of immigration orders, it is essential that children's records be as accurate as possible. BP agents specializing in the intake of unaccompanied children report that erroneous deportations of unaccompanied children based on a child's false claim of adulthood cannot be erased from the system once they are discovered. Most children, however, are returned without penalty. Individuals with an official order of deportation in their U.S. immigration record are banned from applying for authorized entry for a period of five to 10 years, unless they can prove persecution or torture by their country of origin. Re-entry into the U.S. by an individual with a previous order of deportation can result in that individual's incarceration. While BP agents assert that records can be annotated to reflect that an order of deportation was falsely issued, it remains unclear what weight this annotation will carry if a child attempts to enter the U.S. within 10 years.

Detention and Return Treatment of the Child by U.S. Authorities

Without clear national standards and training for the treatment of children throughout the duration of their placement in U.S. custody, the child's experience in the U.S is wholly at the mercy of the individual agent's discretion.

Some U.S. immigration authorities' methods for detaining and processing Mexican children appear consistent throughout all regions observed (e.g., overnight detention of children in over air-conditioned cells without beds, and lack of access to outside communications or legal services). Some stations made efforts, however, to improve conditions for children in detention where some BP staff attempted to attend to children's basic needs. In one station, for example, BP created a space for the local Mexican consulate to stockpile resources for unaccompanied children, such as dry, clean clothes and blankets. The fact that a few individual agents and supervisors felt that they needed to do more to attend to the needs of unaccompanied children, even without a budget or mandate to do so, illustrates the need for more humane protocols for the treatment of children.

Regional examples of inattention to the special needs of children are yet another symptom of the lack of standardization in policy and training between CBP regions. Mexican authorities from more than one port of entry expressed concern that children are being repatriated in the middle of the night, sometimes without consular notification of the child's apprehension. Moreover, children and authorities both reported instances in which U.S. officials have repatriated children to ports of entry not specified in the regional agreements (i.e., ports of entry where there is no Mexican child welfare agency or appointed INM representative to receive them).

Staffing

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 BP “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.

We also observed inconsistent understanding of agency policy and interpretation of duty between BP regions. For example, in one region, a BP agent with experience in processing unaccompanied children from Mexico asserted that teenagers can claim themselves to be emancipated from their parents and that in such instances they may be processed as adults without consular notification. This demonstrates a lack of understanding of the requirements of the Vienna Convention on Consular Relations and a basic understanding of the written protocols related to the removal of children to Mexico. If agents in this region are receiving training in these areas, the training is insufficient.

One BP supervisor with seniority and experience asserted to us that he was unaware of any written protocols for the repatriation of children to Mexico. He doubted the existence of any bi-national agreement related to repatriation, and stipulated that his region functioned on the basis of oral agreements with Mexican consular officials. He also maintained that local repatriation agreements were not included in formal agent training and that agents learned how to process children on the job.

Basic Components of the Repatriation Process in Mexico

A host of Mexican agencies and authorities assist with the repatriation of unaccompanied children, including immigration authorities, child welfare agencies, and in some instances, non-government entities. The roles and jurisdiction of these authorities vary by port of entry, creating a patchwork of repatriation procedures along the border.

INM

The Mexican National Institute on Migration (INM) is the single point of contact common to all children officially returned by the United States. At all observed ports of entry, INM facilities for the receipt of unaccompanied children are located at the port of entry, just inside the Mexican border. Once the child has been interviewed by INM, he is transferred to the care and custody of a shelter. In some cities, there may only be one. However in areas with shelters that are run by more than one authority, INM staff may determine to which shelter send the child. A 2004 UNICEF report raised concerns that placement determinations were made by agents with no child welfare experience.¹³

¹³ Gallo, Karla. (2004) *Niñez Migrante en la Frontera Norte: Legislación y Procesos*. UNICEF, Mexico.

State, Local, and Non-Government Organization Service Providers

The extent to which the United States is obligated to ensure the safety and security of unaccompanied children is greatly determined by the ability of the child's country of origin to assume that duty upon the child's repatriation

Child Protective Services in Mexico: Desarrollo Integral de Familia (DIF)

The Mexican federal agency charged with child welfare issues, including oversight of children's protective services, is the Desarrollo Integral de Familia. 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 multiple DIF shelters run separately by the state and local administrations. In these instances, the child's assignment to a particular shelter may depend on the child's age and/or gender (i.e., in Nogales, Sonora we observed that children 0-12 are sent to the state DIF shelter, while children older than age 12 are housed in municipal DIF shelters segregated by gender).

Once under DIF's care, whether at the state or local level, the child can contact family members. DIF then arranges for the child's speedy reunification. DIF shelters for repatriated children are not meant to be permanent solutions. Most shelters claim the average stay of a repatriated child is about three days.¹⁴

None of the representatives of the shelters participating in the study provided written policies, procedures, or guidelines. While some representatives hinted that there were no written policies, it was unclear whether the policies did not exist in writing or whether staff did not have access or clearance to share the materials.

Organizational Structure Can Be an Obstacle to Services. DIF is responsible for the well-being and reintegration of children returned by the United States of America. To this end, DIF reports that it has developed programs specific to the needs of repatriated children and has forged collaborative agreements with other federal Mexican agencies to ensure the protection of children throughout the repatriation process. These agreements include conventions with Mexico's National Institute on Migration to protect the interest of children repatriated to Mexico by the U.S., as well as non-Mexican children repatriated to Central America by Mexican authorities.

While DIF recognizes the importance of prioritizing services for this vulnerable population, the structure of both the agency's funding and administration can present obstacles to the standardization and implementation of viable policies.

Child protective services in Mexico are administered at the state and municipal level through federal, state, and municipal funding. There are 32 state level DIF agencies and 2,440 municipal level incarnations of the agency.

¹⁴ We observed instances in which children were held in excess of a week. In these instances the children were either from remote interior areas that complicated travel arrangements, or had no identifiable family members to claim them.

DIF is traditionally headed by the wife of the top elected official, as are many national human service agencies in Latin America. Therefore, 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.¹⁵ The president of DIF is responsible for the agency's direction, oversight, and resource development beyond public funding. The efficacy of an agency's administration and the extent to which it can acquire resources for its clients depends on whether the wife of a given elected official is committed to the provision of human services, is capable of pursuing that concern, and whether her husband's party is the same as the one in power above him. As significant funding for the agencies comes from the top down, conflicting political agendas among the multitude of jurisdictions can lead to significant funding disparities and added layers of red tape in interregional operations.

Local governments change every three years with general elections. Even in cases where the same party remains in power, personnel and organizational structure are often affected. The disruption that can be caused by both personnel and party changes can also confound attempts at standardization of policy and seriously jeopardize continuity of services and care for this vulnerable population.

Given dependence of social services on the current political power structure, the availability and quality of repatriation services available to children returning from the U.S. can vary greatly within the same Mexican state. The same may be true within the same city when ports of entry have more than one shelter administered by more than one agency or organization.

Lack of Continuity and Coordination. DIF Matamoras (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 parties' efforts appear to be coordinated, however. As a consequence, much-needed innovation is being duplicated and the potential development of a cohesive system is unrealized.

Non-Government Organizations: In some areas, repatriated children may be released to non-government shelters, such as the YMCA. We did not observe any non-government shelters.

Inconsistencies in the repatriation process in Mexico

Variations in the collection and sharing of data on the repatriated child, the guidelines surrounding the release of the child, staffing requirements, and the range of available services confound standardization of the repatriation process and the safety of the child.

Data: As with the child interviews conducted by U.S. authorities leading to the child's removal, the interviews between Mexican agency personnel and children in the course of the child's repatriation are inconsistent. We observed significant variations in data collection in the three Mexican States visited. Some DIF local authorities utilized a standardized intake form, some ad-libbed the intake process based on the individual counselor's experience and perception of the child. Some DIF facilities have no computerized database. Others have extensive databases

¹⁵ The system for selecting the head of DIF in instances where the top elected official happens to be a woman, or does not have a wife, is unclear.

integrated locally and in one instance statewide. Similar variations were observed in the procedures implemented by the Mexican Consulate.

Given the observed inconsistent data collection mechanisms of DIF and the Consulate, INM's data on the number of children repatriated to Mexico appears to be the most complete, with the caveat that reported incidents of children escaping during the return process and the undocumented return of children by U.S. authorities could lead the INM numbers to be understated. Furthermore, as our access to INM was not as open as the granted access by DIF and the Consulates, consistency in INM record keeping mechanisms and procedures can not be substantiated.

Staffing: As with the Border Patrol (BP), the qualifications and training for Mexican consulate and DIF staff working with unaccompanied children vary considerably by region. Though it is not within the scope or authority of this report to fully analyze the situation of Mexican policy and procedure, it is important to note inconsistencies that may affect the safe return of the unaccompanied child. To the extent that this situation confounds the safe repatriation of the unaccompanied child, it creates a greater demand for the standardization of U.S. procedures.

Services: 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 developed mechanisms to assess and address the original reason for the child's migration. In Matamoras, for example, the previous local DIF administration (2004-2007) developed a network of adult and child services (and connectivity to other health and human service programs) to promote the permanent reintegration of children repatriated locally. These services included:

- Outreach to local schools to educate children on the risks of unauthorized migration;
- Holistic assessment and provision of family needs and services (including individual and family therapy and workforce development/vocational training for adults and older children) to address the root causes of migration;
- Continued case management services;
- Dependency rehabilitation services; and
- Assistance to support the child's reintegration into the school system.

Whether these services will be continued or expanded by the new administration remains to be seen.

Release: Guidelines for which parties a DIF official may release a child 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 parents or legal guardians. Others will release the child to any party designated by their parents, accepting faxed requests as authorization.

Most facilities will allow older children to leave DIF's care on their own accord, but the age and eligibility requirements for this practice vary by region.

In instances where families are unable to retrieve the child due to travel costs or disability, DIF will allow the child to make the journey alone. DIF authorities have limited budgets to facilitate the return of children to their original residences. In theory, DIF counterparts in the child's

hometown will confirm the child's safe return and placement. We were unable to verify that any procedures were in place to ensure this practice.

U.S./ Mexico Agreements:

The Heart of the Disconnect and the Cornerstone for Change

Written agreements on repatriation between the U.S. and Mexico are dated and in need of official review. 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 U.S. A series of agreements between the U.S. and Mexico related to the repatriation of Mexican nationals culminated in the drafting of individual regional agreements: Brownsville to Roma, Laredo to Presidio, Juarez and New Mexico, Arizona, rural California, and San Diego.

The original agreements were cursory, addressing the specific needs and vulnerabilities of children in a limited chart of a half page or less. These basic charts stipulate the hours that children may be safely repatriated. Some specify daylight hours only; others give a range (i.e., 6 a.m.-10 p.m.) that may include hours of darkness. The charts clarify the need for consular notification of all children in custody and in some instances specify the point-of-contact (in all likelihood outdated), as well as which ports of entry may be used for the return of children to the Mexican authorities.

In 2004, the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States (Mexico) and the U.S. Department of Homeland Security (DHS) 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 of all regional agreements pertaining to repatriation.

In Article 3 of the 2004 MOU, attention is given to the need to safeguard human rights, specifying the following considerations for the revision of agreements (**Emphasis added**):

- a. Repatriations should be conducted in a manner consistent with the respect of human rights and dignity of Mexican nationals found in the United States in violation of immigration law;
- b. Notification of the titles of authorities that are empowered to deliver or receive Mexican nationals into Mexico;
- c. Points of repatriation are to be established in a manner consistent with scheduled hours of operation and staffing availability. Every effort should be taken by Mexico to ensure that mutually designated points of reception are fully staffed with appropriate local, state, and/or federal entities responsible for the health, welfare, and safety of Mexican nationals;
- d. Identification of points of contact to receive and/or convey information about incidents involving reported mistreatment or potential human rights concerns;
- e. **The unity of families should be preserved during repatriation, taking into consideration administrative parameters;**
- f. **Incapacitated persons, unaccompanied minors, and other vulnerable individuals should be repatriated during daylight hours to ensure their safety. The Mexican**

Participating Agencies should make every effort to have the appropriate family welfare representatives receive such persons upon repatriation from the United States;

- g. Appropriate representatives of the Participating Agencies should address issues of mutual concern such as consular notification and access to consular assistance;
- h. Notification of repatriation should be done taking into consideration logistical and operational needs. Local arrangements should address routine notification at the border;
- i.
- j. Timely special notification and information should be provided by DHS authorities for cases where additional preparation will be required to receive an unaccompanied minor or an individual with medical, mental or other special needs.¹⁶

That same year, parties to the MOU developed an action plan to achieve its objectives of the agreement. The plan 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.

Status of Regional Repatriation Agreements

The MOU also included the reiteration of the need to update regional repatriation agreements. To date, only the Juarez/El Paso has been revised.¹⁷ In our interviews, Mexican authorities in Texas and Arizona expressed the need for updates to these agreements due to deviations from the original agreements that put children at risk.¹⁸

Most of the agreements have not been revisited since their original drafting between 1997 and 1998. According to Mexican officials, parties to the agreements did not maintain regular meetings at the operational level, after September 11, 2001.¹⁹ Concern exists on both sides of the border as to the extent to which agents are even aware of the agreements. Until these agreements are renewed, employees are trained, and the agreements implemented, variations in removal practices will continue to confound policy and international relations and put children at risk.

In 2006, parties to the MOU designed a model arrangement for the revision of regional agreements.²⁰ The revised Juarez/ El Paso agreement serves as a pilot for this model.

¹⁶ Memorandum of Understanding between the Department of Homeland Security of the United States of America and the Secretariat of Foreign Affairs and the Secretariat of Governance of the United Mexican States on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals (MOU) 2004. <http://www.migracioninternacional.com/docum/index.html?buttonbot=ofdocumx.html>; See also Appendix F.

¹⁷ See *Appendix F: Local Agreements with Mexico* for text of the agreements.

¹⁸ For example, one consulate was concerned that they 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. (<http://www.usdoj.gov/oig/reports/INS/e0110/index.htm>).

¹⁹ Hernandez Joseph, Daniel. Director General of Protection and Consular Affairs with SRE. Interview by Amy Thompson. Via telephone. (July 1, 2008).

²⁰ *Ibid.*

According to the Mexican Consulate. Regions across the United States are scheduled to begin drafting revised agreements in 2008. The creation of these agreements reportedly includes the participation of child welfare authorities, non-governmental organizations, as well as local authorities.²¹

The Child's Experience: Findings from the Mexico Interviews

The individual child's personal background and the public structures of their country of origin influence both the child's decision to migrate, and the reality of their return.

The Child's Situation Prior to Migration

The participants entered into migration from a range of backgrounds.

The information in this section provides general demographics about the interviewees. On the surface these demographics both support and dispel preconceptions about unaccompanied children. Given that our sample is so small, however, the information can not be relied upon for a generalization of the population at large.

Of the 26 children who participated in the structured interview process, fewer than one-third (eight children) were girls. The average age among the participants was 14, with a range from age 7 to 17. Three of the children did not know their birthdates.

Prior to migrating, 19 of the 26 children participating in the study lived with at least one parent in Mexico. Nine had at least one parent living in the United States. One boy lived with a young adult sibling. Two of the children were living independently—one in a gang and one on the streets.

Three of the children were in committed relationships. One was married, and two were engaged. Three had or were expecting children of their own: one had a baby, one was pregnant, and one had a pregnant girlfriend.

Only eight of the 26 children—less than one-third—were originally from the border state to which they were returned by U.S. authorities. Of the remaining 18 children, all were from interior Mexican states such as: Chiapas, Durango, Guanajuato, Guerrero, Mexico, Michoacan, Oaxaca, and Veracruz. According to 2007 data from the Mexican National Institute on Migration, nearly one-fourth of children were repatriated to Tamaulipas, the location of the project's formal child interviews. (See table below.)

²¹ As of the distribution of this report (November 12, 2008), the border liaison office for state child protective services in Texas had no knowledge of any effort to renegotiate the regional agreements within its jurisdiction.

**Repatriations of Unaccompanied Mexican Children Based on Residential Status
January – December 2007**

| State of Repatriation | Original Residence | | | Total |
|-----------------------|----------------------|-----------------------|----------------|---------------|
| | Port of Repatriation | State of Repatriation | Interior State | |
| Coahuila | 270 | 137 | 891 | 1,298 |
| Tamaulipas | 748 | 329 | 2,915 | 3,992 |
| Sonora | 717 | 739 | 10,283 | 11,739 |
| Chihuahua | 1,139 | 742 | 4,224 | 6,105 |
| Baja California | 804 | 161 | 11,447 | 12,412 |
| Total | 3,678 | 2,108 | 29,760 | 35,546 |

Source: National Institute of Migration, Mexico. Online statistics.
 Statistics available at (<http://www.inami.gob.mx/estadisticas/enedic07/repatriacion.mht>).
 Note: Above numbers may refer to multiple repatriations of the same minor.

The Child’s Motivation to Migrate to the U.S. The children we interviewed stated that they migrated to the U.S. for a variety of reasons, including the desire to make more money to support their family, the desire to get a better education, and the desire to escape a dangerous situation at home.²²

I told my parents that I wanted to come here [to the U.S.] to work. They agreed, as long as nothing happened to me. Lilianna, 16, Guerrero

My mom [made the decision for me to migrate] because there’s no money there [in Mexico] either and to support my little girl. Marianna, 16, Guerrero

I wanted to come over here [U.S.] to study. Back home [in Mexico] schools are worthless, except for elementary school. They’re a mess. They don’t explain things. They don’t teach well. Alma, 13, Michoacana

I decided all by myself to go to the U.S. It was my idea. To see if I could free myself from the gangs. It’s not the same. The gangs are everywhere and everywhere you see death if you don’t keep yourself in line. Juan , 16, Tamaulipas

Seventeen (roughly two-thirds) of the respondents stated that the decision to migrate was theirs. Eight children were migrating in search of work, two hoped to attend school, and two were seeking an escape from violence—one from violence at home, one from gang violence. Two more children crossed out of simple curiosity, as they lived in border communities. Another boy

²² The structured interview for children in Mexico did not include fields for employment status or school enrollment prior to migration. While some participants offered this information, it was not pursued in each interview. The children’s statements related to their motivation for travel give some indication of those entering or in the workforce.

from a border community was attempting to visit his U.S.-citizen girlfriend who lives on the other side of the border. One child simply stated he wanted a better life. Though he did not or could not define what would make his life better, he was sure he would find it in the U.S. One child was uncertain why he had crossed.

Of the nine children who said the decision was made for them:

- Three had been sent for by parents in U.S. whom they had not seen for years;
- Three were traveling with their mothers to reunify with their fathers and were apprehended after they became separated; and
- Three were sent by a parent in Mexico to work in the U.S..

The Child's Experience Migrating to the U.S.

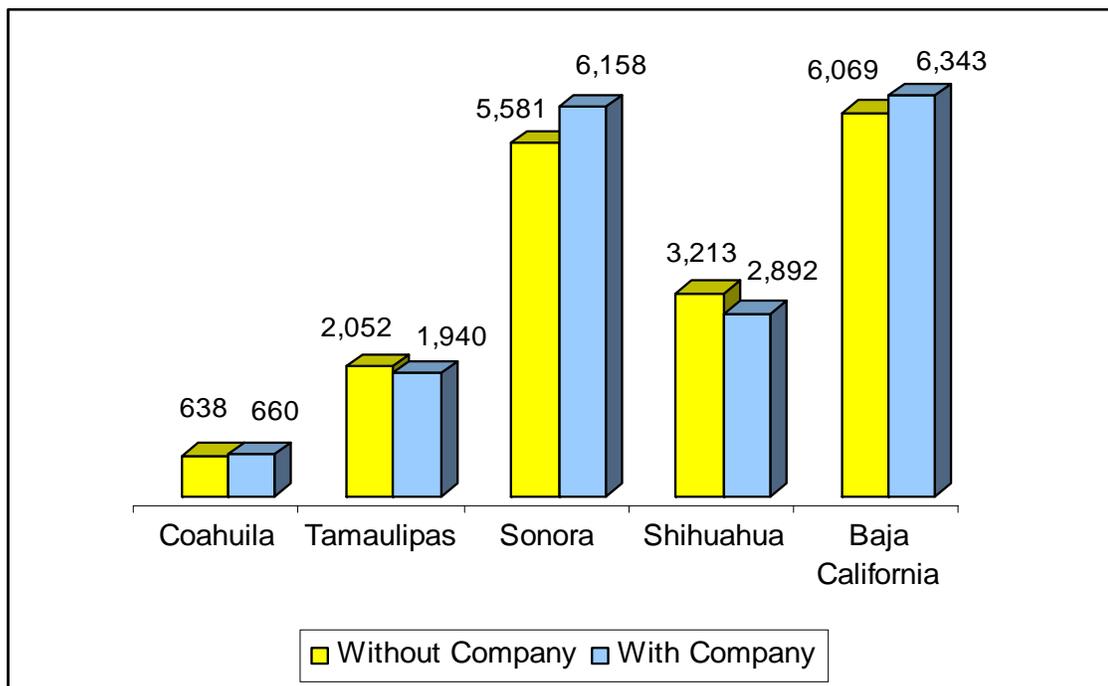
Children reach the U.S. through a variety of experiences. They may make the journey alone or in the company of others; they may be traveling on their own resources or through the support or by the demand of another. Whether the child is traveling of their own volition or under duress, they pay a price for the experience.

Only seven of the participants claimed to have traveled completely on their own (i.e., no siblings, friends, or guides). The majority of the children traveled in the company of other minors or adults other than their parents. A few were traveling with a parent but became separated prior to apprehension.

The interview responses in this study appear in contrast to data from the Mexican National Institute of Migration (INM) (see figure below). Participants for this study were selected from shelters in two different ports of entry in Tamaulipas. According to the numbers gathered by INM, a slight majority of children repatriated to Tamaulipas in 2007 traveled completely alone. This discrepancy may be accounted for by seasonal shifts in migration patterns,²³ or perhaps in part by the fact that INM data does not separate duplicative crossings. The lack of distinction between repeated crossings could lead to the inflated reporting of children traveling alone. Children who travel alone may be more likely to attempt to re-cross the border, or if separated from their companions, may re-cross on their own in an attempt at reunification. Without refined data collection systems it is impossible to determine the extent to which this study's respondents are representative of the total population.

²³ Though there are currently no data sources to identify or predict shifts and trends in migration patterns among youth, authorities on both sides of the border maintain that there are seasonal shifts and trends.

Repatriations of Unaccompanied Mexican Children Based on Condition of Accompaniment During Migration January – December 2007



Without Company refers to children traveling completely alone.

With Company refers to children traveling with a companion. The definition of companion may include siblings and is not necessarily a guardian or adult.

Source: National Institute of Migration, Mexico. Online statistics.

Statistics available at (<http://www.inami.gob.mx/estadisticas/enedic07/repatriacion.mht>).

NOTE: Above numbers may include minors who were repatriated multiple times in one year.

Twenty-four of the 26 respondents entered the United States “without inspection,” or without affirmatively presenting themselves to U.S. immigration authorities at a designated port of entry. As the border between Texas and Mexico is defined by the Rio Grande, the children had to cross the border either swimming or with the aid of a floatation device.²⁴ Seventeen crossed the border with a guide, or *coyote*. Several of the children claimed to have paid or negotiated for the guide themselves. Based on the five children who were aware of an exact amount paid, the price for a guide to cross the border ranged from \$160 to \$1,800 dollars. Two of the participants reported owing money to the guide; one claimed that this debt was significant. Determination of whether the child is associated with any debt to a professional criminal is critical to assessing whether and how repatriation could be pursued in the child’s best interest.

²⁴ Nine of the participants stated that they swam and 13 used an inner tube or were ferried across in a raft; only one participant claimed to have walked across – at a low point in the river. At the time that the interviews were conducted, the Rio Grande was running high. While we were in the field, a family drowned while trying to cross. The only surviving member was a four-year-old boy, who was quickly repatriated.

The Child's Understanding of Migration

The child's demonstrated inability to fully comprehend the significance of their migration in a financial, political, and even geographic sense further illustrates the inappropriateness of assigning adult motivations, responsibility, and penalties to their actions.

Finances and Their Consequences. As 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 are not available. The responses offered by a few children, however, raise concerns for the vulnerability of the general population.

At least two of the children interviewed were sponsored by a third party for commercial purposes (i.e., someone other than themselves or a parent paid for their transport, with the agreement that the child would work off the debt once in the U.S.). Neither child was able to answer whether they would still be obligated to repay this money, or whether they would attempt to cross again. At least three children were uncertain if they owed money.²⁵

Geopolitics and personal responsibility. 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 the geographic boundaries they 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. Thus, this lack of understanding likely arose both from children's developmental status as well as their educational background and opportunities.

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

"I never made it to the United States, I was in Texas."²⁶ – Alex, 7, Chiapas.

Participants also used language indicative of 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," wondered Gilberto, a 13-year-old boy from the border area who attempted to cross at the official port of entry without papers.

Children are inherently developmentally unprepared to understand or independently navigate international boundaries. However, the current U.S. system for receiving and returning children from neighboring countries is based on the assumption that children knowingly and willingly violated U.S. administrative code.

Naturally, not all children involved in the immigration system are completely innocent. Still, as children, they are developmentally unprepared to bear the full responsibility for their actions. Given the inherent cognitive and emotional limitations associated with children as they develop,

²⁵ It also is possible that some children who said for certain that neither they nor their parents had a debt associated with their migration may be unaware of any obligations to a third party.

²⁶ In such instances, we rephrased all study questions related to experiences in the U.S. to reflect the child's understanding; (i.e., replacing such clauses as "While you were in the U.S." with "While you were in Texas.>"). In this instance, due to his level of understanding, the child was not able to participate in the formal interview process.

special protections and considerations must be afforded to all children regardless of their circumstances or immigration status.

The Mexican Child's Experience in the U.S.

Children's experiences vary widely in respect to the time they spend in the U.S. prior to detection and the treatment they receive in the custody of the U.S.

Time prior to apprehension. The time that the interview participants spent in the U.S. before being taken into custody ranged from "caught entering" to six months. Four of the respondents were intercepted by U.S. authorities while trying to enter the country. The 22 who were not caught entering spent an average of twelve days each in the U.S. prior to apprehension by either federal or local authorities.

Those who were in the U.S. for more than a few hours reported a range of experiences. Some found work in border communities and avoided detection for several weeks. Others spent days trying to travel beyond the border region. Several reported being held against their will by coyotes while in the U.S. These children reported being held for days with little to no food and forced to walk for many hours without stopping.

The two children who attempted to enter the U.S. at an official port of entry without documentation spent a couple of hours at the Customs and Border Patrol facilities located on site. They were then transferred to Mexican immigration authorities on the other side of the bridge.

Nineteen children reported on the time they spent in Border Patrol (BP) custody. Of these, the average time spent in BP custody was three-fourths of a day.²⁷

Treatment under U.S. Custody. Seven of the study participants said they experienced either abuse or mistreatment while in United States. Claims included 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 freezing cell, not being given any or enough food, not being allowed to contact family, being handcuffed, and being transported "like dogs."

Interestingly, many children reported on the same discomforts and indignities mentioned above, but without qualifying them as mistreatment. For example, 14 children complained of not being provided enough or any food, yet only seven of these claimed mistreatment. Five children claimed to have been handcuffed, but only one referred to it as abuse.

Experiences that the children described without claiming mistreatment or abuse included:

- 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;

²⁷ However, if the time spent by one boy in juvenile detention is included, then the total time spent in custody by the respondents exceeds 379 days in U.S. custody. Based on this data, the children spent decidedly more time in custody than in the U.S. prior to their apprehension.

- One girl claimed she was threatened at gun point by Border Patrol; and
- Four children were handcuffed.

The children who suffered these conditions without claiming abuse or mistreatment were in no way indifferent to the experience. They were emotional—scared or angry or embarrassed or said that it hurt. Yet, they did not define it 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.

Only six of the 25 participants recalled any contact with the Mexican consulate while in the U.S. Five children reported that the consulate visited them in the U.S. Border Patrol station. One child claimed he was interviewed by the consulate over the phone. Most children either denied having any contact with the consulate or specified that a representative from the Mexican Consulate physically escorted them across the bridge and delivered them to Mexican migration authorities, but that that was the extent of their contact with the consulate.

It is possible that in many instances a child, especially a younger child, might not distinguish a representative of the Mexican consulate from the other authorities involved in the removal and repatriation processes. However, it is worth noting that in three instances where we sought to verify a child's story with the consulate's records, consular representatives could find no record of the child's repatriation in their files. Furthermore, the frequency with which we encountered non-Mexican children who had been repatriated as Mexican, and the relative ease experienced in determining that the children were not Mexican, may indicate a lack of Mexican consulate involvement prior to the child's repatriation. To the extent that the lack of consular involvement exists, it likely varies by region based on either CBP failure to notify the consulate in a timely manner or from the consulate's limited capacity to respond to the situation.²⁸

Children's Experience with Repatriation

Children-offered comments compared the conditions of their confinement in Mexico and in the United States. Almost all stated that treatment in Mexico was significantly better, and none found it to be worse—including one boy who claimed to have been beaten by Mexican police.²⁹ Common variables influencing the children's favorable assessment of their treatment by Mexican authorities were the provision of better and more food, ability to contact family members, and a sense that their custodians cared for them.

As Mexico Case study interviews were conducted prior to the child's reunification with their family or other permanent placement, the full effect of repatriation on the child can not be assessed. This section presents information relevant to the child's immediate experience of return to a child welfare-based environment. The expressions of apprehension made by children with prior repatriation experience indicate that there is need for greater attention to the efficacy

²⁸ Interviews with Mexican officials at ports of entry reported instances in which consulates were not notified of a child's return, as well as instances in which children were returned at hours or locations to which consular protection officers could not respond due to capacity.

²⁹ While the study's survey did not request a comparison of services offered in both countries, the structure of the survey (i.e. a question concerning the conditions experienced in the U.S. followed by a question concerning conditions in Mexico) prompted children to volunteer this information.

and safety of the entire repatriation process. Though several children stated that they would be afraid to return to the U.S., the negative experiences the children endured in the U.S. will not necessarily prevent them from doing so.³⁰ Two respondents stated that they would attempt to cross again immediately, and three were uncertain but said they would consider it. Most reported that they would first attempt to return to their families in Mexico somehow. Yet, several of these affirmed that the ultimate goal would be to attempt to cross again. Only three children stated definitively that they would not choose to attempt migration to the U.S. again. Whether the decision not to migrate is truly theirs, however, is always in question.

Five of the participants admitted to crossing before. Two of these children were from interior states and three were from the border. Of the two from the interior, one boy had been crossed by his parents at age four and barely remembers the incident. The other, a girl, was the only member of her immediate family left in Mexico. Of the three children from the border area, each had crossed multiple times. Two actually had jobs working in stores on the U.S. side. They crossed frequently, but had never been caught before. The third had also crossed frequently, but had multiple experiences with removal and repatriation. This boy claimed to have been repatriated twice to a city that is not listed in any U.S.-Mexico agreement as an official port of entry. If true, there would have been no child welfare authority or shelter to receive him.

Several of the children mentioned a rumor they had heard of children who had been caught crossing multiple times being imprisoned from two months to a year. One of the children familiar with the rumor was Marianne from Guerrero. Still, she had already crossed twice and imagined that she would have to do so again.

For children who choose to migrate, the factors influencing their decision would seem greater than the known risks. For those who are compelled or made to migrate, the decision is clearly out of their hands.

Summary of Mexico Case Study Findings and Analysis of U.S. Responsibility: Implementing a Shift From Law Enforcement to a Best Interest of the Child and Child Protection Perspective

The current process for returning unaccompanied children to Mexico is neither standardized nor consistently safe. Children are returned with and without consulate services. Children may be deported (typically a penalty only for adults) instead of returned. Some Mexican children in ORR are returned to the nearest port of entry rather than directly to their home communities.

With the exception of the relatively few Mexican children entered into ORR care, we observed no instances of unaccompanied children from Mexico receiving legal assistance or even the opportunity to request legal assistance in contesting their immediate removal.³¹ There is currently no standard mechanism for the assessment of child's eligibility for special protective

³⁰ As Mexico Case study interviews were conducted prior to the child's reunification with their family or other permanent placement, the full effect of repatriation on the child can not be assessed. This section presents information relevant to the child's immediate experience of return to a child welfare-based environment. The expressions of apprehension made by children with prior repatriation experience indicate that there is need for greater attention to the efficacy and safety of the entire repatriation process.

³¹ All of the interview participants asserted that they had had no contact or access to an attorney while in the United States, including the boy who was convicted of a juvenile offense.

status, such as SIJS, if that child is from a neighboring country. CBP standard requirement is that all individuals, children included, must assert that they are afraid to return to their country of origin in order to receive a referral to be screened for asylum. Unfortunately, unaccompanied children will be likely unwilling to express fear to a perceived adversary. Given the speed with which returns are made, in combination with other barriers, Mexican children are simply not afforded the same access to immigration relief as children from non-neighboring countries.

Variations in the practices and perspectives of BP agents indicate 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 will require the review and oversight of a child welfare authority.

The development of bi-national standards for data collection from unaccompanied children could facilitate cooperation among immigration and child welfare agencies and their international counterparts. These standards should include mechanisms to identify and respond to the individual child's unique vulnerabilities, while minimizing the risk of re-traumatizing the child through repeated interviews.

The protections afforded to unaccompanied children by the Vienna Convention are not consistently or meaningfully applied by U.S. authorities. While the scenarios of children being returned without consular notification are unacceptable, the manner in which consular contact is often conducted is equally concerning. If a consulate is only notified immediately prior to a child's return, the services they can provide to the child are necessarily limited. Location and notification of the child's family, meaningful analysis of the child's eligibility for release to family, and assessment of the child's eligibility to petition for legal entry cannot occur when consulates are denied sufficient time to confer with the child prior to removal.

Through interviews with Mexican authorities and the child study participants, we encountered several scenarios in which children at extreme risk of trafficking or involvement with organized crime were repeatedly returned to Mexico without intervention by U.S. or Mexican authorities. Enhanced collaboration, data exchange, and interagency training could address this problem. For example, CBP 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.

HONDURAS: THE LEADING COUNTRY OF ORIGIN AMONG UNACCOMPANIED CHILDREN FROM NON-NEIGHBORING COUNTRIES

Over the past four years, Honduras has consistently ranked at or near the top of the list of most common countries of origin for unaccompanied migrant children in the U.S. (See the first table in the *Report Methodology backgrounder*). Understanding the conditions of childhood in Honduras can better inform both the roots of child migration and concerns for the safe repatriation of children.

An Introduction to Honduras

Honduras is a democratic republic without a federal structure. The country is divided into 18 departments which are governed by the national administration. Local residents elect officials to run municipal governments.

Honduras is comparable to the state of Virginia in both size and number of inhabitants. Honduras has a very young and a very poor population.³² More than 40 percent of the nation's seven million inhabitants are under the age of 15.³³ By comparison, according to the 2007 U.S. Census, this age group comprises just 20 percent of the U.S. population. Honduras' per capita annual income is roughly \$1,000.³⁴

A recent study by the World Bank defines 50.7 percent of the Honduran population as poor, subsisting on roughly \$50/month, and 23.7 percent as extremely poor, subsisting on roughly \$25/month.³⁵ Economic disparity is extreme in Honduras, with the poorest 20 percent of the nation responsible for just 5 percent of consumption and the top quintile consuming over 50 percent.³⁶ This disparity is reflected by the fact that more than half of the country's heads of household are employed in agriculture (an industry that accounts for less than 15 percent of total GDP), while 15 percent of the workforce is engaged in the service industry (which produces more than 50 percent of the GDP).³⁷ As might be expected given the age and means of the general population, many children participate in the workforce.

The World Bank 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.³⁸

³² Background Notes: Honduras. Department of State. (Accessed 3.14.08)

<http://www.state.gov/r/pa/ei/bgn/1922.htm>

³³ *Honduras Poverty Assessment Attaining Poverty Reduction. Volume 1: Main Report.* (June 30, 2006). The World Bank. Report No. 35622-HN.

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ Background Notes: Honduras, and *Honduras Poverty Assessment* (2006)

³⁸ *Honduras Poverty Assessment* (2006),

While the World Bank ranks education as the single most important tool to reversing poverty in Honduras, it places much of the blame for the country's current economic situation on recent natural disasters, including hurricanes and droughts.³⁹

In 1998, Hurricane Mitch devastated the country of Honduras. The storm completely destroyed more than 25 villages and displaced more than 20 percent of the population.⁴⁰ More than 6,500 Hondurans lost their lives and more than 11,000 are still missing. At least 70 percent of the country's transportation infrastructure and 70 percent of its crops were destroyed.

Though it has been a decade since Mitch tore through Honduras, the significance of the event continues to affect nearly every aspect of Honduran life and will likely continue to be a critical factor for years to come. According to Honduras' then-President Carlos Flores Facusse, the Category Five hurricane destroyed 50 years of progress in the country.

Over the past decade, significant numbers of Hondurans have attempted migration to the United States. The National Forum on Migration in Honduras reports that 80,000 Hondurans attempt to migrate to the U.S. each year. The vast majority, 75 percent, are apprehended by Mexican officials and returned by land. A small percentage, 7 percent, obtain legal entry into the United States, and 17 percent reach the U.S. border without documentation.⁴¹

Honduras is a party to numerous international conventions that guarantee the rights of children, including:⁴²

- The UN Convention on the Right of the Child (UNCRC) and its optional protocols;
- The Organization of American States (OAS) Convention on the International Trafficking of Minors;
- The Hague Convention on International Child Abduction; and
- The Vienna Convention on Consular Relations

As a ratifying member of the UNCRC, the UN reviews Honduras' progress towards compliance. The issues and concerns about Honduras reported by the Committee on the Rights of the Child include:⁴³

- Lack of state protections from both domestic and institutional violence;
- Discrimination against girls, indigenous, and disabled children (in access to services and in relation to correctional measures);
- High levels of violent deaths and a lack of protection by authorities;
- Cruel and degrading detention conditions in correctional and treatment facilities; and
- High levels of emigration.

³⁹ *Honduras Poverty Assessment* (2006).

⁴⁰ *Mitch: The Deadliest Atlantic Hurricane Since 1780*. (August 29, 2006). National Climate Data Center. (<http://lwf.ncdc.noaa.gov/oa/reports/mitch/mitch.html>).

⁴¹ "Situacion Migratoria Honduras 2005". (09/2005). *Boletín FONAMIH*, N.19.

⁴² From IHNFA agency factsheet, presented to us by IHNFA personnel. "Marco Legal de la Infancia en Honduras".

⁴³ *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.

(<http://daccessdds.un.org/doc/UNDOC/GEN/G07/415/06/PDF/G0741506.pdf?OpenElement>)

Mirroring these concerns, the U.S. Bureau of Democracy, Human Rights, and Labor's 2006 *Honduran Country Report on Human Rights Practices* finds:⁴⁴

- High estimates of children (20,000) living on the street with limited access to social services (only 240 government shelter beds for children in Tegucigalpa);⁴⁵
- Killing of street children by vigilantes, security forces, and even police;
- Trafficking of 15,000 children a year within the sex industry;
- Considerable gang violence;
- Rampant government corruption (in one instance culminating in the arrest of the Director of Immigration);
- Few legal remedies for child abuse (of the 1,934 reports in 2006, only 116 were taken up by the courts); and
- Limited access to education (citing a Honduran government report that 368,000 of the 1.7 million children ages 5 to 12 did not receive any schooling in 2006).

When unaccompanied Honduran children leave or are trafficked from Honduras, they are leaving behind a government system that offers few resources and fewer protections to secure their basic rights. The dangers inherent in returning an unaccompanied child to such a situation heightens the U.S.'s obligation to ensure the safety of repatriated children.

**Child Protective Services in Honduras:
The Honduran National Institute for Families and Children
(Instituto Hondureño de la Niñez y Familia, IHNFA)**

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. The organization functions at the national, state, and local levels under the authority of the wife of the respective elected executive. The UN Committee on the Rights of the Child finds that IHNFA is considerably understaffed, under-trained, and under-funded.⁴⁶ The committee has also cited concerns related to IHNFA's lack of a centralized data collection system to review and assess the provision and efficacy of services. Transitions among federal administrations can 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 Honduran National Institute for Families and Children (IHNFA) contracts with dozens of non-profit, non-government organizations. These partnerships are an encouraging step towards developing and expanding a safety net for the children of Honduras. IHNFA partners with Casa Alianza to pilot a project for reintegrating child victims of the trafficking industry. Casa Alianza is an international, faith-based

⁴⁴ Country Reports on Human Rights Practices: Honduras [2006](http://www.state.gov/g/drl/rls/hrrpt/2006/78896.htm) (March 6,2007). Department of State Bureau of Democracy, Human Rights, and Labor. (<http://www.state.gov/g/drl/rls/hrrpt/2006/78896.htm>).

⁴⁵ During field research, we 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 more than two weeks. In response to our inquiries, no one at the agency could tell us what was happening in the shelters during this period (i.e., whether they were closed completely, or staffed by a skeleton crew).

⁴⁶ *State Party Examination of Honduras's 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.

organization that provides shelter, education, and dependency treatment services to homeless children in the capital city.

IHNFA partnering organizations, however, face significant resource issues, which result in stringent eligibility criteria that can create a service gap that excludes many of the children at risk of migration. Some organizations limit their services to the most at-risk populations, such as Casa Asti's programs for homeless children with drug dependencies and/or a history of prostitution. Other organizations focus on the children most likely to succeed in overcoming their situations, such as SOS International's Kinderdorf homes for orphans under age 7. SOS's success with providing non-institutional homes for young orphans is impressive and based largely on the fact that the organization does not admit into care clients older than age 7. According to Kinderdorf staff, the philosophy behind this decision is that children who are orphaned or living on the streets at an older age are more likely to have significant emotional issues and service needs.

IHNFA's two national offices in Tegucigalpa (Honduras' capital, located in the western mountains) and San Pedro Sula (the industrial center of Honduras, located near the northern coast) are responsible for the receipt of children repatriated by both land and air. Children returning by land, over Guatemala, are released by Mexican officials at the border cities of Ocotpeque and Puerto Cortes. Children returning on flights from the U.S. arrive in Tegucigalpa and San Pedro Sula. Logistically, this proves problematic, as regional offices are located hours from their respective border cities. Tegucigalpa is one day's travel from Ocotapeque. The trip from San Pedro to Puerto Cortes takes at least three hours. The IHNFA representatives charged with the repatriation of children have the impossible task of having to be two places at once while attempting to serve thousands of children a year. Further complicating their task is the fact that resources, such as transportation, are difficult to secure due to scarcity and steep competition with other staff.⁴⁷

When the IHNFA representative serves one population of repatriated children, it is at the expense of the other. The bus returning unaccompanied children from Mexico arrives almost every day. According to the IHNFA office in San Pedro, Mexican officials notify IHNFA days in advance of each bus' manifest and estimated time of arrival. Flights returning children from U.S. custody arrive frequently, but irregularly. According to the Honduran minister of foreign relations, the proper protocol for notification of the arrival of an unaccompanied child is as follows:

1. The U.S. informs the Honduran Consul in the U.S.;
2. The Consul notifies the Ministry in Honduras;
3. The Ministry in turn notifies the National Immigration Police (NIP) officer at the airport;
and
4. The Ministry and the police then notify IHNFA.

In practice, however, both IHNFA and the National Immigration Police, which have the authority to initially receive custody of the children from ICE, report that little to no advance notice is given of a child's arrival. Moreover, when flight manifests are available in advance, they are often

⁴⁷ Interview with Doris Garcia and Jahum Aguilar, Regional Directors of IHNFA. Interview by Amy Thompson in Tegucigalpa, Honduras. (August 14, 2007). Interview with Gladis Rodriguez and Alma Soza, IHNFA regional program directors, Interview by Amy Thompson in Tegucigalpa, Honduras. (August 22, 2007). Interview with Jahum Aguilar, Regional Director of IHNFA. Interview by Amy Thompson in San Pedro Sula, Honduras. (September 2, 2007). We also interacted with various IHNFA personnel while touring seven of the IHNFA shelters and correctional facilities for children in Tegucigalpa and San Pedro Sula.

inaccurate (i.e., children do not arrive on the specified flights). According to IHNFA personnel, this is a recent occurrence. Prior to 2002 the U.S. official regularly informed IHNFA in advance.⁴⁸ In our interviews, IHNFA representatives expressed frustration over the lack of a written agreement with the U.S. regarding protocols for the return of children.^{49,50}

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 from immigration police prior to sending a representative to the airport. In Tegucigalpa, this means a child is held in police custody an average of about four hours until IHNFA arrives.⁵¹ According to the immigration police in San Pedro Sula, their common practice is to simply release children without IHNFA involvement.

The lack of understanding of U.S. agency roles on the part of Honduran authorities may represent a complicating factor regarding the establishment of protocols and melioration of communications issues. During the author's interviews with agency staff, representatives from all three Honduran authorities (the ministry, IHNFA, and the NIP) referred to the American Embassy as the custodian of unaccompanied children on U.S. flights. This illustrates a lack of understanding among Honduran authorities of who the official U.S. contact is for any problems with repatriation. This confusion likely stems from the fact that ICE offices out of the embassy building and ICE officers are treated as diplomats at immigration check points. To the extent that there is conflict or misunderstanding related to repatriation roles and responsibilities, this situation could strain Honduran relations with the Department of State. The lack of understanding of U.S. agency roles on the part of Honduran authorities may represent a complicating factor regarding the establishment of protocols and melioration of communications issues. During the author's interviews with agency staff, representatives from all three Honduran authorities (the ministry, IHNFA, and the NIP) referred to the American Embassy as the custodian of unaccompanied children on U.S. flights. This illustrates a lack of understanding among Honduran authorities of who the official U.S. contact is for any problems with repatriation. This confusion likely stems from the fact that ICE offices out of the embassy building and ICE officers are treated as diplomats at immigration check points. To the extent that there is conflict or misunderstanding related to repatriation roles and responsibilities, this situation could strain Honduran relations with the Department of State.

Return of Children from U.S. to Honduras

The following account of the processes of removal and repatriation for Honduran children is based on our interviews with repatriated children and Honduran immigration and child welfare authorities, as well as our observation of repatriations from the point of the child's escort onto an airplane in the U.S. until the child's reunification with his family.

⁴⁸ Interview with Gladis Rodriguez and Alma Soza, IHNFA regional program directors. Interview by Amy Thompson in Tegucigalpa, Honduras. (August 22, 2007).

⁴⁹ Interview with Doris Garcia and Jahum Aguilar, Executive director for IHNFA at large, and the Regional Director in Tegucigalpa. Interview by Amy Thompson. (August 14, 2007) .

⁵⁰ 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.

⁵¹ 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.

The findings in this report relate specifically to Honduran children removed from ORR custody by Immigration and Customs Enforcement with orders of deportation. None of the interviews involved children in ORR custody removed from foster care placements, sponsors in the community, or through processes other than deportation.⁵² Relevance is further limited as to the demographics of the participants, as discussed below.⁵³

From ORR Care to the Streets of San Pedro

The removal of unaccompanied children from ORR to Honduras involves the child's transfer back and forth between child welfare and law enforcement authorities. The Office of Refugee Resettlement views all processes related to the removal and repatriation of children as immigration enforcement.⁵⁴ As such, it does not involve itself with the arrangements made to secure the child's safe return.

Each of the children interviewed maintained that he was escorted by an ICE agent from their ORR residence to the airport. Four of the children maintained that they were taken to an immigration agency station prior to their arrival at the airport. Two of the children said they spent the night at such facilities, in over air-conditioned cells with no beds or blankets.

Children may be returned individually or in large groups.⁵⁵ Once at the airport, groups of unaccompanied children are boarded on commercial flights separately from and in advance of the public through the service entrance in the back of the plane. In some airports this will necessitate the children walking across the tarmac and navigating the congestion that typically surrounds a plane at an international airport. (i.e., baggage, fuel, and meal trucks). In instances where there are not enough escorts, this situation could prove dangerous. Often, there are too few escorts for the number of children transported (e.g., twelve children to one escort).

None of the children reported being handcuffed or shackled while on the commercial flight. Once the plane landed in Honduras, the unaccompanied children were the last to disembark. The initial receiving authority in the airports is the National Immigration Police, the Honduran counterpart to Customs and Border Protection. The manner in which children are brought to the attention of the Honduran immigration police varies by U.S. agent, but interaction between Honduran and U.S. authorities is minimal.

In one instance, we observed an ICE agent escort a group of children from the plane to the office of the immigration police. Though the agent did not enter the office, he waited outside until all the children had. He then proceeded to leave the airport with apparently no direct interaction with Honduran authorities regarding the children. In a separate incident, we observed an ICE

⁵² It is conceivable that other federal authorities may have processes for the removal of children outside of the immigration system – i.e., the US Coastguard apprehends unaccompanied children at sea and the Department of State and may assist the repatriation of unaccompanied refugee children – but information on these processes, though relevant to the topic of US obligation towards unaccompanied children, is not accessible and beyond the scope of this investigation.

⁵³ As DHS provided little response to the study's request for information, cross referencing our findings with official U.S. policy, guidelines, or statistics was limited.

⁵⁴ Interview with Susana Ortiz-Ang, Deputy Director of the Division of Unaccompanied Children's Services (DUCS) at ORR. Interviewed by Amy Thompson. Washington, D.C. (September 26, 2008)..

⁵⁵ We observed the arrival of one flight with more than a dozen children in the escort of a single ICE officer.

agent leave his charges alone at the arrival gate and then he proceeded to exit the airport.⁵⁶ After several minutes of milling about the gate unsupervised, the children eventually came to the attention of the Honduran immigration police.

Honduran Custody and Repatriation of the Child:

A Tale of Two Cities

Regional variations in Honduran child welfare and migration agency services translate into significant differences in the repatriation experience based on port of entry.

Tegucigalpa

Once in the custody of the immigration police, Honduran children are interviewed individually (though not privately). In Tegucigalpa, immigration officers use a form adopted from the Center for Repatriated Migrants (Centro Atencion de Migrantes Repatriados, CAMR). CAMR a non-government organization and is the lead authority for the organized receipt of adult repatriated migrants. The CAMR intake form includes questions related to the individual's family situation, level of education, route and experience of migration, employment eligibility, and personal identification information. It is not child-specific.

Once the migration police complete their interviews, the children wait for the Honduran National Institute for Families and Children (IHNFA) to arrive. This can take an average of four hours, as Migration Police notify IHNFA of the child's arrival and IHNFA secures transportation. In some instances, the children's parents may already be at the airport when the children arrive. Reunification is delayed, however, until IHNFA can interview the child and parent separately. This may occur at the airport. However, if there is more than one family reclaiming a child, or if the parents do not have proper identification, IHNFA will take the child(ren) to an offsite shelter to continue the interview process.

Initially, children are taken to one of two shelters for processing, depending on gender and age. Boys under age 12 and girls of all ages go to one shelter; boys age 12 and over go to another. Children are interviewed by the IHNFA representative or shelter staff, using a form that again traces their motivations and method of migration, their overall experience, and their family situation.

Parents and guardians are required to produce two forms of proof confirming the relation (the child's birth certificate or the adult's certification as legal guardian, and the adult's national ID card). The interview process with IHNFA can be prolonged and adversarial if IHNFA finds cause to doubt the child's relation to the adult claiming them. We observed at least one interview in which indignation on the part of the parent (of a 2-year-old girl clinging to her neck and crying "Mommy") appeared to constitute cause for suspicion.

⁵⁶ In both instances witnessed, we approached the agent to inform him of the study and to ask for agency contacts for questions related to repatriation in Honduras. The first agent referenced was polite and responsive. The second agent claimed to not be authorized to release even his name. He then suggested that to approach an Immigration and Customs Enforcement officer in the field was a threat to U.S. national security. While we do not believe that the agent felt threatened, it was clear that his expressed consideration of us as a "threat" was intended to suppress further inquiry. We experienced several similar situations with CBP personnel in the United States, as well.

For parents who are unprepared to prove relationship, the requirement can present a significant obstacle. Birth certificates are rare in rural regions and are logistically and financially challenging for the poor to obtain. This requirement, while necessary to protect children from release to smugglers, can delay reunification and cost families lost wages and extended travel costs. The effect on children can be detrimental as well, as children have to remain in IHNFA shelters until their families can comply with the identification requirement.

Systemwide, it is unclear what happens to children who have no family to claim them.⁵⁷ Officials at IHNFA and the Secretariate of Exterior Relations categorically deny that there are children for whom a responsible adult caretaker cannot be found readily from within the child's family. This claim is difficult to believe, given the obvious existence of both orphanages and street children within the country. Presumably the children remain at the shelter until they decide to leave. As there are no statistics or records available on the length of stay of repatriated clients, it is impossible to ascertain what happens to these children. Nevertheless, a child's departure would appear to require some recognition by IHNFA staff as most of the shelters appear relatively secure—with bolted doors, razor wire, and guards.

If the child has a criminal record or known affiliation, he may be interviewed by the national police prior to release. According to the police, this is only done with IHNFA's approval. While we could find no evidence of children detained by law enforcement or imprisoned upon arrival, the risk of such detention for some repatriated youth may exist. According to local advocates, having a known affiliation with a gang can be considered a crime.

San Pedro Sula

In San Pedro Sula, there are no standardized intake forms for the police or IHNFA; police collect general information on the child's identity and may ask questions related to the child's safety.⁵⁸ According to Alejandro Flores, the Chief of Border Police (a branch of the National Immigration Police) at the San Pedro Sula airport, children sometimes complain of abuse by U.S. authorities, but the immigration police have no process to pursue these complaints.

The immigration police report that, in most instances, IHNFA does not attend to children repatriated to the San Pedro airport. The airport migration police routinely release children older than 16 on their own recognizance and younger children to their parents, if they have reasonable proof of relationship. This proof may require a photo ID and birth certificate or at times be simply based upon the officer's best judgment.

⁵⁷ While the official position is that unclaimed children do not exist, some shelter social workers and directors are willing to speak to the issue. However, confusion on the matter abounds. Staff at one shelter claimed that children without families to come claim them stay about two weeks before leaving, and that abandoned babies are kept for about three months before being placed with an adoption unit. Staff at another shelter claimed that only about 80 percent of unaccompanied children return to families, and that the rest were referred to a local non-profit. When we contacted the non-profit, however, it denied receiving unaccompanied children from IHNFA.

⁵⁸ Interview with Irma Serrano, Unaccompanied Children's Protection Officer for IHNFA. Interview by Amy Thompson, in San Pedro Sula, Honduras. (September 2, 2007). Interview with Alejandro Flores and Elias Aceituno Canaca, Chiefs with the National Immigration Police. Interview by Amy Thompson, in San Pedro Sula, Honduras. (September 5, 2007).

San Pedro National Immigration Police expressed concern about not having any advanced notification of the arrival of unaccompanied children.⁵⁹ Related to this concern was the regional experience of immigration police with cases of recidivism. The police chief remarked on one case in particular involving a young girl who had been deported by the U.S. on three separate occasions by the time she was 16. Both the National Immigration Police and IHNFA claimed that, barring recognition of the child by an individual agent, they would have no way of knowing that an arriving child had been previously deported. Without advanced notice of the child's arrival and history by the United States and with limited staff and resources, it is unlikely that IHNFA would have any means of intervening in such cases.

When the IHNFA representative *is* present, he will release children to their parents at the airport, following an informal interview based on intuition.⁶⁰ If the parents are not present, IHNFA will take the child to its primary local shelter. At the shelter, the child is interviewed by a psychologist and either reunified with his family or formally admitted to an IHNFA shelter based on age, gender, and behavior.

As in Tegucigalpa, it is unclear what services are available to children arriving in San Pedro with no reliable family in the area.

The Child's Experience: Findings from the Honduran Interviews

7 boys, 15-to-17-years-old

The Honduran Child's Situation Prior to Migration

For the Honduran participants, childhood poverty and a lack of educational opportunities are a common thread.

Four of the X boys came from rural backgrounds and three grew up in the cities (two in Tegucigalpa, one outside of San Pedro). Four of the boys lived with both parents. Two lived with other family members, and one lived with his pregnant wife.

Six of the boys no longer attended school. Four boys attended no more than three years of primary education. One boy nearly completed his primary education and one had attended a year of secondary schooling. Only one was still attending school, prior to migration. The two boys with some secondary school experience lived in urban areas.

All six of the boys who left school did so to enter the workforce. All six were working full-time or seeking full-time work before they migrated. The four boys living in rural areas left primary school to join their families working in the fields, harvesting corn, coffee, and beans. Of the boys living in urban environments, one of the boys worked as a gardener with his father and one worked odd construction jobs.

The boys' situations prior to migration reflect several indicators traditionally associated with poverty and, in the case of Honduras, migration. These indicators include rural residency and its connection to early entrance into the workforce and primary school drop out.

⁵⁹ *Ibid*

⁶⁰ *Ibid*

The Honduran Child's Motivation to Migrate to the U.S.

Six of the boys migrated in search of work, and one sought to reunify with family members. Two of the boys claimed it was not their decision to migrate. Five of the boys had some family in the U.S.. Five of the boys traveled completely alone. Two made the trip with friends.

Why did I go? Because [in the U.S.] some people earn better salaries, more money, those things. And maybe I could get ahead because here [the U.S.] the dollar is worth more. Marvin, 17, rural village

Because I wanted to provide for my family. Walter, age 17, Tegucigalpa

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 U.S.]. To see if I could study here. Honduran child 16 in DIF shelter, mistakenly removed from the U.S. (not a survey participant)

The Honduran Child's Experience Migrating to the U.S.

While the level of resources available to them or debt incurred may vary by individual, the journey to the U.S. was perilous for each of the Honduran study participants.

Three boys hired a guide at the U.S./ Mexico border. Only one traveled with a guide the entire way from Honduras. It should be noted that a guide is not always a professional criminal – even though they charge. It may also be a cousin or relative who charges for the inconvenience. The price they pay is a good indication of whether the guide is really just a guide or more of a coyote – or professional criminal trafficker.

To reach the U.S., unaccompanied Honduran children must first cross two other international boundaries—the boundary between Honduras and Guatemala and again between Guatemala and Mexico. The first border stretches across mostly rural, mountainous regions that can be crossed either by foot or vehicle. The second border is defined by a river. Without authorization to enter at an official check point, children must cross by swimming or using floatation devices.

Honduran Code on Childhood and Adolescence clearly states that children under age 18 may not leave the country except in the company of their parents or legal guardians.⁶¹ The Border Police systematically enforce this rule at the country's international airports. Enforcement appears to be less rigorous along the land border, however, as four of the study participants claim to have crossed the border into Guatemala in vehicles without documentation or legal guardians. The other three participants crossed into Guatemala on foot; whether they crossed through official checkpoints was unclear.

None of the participants spent more than a few days crossing Guatemala. Those who crossed by bus spent only a few hours in the country. Once in Mexico, six of the boys used freight trains

⁶¹ Código de la Niñez y de la Adolescencia de Honduras, Libro: Dos; Título: Uno; Capítulo: Tres. Honduran Code on Childhood and Adolescence, Book 2, Title 1, Chapter 3.

to travel to northern Mexico. To catch the freight trains, the boys risked their lives or physical injury by jumping onto moving box cars. The one boy who did not travel by train stowed away in a trailer truck.

Four of the boys reached the Texas-Mexico border by swimming or floating across the river. Three crossed the border into Arizona, walking for days in the Sonoran desert.

The boys who used guides reported that the guides were paid or promised between \$300 and \$2,000. Of the two highest sums reported by the participants, one was arranged for by a third party and one was agreed to by the boy himself during the course of the journey.

One of the boys, Maynor, agreed to repay his guide \$2,000. At the time, Maynor had no money and agreed to work for the guide to pay off his debt. Maynor was uncertain, however, as to how long that would have taken or what that would have entailed. After crossing the border, he was trafficked to a major city and held. A raid by local police freed him from indentured servitude, but the authorities did not recognize his condition as such. Had Maynor been identified as a victim of trafficking, he might have been able to cooperate with police to provide evidence against the guide.

None of the boys reported any debt related to their journeys. Several had saved for many years to make the trip. Maynor was uncertain whether his debt would be erased. Others claimed that their capture erased the debt. In the cases where the child was not the sole or primary decision maker regarding his travel, it is unclear whether third-party debt is a factor.

The Honduran Child's Experience of Detention and Removal

The Honduran case study participants endured prolonged detentions subsequent to receiving their orders of removal. The interview responses of the children indicate that they had little understanding of what was happening to them and what their rights may have been while they were shuffled between U.S. law enforcement (ICE) and child welfare (ORR) authorities. This lack of awareness is most likely the result of limited contact with consulate and pro bono services.

Combined, the seven boys spent a total of 20 days in the U.S. prior to apprehension. They spent an average of just under three days in the U.S. before they were apprehended. They spent a combined total of 53 days detained in Border Patrol (BP) stations (just under nine days on average). They spent more time in U.S. custody than in the U.S., 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. One boy who was not initially apprehended by a DHS agency was detected by a local police force during a raid on an apartment building. He spent two days in a municipal jail cell – with adult criminals – prior to being transferred to ORR custody.

The participants spent a total of 550 days in ORR care, for an average placement of 79 days. Well over a third of this time was subsequent to the immigration judge's order of the child's removal. See table below.

Account of Time Spent in the U.S. by Honduran Case Study Population

| | Days in U.S. Prior to Apprehension | Days in BP Custody* | Days in ORR Custody Prior to Receiving Order of Removal | Days Spent in U.S. after receiving order of removal | Total Days in Custody* | Total Days in U.S.** |
|--------------|------------------------------------|---------------------|---|---|------------------------|----------------------|
| Total | 20 | 53 | 356 | 194 | 605 | 625 |
| Avg. | < 3 | > 8 | 51 | 28 | > 86 | 89 |

* response includes only 6 of the participants as one was held by local law enforcement prior to transfer to ORR

** includes two days that one boy spent in local detention

Treatment under Border Patrol Custody. One of the boys classified his treatment by U.S. immigration authorities as abusive and said that he was beaten by a Border Patrol agent. Two boys described the care they received as mistreatment. As in the Mexico case study, however, while the rest of the interviewees did not claim mistreatment, they described conditions that could have been presented as such. Complaints common among the interviewees regarding U.S. detention were a lack of food or inedible food, a lack of beds, and uncomfortably cold temperatures.

Child’s Understanding of Situation. Four of the participants stated that they did not understand the papers they signed while in Border Patrol custody. Two of the three who claimed understanding made comments indicating an incomplete understanding. For example, one boy explained that the papers he signed for the BP were simply to create a record of his presence in the event that he might choose to visit the U.S. in the future. Only one of the participants presented as capable of reading and understanding the context of what he was asked to sign.

Two of the boys claimed that the BP did not provide any written or spoken information in a language they could understand (Spanish). One boy claimed that he was provided information in Spanish, but that the wording used did not make sense.

They [Border Patrol] 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.

Will, 17, outskirts of San Pedro

Consular Notification. The participants uniformly maintained that they had no access to their consulates while in the custody of immigration (i.e., BP or ICE) or local authorities. Five of the boys affirmed that they had had contact with their consulate while they were in ORR care. This contact was not 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 put in contact with his consulate. Two of the participants were adamant that they were never in contact with their consulate while in the U.S.

Legal Representation. Though the pro-bono advocacy community has significantly increased the availability of legal representation to unaccompanied children in ORR custody, there are still many instances in which children in ORR care receive limited or no legal representation. We observed significant variations in the quality and availability of rights presentations provided in eight of the ORR facilities visited during the study. 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 only once and sometimes only after they appeared in court. The quality of the presentations varied greatly with the experience and language skills of the presenter. In some instances the presentations were conducted by professionals with educational backgrounds; in other facilities the presentations were led by law students with limited to no familiarity with Spanish or experience with children.

Five of the study respondents were identified with the assistance of their attorneys in the U.S., which limits the applicability of any comments made by these participants regarding legal advice and representation. Several of the children's comments on the topic of representation, however, are illustrative of the limitations 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 presented his rights or options prior to court. Two of the children claimed that legal providers told them of their rights, but that they had no legal representation in court. Six of the boys had some recognition of the possible claims for immigration relief available to unaccompanied children, indicating that they had likely received some form of a rights presentation.

While they were in the United States in ORR care, six of the boys said that social workers or legal representatives asked whether they were afraid to return to Honduras. Only two boys reported that a U.S. immigration authority asked whether they were fearful to go home. As children are unlikely to volunteer any fears they may have, ensuring their safe return requires that they be specifically questioned concerning any fears.

Several boys responded to the effect that they weren't afraid of anything. This underscores the need for individual country of origin assessments to determine whether a child may be returned safely.

The Children's Experience of Repatriation to Honduras

All of the boys 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 without notifying him.

Once in Honduras, three of the boys had to wait more than four hours for a representative from the Honduran National Institute for Families and Children (IHNFA) to take custody of them. They had no access to food or beverages. While the children waited they were interviewed by migration authorities in front of other unaccompanied children and detained travelers.

Most of the boys were released from IHNFA custody to family members the same day of their return; however, two spent at least one night in an IHNFA shelter pending family reunification. Only one of the boys reported that IHNFA had asked whether he had any concerns related to returning to his family or hometown.

As in the Mexico case study, the hardships born by the children during migration do not present a significant deterrent to repeated attempts to return to the U.S. Only one of the boys said that he would not attempt to return to the United States. Three said they would definitely attempt to return: two stated that they intended to return after they earned the money for the trip and one said that he might return, if he could figure out a way.

As most of the boys had little formal education and were traveling in search of work, it is likely that some form of financial or educational opportunity would be necessary to mitigate their motivations to migrate. Three of the boys mentioned that they hoped to develop certain technical skills in the United States. One boy was interested in learning to install air-conditioning systems and two wished to learn mechanics. One said that the cost of technical training in Honduras was greater than the cost to migrate.

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

Summary of Honduran Case Study Observations and Analysis of U.S. Responsibility

The current system of removal for Honduran children, based on ICE escort, inappropriately charges a law enforcement agent with the execution of a policy that has extreme consequences on the safety and well-being of a child. In the immediacy, there is a need for written transport and escort protocols for ICE agents charged with returning unaccompanied children. These protocols should limit child-to-staff ratios. They should further require gender-appropriate escort, signed release to an identified authority, and advanced and direct communication with that authority prior to the child's removal from the United States. Direct coordination with Honduran authorities is critical to enable Honduras to efficiently and expediently allocate resources and personnel for repatriation services. In addition, U.S. agencies should not place children at risk or unduly burden Honduran authorities by returning unaccompanied children without the advanced and confirmed acknowledgment of both the Honduran National Police and IHNFA. Transportation protocols should further place priority on the child's safety and security, such as providing a reasonable child-to-escort ratio.

To truly address the risks posed to the child during removal and to discourage repeated migration, the return and repatriation of children should be coordinated and overseen by an expert in child welfare.

While the economic situation is a considerable variable in the root of adult migration from Honduras, many factors influence a child's migration. As these factors are unique to the child's country of origin and the individual child, 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. Currently, state child welfare authorities and ORR conduct home studies and best interest analyses in relation to the release of a child from their custody placed *within* the United States. Moreover, state agencies routinely conduct or contract out these services in order to

place children internationally. These processes could be adapted for the needs of all unaccompanied children removed internationally and should be implemented by a child welfare professional.

While government services programs in Honduras are limited in their ability to provide services to unaccompanied children, hundreds of non-government services agencies in Honduras are available to provide support. Providing unaccompanied children with contact information for these non-profits and in-country services could help children address the issues at the root of their migration without resorting to repeated migration. U.S. authorities could provide this information in consultation with in-country experts from IHNFA, the United Nations, established NGOs (such as Casa Alianza), and non-profit coalitions (such as Project Honduras).

In practice, the bifurcated system of return for Honduran children (to either Tegucigalpa or San Pedro Sula) without regard for the child's ultimate destination or fear of return to a specific region complicates family reunification and places the child at unnecessary risk. It should be noted that, unlike Mexico, Honduras has no resources to facilitate the child's return to their hometown. Families interested in reunification are challenged to secure the child's safe and expedient return by geographic, infrastructure, and economic barriers. Returning a child to an airport on the other side of the country can mean the difference between hours and days, between expense and fiscal disaster for parents attempting to retrieve their children. Children should be returned to the airport nearest their ultimate destination to encourage family reunification and prevent returning the child to an unsafe environment.

As in Mexico, in Honduras we encountered reports of children from other Latin American countries who were mistakenly removed to Honduras based on the child's claim. According to IHNFA, the motivations given by these children for denying their true citizenship ranged from a desire to travel to a fear of return to their country of origin. In one instance reported by IHNFA, a Salvadoran child did not want to be returned for fear of punishment by his home country for his involvement in migration. Though the occurrence of mistaken removal to Honduras is decidedly less common than in Mexico, similar risks and concerns warrant attention to the situation. ICE should confirm that country-of-origin authorities are aware of the possibility and process for returning an unaccompanied child to the United States if he is incorrectly removed, especially in instances where the child expresses a fear of return.

Alternative Models of Return

Models exist that put the best interest of children first. The following models should be used as references for the development of systems and procedures that treat all children fairly—regardless of their immigration status.

State Child Welfare Systems: Repatriation Based on Best Interest

Any child in the United States, including an undocumented child, may be taken into state custody if found to be in an unsafe environment or situation. Undocumented children in the care of state child protective systems can fit the definition of an unaccompanied child in instances of abandonment or the termination of parental rights. Several states maintain special agreements with Mexican child welfare agencies for the safe repatriation of unaccompanied Mexican national children in U.S. state care. These states include Illinois, California, and Texas.

In custody cases where family reunification or placement is a viable option, state child protective services may pursue the repatriation of undocumented children for the purpose of reunification.¹ State child protective services routinely work with country-of-origin consulates and protective services to achieve repatriation. In these cases, children are returned and repatriated under the authority of the state's protection and without notification of the immigration system.²

Child Protective Services routinely requires a home study prior to approving family reunification. Many countries will provide home studies to state protective services. Non-government entities, such as International Social Services, may also provide these services.³ These studies provide the information that courts need to determine whether and in what manner repatriation serves the child's best interest. Children are escorted by social workers, family members with special visas, or consulate officials— not law enforcement officers.

The European Union

The European Union provides another useful model. In fact, the receipt of undocumented unaccompanied children is not unique to the U.S. Industrialized countries across the globe have struggled with this phenomenon for years. In the European Union, policy makers and advocates have a comparatively longer history than the U.S. in directly and openly addressing the issues surrounding the return of

¹ State agencies will place U.S. Citizen children in international placements, if it is deemed in the child's best interest to do so.

² The authority for this practice is based in part on the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, stating that "services and assistance relating to child protection (and) adult protection services are deemed 'necessary for the protection of life or safety' and as such are exempt from restrictions relating to immigration status so long as only in-kind services are provided and no income restrictions are imposed."; in conjunction with federal law 42 U.S.C. ss 629a(a)(7)(B)(vi) and 671(a)(15)(B) authorizing state protective services to provide family reunification services including transportation services.

³ <http://www.iss-usa.org/site/index.asp?IdSection=10>

unaccompanied children. Conclusions developed through European dialogue and research may serve as tools in the development and analysis of policy in the U.S.

The 1997 *EU Resolution on Unaccompanied Minors Who are Nationals of Third Countries*⁴ outlines guiding principles for the development of policies related to the return of unaccompanied children, including:

- A child must not be returned when return would be contrary to the Convention relating to the Status of Refugees, the European Convention on Human Rights, the Convention against Torture or the Convention on the Rights of the Child (CRC);
- A child may be returned only if adequate reception and care are available;
- Family tracing should be undertaken as soon as possible, on a confidential basis and without prejudging the merits of any application for residence; and
- An independent legal guardian should be appointed as soon as possible.⁵

These guidelines are based on an understanding of international norms and research specific to the situation of migrant children.

The Separated Children in Europe Programme (SCEP)

Since 1997, the Separated Children in Europe Programme has engaged in the research and development of policy related to separated and unaccompanied migrant children in the EU. The SCEP is a collaborative initiative among members of the International Save the Children Alliance and the United Nations High Commissioner for Refugees, with non-governmental organization (NGO) partners from each member country of the European Union. The Programme informs EU- level policy related to migrant and immigrant children and reviews the individual immigration policies of EU member states for compliance with EU guidelines

Recognizing the variations in policies among EU member nations, SCEP has developed a list of policy guidelines for the return of unaccompanied children. These guidelines include areas of consideration for ensuring that returns are conducted within the frame of the child's best interest, procedures for deciding on removal, and standards for the enforcement of removal policies.⁶

Considerations related to the child's best interest include safety; family reunification/ willingness, and ability of family to receive child; the child's view and volition; the legal

⁴ The Council of the European Union, Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03) Official Journal C 221, 19/07/1997 p. 0023 – 0027; The phenomenon of what the EU refers to as children of “third countries” is analogous to the situation of children apprehended along the U.S./ Mexico border, who are from third country of origin (e.g. Honduras, or China).

⁵ *Save the Children and The Separated Children in Europe Programme Position Paper on: Returns and Separated Children*. (2004). Separated Children in Europe Programme, http://www.savethechildren.net/separated_children/publications/reports/index.html#returns. Summation of 1997 resolution available on page 2

⁶ *Ibid*

guardian's opinion; socio-economic conditions in the country of origin; the child's level of integration in the host country;⁷ and the child's age and level of maturity.

Procedures for Determination (as laid out by the Separated Children in Europe Programme):⁸

1. The determination to return a child to their country of origin should be made by a child welfare authority, i.e., a judge specializing in child welfare, taking into account the above consideration;
2. A legal guardian should be appointed to ensure attention to the child's interest and support the child's understanding and assessment of the situation;
3. A professional independent (NGO) entity should assess the country of origin conditions and identify and locate family members;
4. The child should be involved at all stages of planning regarding their return and reintegration to ensure that their return is a durable solution;
5. The child's opinion must be heard at any judicial or administrative proceedings that will affect their return;
6. Unaccompanied children should never be returned under accelerated procedures, such as those related to the concept of a "safe country of origin." Unaccompanied children should never be refused entry at a port of entry as such procedures deny determination of the child's best interest;
7. Decisions related to a child's return should be made in a timely manner to avoid the threat of related consequences to the child's development. Procedural measures to ensure the timeliness of a decision must not compromise the child's legal or individual rights;
8. Children should have legal representation provided at no cost to them and should have the right to appeal;
9. If removal of the child is determined to be against their best interest, a durable solution should be provided by the host country, such as long-term residence;
10. Age assessment should be carried out by independent professionals; and
11. All persons involved in the removal and return of unaccompanied children should have training on the special needs and rights of unaccompanied children.

Standards for Enforcement (as laid out by the Separated Children in Europe Programme):⁹

- Unaccompanied children should never be returned via forced group removal, (i.e. such as JPAT deportation flights in the US);
- Children should be accompanied by a child care professional familiar to the child (to ensure that the child is safely delivered and to respond to emotional trauma associated with return);

⁷ The SCEP guidelines recognize that children who migrated at so young an age as to have little or no recollection of their country of origin are deeply affected by removal. This experience can have lasting developmental and emotional effects.

⁸ The guidelines are presented in paraphrased form to avoid confusion over regional variations in language.

⁹ Standards are paraphrased to avoid confusion over variations in terms between U.S. and European systems.

- Children should never be released to border authorities unless the mechanisms for the continued and appropriate care of the child are certain; and
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- The child's country-of-origin caregiver should receive any information relevant to the child's well-being.

Italy as a model of how the above guidelines can be implemented. Italian law provides that separated children can only be returned to their country of origin by means of "assisted repatriation" in order to be reunited with their family.

Before a child may be returned, an assessment is conducted to trace the child's family and to assess whether the child's return to the country of origin would be safe. The child must be consulted during this process. The child's reaction and opinions fully informs the assessment of their safety, while including them in the process supports their acceptance of return as an option. The Committee for Foreign Minors (part of the Ministry of Labour and Social Welfare) whether to return to the child in accordance with the U.N. Convention on the Rights of the Child (CRC). This mandate ensures that the considerations concerning the safety and well-being of the child will be balanced against the interest of any non child welfare based agencies.

Italy contracts with six different NGOs to provide family tracing and assessments in the child's country of origin. Reintegration services are then offered to returned children to ensure that the child's placement is stable and to guard against repeat migration.

NGO Contracts

NGOs, such as the International Social Services (ISS) organization, can facilitate the return process and ensure attention to best interest of the child principles.. European countries contract with ISS to assess the viability of and assist in the child's return to country of origin.¹⁰ ISS provides research services on the situation in the child's home country and traces family members to identify potential guardians.

U.S. collaboration with ISS is not unprecedented. The U.S. contracts with ISS to assist in the repatriation of U.S. citizens, including children abroad.¹¹ At the state level, child protection and welfare agencies contract with ISS to conduct home studies for placement of child protective services clients in countries that are unable to provide a viable analysis for child welfare purpose.

Bi-national Collaboration

In some regions along the U.S./ Mexico border, local authorities on both sides have attempted to mitigate the situation of childhood migration and identified related conflicts between jurisdictional policies through the creation of joint initiatives and agreements with their counterparts.

¹⁰ See service information on ISS website http://www.issuk.org.uk/what_we_do/asylum.htm

¹¹ See service information on ISS website <http://www.iss-usa.org/site/index.asp?IdSection>

The area of Matamoros, Mexico and Cameron County, Texas has engaged in a number of such efforts, to which they attribute lowered regional migration rates. The area developed a bi-national education program in which law enforcement and child welfare agencies present at local schools to inform children of the risks and consequences associated with unauthorized migration.

The Matamoros/Cameron County area has also developed agreements between local Texas law enforcement and the local Mexican child welfare agency for collaboration on the removal of unaccompanied Mexican national children who are convicted through the juvenile justice system. This system allows the local Mexican child welfare agency to serve as the child's probation officer upon repatriation. This is a great benefit to children who live in border communities. Removed children with U.S. parole officers can not comply with U.S. parole requirements, as they cannot report to their officer in the U.S. As a result, these children would have to contend with a parole violation if they ever visited the U.S. in the future.

Examples of bi-national, albeit at the local level, collaboration to directly address the roots of child migration should be analyzed in the development of national initiatives.

UNHCR's Best Interest Determination (BID)

UNHCR recently released its process for determining the best interest of refugee and unaccompanied children.¹² The process is reserved for decisions with far-reaching consequences, requiring enhanced procedural safeguards, and involves multiple expert decision makers. UNHCR reserves the BID process for three situations, each of which is analogous to the situation of unaccompanied children in the U.S..

1. **Identifying durable solutions** for unaccompanied and separated refugee children;
2. **Identifying temporary care arrangements** for unaccompanied or separated children at particular risk (i.e. in instances of doubt related to the planned care arrangements, or in instances that the child involved has a disability); and
3. **Addressing situations in which the children are separated from their parents** and their will (i.e. the parents return to the country of origin without their children).

Situation 1 is analogous to that of unaccompanied children in the U.S. immigration system, awaiting a ruling that will determine their permanent placement. Situation 2 is analogous to both the situation of unaccompanied children in state or U.S. custody that are at risk in their temporary placement and to the situation of children ordered removed to countries of origin with no known plan for continued protection or service. Finally, situation 3 is similar to instances in which undocumented children are separated from their parents or guardians via the detention or removal of the adult.

UNHCR has procedural guidelines for each scenario. The guidelines are based on the input and expertise of various agencies including UNICEF, Save the Children, and

¹² *UNHCR Guidelines on Determining the Best Interests of the Child*. United Nations High Commissioner for Refugees. May 2008.

Lutheran Immigration and Refugee Services. Key among the supporting documents for UNHCR's model is the International Rescue Committee's Interagency Guiding Principles for Unaccompanied and Separated Children, which calls for an "overall framework of protection" when dealing with unaccompanied and separated children, as well as "complementarity and cooperation" between all agencies involved in such cases.¹³ These guidelines should be explored and considered as the U.S. develops policies to secure the safe repatriation of unaccompanied children.

Summary

Child migration is a global phenomenon. Many industrialized nations have begun to address the issue of child migration with a prioritized concern for the welfare of the unaccompanied child, as opposed to focusing solely on immigration and law-enforcement considerations. In the U.S., the response to this phenomenon varies between regions with fragmented local, state, and federal policies. In some instances U.S. authorities agree to focus on the situation of the individual child, but in far too many children slip through the cracks in our decision making processes, vulnerable to the myriad dangers of continued or repeated migration.

Our humanity as a people is inextricably linked to our security as a nation. How we treat the most vulnerable visitors to our country affects our credibility and standing in the world. The extent to which the policies of the U.S. compare with the standards that the international community has set for itself greatly determines the extent to which the US can be viewed as a leader in this larger community. The U.S. needs a cohesive child welfare focused policy for the return of unaccompanied children. In the development of this policy it is essential to assess all available "lessons learned". The U.S. must look not only at the international conventions to which it is a party, but to the proven successes and shortcomings of other nations in addressing the plight of unaccompanied children. We must also assess the areas where we have already succeeded and failed in the protection and service of these children.