PUSHED INTO HARM'S WAY

FORCED RETURNS OF UNACCOMPANIED MIGRANT CHILDREN TO DANGER BY THE USA AND MEXICO

AMNESTY INTERNATIONAL

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Cover photo: Girl looking through a fence into the USA from the San Luis Port-of-Entry on the US–Mexico border, viewed from San Luis Río Colorado, Sonora, Mexico. Copyright © 2019 Amnesty International

CONTENTS

GLOSSARY 4

EXECUTIVE SUMMARY 6
KEY RECOMMENDATIONS 10
METHODOLOGY 12

STORY OF EDUARDO 13

1. DEPORTATIONS OF UNACCOMPANIED MEXICAN CHILDREN BY THE USA 15
1.1 UNLAWFUL US BORDER AND ASYLUM POLICIES 15
1.2 DEMOGRAPHICS OF UNACCOMPANIED CHILDREN SEEKING SAFETY IN THE USA 17
1.3 US BORDER AUTHORITIES IMMEDIATELY RETURN ALMOST ALL UNACCOMPANIED MEXICAN CHILDREN 19
1.3.1 STATE OF CHIHUAHUA 24
1.3.2 STATE OF BAJA CALIFORNIA 26
1.3.3 STATE OF SONORA 27

2. DEPORTATIONS OF UNACCOMPANIED CENTRAL AMERICAN CHILDREN BY MEXICO 30
2.1 FLAWED DETERMINATIONS OF CHILDREN'S BEST INTERESTS 32
2.2 MEXICO'S ASYLUM SYSTEM IS OVERWHELMED AND UNDERFUNDED 33
2.3 INTERCEPTIONS AND DEPORTATIONS OF CENTRAL AMERICAN CHILDREN 34
2.3.1 STATE OF CHIHUAHUA 37
2.3.2 STATE OF BAJA CALIFORNIA 40
2.3.3 STATE OF SONORA 40

3. INTERNATIONAL COOPERATION TO FACILITATE PASSAGE OF CHILDREN FROM MEXICO TO USA FOR FAMILY REUNIFICATION 42
3.1 STATE OF CHIHUAHUA 43
3.2 STATE OF BAJA CALIFORNIA 44

4. CONCLUSION 46

5. RECOMMENDATIONS 47

GLOSSARY

WORD	DESCRIPTION
ASYLUM-SEEKER	An asylum-seeker is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum-seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal granting of asylum.
CBP	Customs and Border Protection (CBP) is a law enforcement agency of the US Department of Homeland Security (DHS), operating in the border area and ports-of-entry of the United States. The US Border Patrol is part of CBP.
CNDH	Mexico's National Commission on Human Rights (Comisión Nacional de los Derechos Humanos). CNDH is an independent human rights protection institution, which has a legally mandated oversight role in the determination of the best interests of children by DIF and the Subprocuraduría.
COESPO	Mexico's State Population Council (Consejo Estatal de Población, or COESPO) is a public state body mandated to support economic and social development. In the state of Juarez, Chihuahua, it has a unique role in the orderly management of border infrastructure and migration.
COMAR	The Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados, or COMAR) is the agency of the Mexican Government responsible for processing refugee status determinations.
DHS	US Department of Homeland Security.
DIF	The Mexican government's National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia, or DIF).
FISCAL YEAR	The US government classifies some official information by the Fiscal Year (FY), which runs from October 1 to September 30 of each year.
ICE	Immigrations and Customs Enforcement (ICE) is an agency of DHS, charged with carrying out detentions and deportations of asylum-seekers and migrants.
HHS	US Department of Health and Human Services.
INM	The Mexican government's National Institute of Migration (Instituto Nacional de Migración, or INM).
IOM	The International Organization for Migration (IOM) is an intergovernmental organization providing migration-related services and support to governments and migrants, refugees, and internally displaced persons.
IRREGULAR ENTRY	Crossing into a country without a migration status that complies with requirements of domestic immigration legislation and rules. The term "irregular" refers only to a person's entry or stay.
NORTHERN TRIANGLE	The region of Central America comprising El Salvador, Guatemala, and Honduras.

WORD	DESCRIPTION
ORR	The Office of Refugee Resettlement (ORR) is a program of the Administration for Children and Families office of HHS, created by the US Refugee Act of 1980. ORR is responsible for the care and placement of unaccompanied children in the USA.
PORT-OF-ENTRY	Ports-of-entry are official customs border entry points into the USA, where travelers show their identification and travel documents and request entry.
PUSHBACKS	Pushbacks happen when people are forced back to the country they are trying to leave after crossing or seeking to cross a border, without an opportunity to request asylum or otherwise challenge their forced return.
REFOULEMENT	Forcible return of an individual to a country where they would be at risk of serious human rights violations (the terms "persecution" and "serious harm" are alternatively used). It is prohibited by international law to return refugees and asylum-seekers to the country they fled – this is known as the principle of ***non-refoulement.*** Indirect ***refoulement*** occurs when one country forcibly sends someone to another country that subsequently sends them to a third country where they risk serious harm; this is also prohibited under international law.
REFUGEE	Refugees are individuals who fled from their countries-of-origin due to a well-founded fear of persecution, from which their governments cannot or will not protect them. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes an asylum-seeker as a refugee, it gives them international protection as a substitute for the protection of their home country.
SEGOB	Mexico's Secretariat of the Interior (Secretaría de Gobernación, or "Office of Governance").
SIPINNA	Mexico's National System for the Comprehensive Protection of Girls, Boys and Adolescents (Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes, or SIPINNA) is a public institution mandated to protect the human rights of children, in line with UN Convention on the Rights of the Child and the Constitution of Mexico. The SIPINNA includes the President of Mexico and eight federal agencies.
SUBPROCURADURIA	In Mexico, the Deputy Attorney for the Defense of Girls, Boys, and Adolescents (Subprocuraduría de Protección de Niñas, Niños y Adolescentes; or simply Subprocuraduría) legally represents and determines the best interests of unaccompanied children in the custody of the state.
UNACCOMPANIED CHILD	In migration contexts, an unaccompanied child is generally defined as a person under the age of 18, who enters a country without a parent or legal guardian, and/or children who for other reasons have been separated from their parents or legal guardian.
UNHCR	The United Nations High Commissioner for Refugees (UNHCR) is the principal UN refugee agency, mandated to aid and protect refugees, forcibly displaced communities, and stateless people, and to assist in their voluntary repatriation, local integration, or resettlement to a third country.
UNICEF	The United Nations Children's Fund (UNICEF) is a UN agency responsible for providing humanitarian and developmental aid to children worldwide.
USCIS	The US Citizenship and Immigration Services (USCIS) is an agency of DHS, charged with processing immigrant visa petitions, naturalization petitions, asylum applications, and refugee applications.

1. EXECUTIVE SUMMARY

Children, just like adults, have the universal human right to seek and enjoy asylum from harm. Unaccompanied migrant children are often targeted precisely because they are children, and are even more vulnerable to human rights violations than adults. Compounding the potential harm they face in each country and every step along the migrant trail, they are then often routinely denied access to asylum and other protection systems.

From 2018 to 2021, the governments of both Mexico and the USA have forcibly returned unaccompanied migrant children to their countries of origin, without adequate screenings for potential irreparable harm they could face there. Yet even prior to then, unaccompanied migrant children had uneven access to asylum procedures both within Mexico and at the US–Mexico border, which persists today.

Since January 2021, under the new administration of US President Joseph Biden, tens of thousands of unaccompanied migrant children from Central America and Mexico have crossed irregularly into the USA along the US–Mexico border. The majority of those children are seeking safe haven from targeted violence and other human rights crises in their countries of origin. One in every three migrants and asylum-seekers from Central America and Mexico is a child, and half of them are unaccompanied by family members or other adults. In more than 80 percent of their cases, these children are hoping to reunify with family members who are already residing in the USA, according to the US Department of Homeland Security (DHS).

After these unaccompanied children have fled life-threatening insecurity in their home countries, they have then faced new threats of systematic pushbacks and forced returns by US and Mexican authorities to those very countries where many escaped death threats or other irreparable harm. Under national and international law, both the US and Mexican governments are legally obligated to determine and act in the children's best interests when receiving them. Instead, they are often failing to conduct adequate screenings of potential harm that the children could face upon return to their countries of origin, and are in some cases forcing them back into harm's way.

From 2018 to 2020, Amnesty International interviewed dozens of unaccompanied children from Central America and Mexico, in shelters on both sides of the US–Mexico border. Each with their own hopes and dreams – most often to reunite safely with loved ones in the USA – they recounted troubling stories of being routinely denied their right to request asylum at US–Mexico border crossings. Those denials came from both US and Mexican authorities. The children recounted how they were turned away by US border authorities, intercepted by Mexican immigration officials, threatened with deportation to harm in their home countries if they sought to cross the border, and sometimes even insulted or physically assaulted by authorities.

One 15-year-old girl from Honduras told Amnesty International in April 2019 of how she slept in the streets of Juarez for two weeks to avoid detection by Mexican authorities, until she could cross the river safely to El Paso and try to reunite with her brother in the USA. Even though she was fleeing death threats by a gang that had already killed her cousin, she knew as a child that she was not allowed to request asylum at the official border crossing ("port-of-entry"), and that if she were intercepted then she would most likely be deported to the same dangers she had just escaped:

> **"I DIDN'T KNOW WHERE TO START, AND THERE WERE LOTS OF MEXICAN FEDERAL AUTHORITIES AT THE BRIDGE, WHO SAID THEY'D RETURN ME TO HONDURAS. [...] I ARRIVED WET THROUGH THE RIVER UNDER THE BRIDGE."**
> *- Maria**

In March 2020, a 16-year-old boy from Honduras told Amnesty International how he fled similar death threats from a gang, after refusing to deal drugs for them. After arriving in Tijuana, he tried to claim asylum at the port of entry, in order to reunite with his older brother in California. US border authorities immediately turned him away.

> "They said they weren't giving any asylum. It was very rapid. […] There was a police officer who was private security who told me I had to leave or he would call INM and they would deport me. […] I was here one week, and then I jumped the fence and was caught. […] Yes, I asked for asylum, but they didn't put me into any process, they just gave me to the Mexican immigration. Yes, I told the Mexican officials what happened, and they didn't take me to immigration, they took me to the shelter. […] The Americans didn't tell me anything. Since my birth certificate doesn't have a picture, they didn't believe that I was a minor. […] I got very scared that they would send me back to Honduras." – Eduardo*

Both US and Mexican authorities have violated their obligations under national and international law to protect the human rights of asylum-seeking children. They have violated their rights, firstly, by denying them access to asylum procedures through unlawful pushbacks at the border; and, secondly, by summarily returning them to their countries of origin, without adequate screenings for potential harm. In some cases of asylum-seeking children, this has likely resulted in their forced return to ill-treatment (*refoulement*).

Aware of some of their shortcomings, the US and Mexican governments have also both adopted positive measures in recent months to expand protections for unaccompanied migrant children. However, they have not done enough to ensure children are not sent back to harm, and the aforementioned violations continue every day. Both governments have the capacity and resources to halt their abuses, improve human rights protections in policy and practice, and stop sending migrant children back into harm's way.

In some localities, Mexican and US border and immigration authorities have worked together with international partners on an ad hoc basis to facilitate family reunifications of Central American and Mexican unaccompanied children with their family members already living in the USA. Those initiatives have proven successful in their limited application, and should be adequately funded for expansion and transparent oversight all along the US–Mexico border. DHS Secretary Mayorkas noted in 2021 that approximately 80 percent of unaccompanied migrant children apprehended by DHS along the US–Mexico border are seeking to reunify with sponsoring family members who are already in the USA.

To deny unaccompanied migrant children their rights both to seek asylum and to family unity is unconscionable, irrespective of whether they are from Central America or from Mexico. Systematic violations of those rights by both the USA and Mexico must stop without further delay.

DEPORTATIONS OF MEXICAN CHILDREN BY THE USA

Since entering into office, the Biden administration has continued the Trump-era policy of disallowing almost all asylum-seekers from requesting protection at official ports-of-entry along the US–Mexico border. The US Department of Homeland Security (DHS) also continues to summarily "expel" almost all asylum-seekers when they consequently cross the border irregularly between ports-of-entry, in order to present themselves to US Border Patrol agents and request asylum. These policies, in effect, leave people with no route to exercise their right to seek asylum.

During the first year of this disastrous and discriminatory policy, from March 2020 to March 2021, the Trump and Biden administrations unlawfully expelled more than half a million migrants and asylum-seekers, including over 13,000 unaccompanied children expelled by the Trump administration. Using an obscure provision under "Title 42" of the US Code, both administrations used bogus public health grounds to deny asylum-seekers' human right to request protection from persecution and serious human rights abuses that forced thousands of them to flee their countries. Most of those migrants and asylum-seekers were returned directly back to Mexico, or to their countries of origin in the Northern Triangle region of Central America (comprising El Salvador, Guatemala, and Honduras).

In November 2020, a federal court exempted all (and only) unaccompanied minors from forced returns to their countries of origin under the Title 42 policy. Since January 2021, the Biden administration has continued to exempt only unaccompanied migrant children from the policy, pushing families to make an impossible choice. Likely thousands of children have had to separate from their asylum-seeking parents in order to escape dangerous border regions of northern Mexico, and have then crossed the border alone, since they would otherwise be deported as a family if their parents crossed with them. In addition to compelling families to separate unnecessarily, US border authorities still reportedly turn unaccompanied children away at some of the most heavily trafficked official ports-of-entry and deny them access to asylum procedures. Despite their legal right to request protection at ports-of-entry, the vast majority of unaccompanied children instead take dangerous journeys across the open border – often at the mercy of smugglers.

Now, while unaccompanied children are no longer subjected to mass expulsions under Title 42, US border authorities are still immediately returning the vast majority of unaccompanied Mexican children who enter the USA. They do so by misusing a provision of anti-trafficking legislation concerning Mexican unaccompanied children to deprive them of effective screenings for harm and to deny them access to asylum procedures. Based on a provision that only applies to "contiguous countries" (Mexico and Canada), US border officials conduct a superficial and ineffective screening of unaccompanied Mexican children for risks of harm or being trafficked, and then repatriate the children without ever placing them in immigration proceedings.

> **"THE POLICY RIGHT NOW FOR MEXICAN UNACCOMPANIED MINORS IS FOR THEM TO BE REPATRIATED."**
> *- White House assistant press secretary and immigration adviser Vedant Patel, May 2021*

From November 2020 to April 2021 after Title 42 stopped being applied to unaccompanied children, about 20 percent of the nearly 60,000 unaccompanied migrant children apprehended by the US Border Patrol were Mexican nationals. According to US statistics, DHS swiftly returned approximately 95 percent of those Mexican children, often in a matter of hours. On 25 May 2021, DHS's border agency Customs and Border Protection (CBP) informed Amnesty International that it had returned approximately 10,270 unaccompanied Mexican children from November 2020 to April 2021 (not including Title 42 returns). In contrast, CBP referred only a few hundred unaccompanied Mexican children to child protection specialists at the US Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) during the same period. In total, unaccompanied Mexican children were returned to Mexico more than 22 times as often as they were transferred to ORR after being apprehended by the US Border Patrol.

Migrant human rights defenders, international organizations, migrants themselves, and government officials in northern Mexico told Amnesty International that those systematic forced returns of Mexican children by US authorities often happened without the legally required screenings of the children for fear of return to Mexico, which are supposed to ensure they are not being returned to harm or are victims of human trafficking.

In a 2020 study published in the Journal on Migration and Human Security, academic researchers found that US border officials in the CBP agency failed to effectively screen on average half of unaccompanied Mexican migrant children prior to returning them over the border to identify: (1) if they feared return to Mexico; and (2) if they were victims of human trafficking. CBP officials are legally required to conduct both screenings before returning any unaccompanied Mexican children, or instead route them to child protection specialists in ORR. Over half of the 97 children surveyed in the study had no idea they were signing forms consenting to their returns to Mexico, and CBP didn't explain it – in some cases even pressuring children to sign the forms they did not comprehend.

In April 2021, one of the study's authors recounted to Amnesty International:

> "I remember in an interview when one kid said about his hometown, 'if people don't know you, they kill you' – obviously prompting some fear! We met these kids at a point when they had already been returned to Mexico, and those fears hadn't been taken into consideration."

As a matter of policy, the Biden administration continues to return almost all unaccompanied Mexican children to Mexico, without adequate screenings for risks of harm. By allowing US border authorities – instead of child protection specialists – to decide the fates of unaccompanied Mexican children, the US government is failing to protect unaccompanied children and facilitate their safe reunifications with their families in the USA. In addition to denying unaccompanied Mexican children their right to seek asylum, the US is deliberately doing so on the discriminatory basis of their nationality.

DEPORTATIONS OF CENTRAL AMERICAN CHILDREN BY MEXICO

While the US government is forcibly returning unaccompanied Mexican children over the border to Mexico, the Mexican government is doing the same to unaccompanied Central American children, the majority of whom it repatriates to their countries of origin.

During the Trump administration, the US government repeatedly pressured Mexico with threats of tariffs and other penalties to do its dirty work by turning away, detaining, and deporting Central American migrants, before they could reach the US–Mexico border to request protection.

As Central American migrants and asylum-seekers traveled with greater frequency through Mexico to the USA in 2019, Mexican immigration authorities forcibly returned more than 90 percent of the unaccompanied migrant children whom they encountered, approximately 12,000 children in total. In 2020, despite reduced migration during the COVID-19 pandemic, Mexican authorities still forcibly returned over 3,300 unaccompanied migrant children to Central America, more than 70 percent of those whom they took into custody.

Following years of advocacy by migrant rights activists and civil society organizations, the Mexican government enacted a legal prohibition on the detention of migrant children by Mexico's immigration authorities (INM), which entered into force in January 2021. Now all migrant children encountered by Mexican authorities must be transferred to the custody of Mexico's child protection services ("DIF", by its acronym in Spanish) to determine and act according to what is in their best interests.

Nonetheless, so far in 2021, Mexican authorities have reported deporting about half of the unaccompanied Central American migrant children whom they have taken into custody nationwide. With DIF shelters overcrowded, and processing times delayed, it is likely those rates of return will climb steeply in the second half of 2021. Amnesty International received information from Mexican child protection authorities at the US–Mexico border that the true rates of repatriation of Central American children were as high as 85 percent in some localities in the first quarter of 2021. This is notwithstanding the fact that the rates of forced return of unaccompanied migrant children are reportedly the highest in the south of Mexico, closer to the southern border and Central America.

Mexican immigration and child protection authorities continued most often to determine that it was in the "best interests" of migrant children to be repatriated to their countries of origin that they had fled, for the purpose of reunification with their families even amidst dire threats. In contrast, a United Nations (UN) representative in northern Mexico told Amnesty International she estimated that as many as 90 percent of unaccompanied Central American migrant children in Mexico could be in need of international protection.

In a December 2020 report, Mexico's National System for the Comprehensive Protection of Girls, Boys and Adolescents (SIPINNA) confirmed many of the same human rights violations identified by Amnesty International in its own research.

Among other problems, SIPINNA highlighted that:

- Some Mexican authorities are unaware of the rights of unaccompanied migrant children seeking refugee status, and their obligation to protect them;
- When Mexican authorities have apprehended and returned unaccompanied migrant children to their countries of origin, they have in some cases violated both the best interests of the children, and the absolute prohibition on returning migrants and refugees to serious harm (the principle of *non-refoulement*);
- Unaccompanied migrant children face difficulties crossing the US–Mexico border to reunite safely with their family members in the USA; and
- US border authorities have forcibly returned unaccompanied migrant children across the border to parts of northern Mexico without repatriation agreements or adequate infrastructure for their care and protection.

INM continues to apprehend unaccompanied migrant children (mostly Central American) throughout Mexico – including near the US border – and then turn them over to DIF to accommodate in mostly closed shelters. One INM official managing such interceptions in Chihuahua state told Amnesty International that she believed only 5 percent of unaccompanied Central American children were in need of international protection, and prided herself on the speed with which she coordinated their repatriations.

In the view of Amnesty International, forcing unaccompanied migrant children to be held in closed shelters until they are forcibly returned still constitutes detention, which is neither lawful nor in the best interests of the child.

Presented with the impossible choice of whether to remain effectively detained in closed shelters in Mexico, or to be repatriated to potentially dangerous situations in their countries of origin, it is no wonder that some children might submit to the latter. Such "best interests" determinations are inherently flawed. Additionally, Mexico's asylum system remains underfunded and overwhelmed, without the capacity to effectively process and protect all of those who have already requested protection within Mexico.

KEY RECOMMENDATIONS

TO THE GOVERNMENT OF THE USA

PRESIDENT BIDEN:

- Immediately order the withdrawal of the CDC order and accompanying HHS final rule under Title 42, and halt expulsions of asylum-seekers thereunder. Those unlawful expulsions have caused the needless separation of asylum-seeking families in order for children to exercise their right to seek international protection in the USA.

DEPARTMENT OF HOMELAND SECURITY:

- Improve trainings and oversight of DHS personnel conducting screenings of unaccompanied migrant children from Mexico, and integrate child-protection specialists into that process, in order to ensure that all risk factors are identified and that children with protection needs are not returned to potential harm.
- Direct CBP personnel to stop turning away asylum-seeking children at ports-of-entry along the US–Mexico border, and instead facilitate their access to asylum procedures, in coordination with Mexican officials.
- Swiftly facilitate all asylum claims by unaccompanied children – irrespective of their nationality – and their expeditious release to family members or other sponsors in the USA.
- For those unaccompanied migrant children present in Mexico who have family members and sponsors already in the USA, coordinate with Mexican authorities to facilitate the children's unhindered access to asylum procedures at the US–Mexico border, in order to swiftly reunify with their relatives and sponsors in the USA.

CONGRESS:

- Conduct oversight of DHS agencies to halt: the illegal pushbacks of asylum-seeking children at US ports-of-entry; and CBP's unlawful returns of unaccompanied Mexican children without legally required screenings for risk and harm in all cases.
- Eliminate the "contiguous country" provision in the Trafficking Victims Protection Reauthorization Act (TVPRA) used to discriminate against unaccompanied Mexican children and turn them back to potential harm, contrary to international protection standards for children and asylum-seekers.

TO THE GOVERNMENT OF MEXICO

PRESIDENT LÓPEZ OBRADOR:

- As the executive official in charge of the National System for the Comprehensive Protection of Girls, Boys and Adolescents (SIPINNA), direct the Secretariat of Interior (Secretaria de Gobernación, SEGOB) and its agencies to adopt the following remedial measures to address the human rights violations identified in this report.

NATIONAL INSTITUTE OF MIGRATION (INM):

- Publicly affirm that unaccompanied migrant children have a right to seek and enjoy asylum from persecution and human rights violations, and ensure their awareness of those asylum procedures in all cases.
- Halt unnecessary repatriations of unaccompanied migrant children who are seeking asylum at both the southern and northern borders of Mexico, and provide them with access to asylum procedures – whether in Mexico, or in the USA in coordination with US authorities.

NATIONAL SYSTEM FOR INTEGRAL FAMILY DEVELOPMENT (DIF):

- For those unaccompanied migrant children present in Mexico who have family members and sponsors already in the USA, coordinate with US authorities to facilitate the children's unhindered access to asylum procedures at the US–Mexico border, in order to swiftly reunify with their relatives and sponsors in the USA.
- Refrain from detaining unaccompanied migrant children in closed shelters or preventing them from accessing asylum procedures at the US–Mexico border.
- Review the successes and failures of current child protection processes and systems to determine the best interests of unaccompanied migrant children, in order to prevent any further instances of *refoulement*, as identified in the December 2020 report of SIPINNA.
- Increase hiring, funding, and training of child protection specialists at DIF and the Subprocuraduría to ensure human rights-compliant reception and care for unaccompanied children in need of international protection, in line with the UNHCR Guidelines on Determining the Best Interests of the Child.

CONGRESS:

- Increase funding to the Mexican Commission for Refugee Assistance (COMAR) in the national budget, in order to expand its presence along both the northern and southern borders of Mexico, and to improve its capacity to process the rising number of requests for asylum in Mexico.

METHODOLOGY

In February and March 2020, Amnesty International conducted a dedicated research mission along the US–Mexico border, specifically focused on the situations of unaccompanied migrant children and their access to asylum procedures. Among dozens of individuals interviewed in the border region were: representatives of relevant Mexican agencies at the federal, state, and municipal levels (CNDH, COESPO, DIF, INM, and Deputy Attorneys' Offices for the Protection of Boys, Girls and Adolescents); the US Border Patrol; UN agencies; migrant rights activists; civil society organizations; directors of migrant shelters throughout northern Mexico (including in Tijuana, Mexicali, Nogales, Agua Prieta, and Juarez); as well as migrant children staying at those shelters. Representatives of CBP field operations repeatedly declined advance requests by Amnesty International for in-person meetings at major ports-of-entry in all four US border states.

In April and May 2021 – building upon that 2020 research, following the lifting of some border restrictions on unaccompanied children – Amnesty International conducted additional video interviews and follow-up correspondence with representatives of all of those same US and Mexican government agencies, as well as UN agencies, shelter directors, migrant rights activists, and other civil society organizations active in all US and Mexican border states. The CBP headquarters in Washington, DC, declined to provide a spokesperson to speak with Amnesty International on the issues addressed in this report, despite acknowledging receipt of repeated written requests for a virtual meeting to do so in April and May 2021. However, on 25 May 2021, CBP shared by email some qualitative and quantitative information in response to several written questions transmitted previously by Amnesty International.

From 2018 to 2020, Amnesty International conducted extensive baseline research on the situation of asylum-seekers along the US–Mexico border, including during months of research missions on both sides of the border – from the Pacific Ocean to the Gulf of Mexico. Based on that research, Amnesty International has routinely documented and reported on challenges that unaccompanied migrant children have faced in reaching the border and requesting asylum from US authorities, as part of broader reporting on border and asylum policies. Pseudonyms have been used to identify some children quoted in the report, which is indicated by the use of an asterisk (*) after their names.

STORY OF EDUARDO

Eduardo (16) sits on the steps of a shelter in Tijuana, where he was staying a month after being turned away by US authorities. (Amnesty International, March 2020)*

In March 2020, Amnesty International spoke with 16-year-old Eduardo* about his escape from death threats in Honduras, and his effort to seek asylum in the USA. Sharing his love of the English language and football, he told us how he dreamt of joining his older brother who already resided in the USA. Yet both Mexican and US authorities repeatedly prevented him from exercising his human right to seek asylum, and instead threatened to send him back to harm in Honduras.

"I have a 20-year-old brother in California, and plan to request asylum."

"I love English. We have a teacher who comes here [to the shelter] to teach us. Football is my passion. Since we can't play really well here, I will play by myself."

"I left Honduras alone on a bus […] and have been here in Tijuana about a month. […] I came after being threatened to death in Honduras. Someone who lived in the neighbourhood wanted me to become a drug dealer, but because I said no they threatened me and I had to leave the very next day."

"I went to the Port of Entry, and asked for asylum [from US border authorities] and they said no. I told them I didn't have any place to stay and it was very late. Since I left Honduras I have been alone. They said they weren't giving any asylum. It was very rapid. They just put me aside. And I kept telling them I didn't have anywhere else. They told me that I couldn't stay there, but I couldn't leave. I stayed there for like half an hour. […] There was a police officer who was private security who told me I had to leave or he would call INM and they would deport me."

"I only want to cross to the United States. […] I heard that I could request asylum. I tried to put my name on the list three times, but they wouldn't let me. I didn't know anything in Tijuana, and someone tried to mug me in el Chaparral [the main pedestrian border crossing]."

"I was here one week, and then I jumped the fence, and the US immigration caught me there. […] Yes, I asked for asylum, but they didn't put me into any process, they just gave me to the Mexican immigration. Yes, I told the Mexican officials what happened, and they didn't take me to immigration, they took me to the shelter."

"The Americans didn't tell me anything. Since my birth certificate doesn't have a picture, they didn't believe that I was a minor. I showed them my birth certificate from Honduras. I got very scared that they would send me back to Honduras."

Image of where Eduardo (16) was turned away by US authorities when he requested asylum in February 2020. View from the Mexico side of the San Ysidro Port of Entry pedestrian crossing ("Ped East") at the US–Mexico border, between San Diego and Tijuana. (Amnesty International, November 2018)

1. DEPORTATIONS OF UNACCOMPANIED MEXICAN CHILDREN BY THE USA

"THE ONLY PEOPLE WE'RE NOT GOING TO LET SIT[] THERE ON THE OTHER SIDE OF THE RIO GRANDE BY THEMSELVES WITH NO HELP ARE CHILDREN."[1]
- US President Biden, March 2021.

"THE POLICY RIGHT NOW FOR MEXICAN UNACCOMPANIED MINORS IS FOR THEM TO BE REPATRIATED."[2]
- White House assistant press secretary and immigration adviser Vedant Patel, May 2021.

1.1 UNLAWFUL US BORDER AND ASYLUM POLICIES

From 2017 to 2020, the US government adopted a constellation of unlawful border and asylum policies to deny access to asylum protection at the US–Mexico border. Those policies resulted in irreparable harm to thousands of individuals and families seeking sanctuary in the USA from persecution or serious human rights violations in their countries of origin, including children.[3] Under its ongoing policies of systematic pushbacks and forced returns, the US government stranded tens of thousands of asylum-seekers in dangerous regions of northern Mexico – overwhelming the Mexican government's social services and asylum system, and causing a humanitarian emergency.

Among those denied access to asylum, Amnesty International has documented frequent past instances of US border authorities summarily turning away unaccompanied migrant children when they requested protection at official ports-of-entry, including but not only Mexican children.[4]

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1. The White House, "Remarks by President Biden in Press Conference" (25 March 2021): https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/25/remarks-by-president-biden-in-press-conference/.
2. NBC News' El Paso affiliate, KTSM-9, "One-on-one with White House immigration adviser: Family reunifications, expulsion of Mexican minors" (4 May 2020): https://www.ktsm.com/news/border-report/one-on-one-with-white-house-immigration-adviser-family-reunifications-expulsion-of-mexican-minors/.
3. Amnesty International, Submission to the UN Special Rapporteur on the human rights of migrants, "Americas: Pushback Practices and their Impact on the Human Rights of Migrants and Refugees" (8 February 2021, Index number: AMR 01/3658/2021): https://www.amnesty.org/download/Documents/AMR0136582021ENGLISH.PDF.
4. Amnesty International report, *'You Don't Have Any Rights Here': Illegal Pushbacks, Arbitrary Detention & Ill-treatment of Asylum-seekers in the United States* (11 October 2018), at pp. 15 and 20: https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/. Amnesty International report, *'Saving Lives Is Not a Crime': Politically Motivated Legal Harassment against Migrant Human Rights Defenders by the USA* (2 July 2019), at pp. 34-35: https://www.amnesty.org/en/latest/news/2019/07/usa-authorities-misusing-justice-system-harass-migrant-human-rights-defenders/.

In March 2020, the administration of US President Trump reached a new low in its attacks on migrants and asylum-seekers when it exploited the COVID-19 crisis in an effort to block all access to asylum procedures at the US–Mexico border. Utilizing an obscure provision under Title 42 of the US Code, based on spurious public health grounds, the US government adopted a policy of immediately detaining and "expelling" almost all migrants and asylum-seekers at the border who lacked legal status to enter the USA.[5]

The policy constituted a misuse of public health justifications to achieve a non-health goal. Almost all asylum-seekers – including unaccompanied children[6] – could no longer request asylum either at ports-of-entry or after crossing the border irregularly to present themselves to US Border Patrol. In the first year of the policy, the US government collectively expelled over half a million migrants and asylum-seekers who entered irregularly into the USA to seek safety, including over 13,000 children.[7] The majority were forcibly returned to their countries of origin, or to Mexico in some cases.[8]

In May 2020, the Inter-American Commission on Human Rights denounced the Title 42 policy and its outcomes of sending vulnerable unaccompanied children back to potential harm in the Northern Triangle of Central America, which likewise applies to risks faced by children who continue to be returned there by Mexico.[9]

In November 2020, a federal court issued a preliminary injunction against the US government, prohibiting such expulsions of unaccompanied migrant children.[10] The day after an appellate court lifted the injunction on 29 January 2021,[11] President Biden signed an Executive Order to set the temporary exemption of unaccompanied children as official US law and policy.[12]

While the Biden administration pledged no longer to abuse Title 42 to expel unaccompanied migrant children, it continued to use the unlawful order to deport most asylum-seeking adults and families apprehended at the border in its first several months in office.[13] The Biden administration has not re-opened all official ports-of-entry to asylum-seekers – or ensured that CBP officials admit all asylum-seeking unaccompanied children as required by their exemption from Title 42 – even while allowing thousands of American tourists to travel freely to and from Mexico for vacations.

The Biden administration's unlawful and hypocritical retention of the Title 42 order, with an exemption only for unaccompanied children, had two immediate consequences:

1. Those children – primarily from Central America and Mexico – were forced to split from their asylum-seeking families, in order to cross the border alone to request protection in the USA, since they and their families would otherwise be expelled under Title 42 if they sought protection together; and
2. As CBP continued to turn children away at many official ports-of-entry, those children who crossed irregularly into the USA ended up being detained for longer than legally permitted in the US Border Patrol's substandard immigration stations. (Those border detention facilities were already notorious for ill-treatment of migrant children in 2019, even before the pandemic.[14])

After campaigning for the US presidency based on the supposed immorality of his predecessor's family separations policy, President Biden's policies then immediately compelled asylum-seeking children to separate from their families and take dangerous journeys alone across the open border, or else turn to exploitive smugglers. While the Biden administration has repeatedly decried the peril faced by children when they have to cross the border irregularly,[15] it has also failed to acknowledge that such dangers are a direct result of the unlawful Title 42 policy that the Biden administration continues to enforce, as well as the ongoing sporadic turning away of children by CBP at some ports-of-entry.

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5. HHS-CDC, "Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists" (20 March 2020): https://www.cdc.gov/coronavirus/2019-ncov/order-suspending-introduction-certain-persons.html.
6. ProPublica first reported on instructions by the Trump administration to expel all unaccompanied children, along with adults, under Title 42. See, ProPublica, "Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law" (2 April 2020): https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law; and https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html.
7. Title 42 expulsions exceeded half a million in February 2021, and have risen further since then. See CBP Enforcement statistics at: https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2020 (FY 2020); and https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics (FY 2021).
8. In March 2020, at Title 42 expulsions began, Mexico indicated that it would no longer receive unaccompanied non-Mexican children from the USA. See, Secretaría de Relaciones Exteriores (SRE), Nota Informativa No. 11 (21 March 2020): https://www.gob.mx/sre/documentos/nota-informativa-relaciones-exteriores-no-11; https://www.gob.mx/cms/uploads/attachment/file/542685/20200321_Nota_informativa_11.pdf. Yet US border officials in some cases returned non-Mexican children to Mexico despite prohibitions of such returns under US and Mexican law. *New York Times,* "U.S. Expels Migrant Children From Other Countries to Mexico" (15 March 2021): https://www.nytimes.com/2020/10/30/us/migrant-children-expulsions-mexico.html.
9. Twitter thread of the Inter-American Commission on Human Rights: https://twitter.com/cidh/status/1261045752526254083?s=12.
10. *P.J.E.S. v. Wolf,* -- F. Supp. 3d -- , 2020 WL 6770508, at *8-12 (D.D.C., 18 November 2020): https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2020cv2245-80.
11. *P.J.E.S. v. Gaynor,* No. 20-5357 (D.C. Cir., 29 January 2021).
12. CDC, "Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination" (30 January 2021): https://www.federalregister.gov/documents/2021/02/17/2021-03227/notice-of-temporary-exception-from-expulsion-of-unaccompanied-noncitizen-children-pending.
13. DHS continues to rely on Title 42 to return adults and accompanied children, recently confirming: "As a result of the public health imperative, adults and accompanied children are subject to COVID-19 related travel restrictions and are returned to Mexico under the statutory authority of the CDC." DHS statement, "Homeland Security Secretary Mayorkas Directs FEMA to Support Response for Unaccompanied Children" (13 March 2021): https://www.dhs.gov/news/2021/03/13/homeland-security-secretary-mayorkas-directs-fema-support-response-unaccompanied.
14. DHS Office of the Inspector General, *Capping Report: CBP Struggled to Provide Adequate Detention Conditions During 2019 Migrant Surge* (12 June 2020): https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-38-Jun20.pdf.
15. DHS, "Statement by Homeland Security Secretary Mayorkas on the Grave Risk of Children Traveling with Smugglers" (31 March 2021): https://www.dhs.gov/news/2021/03/31/statement-homeland-security-secretary-mayorkas-grave-risk-children-traveling.

The legal services director at the Immigrant Defenders Law Center in Los Angeles told Reuters that 16 percent of the 327 unaccompanied children they interviewed between December 2020 and March 2021 had travelled to the border with family members who were expelled under Title 42.[16]

In the Rio Grande Valley of Texas, border activist Jennifer Harbury described the horrifying ramifications of those policies turning away asylum-seekers at ports-of-entry, for children stuck in the dangerous border town of Reynosa, in Tamaulipas, Mexico:

> "No one is allowed to cross through the ports of entry, including unaccompanied kids. Lots of kids are crossing separately from their families stuck in Reynosa – as they've been doing for over a year to escape kidnapping and violence. Mexican immigration in Tamaulipas is intercepting kids on their way north, and then they're usually getting deported and the conditions are awful, I hear. They need to lift Title 42. They're turning away everyone at the midpoint of the bridge and sending them back to Mexico. That forces the parents to send the kids across the river, which is highly dangerous. They might get raped, shot, drowned. Rather than let a child cross the bridge and get processed correctly, they're turning them away and forcing them to cross the river dangerously, saying, 'we'll let you in if you don't drown.' Just the drowning rates are horrendous."[17]

A migrant human rights defender in Nogales, Sonora, also informed Amnesty International in March 2021 that stranded families in the region had made the difficult decision to send their children across the border alone in order to get them to safety: "Either they split up when crossing so their kids would be considered unaccompanied, or after being expelled a couple of times under Title 42 they decided to split up."[18]

In May 2021, the UN High Commissioner for Refugees issued a public statement imploring the Biden administration "to provide access at ports of entry which remain closed to most asylum-seekers owing to the Title 42 public health order," which "has resulted in the expulsions of hundreds of thousands of people to Mexico or their countries of origin, denying their access to asylum procedures."[19]

1.2 DEMOGRAPHICS OF UNACCOMPANIED CHILDREN SEEKING SAFETY IN THE USA

DHS Secretary Mayorkas confirmed in March 2021 that the vast majority of unaccompanied children seeking safety at the US–Mexico border already have close family ties in the USA:

> "In more than 80 percent of cases, the child has a family member in the United States. In more than 40 percent of cases, that family member is a parent or legal guardian. These are children being reunited with their families who will care for them. The children then go through immigration proceedings where they are able to present a claim for relief under the law."[20]

In a positive policy change in March 2021, the Biden administration rescinded the interagency information-sharing agreement between DHS and HHS, based on which family members and other sponsors of unaccompanied migrant children were being targeted for immigration enforcement, essentially using the children as bait for mixed-status families.[21] The policy had undermined efforts to reunite migrant children with their families and other sponsors in the USA, significantly delaying the release of children from ORR facilities and causing a backlog, requiring the opening of temporary facilities that provided inadequate conditions for the care of children.

In May 2021, during a visit by Secretary Mayorkas to the Rio Grande Valley, representatives of the US Border Patrol confirmed that those general trends continued and that most of the arriving unaccompanied children had relatives in the USA.[22]

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16. Reuters, "Where is my aunt? Kids separated from relatives at the border strain U.S. shelters" (30 March 2021): https://www.reuters.com/article/us-usa-immigration-separations/where-is-my-aunt-kids-separated-from-relatives-at-the-border-strain-u-s-shelters-idUSKBN2BM149.
17. Phone conversation with Jennifer Harbury (May 2021).
18. Email and phone correspondence (March 2021).
19. UNHCR, "Statement attributable to UN High Commissioner for Refugees Filippo Grandi on the need to end US COVID-19 asylum restrictions" (20 May 2021): https://www.unhcr.org/news/press/2021/5/60a687764/statement-attributable-un-high-commissioner-refugees-filippo-grandi-need.html.
20. DHS, "Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border" (16 March 2021): https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation.
21. DHS, HHS, and DHS, "Joint Statement on Termination of 2018 Agreement" (12 March 2021): https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement.
22. C-SPAN, "Secretary Mayorkas tour of Customs Border Protection processing facility in Donna, Texas" (7 May 2021, at min. 26:55): https://www.c-span.org/video/?511595-1/secretary-mayorkas-tour-customs-border-protection-processing-facility-donna-texas.

In an interview with Amnesty International in April 2021, a government employee described the demographics of the unaccompanied children being held at an emergency intake site in Texas – and confirmed that many of the thousands of children crossing into the USA to seek safety had separated from their asylum-seeking families who were still stranded in northern Mexico due to Title 42:

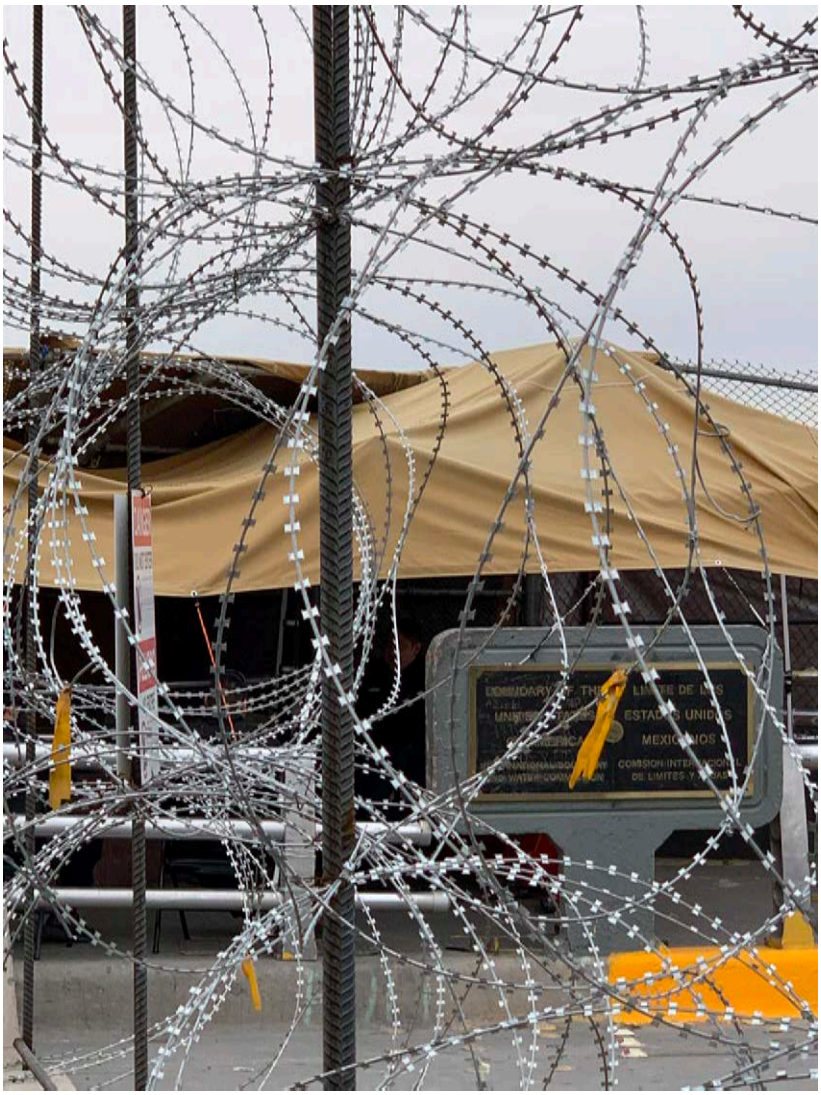
> "They are 12- to 17-year-old, pre-teens to teens, roughly 50/50 males and females. Mostly Central Americans, but again probably about 15 percent other nations. [...] Highest populations are Guatemalan, Honduran, and Salvadoran, more than 85 percent in total. You have a large category of children whose parents are still in Mexico, because of Title 42. So parents sent their kids across, and it's going to be hard to do reunifications. If you know our sponsorship levels, Category 1 is parents, so we're looking at secondary relatives [as sponsors]. They are a very resilient group; the kids are very resilient."

In an even more startling revelation, the government employee also confirmed that none of the children at the facility were Mexican nationals:

> "I haven't seen any, so we haven't gotten any."

In its first two months open through 20 May 2021, only five Mexican children had passed through the emergency intake site, with a capacity of more than 2,000 children.

The fact that almost none of the tens of thousands of unaccompanied children being processed by ORR have been Mexican nationals showcases the Biden administration's failed promise not to turn away unaccompanied migrant children to the same threats of harm that they fled.



CBP checkpoint on the international boundary line at the center of the Paso del Norte International Bridge, over the Rio Grande river between El Paso and Juarez. (Amnesty International, March 2020)

1.3 US BORDER AUTHORITIES IMMEDIATELY RETURN ALMOST ALL UNACCOMPANIED MEXICAN CHILDREN

For years, unaccompanied migrant children have had uneven access to asylum procedures at the US–Mexico border. Amidst a dizzying array of restrictive border and asylum policies during the Trump administration, the rules were different and fluctuating, depending on the ports-of-entry children approached and the attitude of the officials they encountered there.

Most unaccompanied children were not allowed to add their names to the illegal asylum waitlists created under CBP's "metering" policy, under which US border officials would only admit an arbitrarily low number of asylum-seekers each day, in order to force them to queue in Mexico, as one of many steps to undermine the US asylum system.[23] Children were often turned away by both US and Mexican border officials when they tried to present themselves directly at ports-of-entry. As a result, many had to cross irregularly into the USA to seek asylum and to reunify with their family members already there.

While unaccompanied children have been exempted from expulsions under Title 42 since November 2020, Mexican children continue to be swiftly returned to Mexico under another law, and remain almost entirely without access to asylum procedures. This was evident in the HHS-administered emergency intake site described above as accommodating almost no Mexican children.

Offering a surprisingly clear confirmation of that trend, HHS and DHS jointly issued a so-called "Unaccompanied Children Daily Report"[24] with daily statistics on the total number of unaccompanied migrant children in the respective custody of each agency. In a dismissive and matter-of-fact footnote, each of the daily reports carries a common last line:

> **"*THIS NUMBER DOES NOT INCLUDE CHILDREN FROM MEXICO, MOST OF WHOM WILL BE REPATRIATED AND WILL NOT REMAIN IN CBP CUSTODY."**
>
> *- Footnote included at the bottom of each DHS/HHS "Unaccompanied Children Daily Report".*

After Title 42 stopped being applied to unaccompanied children, about 20 percent of unaccompanied migrant children apprehended by Border Patrol from November 2020 to April 2021 were Mexican nationals (10,568 out of nearly 60,000 apprehensions). During FY2020 (from October 2019 to September 2020), amidst reduced migration, Mexican nationals represented nearly 50 percent of all Border Patrol apprehensions of unaccompanied migrant children (14,359 out of 29,392).[25] Notably, those statistics describe apprehensions, which may in some cases include multiple entries by the same individuals.

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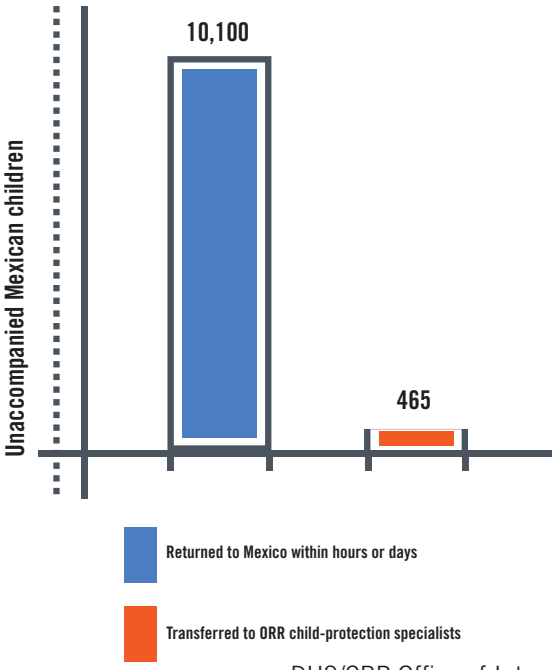
23. For background on and the current status of the so-called "metering" asylum waitlists, see Strauss Center, *Metering Update* (May 2021): https://www.strausscenter.org/wp-content/uploads/May-2021-Metering-Report.pdf.
24. See, e.g., DHS/HHS, *Unaccompanied Children Daily Report*, available at: https://img.lbpost.com/wp-content/uploads/2021/04/28075002/Unaccompanied-Children-Daily-Report-4.26.21.pdf (26 April 2021); and https://content.govdelivery.com/accounts/USDHS/bulletins/2d89ce6 (6 May 2021).
25. CBP, Southwest Border Unaccompanied Children Encounters by Country – Mexico. Available at: https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters/usbp-sw-border-apprehensions.

On 25 May 2021, CBP informed Amnesty International that it had conducted approximately 10,100 repatriations of unaccompanied Mexican children apprehended by the US Border Patrol from November 2020 to April 2021 (the first six months when unaccompanied children were exempted from expulsions under Title 42). This compared to only 465 referrals of unaccompanied Mexican children to child protection specialists at ORR after apprehensions during the same period. Unaccompanied Mexican children were therefore returned to Mexico in approximately 95 percent of cases after being apprehended by US Border Patrol, and more than 22 times as often as they were transferred to ORR. In contrast, when unaccompanied children were allowed to present themselves at ports-of-entry during that period, CBP recorded roughly equal numbers who were returned to Mexico (171) and referred to ORR (173) – possibly reflecting that those few hundred unaccompanied Mexican children who were able to access ports-of-entry were more likely to have legal representatives supporting them, improving their chances of being received and routed to protection services.[26]

US BORDER PATROL TREATMENT OF UNACCOMPANIED MEXICAN CHILDREN (NOV. 2020 TO APR. 2021)



DHS/CBP Office of Intergovernmental Public Liaison (fn. 26).

According to the Mexican government, US border authorities conducted at least 8,632 repatriations of unaccompanied Mexican children from November 2020 to April 2021. This number is about 15 percent lower than the 10,271 returns reported by CBP (not including Title 42 expulsions). Either way, those statistics confirm that CBP has returned the vast majority of Mexican unaccompanied migrant children to Mexico, even after they were exempted from Title 42.[27]

Based on past reporting by DHS on returns from 2014 to 2019, unaccompanied Mexican children have been returned at a high rate for years under this same process. In DHS's FY2020 Enforcement Lifecycle Report, it reported:

> "UACs [unaccompanied migrant children] from Mexico or Canada who are not found to be victims of severe trafficking and who are considered able to make an informed decision to return to their country of citizenship may be offered voluntary return by CBP. A total of 79,055 Mexican and five Canadian UAC encounters occurred between 2014 and 2019, and a high percentage (88 percent) resulted in such returns. Among the remainder, 3.6 percent were removed or reencountered, 2.5 percent were granted relief or other protection from removal, 4.5 percent were being processed as of 2020 Q2, and 0.9 percent had received unexecuted orders of removal or offers of voluntary departure."[28]

26. Statistics provided to Amnesty International by DHS/CBP Office of Intergovernmental Public Liaison; email dated 25 May 2021.
27. SEGOB, "Repatriation events of Mexican migrant minors from the United States, according to state of origin, age groups, travel condition and sex" (for November 2020 to April 2021). See chart 5.5 of 2021 Monthly Statistical Bulletin (Boletín Mensual de Estadísticas Migratorias 2021), available at: https://portales.segob.gob.mx/es/PoliticaMigratoria/Boletines_Estadisticos. If including Title 42 returns of Mexican children as well, the 8,632 repatriations recorded by Mexican officials would still represent a minimum rate of 69 percent of children being returned (out of 12,514 apprehensions by CBP of children processed under both Title 8 and Title 42, between November 2020 and April 2021).
28. DHS Office of Immigration Statistics, *Fiscal Year 2020 Enforcement Lifecycle Report* (December 2020), at p. 13, fn. 13: https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special_Reports/Enforcement_Lifecycle/2020_enforcement_lifecycle_report.pdf.

With an average 88 percent rate of returns of unaccompanied Mexican children, it is deeply disturbing and likely unlawful that only "2.5 percent were granted relief or other protection from removal". The reference to "victims of *severe* trafficking" also does not appear to reflect the requirements of protection screenings of children for potential harm.

In practice, CBP is misusing a provision of an anti-trafficking law called the Trafficking Victims Protection Reauthorization Act (TVPRA) to summarily return the vast majority of unaccompanied Mexican children, by inadequately screening them for protection needs or risk of harm, and thereby denying them access to asylum procedures.[29] Under that law, CBP is legally required to screen all unaccompanied Mexican children, in order to ensure that (1) they are not afraid to return to Mexico, or in need of international protection; (2) they are not victims of trafficking; and (3) they are returning voluntarily.

In a 2020 study published in the *Journal on Migration and Human Security*, academic researchers found that CBP officers failed to screen approximately half of unaccompanied Mexican migrant children prior to returning them over the border to identify: (1) if they feared return to Mexico; and (2) if they were victims of human trafficking. Over half of the 97 children surveyed in the study had no idea they were signing forms consenting to their returns to Mexico, and CBP didn't explain it – in some cases even pressuring them to sign the forms they did not comprehend.[30]

One of the study's authors recounted to Amnesty International:

> "I remember in an interview when one kid said about his hometown, 'if people don't know you, they kill you' – obviously prompting some fear! We met these kids at a point when they had already been returned to Mexico, and those fears hadn't been taken into consideration."[31]

Clear from the above, CBP officials are often not performing child-protection screenings faithfully, appropriately, or with reasonable informed consent of the children, who often do not understand what is happening during the process. Their forced returns thereafter are therefore not actually voluntary.

When CBP officials do not faithfully conduct those screenings of potential harm before repatriating unaccompanied Mexican children, they are legally required to transfer the children to the care and custody of child protection specialists at ORR within 72 hours, and place them in standard removal (deportation) proceedings with a right to an immigration hearing.

In stark contrast with CBP's apparently flawed assessments of risk of harm, a study by the UN refugee agency (UNHCR) found that a 46 percent of unaccompanied Mexican children interviewed in Border Patrol custody prior to being returned to Mexico identified needs for international protection. Threats they often faced ranged from inescapable violence in their home states (32 percent), to exploitation by human smugglers (50 percent), to violence directed at them by Mexican armed forces (10 percent).[32]

Even when not in need of international protection, the TVPRA also requires CBP to conduct any lawful repatriations at certain hours and locations, subject to negotiated repatriation agreements with Mexican authorities.[33] Highlighting CBP's violation of those legal requirements, Mexico's National System for the Comprehensive Protection of Girls, Boys and Adolescents (SIPINNA) noted in a December 2020 report that US border authorities have repatriated unaccompanied Mexican children outside of the scope of such agreements, and therefore outside of the law:

> "The immigration authorities of the United States are carrying out the return of children and adolescents through border entry points that are not regulated by repatriation agreements and, consequently, do not have the adequate infrastructure for their care and protection; an example of this is Puerto Palomas, Chihuahua."[34]

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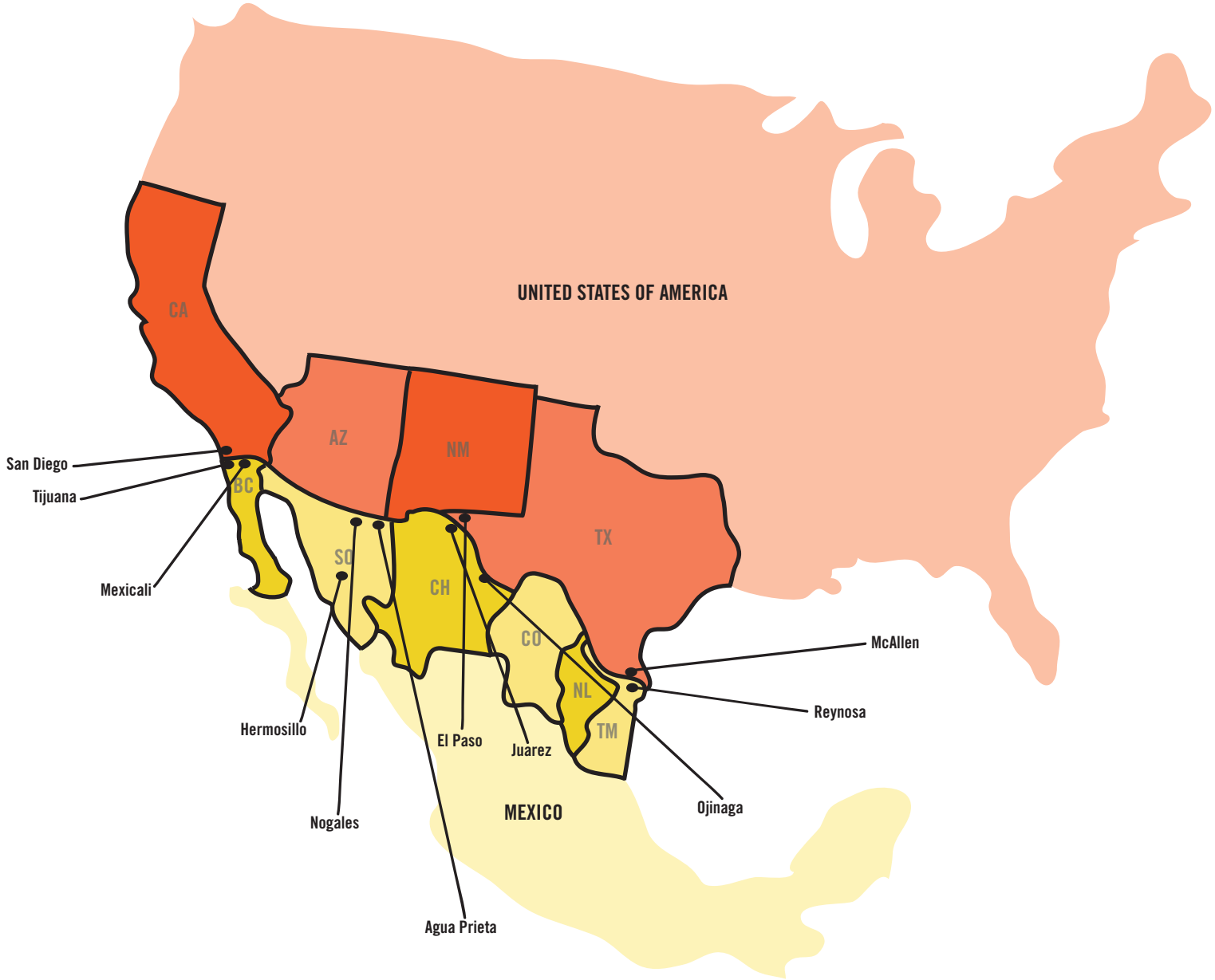
29. William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 (8 U.S.C. 1232(a)(2), (b)(3)), available at: https://www.law.cornell.edu/uscode/text/8/1232. For more-detailed analysis of these provisions, see: CRS, "The Law of Asylum Procedure at the Border: Statutes and Agency Implementation" (9 April 2021), available at: https://www.everycrsreport.com/reports/R46755.html. See also, CRS, "Unaccompanied Alien Children: An Overview" (updated 9 October 2019), available at: https://crsreports.congress.gov/product/details?prodcode=R43599.
30. See, Coulter et al., "A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection", *Journal on Migration and Human Security (2020),* Vol. 8(2), at pp. 96-110: https://journals.sagepub.com/doi/pdf/10.1177/2331502420915898.
31. Video call with Ms. Kiera Midori Coulter (May 2021).
32. UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection,* at pp. 37-41: https://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.htmlNews.
33. TVPRA of 2008, 8 U.S.C. 1232(a)(2)(C), at n. 29 above.
34. SEGOB/SIPINNA, Commission for the Comprehensive Protection of Migrant Girls, Boys and Adolescents and Refugee Applicants, *Report 2019–2020* (December 2020), at pp. 16-17: https://www.gob.mx/cms/uploads/attachment/file/609220/Informe_2019-2020_Comisi_n_NNA_Migrantes.pdf.

Given the frequency and extent to which CBP has unlawfully applied this "contiguous country" provision to systematically deny unaccompanied Mexican children access to international protection, it is no wonder that the Trump administration sought to authorize the swift repatriation of *all* unaccompanied children, under the same criteria as CBP applies to Mexican children.[35] In March 2021, Senator Lindsay Graham (a Republican ally of Mr. Trump) introduced an amendment to the same legislation that would do exactly that – expand the provision to apply to all unaccompanied children, pushing many of them into harm's way.[36]



35. See, *In Children's Best Interests: Charting a Child-Sensitive Approach to U.S. Immigration Policy,* CLALS Working Paper Series No. #28 (16 Jul 2020, by Dennis Stinchcomb), at pp. 35-36: "The White House has repeatedly called on Congress to amend existing law and put an end to preferential treatment for the subset of unaccompanied children from non-contiguous countries (i.e., countries other than Mexico and Canada)." Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3644399; https://www.american.edu/centers/latin-american-latino-studies/best-interests-symposium.cfm. See also, Homeland Security Advisory Council, *Final Emergency Interim Report: CBP Families and Children Care Panel* (16 April 2019), at p. 3): https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf.
36. Coulter et al., at n. 30 above.

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1.3.1 STATE OF CHIHUAHUA

In May 2021, the Mexican newspaper *El Diario* reported that US border authorities in the El Paso sector during the first quarter of 2021 repatriated 668 unaccompanied minors to Juarez and Ojinaga.[37] Among the unaccompanied children returned were also Guatemalans, Hondurans, and Nicaraguans. Six of the returned children were under 11-years-old, raising questions on the extent to which CBP explained to them their rights as legally required for children under 14-years-old,[38] and empowered them to make informed decisions on their "voluntary" returns, or whether they were instead being forcibly returned to Mexico through CBP's failure to screen them.

In an interview on 4 May 2021 with a nearby television station in El Paso, President Biden's assistant White House press secretary and immigration adviser Vedant Patel confirmed that the administration is deliberate in its policy of returning all unaccompanied Mexican children:

> "The policy right now for Mexican unaccompanied minors is for them to be repatriated through that process, and I don't have anything additional to announce on top of that."[39]

In April 2021, a coordinator of Mexico's State Population Council (COESPO) in Juarez confirmed to Amnesty International that all unaccompanied Mexican children are being deported by CBP back to Mexico:

> "When kids try to cross to the USA, they are just sent back by the CBP authorities. [...] So most unaccompanied kids cross the river or jump the fence. [...] Unaccompanied Mexican minors are being repatriated – they are all being sent back through the repatriation process. And people who have been staying in the shelters, they send their kids alone, because they hear the kids are making it across."[40]

In March 2020 and May 2021 , the coordinator of the DIF state shelter in Chihuahua that receives those returned children told Amnesty International that DIF's shelters and child protection system have been extremely overwhelmed, understaffed, and underfunded to care for the number of children repatriated by the USA.[41] In April 2021, the newly opened shelter for unaccompanied children in Juarez was already 25 to 50 percent over its intended daily capacity of 60, according to DIF and COESPO officials.

According to the DIF shelter coordinator and the deputy attorney for protection of children (subprocuraduría) in Chihuahua, Mexican children crossed irregularly into the USA every day, and were typically returned to Mexico within 24 hours by CBP under a local repatriation agreement. Yet they noted that some of the returned children had protection needs and could be eligible to seek asylum in the USA.

> **"WE HAVE DETECTED CASES OF DEPORTED MEXICANS WHO ARE IN DANGER, AND THEY SAY SO, [...] SOMETIMES BECAUSE OF THINGS THAT ARE FOREIGN TO THEM, THEY ARE VICTIMS OF A CRIME, AND YOU CAN'T FIND THAT OUT WITHOUT A THOROUGH INVESTIGATION."[42]**
>
> *- Lic. Diego Gutierrez Aranda, Subprocuraduría (Juarez, March 2020).*

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37. *El Diario de Juarez,* "The US deport six minors alone every day: They are handed over to the Mexican authorities at the Paso del Norte–Santa Fe international bridge" (4 May 2021): https://diario.mx/juarez/deporta-eu-cada-dia-a-seis-menores-solos-20210504-1790963.html.
38. See, 8 CFR § 1236.3(h) – Detention and release of juveniles: https://www.govinfo.gov/content/pkg/CFR-2011-title8-vol1/pdf/CFR-2011-title8-vol1-sec1236-3.pdf.
39. NBC News' El Paso affiliate, KTSM-9, "One-on-one with White House immigration adviser: Family reunifications, expulsion of Mexican minors" (4 May 2020): https://www.ktsm.com/news/border-report/one-on-one-with-white-house-immigration-adviser-family-reunifications-expulsion-of-mexican-minors/.
40. Phone interview with COESPO official in Juarez (April 2021).
41. Phone interview with DIF Chihuahua official (May 2021).
42. Meeting with DIF Chihuahua official (March 2020).

According to official statistics DIF shared with Amnesty International, CBP returned 750 unaccompanied Mexican children just to the city of Juarez from 1 January to 7 May 2021. This compared to 744 in all of 2020, and 1,283 in all of 2019.[43]

In a March 2020 visit to the Nohemí Álvarez Quillay shelter for unaccompanied children in Juarez, a representative of the deputy attorney's office told Amnesty International that CBP always rejects and returns unaccompanied Mexican kids – including those with protection needs – typically in less than a day. He observed that children from violent Mexican states such as Guanajuato and Michoacán are particularly unsafe to return to their sates of origin. In general, he estimated that approximately 10 percent of all unaccompanied Mexican children repatriated by the USA were not safe to return, such that Mexican authorities tried to facilitate an alternative relocation for those at serious risk.

In one example, he recalled three girls and two boys from Guanajuato being apprehended by Border Patrol, who immediately admitted the girls and returned the boys. One of the boys, who was the boyfriend of one the girls, said he was sent back even though he had told CBP he was at risk of harm if returned. The boys' families ultimately picked them up from the (closed) DIF shelter, and they stayed in hiding in Juarez since they were unsafe.[44]

Cindy, a 17-year-old Mexican mother, who was seven months pregnant, had been waiting in Tijuana for over two months to request asylum on the US–Mexico border after fleeing from threats and violence in her home state in Michoacán, Mexico. "I feel unsafe and afraid to stay here," she told Amnesty International. Soon after she fled Cindy had started receiving threatening phone calls from those whom she fled in Michoacán. (Amnesty International, April 2019)*

43. Statistics shared by DIF Chihuahua public relations officer (May 2021).
44. Meeting with Lic. Diego Gutierrez Aranda, Subprocuraduría, at Nohemí Álvarez Quillay shelter (March 2020).

1.3.2 STATE OF BAJA CALIFORNIA

In Tijuana, representatives of Mexico's National Human Rights Commission (CNDH) told Amnesty International that there had been more than a 100 percent increase in the number of unaccompanied migrant children in the region in the first quarter of 2021. The majority of the minors in state custody during this period were Mexican children repatriated by the USA.[45]

In April and May 2021, a social worker who supports and surveys unaccompanied children in Tijuana told Amnesty International that those returned by CBP were almost never informed of their rights or asked if they feared return, prior to their being repatriated. Some children also reported to the social worker being insulted and physically assaulted by US border and immigration agents in some instances, including pushing, hitting, and excessive force when putting on handcuffs.

Yet when the social worker interviewed them in detail, the returned children often described fleeing violence by armed groups or organized crime, the murders of family members, and other types of serious abuse and trauma. Many articulated their main goals as to reunite safely with their sometimes only remaining relatives in the USA.

> "There is a great normalization of violence in young people, which leads to not recognizing that their lives are at risk and that is the real factor of their migration. [...] You require specialists when you work with children [and] social workers to make a real intervention and detection of the children's social history. Definitely a two-minute 'fear interview' with an agent [of a law enforcement agency], in a detention center, is not a good intervention. Real social work is needed."[46]

In Tijuana, the director of the border rights program of the legal services organization Al Otro Lado highlighted that unaccompanied Mexican children have been forced to cross irregularly without their families due to Title 42, in order to flee irreparable harm in Mexico. Even then, they are routinely denied their procedural rights by CBP, which remains intent on seeking to repatriate them irrespective of harm they may face:

> "We recently worked on a case of an unaccompanied boy from Mexico who CBP intended to expel until we became involved. This was in March [2021]. He was held in CBP custody six to eight days and was not given the opportunity to call his family or me his lawyer, despite the fact that I entered a G28 [legal representation form] and requested that he be permitted to contact his uncle in California. His family sent him alone and his parents were in hiding in Mexico. They feared the whole family would be sent back, which is why they sent him alone. It was particularly distressing for his parents to not know anything of their son for those days, and whether CBP would not go back on their word and expel the boy without his parents there to meet him at the line."[47]

The boy was ultimately held in CBP custody for seven days (more than double the legally permitted time) before being transferred to ORR, from whose custody he was released to a close family member in the United States. As of May 2021, his family remained in hiding in Mexico, unable to request asylum protection with their son due to the Biden administration's retention of the Title 42 policy.[48]

Al Otro Lado previously informed Amnesty International that CBP was turning away unaccompanied Mexican children from the San Ysidro Port of Entry even prior to the Title 42 order, and in some cases Border Patrol had directed unaccompanied Mexican children to return to Mexico irregularly when apprehended crossing irregularly.[49] CNDH also noted that the Grupo Beta unit of INM prevented children from joining the asylum waitlist in Tijuana, prior to the USA's wholesale closure of the border to migrants and asylum-seekers in March 2020.[50]

"ONLY MEXICAN CHILDREN CANNOT ENTER [THE USA]."

- INM Baja California, deputy director for the protection of migrants, April 2021.

45. Meeting with CNDH office in Tijuana (April 2021).
46. Correspondence with social worker (May 2021).
47. Correspondence with Al Otro Lado (April 2021).
48. Correspondence with Al Otro Lado (May 2021).
49. Meeting with Al Otro Lado in Tijuana (March 2020).
50. Meeting with CNDH office in Tijuana (April 2021).

In April 2021, the INM official in charge of repatriations in Tijuana told Amnesty International that INM worked closely with CBP to repatriate an average of 15 unaccompanied Mexican children per day under the local repatriation agreement, usually in less than 24 hours.[51] The official confirmed that the ports-of-entry in Baja California remained closed to almost all new asylum-seekers, and that most unaccompanied migrant children in the region were Mexican nationals who crossed irregularly through nearby mountains. She confirmed that almost all Mexican children were swiftly returned by CBP without being provided access to asylum procedures, noting: "only Mexican children cannot enter [the USA]."

Amnesty International held a virtual meeting in April 2021 with the acting deputy patrol chief of the US Border Patrol for the San Diego sector. He confirmed that CBP routinely returns unaccompanied Mexican children. While noting that 16- and 17-year-old unaccompanied migrant children are highly vulnerable to sex trafficking, he added:

> "Now it's really pretty simple: if they are 'other than Mexican' and they are under the age of 18, then we hold them and turn them over to ORR. If they are Mexican, then we hold them, we contact the Mexican consulate or the Mexican immigration services, they attempt to locate their family in Mexico, and then we turn them over to the Mexican immigration service so that they can reunite them down in Mexico. That's actually pretty simple."[52]

Despite repeated requests, Border Patrol declined to inform Amnesty International how many (if any) unaccompanied Mexican children it had transferred to ORR in the San Diego sector instead of repatriating them to Mexico.

In 2020 and 2021, representatives of shelters, lawyers, and CNDH all noted that the frequent turnover of staff at DIF's state office for Baja California had negatively impacted the care and protection of unaccompanied migrant children in the region, including those repatriated by the USA. According to CNDH, some of the greatest risks faced by unaccompanied migrant children in Tijuana were abuses by municipal police, who discriminated against and targeted the children due to their vulnerability, subjecting them to arbitrary arrests, robbery, and excessive use of force.[53]

1.3.3 STATE OF SONORA

In March 2020, a manager of the DIF shelter Camino a Casa in Nogales informed Amnesty International that Mexican authorities received and transferred to the shelter an average of five repatriated Mexican children per day, mostly Indigenous children from Oaxaca, Chiapas, and Guerrero.

A representative of the deputy attorney for the protection of the child in Nogales confirmed that average rate of repatriations, and expressed concern to Amnesty International about the processing of the children:

> **"THE SYSTEM IS OVERLY FOCUSED ON 'REUNIFICATION,' AND NOT ON THE NEEDS OF THE CHILDREN. SO, THERE ARE [MEXICAN] CHILDREN WHO VOICE THEIR FEAR OF RETURN AND TRY TO CROSS. THEY DON'T JOIN THE WAITLIST. INSTEAD THEY CROSS IRREGULARLY, ARE CAUGHT AND RETURNED BY CBP TO MEXICO, AND THEN DEPORTED BY INM TO THEIR STATES."[54]**

He said INM received the children from CBP, then transferred them to DIF in Sonora State, where personnel accommodated them in the closed shelter. While the majority asked to be held in their states of origin, it was often unsafe for them to return, such that the parents would come to Sonora to take custody of them.

This raises additional questions as to whether or not CBP is adequately screening unaccompanied Mexican children for fear, prior to returning them en masse to Mexico.

51. Meeting with INM Baja California, deputy director for the protection of migrants, (March 2020 meeting in Tijuana; April 2021 virtual meeting by video).
52. Virtual meeting with US Border Patrol by video (April 2021).
53. Meeting with CNDH office in Tijuana (April 2021).
54. Meeting with representative of the Deputy Attorney's Office for the protection of children in Nogales, Sonora (March 2020).

Sculpture located outside of the DIF shelter Camino a Casa, located in Nogales, Sonora. (Amnesty International, March 2020)

2. DEPORTATIONS OF UNACCOMPANIED CENTRAL AMERICAN CHILDREN BY MEXICO

Under its legal framework, Mexico has established a national system for the protection of unaccompanied migrant children in its territory. The Law on Migration requires the prioritization of the best interests of migrant children while their immigration statuses are resolved,[55] and since January 2021 as amended it prohibits the detention of any children by INM in its immigration stations.[56] Under Mexico's law on the rights of children, authorities are also absolutely prohibited from returning unaccompanied migrant children to harm in their countries of origin or any other country.[57]

In practice, however, Mexican authorities have applied those protection principles in a fashion that has resulted in the deportation of children to potential harm, due to their frequent determinations that the children's repatriation to their countries of origin is in their best interests. Authorities have made those determinations even when the children have just fled those same countries, and are trying to join family members in the USA. Despite their prioritization of family unity in best-interests determinations,[58] family reunification has typically been synonymous with deportation,[59] and Mexican authorities have rarely considered migration to the USA as in the best interests of unaccompanied migrant children.

In a December 2020 report, UNHCR and UNICEF found that 66 percent of unaccompanied children interviewed in transit would try to flee their country again if detained and deported to their countries of origin, while 25 percent of them were already on their second or third attempt to reach the USA or Mexico.[60]

As more unaccompanied children from Guatemala, Honduras, and El Salvador have traveled north, political pressure has grown on Mexico – particularly from the USA – to prevent Central American migrants, including children, from transiting through Mexico's territory on their way to the US–Mexico border. Making matters worse, the Trump administration in August 2017 eliminated the Central American Minors (CAM) Program, by which children in the Northern Triangle could arrange to reunite directly with their parents who were already lawfully in the USA. The Biden administration has begun to restart that program.[61]

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55. Law on Migration (25 May 2011, last updated 7 January 2021): http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_070121.pdf. See also, Amendments to the Law on Migration (28 September 2012, revised 23 May 2014), e.g., at Article 168 et seq. Available at: https://www.ordenjuridico.gob.mx/Documentos/Federal/html/wo88430.html.
56. Federal Register, "Decree amending various articles of the Migration Law and the Law on Refugees, Complementary Protection and Political Asylum, in the area of Migrant Children" (11 November 2020): https://dof.gob.mx/nota_detalle.php?codigo=5604705&fecha=11/11/2020.
57. General Law on the Rights of Boys, Girls and Adolescents (4 December 2014, last revision 20 June 2018): https://perma.cc/BLR4-6PX3. English Translation available at: https://acnur.org/fileadmin/Documentos/Proteccion/Buenas_Practicas/11430.pdf. See, Article 96 and 97: "It is prohibited to return, expel, deport, return, refuse entry at the border or not admit, or in any way transfer or remove a child or adolescent when their life, security and/or freedom are in danger due to persecution or the threat of persecution, generalised violence or massive violations of human rights, among others, as well as where they may be subjected to torture or other cruel, inhuman or degrading treatment. […] Any decision to return a child or adolescent to their country of origin or to a safe third country may only be based on the requirements of their best interests."
58. DIF statement, "The principle of family unity will prevail in the care of migrant children and adolescents" (3 March 2021): https://www.gob.mx/difnacional/prensa/prevalecera-el-principio-de-unidad-familiar-en-la-atencion-de-ninez-y-adolescencia-migrantes-265513?idiom=es.
59. INM statement, "INM identifies three unaccompanied minors in immigration verification operation" (23 April 2021): https://www.gob.mx/inm/prensa/identifica-inm-a-tres-personas-menores-de-edad-no-acompanadas-en-operativo-de-verificacion-migratoria-270148?idiom=es.
60. UNICEF/UNHCR, *Families on the Run: Why families flee from northern Central America* (December 2020): https://familiesontherun.org.
61. Testimony of DHS Secretary Mayorkas before US Senate Committee on Homeland Security and Governmental Affairs, "DHS Actions to Address Unaccompanied Minors at the Southern Border" (13 May 2021): https://www.hsgac.senate.gov/imo/media/doc/Testimony-Mayorkas-2021-05-13.pdf.

In March 2021, a Mexican diplomat told Amnesty International in clear terms that the priority of Mexican immigration authorities was to apprehend and deport unaccompanied Central American children encountered in Mexican territory. He noted:

> "INM has announced and made very public that they're carrying out operations in both the north and south of Mexico. […] Specifically they are concerned about the movement of unaccompanied minors from Central America. They are trying to address that in particular and decrease regular migration. […] They are 'rescuing,' as we call it, people who were being smuggled across the border from Guatemala."

INM issued a statement on 19 March 2021 confirming their intention to intercept unaccompanied Central American children on their way to the USA, in order to enforce the "best interests" of the children. [62]

In a December 2020 report, Mexico's National System for the Comprehensive Protection of Girls, Boys and Adolescents (SIPINNA) identified systematic violations of children's human rights resulting from Mexico's apprehension and deportation of unaccompanied migrant children.

Among its findings, the report highlighted that:

- Some Mexican authorities are unaware of the rights of unaccompanied migrant children seeking refugee status, and their obligation to protect them;
- State-level child protection offices are understaffed to serve the protection needs of migrant children transiting through Mexico;
- When Mexican authorities have apprehended and returned unaccompanied migrant children to their countries of origin, they have in some cases violated both the best interests of the children, and the absolute prohibition on returning migrants and refugees to serious harm (the principle of *non-refoulement*); and
- Unaccompanied migrant children have been unable to cross the US–Mexico border to reunite safely with their family members residing in the USA.[63]

In a December 2020 report, UNHCR and UNICEF likewise raised concerns about repatriations of unaccompanied children by Mexican authorities that could amount to *refoulement*, finding:

> "These add to the ongoing deportations of asylum seekers and migrants – referred to as 'assisted returns' under Mexican law –, including unaccompanied boys, girls and adolescents. Many children of all ages have been sent back with no screenings for international protection needs or family reunification claims, as well as without best interest procedures, vulnerability assessments or family tracing. In such cases, there is rarely preparation for return or reintegration assistance, heightening the protection and health risks for children during their return from Mexico and the United States to Mexico, El Salvador, Guatemala, and Honduras. […] Amongst unaccompanied children, 21 percent reported fleeing death threats, 5 percent said to be fleeing gang recruitment, 2 percent were running from domestic violence and another 2 percent from extortion. […] Fifty-four percent of unaccompanied children had considered seeking asylum, compared to 30 percent of the children accompanied by family members."[64]

Those and SIPINNA's conclusions are consistent with Amnesty International's own research findings in 2020 and 2021, and describe problems that persist.

The SIPINNA report identified urgent remedial measures as action items for 2021, including to review the best-interests determinations by the Attorney General's Offices for the protection of children, and improve the trainings of their staff, in order to (1) address the *refoulement* of unaccompanied migrant children to their countries of origin, and (2) facilitate the reunification of migrant children with family members in the USA, when in their best interests.[65]

Amnesty International acknowledges those recommendations as highly positive proposals in the right direction, though Mexican immigration and child protection institutions have yet to adopt the necessary urgent measures to ensure that no more migrant children are deported to harm or prevented from reuniting with their families in the USA, which will also require cooperation and coordination with US authorities.

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62. INM statement, "Government of Mexico deploys operation on the southern border to safeguard migrant children" (19 March 2021): https://www.gob.mx/inm/prensa/gobierno-de-mexico-despliega-operativo-en-frontera-sur-para-salvaguarda-de-ninez-migrante-267026?idiom=es.
63. SEGOB/SIPINNA, Commission for the Comprehensive Protection of Migrant Girls, Boys and Adolescents and Refugee Applicants, *Report 2019–2020* (December 2020), n. 33 above, at pp. 16-17: https://www.gob.mx/cms/uploads/attachment/file/609220/Informe_2019-2020_Comisi_n_NNA_Migrantes.pdf.
64. UNICEF/UNHCR, *Families on the Run*, at n. 60 above.
65. Ibid, at pp. 17–18.

2.1 FLAWED DETERMINATIONS OF CHILDREN'S BEST INTERESTS

All unaccompanied migrant children encountered by Mexican authorities must be transferred to the custody of DIF to determine and act in accordance with their best interests.

Once they have determined the best interests of children, the state-level institutions of DIF and the Deputy Attorney's Office (Subprocuraduría) typically resolve to take one of four actions:

- Provide them with humanitarian visas to remain in Mexico (pending the determination of their best interests, including due to recent backlogs);
- Refer them to Mexico's asylum office (COMAR) to apply for asylum protection in Mexico;
- Repatriate (deport) the children to their countries of origin; or
- In rare circumstances and certain localities, facilitate the passage of the children across the US–Mexico border, in order to reunite with their family members in the USA.[66]

With all unaccompanied migrant children being referred to DIF and the Attorney General's Offices for their best-interests determinations, Mexican authorities and UN personnel active in Mexico have informed Amnesty International that DIF shelters were overwhelmed in early 2021, and processing times had been correspondingly delayed in some cases.

In March 2021, a Mexican diplomat informed Amnesty International that the prohibition of INM's detention of children in immigration stations resulted in space constraints at DIF shelters in Tamaulipas in particular, a state through which unaccompanied children have recently migrated the most frequently. She observed:

> "This is not a result of a change of policy, but is a result of the legal reforms in Mexico, that prohibits us from detaining children in immigration facilities. Every child or family needs to be referred to DIF facilities, and they do not have capacity to receive all children in DIF, including in Tamaulipas."

A migrant human rights defender in Tamaulipas confirmed that INM were referring children to non-DIF shelters in 2021 as a result, even in cases when Mexican institutions aimed ultimately to deport the children.

In Juarez, a COESPO coordinator said DIF's large new migrant youth shelter had already exceeded its capacity in April 2021:

> "The capacity was to be about 60, and today we have about 90. We are also sending kids to other shelters – Centers for Social Assistance. DIF's hands are full. To take care of this situation, we need to improve the capacity of DIF and the Subprocuraduría. [...] Our shelter capacity will be full at some point, so we're looking for more shelter capacity."[67]

The general coordinator of DIF in Juarez likewise informed Amnesty International that the legal reforms had resulted in more children being transferred into DIF's custody, which had strained the capacity of both DIF and the Deputy Attorney's Office, and thereby resulted in delays in the processing of children. Drops in those institutions' operational capacity had lengthened the time children were being accommodated in shelters, while authorities arranged for their repatriation (deportation) to their countries of origin in most cases. The length of time children spent in shelters went from approximately 15 days in 2020, to an average of four months in 2021, she said.[68]

In 2020, representatives of the International Organization on Migration (IOM) in one border city informed Amnesty International of similar problems in the determination of best interests of children in northern Mexico even prior to the legal reforms and increased number of children migrating. Among other concerns, they noted that DIF often accommodated migrant children at closed-door shelters – contrary to their best interests – and took too long to determine the children's best interests, in part due to lack of resources and high staff turnover. Additionally, IOM representatives expressed that some Mexican agencies did not understand their roles in the determination of children's best interests, as SIPINNA also found, and that INM in most cases ultimately repatriated the children to their countries of origin.[69] Nongovernmental organizations (NGOs) working in the area of protection of migrant children's rights in Mexico have noted similar shortcomings in previous years as well.[70]

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66. Phone interviews with representatives of CNDH, COESPO, and DIF (April 2021).
67. Interview with COESPO coordinator (April 2021).
68. Interview with DIF Juarez coordinator general (April 2021).
69. Interview with IOM representative (March 2020).
70. WRC, *Migrant and Refugee Caravans: Failed Responses to Women and Children in Need of International Protection and Humanitarian Aid* (May 2019): https://www.womensrefugeecommission.org/research-resources/migrant-and-refugee-caravans/. KIND, *Blocked From Safety: Unaccompanied Children along the US–Mexico Border* (April 2019): https://supportkind.org/wp-content/uploads/2019/04/Blocked-From-Safety-KIND-Border-Report-4-29-19_FINAL.pdf; and *The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and Endangering the Lives of Children at the US Border* (December 2018): https://supportkind.org/wp-content/uploads/2018/12/Protection-Gauntlet_12-21-18-FINAL.pdf.

In the view of Amnesty International, forcing unaccompanied migrant children to be held in closed shelters until they are forcibly returned still constitutes detention, which is neither lawful nor in the best interests of the child.[70]

2.2 MEXICO'S ASYLUM SYSTEM IS OVERWHELMED AND UNDERFUNDED

Amidst an overall increase in migration in 2021, the capacity of the Mexican Commission for Refugee Assistance (COMAR) has likewise been strained – receiving about 30 percent more asylum requests in the first quarter of 2021 compared to the same period in 2020.[72] COMAR is the agency of the Mexican government responsible for processing refugee status determinations, including those of unaccompanied children.

The COESPO coordinator in Juarez noted in April 2021 that unaccompanied migrant children were being granted humanitarian visas when referred to COMAR for consideration of asylum claims, but that COMAR was under-resourced and had no presence in Juarez:

> **"I WISH COMAR WERE HERE. THEY HAVE NO REPRESENTATION IN JUAREZ. I WOULD GLADLY GIVE THEM AN OFFICE HERE. WE DO NEED THE PRESENCE OF COMAR HERE, SINCE MORE AND MORE PEOPLE ARE DECIDING TO SEEK REFUGE."[73]**

In contrast, the state DIF office in Juarez had only referred three out of 227 unaccompanied migrant children to COMAR in 2019, after determining it was in their best interests to request asylum in Mexico, while granting three or four others humanitarian visas to stay in Mexico as victims of crimes.[74] In contrast, DIF determined in 80 percent of those cases that it was in the children's best interests to return to their countries or origin.[75]

According to the INM official in charge of deportations of unaccompanied foreign children in Juarez, due to the lack of a COMAR office, it took about three weeks to coordinate each of the interviews in those three cases, since COMAR has to conduct interviews personally for children and teenagers. Then it took an additional six to eight months for COMAR to decide on their cases, following which COMAR issued its resolutions and INM issued documents with asylum status.[76]

In an October 2019 visit to Mexico, the UN High Commissioner for Refugees Filippo Grandi expressed concern that Mexico had not adequately resourced COMAR to process the growing number of asylum claims that it had been receiving, which resulted in a "lack of international protection"[77] for Central Americans who are seeking asylum in Mexico.

> "Mexico is facing increased challenges and concerns as a result of policy changes in the United States which have led to a significant increase in the number of individuals deciding to apply for asylum in Mexico, putting additional strain on an already overwhelmed asylum system. Concerns in this regard are particularly acute along Mexico's northern border." [78]

To strengthen its asylum capacity and reception systems, even with UN support, would require "reinforced commitment by the Government of Mexico to increase the resources attributed to COMAR in the national budget, in order to enable them to become more responsive and effective," Grandi said.[79]

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71. UNICEF has worked with Mexican authorities to develop alternative models of "open-door" shelters as a further measure of alternatives to immigration detention for children. UNICEF, *Building Bridges for Every Child: Reception, Care and Services to Support Unaccompanied Children in the United States* (February 2021), at p. 22: https://www.unicef.org/media/94341/file/Building%20Bridges%20for%20Every%20Child.pdf.
72. COMAR chart of statistics on asylum requests, January to March 2019–2021 (published April 2021): https://www.gob.mx/cms/uploads/attachment/file/626835/CIERRE_Marzo-2021__1-Abril-2021_.pdf.
73. Interview with COESPO coordinator (April 2021).
74. Interview with representatives of DIF Chihuahua and Subprocuraduría, at Nohemí Álvarez Quillay shelter (March 2020).
75. Interview with DIF Chihuahua official (March 2020).
76. Interview with INM Chihuahua, deputy director of migratory control and verification, in charge of migratory station of Juarez, Chihuahua (March 2020).
77. Reforma, "Piden a México acelerar proceso de asilo" (30 September 2019): https://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?__rval=1&urlredirect=https://www.reforma.com/aplicaciones/articulo/default.aspx?id=1780431.
78. UNHCR statement, "UN Refugee Chief in Mexico hears stories of hope and despair from Central American refugees, calls for more support for refugee response" (2 October 2019): https://www.unhcr.org/news/press/2019/10/5d94541f4/un-refugee-chief-mexico-hears-stories-hope-despair-central-american-refugees.html.
79. *Reforma*, "Piden a México acelerar proceso de asilo" (30 September 2019), n. 77 above.

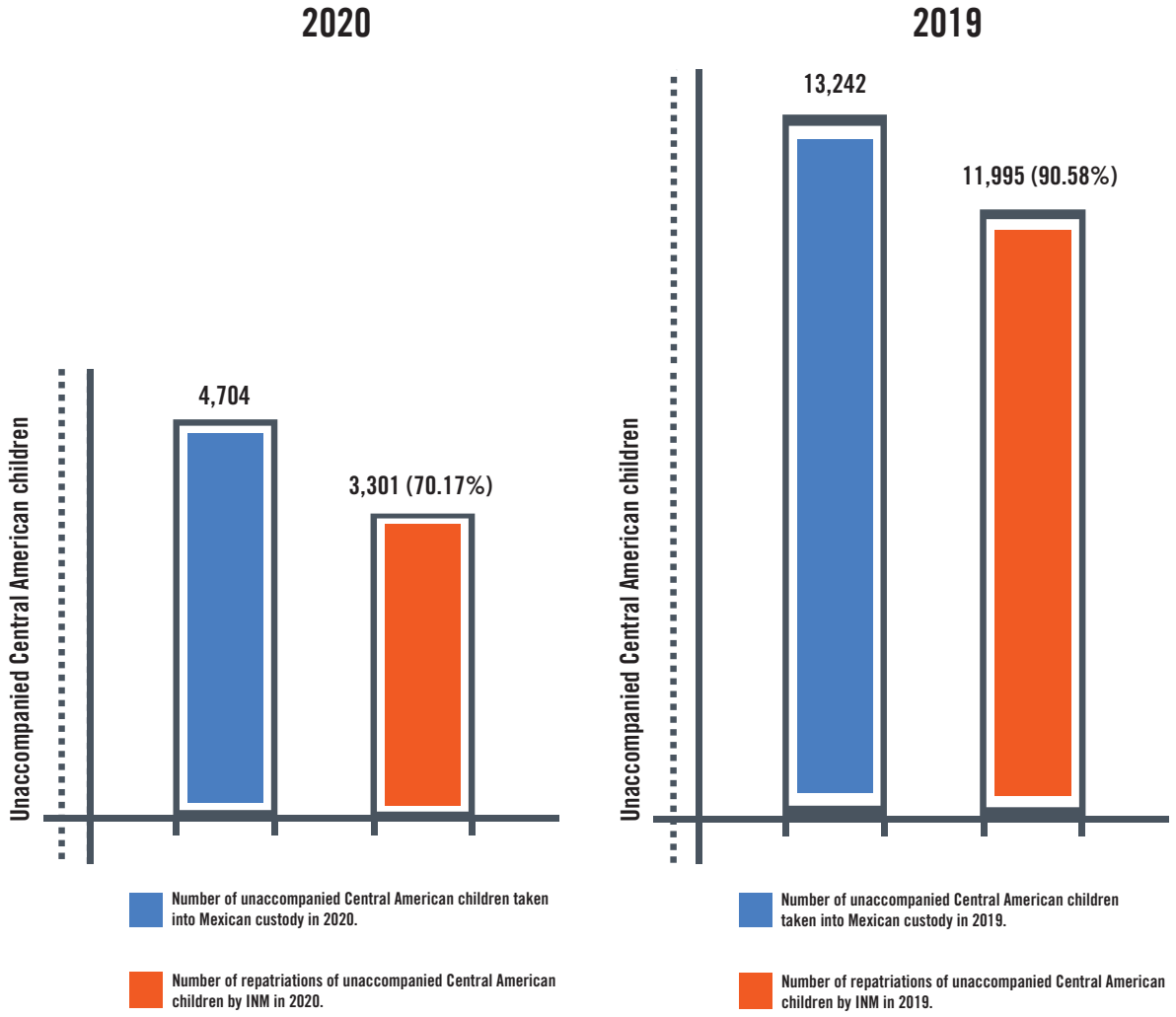
2.3 INTERCEPTIONS AND DEPORTATIONS OF CENTRAL AMERICAN CHILDREN

In 2020 and 2021, Mexican immigration and child protection authorities continued most often to determine that it was in the "best interests" of migrant children to be repatriated to their countries of origin that they had fled, for the purpose of reunification with their families even amidst dire threats.

In December 2020, the Government of Mexico reported to the UN Committee on the Rights of the Child that INM had processed 70,787 unaccompanied migrant children from 2015 to August 2020. After taking into custody those "[m]igrant children and adolescents and applicants for refugee status [...], in most cases a return is made to the countries," Mexico reported.[80]

In 2019, INM deported more than 90 percent of the unaccompanied migrant children whom they apprehended (deporting 12,000 children in total). In 2020, despite reduced migration during the pandemic, Mexican authorities returned over 3,300 unaccompanied migrant children to Central America, still more than 70 percent of those whom they took into custody. In the first quarter of 2021, Mexican authorities reported deporting almost half of the unaccompanied Central American migrant children whom they took into custody nationwide.[81]

CHILDREN DEPORTED BY MEXICAN AUTHORITIES



Source: SEGOB Statistical Bulletins (fn. 81)

80. State Party's Report, "Sixth and seventh combined reports of Mexico: Compliance with the Convention of the Rights of the Child" (submitted 18 December 2020), at paras. 213–214: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MEX&Lang=EN.
81. SEGOB, Statistical Bulletins, available at: http://portales.segob.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN?Anual=2021&Secc=5; http://portales.segob.gob.mx/work/models/PoliticaMigratoria/CEM/Estadisticas/Boletines_Estadisticos/2021/Boletin_2021.pdf; and http://portales.segob.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN.

This could be construed as a positive (decreasing) trend in the repatriation rates of unaccompanied migrant children. However, officials with whom Amnesty International met in northern Mexico in 2020 and 2021 indicated that (1) the DIF shelters filled up, and processing times have slowed for unaccompanied children, (2) the majority of migrant children are still being deported in some northern localities, and (3) the wholesale deportation of unaccompanied migrant children is much more extreme and frequent in southern Mexico.

Those indicators suggest that the aforementioned delays in the processing of children, due to overwhelmed state-level offices of DIF and the Deputy Attorneys for the protection of children may have delayed deportations, and resulted in more children being granted temporary humanitarian visas while their cases are resolved.

An international humanitarian organization informed Amnesty International that it conducted a needs assessment mission in February 2021 to Tapachula in the south and Matamoros in the north, and found that INM routinely deported the majority of unaccompanied migrant children it encountered. The organization found that INM interceptions and deportations were particularly bad in Tapachula (nicknamed "Atrapachula" by some they spoke with). The Deputy Attorney's Office for the protection of children was understaffed and ineffective in child protection, while the COMAR office indicated it was significantly underfunded and processing an artificial backlog of asylum-seekers created by Mexican authorities, which primarily comprised those who were already registered as refugees. The organization also found that fewer unaccompanied children were encountered by other migrants in northern Mexico, suggesting that the majority were either already apprehended in the south, or travelling with smugglers to evade Mexican immigration authorities.

Traffic at the entrance of the Paso del Norte International Bridge, viewed from Juarez, Chihuahua, Mexico. (Amnesty International, March 2020)

2.3.1 STATE OF CHIHUAHUA

In May 2021, the manager of DIF's largest shelter in Juarez informed Amnesty International that the majority of the unaccompanied Central American children in DIF custody in Juarez were apprehended in Chihuahua by INM, except for a few with false documents or mistaken ages who were sent to Mexico by CBP. As of 7 May, DIF had taken into custody 196 unaccompanied migrant children in 2021, compared to 184 for all of 2020, and 227 for all of 2019. He estimated that Mexican authorities currently repatriate approximately 85 percent of those children to their countries of origin, almost all in the Northern Triangle of Central America (Guatemala, El Salvador, and Honduras).[82]

In March 2020, Amnesty International interviewed INM's deputy director of migratory control and verification, in charge of interception and referral of unaccompanied migrant children in Juarez. Even prior to recent legal reforms, she said INM never held unaccompanied migrant children in the INM immigration station, and instead transferred them all to the custody of DIF shelters while their cases were handled.

In the deputy director's view, only about 5 percent of unaccompanied non-Mexican migrant children were not safe to return to their countries of origin, so she prided herself on expediting those returns before the 15-workday deadlines to resolve their immigration status after apprehensions:

> "In my area, I am on both ends: I coordinate the migratory checkpoints, where these children can be first detected. Although I am not personally there, I am the person in charge of those checkpoints. And second, I am on the other side as well [deportation], once they have been detected, and they've been sent to the migratory station, that is when we have to begin the administrative process. We have migratory checkpoints along the river, where we try to persuade them not to cross the river. We let them know the risks of crossing the river alone. So we offer them to return to their country if they're alone. The intention is not to catch them; but you let them know the best is to be protected. If they are on the US side, then CBP starts the procedure."
>
> "My office carries out the whole procedure to assist them in their return to their countries of origin. Our role is from the minute we receive them to the moment when they return to their countries of origin. The objective in their cases is the same: to help them go back to their countries, quickly, safely, with respect for their human rights. When we are going to solve the migratory status of a child or a teenager, the Procuraduría's office needs to issue a document that states that it is indeed in the best interest of the child. We have them wait in the shelters, and we try in 90 percent of the time to resolve their cases [by securing their travel documents from embassies] before their legal status is resolved. We have a 15 working days deadline to resolve their legal status, unless with an extension due to consulates not having enough data to identify parents or issue temporary passports, or a need for more time to locate a family or data. And then we can reunify with family. In some cases – Guatemala, Honduras – they are very quick with the paperwork, sometimes in seven days. The unaccompanied children are all repatriated by airplane – and this is the difference between children and adults."[83]

In contrast with the views of the INM official that only 5 percent of Central American children were in need of international protection, a United Nations official in northern Mexico estimated that 90 percent of the unaccompanied Central American children they encountered in 2020 had serious protection needs. Given the rates of deportation of the children, this discrepancy in views on protection needs of unaccompanied migrant children suggests that the best-interests determination process run by DIF and the Deputy Attorney's Office is breaking down and not adequately identifying children's risk of harm if returned to their countries of origin.

Knowing that apprehension by INM meant almost-certain deportation, a 15-year-old girl from Honduras told Amnesty International in 2019 of the extreme efforts she went to in order to avoid detection by Mexican authorities in Juarez, as she tried to cross into the USA to request asylum and join with her brother who was already there.

> "I didn't know where to start, and there were lots of Mexican federal authorities at the bridge, who said they'd return me to Honduras."

Gangs in Honduras had killed her cousin, and threatened her life when she turned 15, which forced her suddenly to flee her country. Not having papers to cross into the USA, she slept in the streets of Juarez for two weeks, hiding anywhere she thought she would not get caught by authorities, before crossing on her own into the USA. "I arrived wet through the river under the bridge," she said.

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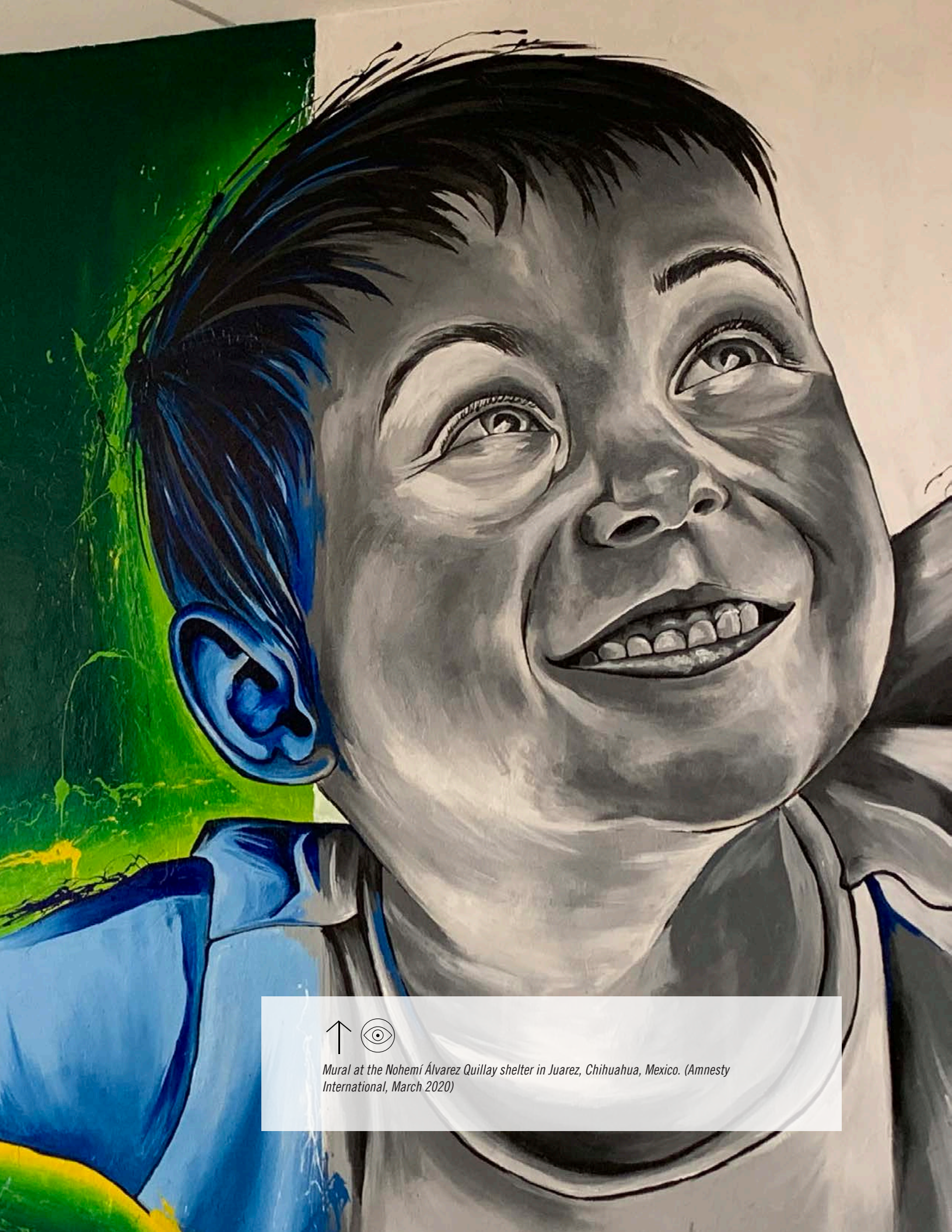
82. Interview with DIF Chihuahua official (May 2021).
83. Interview with INM Chihuahua, deputy director of migratory control and verification, in charge of migratory station of Juarez, Chihuahua (March 2020).

"El Soñador"
Este mural va dedicado a todos esos
niños y niñas migrantes que han tenido
que salir de sus hogares, de su país,
han sido incluso separados de sus familias
y para que... para seguir SOÑANDO



Mural at the Nohemí Álvarez Quillay shelter in Juarez, Chihuahua, Mexico. (Amnesty International, March 2020)

2.3.2 STATE OF BAJA CALIFORNIA

In 2020, the head of the INM office in Tijuana indicated that immigration authorities only processed about 30 unaccompanied non-Mexican children in 2019, all of whom they handed over to the state DIF office.

The Deputy Attorney's Office for protection of children in Baja California estimated that they determined the best interests of those children to be repatriation to their countries of origin in approximately 50 to 60 percent of cases, and in about 30 percent of cases to seek asylum in Mexico. In the remainder of cases, the representative said DIF determined it to be in the best interests of the children to reunify with family members in the USA.[84]

In April 2021, the INM official in charge of repatriations of unaccompanied children confirmed that they do continue to repatriate children, though still in small numbers: "Yes, I have an officer assigned here who went to Guatemala two weeks ago [on a repatriation flight]. The quantities are not as large as those that are handled on the southern border."

A shelter in Mexicali informed Amnesty International in 2020 that few unaccompanied foreign migrant children made it there, unless they had guides. Yet even then, INM reportedly intercepted most Central American children on the border when they were trying to cross, and returned them to their countries of origin. When the shelter manager asked Central American migrant children why they were intending to cross into the USA, she recounted:

> **"THEY SAY THEY DON'T LIKE WHERE THEY'RE FROM, BECAUSE THEY'RE AFRAID OF IT. IT'S LIKE A HORROR MOVIE, THE LIFE THAT THEY'VE EXPERIENCED – BUT LIKE THREE TIMES AS SCARY, A LIVING HELL."[85]**

2.3.3 STATE OF SONORA

In March 2020, Mexican officials in Nogales, Sonora, also indicated that comparatively few unaccompanied Central American children came through the region. The head of the INM office told Amnesty International that his office apprehended few unaccompanied non-Mexican migrant children, but when they did, that it was not appropriate to allow them to cross into the USA to seek asylum: "For us, the most important thing is their reunification with their family." The manager of the asylum "metering" waitlist at the Municipal Hall in Nogales reported that three or four non-Mexican unaccompanied migrant children had been allowed to request asylum over the last year in Nogales, which surprised the INM official.

According to a representative of the Deputy Attorney's Office for the protection of children in Nogales, INM did most of the best-interests determinations and arrangements for repatriations in those few cases of unaccompanied migrant children in Nogales – typically deporting them almost immediately, even when they sought to request asylum. Most of the unaccompanied foreign migrant children were held in a closed shelter in Hermosillo managed by the state DIF for Sonora, prior to reunification with families in their countries of origin. According to the official, those foreign children whom officials encountered were almost all Central American, who tried to seek asylum at the border but were apprehended by INM and the police before they were able to request protection in the USA.

In Agua Prieta, a human rights defender told Amnesty International in March 2020 that few non-Mexican unaccompanied children crossed in the region, but in the isolated cases they did, both INM and the Deputy Attorney's Office for the protection of children expressed that it was best for them to be returned to their countries of origin. "Neither agency has a clear understanding of the best-interest principle, nor of the dangers of returning children to potential harm in their countries of origin," the defender said. In April 2021, she noted that there were still virtually no unaccompanied foreign children in the area, but that CBP had been returning on average 100 people per day under Tile 42, including accompanied children with their families in some cases.

84. Interview with Deputy Attorney for the Defense of Minors and the Family, Tijuana (March 2020).
85. Interview with director of shelter in Mexicali (March 2020).

Migrating people at a shelter in Mexicali, Baja California. (Amnesty International, March 2020)

3. INTERNATIONAL COOPERATION TO FACILITATE PASSAGE OF CHILDREN FROM MEXICO TO USA FOR FAMILY REUNIFICATION

> **"IN MORE THAN 80 PERCENT OF CASES, THE CHILD HAS A FAMILY MEMBER IN THE UNITED STATES. IN MORE THAN 40 PERCENT OF CASES, THAT FAMILY MEMBER IS A PARENT OR LEGAL GUARDIAN."[86]**
> *- DHS Secretary Alejandro Mayorkas, March 2021.*

Safety and protection are always in the best interests of the child.

As of April 2021, according to UNICEF, one in three displaced migrants in the Northern Triangle and Mexico is a child, and half of those children are traveling without their parents.[87]

Of those unaccompanied children who make it to US territory, the US Secretary of Homeland Security stated publicly in March 2021 that the vast majority already have family members residing in the USA whom they are trying to join. That was the Biden administration's partial rationale for allowing Central American children to remain in the USA as they pursue their immigration cases, even while summarily returning Mexican children with the other hand.[88]

It is simultaneously remarkable and completely reasonable that Mexico's SIPINNA Commission for the Comprehensive Protection of Child Migrants and Asylum Seekers identified as a major problem that unaccompanied migrant children from Central America continue to face challenges crossing into the USA to unite with those family members and receive international protection. The Commission's report – published by Mexico's Secretariat of the Interior's (SEGOB) – called on Mexican authorities to remedy that injustice under their legal obligations to advance the best interests of the child.[89]

On a pilot basis in some localities along the US–Mexico border, Mexican and US government authorities have already coordinated with each other (also in cooperation with international organizations and NGOs) to facilitate the passage of children in need of international protection across the border to unite with their families in the USA.

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86. DHS, "Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border" (16 March 2021): https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation.
87. UNICEF statement, "Nine times more migrant children in Mexico over the past three months" (19 April 2021): https://www.unicef.org/press-releases/nine-times-more-migrant-children-mexico-over-past-three-months-unicef. UNICEF, "Executive Director, Henrietta Fore's Remarks at Virtual Briefing on the Humanitarian Situation in El Salvador, Guatemala, and Honduras" (20 April 2021) https://www.unicef.org/press-releases/unicef-executive-director-henrietta-fores-remarks-virtual%E2%80%AFbriefing-humanitarian.
88. DHS statement on US–Mexico border, n. 86 above.
89. SEGOB/SIPINNA, Report 2019–2020 (December 2020), n. 33 above, at pp. 16-17.

These successes have been realized in particular in the cities of Tijuana and Juarez, as well as in isolated instances at ports-of-entry in other cities.

Such coordination is no substitute for the US authorities' compliance with their obligations under US and international law to fully reopen their ports-of-entry to receive, evaluate, and provide protection to all eligible asylum-seekers – including unaccompanied children from both Central America and Mexico.

Based on those past pilot programs, US and Mexican institutions are clearly able to implement such arrangements, though US border and immigration authorities have so far failed to empower a child protection specialist to lead on the reception and best-interests determinations of unaccompanied children. A child protection presence on the US side with clear authority – not just presence during interviews – would help to guarantee and enforce the legal right of unaccompanied children to access all ports-of-entry, regardless of any protocol.

Better coordination between DIF and that US child protection authority would also contribute to a more effective protection system. When children are in DIF custody at shelters in Mexico, there is an opportunity to do sponsor vetting, and to begin the family reunification processes earlier, so that they could move on to be with their family in the USA as quickly as possible.

3.1 STATE OF CHIHUAHUA

In April 2021, the coordinator of COESPO informed Amnesty International that such cross-border transfers were no longer happening in Juarez, though recognized that there was definitely still a need:

> "Most of the people who arrive here already have somebody in their family on the USA. We often ask them, 'do you have somebody waiting for you in the USA – family friends?' And they say 'yes, I have my mother, my husband, my wife' or others."[90]

Immediately prior to the pandemic in March 2020, however, representatives of state DIF in Juarez told Amnesty International that they had already facilitated a limited number of such unifications. While Mexican authorities deported approximately 80 percent of those children to their countries of origin, two representatives of DIF's largest shelter in Juarez independently verified that they facilitated 50 to 60 such cross-border passages for non-Mexican migrant children (mostly from Central America) to unite with their families in the USA since May 2019.

The majority were between 15 and 17 years old, including some children with teen parents or younger siblings of 8, 12, or 14. The youngest unaccompanied child to be transferred across the border in this fashion was about 12 years old in 2019. As one of the DIF representatives described it:

> "The particular feature of these teenagers who make it here all the way to the US–Mexico border, is that their best interest is to arrive in the USA. They are not seeking protection in Mexico, or they would have been asking for protection as soon as they entered Mexico."[91]

The Deputy Attorney for the protection of children in Juarez also noted that the process was firmly rooted in the best-interests determination, and the guiding principle of family unity that motivates Mexico's deportation of unaccompanied children to their countries of origin as well:

> "It would be very exceptional that a child would be considered to have it in their best interest to go to the USA if their parents aren't there."[92]

The Mexican authorities have also worked closely with UNHCR, UNICEF, and the specialized child protection NGO, Kids in Need of Defense (KIND). Since September of 2019, KIND has liaised with HHS's Office of Refugee Resettlement and interviewed the sponsoring families in relation to the transfer processes, in some cases as legal representatives of the children.

In terms of process in those cases, DIF accompanied the children to the Paso del Norte port-of-entry, to transfer custody of the children to CBP at the midpoint of the bridge over the Rio Grande – the same point where CBP typically turns away unaccompanied children and other asylum-seekers.

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90. Interview with COESPO coordinator in Juarez (April 2021).
91. Meeting with Lic. Diego Gutierrez Aranda, Office of the Subprocuraduría Chihuahua, at Nohemí Álvarez Quillay shelter (March 2020).
92. Meeting with Jorge Omar Gaspar Pereyra, Deputy Attorney for the Protection of Children and Adolescents for the Bravos Judicial District in Juarez (March 2020).

One shortcoming identified by DIF was that CBP provided no records of the transfers, such that Mexican authorities felt obligated to take pictures of the children at the exchange of custody, in order to document the transfer. DIF and INM also coordinated the transfer with consular representatives of the Central American children, who in some cases monitored the handoffs.

Another shortcoming of the process was that DHS officials would not take into account DIF's views on the protection needs of the children, since they had no legal standing. DHS would only listen to INM regarding which children were in need of asylum protection. This weak point in the process is another reason for DHS and/or HHS to assign child protection specialists to key ports-of-entry as focal points for the reception of migrant and asylum-seeking children.

Given CBP's track record on undermining the asylum claims of people requesting protection, there are also valid concerns that providing CBP with additional information on individual asylum claimants' cases could do more harm than good in the securing of children's protection.

3.2 STATE OF BAJA CALIFORNIA

In Tijuana, Mexican authorities also facilitated cross-border transfers with US authorities, under the auspices of their best-interests determinations in the cases of a limited number of children. From March 2019 to March 2020, approximately 10 such unaccompanied migrant children benefitted from the pilot program, and are all with their families in the US now, according to CNDH.

The Deputy Attorney's Office, INM, CNDH, two shelter managers, and an NGO representative all described to Amnesty International the application of Mexico's legal process for best-interests determinations in order to facilitate unaccompanied children's passage across the US–Mexico border. All of those actors stressed the importance of involving all relevant institutions in the coordination of the cases, in order to carry out the transfers both effectively and dutifully under the law.

The Deputy Attorney's Office maintained legal custody of the children, and issued precautionary measures in their cases, explaining what each institution's role was, step by step. Those instructions included the role of INM so that there would be no violation of the children's human rights arising from their migration status in Mexico.

> **"THE PRECAUTIONARY MEASURES EXPLAIN WHAT EACH INSTITUTION'S ROLE IS, STEP BY STEP. [...] IT WAS EXCITING AND MADE IT A JOINT ENTERPRISE: THERE WAS SOMEONE FROM INM, SOMEONE FROM DIF, AND WAS ALL ABOVE BOARD AND OFFICIAL."**
>
> *- Representative of CNDH office in Tijuana (March 2020)*

The INM office in Tijuana was notorious in 2018 and 2019 for intercepting asylum-seeking children before they could request protection from US authorities at the port-of-entry – as well as for threatening migrant human rights defenders, whom they framed as human traffickers when they monitored the children's access to asylum procedures at the border crossings.[93]

In March 2020, however, INM had more nuanced views and informed Amnesty International that INM actively participated in the coordination of the reunifications of unaccompanied migrant children with their parents in the USA. Since the reunification process was facilitated under the best-interests determination protocol of DIF and the Deputy Attorney's Office, INM indicated it would not intervene to block the transfers if the children were in custody of the state (whereas they would continue to intercept children who approached the border alone).[94]

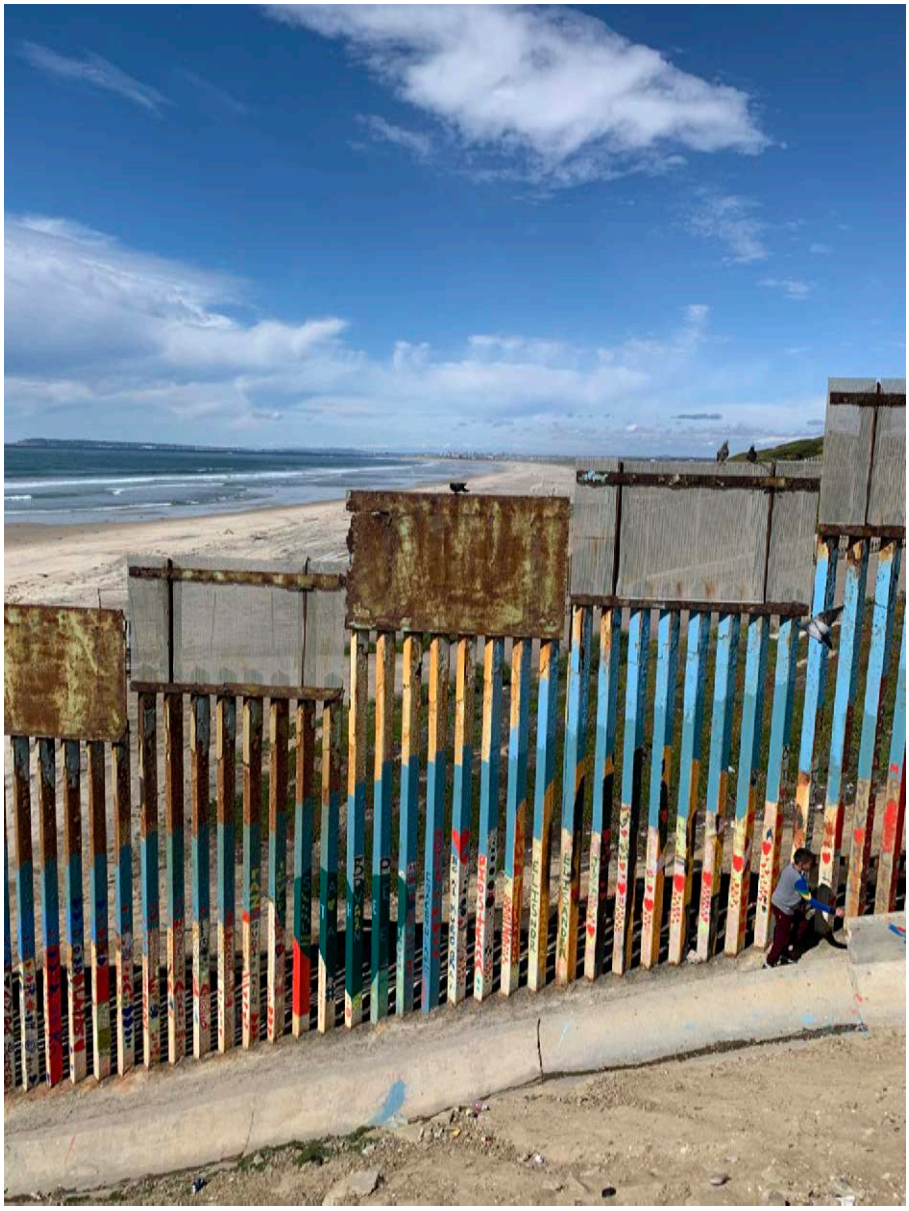
According to CNDH in Tijuana, the successful coordination of the process rose directly out of the needs and individual situations of unaccompanied migrant children with parents and other relatives in the USA. With an important oversight role in the best-interests determinations of migrant children, CNDH has also contributed to the cross-border reunifications.

93. See Amnesty reporting at n. 4 above.
94. Meetings with INM Baja California officials (C.P. Manuel Alfonso Marin Salazar, Head of the Representation Office of the INM in Baja California; Ms. Aide Rosales Marquez, deputy director of migrant protection, including repatriations (March 2020).

In describing the variety of cases of beneficiaries from Central America and Mexico, CNDH's migration specialist observed:

> "We had two specific cases, of two teen girls from Honduras and one case of Mexican boy from Michoacán – understanding that there's a difference in treatment of migrants kids from Mexico and Central America, yet nonetheless the best-interest determination is in relation to the children's situation, not their nationality. There's a protection route that says you need to do whatever you have to do to protect children, including reunification, and not just in Mexico. [...] Taking into consideration what the kid or child is looking for and wanting to do. [...] I think it's essential that the kids have their own voice, their own desires, their own rights."[95]

The Deputy Attorney also noted the value of involving UNHCR in the process to draw on its expertise in best-interests determinations, when considering a cross-border reunification as the best option for the child in need of protection.[96]



Border wall on the US–Mexico border at Playas de Tijuana, Baja California, Mexico. (Amnesty International, March 2020)

95. Representative of CNDH office in Tijuana (March 2020).
96. Interview with Deputy Attorney for the Defense of Minors and the Family, Tijuana (March 2020).

4. CONCLUSION

Children have a human right to seek and enjoy asylum from persecution or serious human rights violations, even when not accompanied by their parents or guardians.

From 2018 to 2021, the governments of both Mexico and the USA have summarily and forcibly returned unaccompanied migrant children to their countries of origin, without adequate screenings for potential irreparable harm they could face there.

Systematic deportations without adequate precautions violate the principle of *non-refoulement* whenever returnees are sent back to harm. Such conduct is not only unlawful; it is also fruitless. One in six displaced migrants in the region is an unaccompanied child, and two-thirds of those children would migrate again after being detained and deported.

With adequate political will to allocate resources appropriately, the governments of both Mexico and the USA are perfectly able to fund and implement their national legal frameworks on protection of migrant children in a fashion that conforms with their human rights obligations under international law.

As a point of departure, both governments need look no further than the innovative and courageous coordination between (1) their border and immigration authorities, and (2) their child protection specialists.

They should study and build upon those successes, developing and rolling out those programs further, beyond the confines of the Paso Del Norte port-of -entry in El Paso/Juarez and the San Ysidro port-of-entry in San Diego/Tijuana.

That positive program does not negate the binding legal obligation to immediately halt any further forced returns of unaccompanied children without adequate screenings for harm. Additional safeguards and trainings should be put in place to prevent any further *refoulemen*t of vulnerable children to where their lives may be at risk, or they may experience serious human rights violations.

Toward that end, the US government should immediately end its policy of repatriating all Mexican unaccompanied minors upon apprehension. For its part, the Mexican government should carefully study and implement in good faith the recommendations of the December 2020 SEGOB/SIPINNA report on how to improve best-interests determinations, and close the protection gaps identified therein.

5. RECOMMENDATIONS

TO THE GOVERNMENT OF THE USA

PRESIDENT BIDEN:

- Immediately order the withdrawal of the CDC order and accompanying HHS final rule under Title 42, and halt expulsions of asylum-seekers thereunder. Those unlawful expulsions have caused the needless separation of asylum-seeking families in order for children to exercise their right to seek international protection in the USA.

DEPARTMENT OF HOMELAND SECURITY:

- Publicly affirm that unaccompanied children have a right to seek and enjoy asylum from persecution and human rights violations, irrespective of their nationality, and uniformly ensure their awareness of those asylum procedures when in DHS custody.
- Improve trainings and oversight of DHS personnel conducting screenings of unaccompanied migrant children from Mexico, and integrate child-protection specialists into that process, in order to ensure that all risk factors are identified and that children with protection needs are not returned to potential harm.
- Direct CBP personnel to stop turning away asylum-seeking children at ports-of-entry along the US–Mexico border, and instead facilitate their access to asylum procedures, in coordination with Mexican officials.
- Swiftly facilitate all asylum claims by unaccompanied children – irrespective of their nationality – and their expeditious release to family members or other sponsors in the USA.
- For those unaccompanied migrant children present in Mexico who have family members and sponsors already in the USA, coordinate with Mexican authorities to facilitate the children's unhindered access to asylum procedures at the US–Mexico border, in order to swiftly reunify with their relatives and sponsors in the USA.
- Expand and improve the recently resumed Central American Minors (CAM) and Protection Transfer Arrangement (PTA) Programs to provide an additional avenue for at-risk children to access international protection.
- Alongside regional humanitarian aid to the Northern Triangle of Central America, designate new Temporary Protected Status (TPS) protection for individuals from Honduras, Guatemala, and El Salvador, affected by recent hurricanes and other environmental disasters.
- Invite the UN Special Rapporteur on migrants to conduct a country visit to the USA to report on conformity of US laws, policies, and practices with international standards, and seek to implement as many remedial recommendations as possible.
- Endorse and adopt immediate measures to implement the Global Compact for Safe, Orderly, and Regular Migration.

CONGRESS:

- Conduct oversight of DHS agencies to halt: the illegal pushbacks of asylum-seeking children at US ports-of-entry; and CBP's unlawful returns of unaccompanied Mexican children without legally required screenings for risk and harm in all cases.
- Eliminate the contiguous country provision in the Trafficking Victims Protection Reauthorization Act (TVPRA) used to discriminate against unaccompanied Mexican children and turn them back to potential harm, contrary to international protection standards for children and asylum-seekers.
- Ratify the UN Convention on the Rights of the Child.

TO THE GOVERNMENT OF MEXICO

PRESIDENT LÓPEZ OBRADOR:

- As the executive official in charge of the National System for the Comprehensive Protection of Girls, Boys and Adolescents (SIPINNA), direct the Secretariat of Interior (Secretaria de Gobernación, SEGOB) and its agencies to adopt the following remedial measures to address the human rights violations identified in this report.

NATIONAL INSTITUTE OF MIGRATION (INM):

- Publicly affirm that unaccompanied migrant children have a right to seek and enjoy asylum from persecution and human rights violations, and ensure their awareness of those asylum procedures in all cases.
- Halt unnecessary repatriations of unaccompanied migrant children who are seeking asylum at both the southern and northern borders of Mexico, and provide them with access to asylum procedures – whether in Mexico, or in the USA in coordination with US authorities.

NATIONAL SYSTEM FOR INTEGRAL FAMILY DEVELOPMENT (DIF):

- For those unaccompanied migrant children present in Mexico who have family members and sponsors already in the USA, coordinate with US authorities to facilitate the children's unhindered access to asylum procedures at the US–Mexico border, in order to swiftly reunify with their relatives and sponsors in the USA.
- Refrain from detaining unaccompanied migrant children in closed shelters or preventing them from accessing asylum procedures at the US–Mexico border.
- Review the successes and failures of current child protection processes and systems to determine the best interests of unaccompanied migrant children, in order to prevent any further instances of *refoulement*, as identified in the December 2020 report of SIPINNA.
- Increase hiring, funding, and training of child protection specialists at DIF and the Subprocuraduría to ensure human rights-compliant reception and care for unaccompanied children in need of international protection, in line with the UNHCR Guidelines on Determining the Best Interests of the Child.

CONGRESS:

- Increase funding to the Mexican Commission for Refugee Assistance (COMAR) in the national budget, in order to expand its presence along both the northern and southern borders of Mexico, and to improve its capacity to process the rising number of requests for asylum in Mexico.

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PUSHED INTO HARM'S WAY

FORCED RETURNS OF UNACCOMPANIED MIGRANT CHILDREN TO DANGER BY THE USA AND MEXICO

The governments of both the USA and Mexico have deported unaccompanied migrant children to their countries of origin, without adequate screenings for potential irreparable harm they could face there. Authorities of both countries have also denied unaccompanied migrant children access to asylum procedures through pushbacks at their respective borders. In some cases, this has resulted in the forced return of asylum-seeking children to ill-treatment (*refoulement*).

As a matter of policy, the Biden administration continues to return almost all unaccompanied Mexican children to Mexico, without adequate screenings for risks of harm. The Mexican government has likewise repatriated the majority of unaccompanied Central American children to their countries of origin without adequately assessing what harm they could face.

In some localities, Mexican and US border and immigration authorities have worked together with international partners to facilitate family reunifications of Central American and Mexican unaccompanied children with their family members already living in the USA. Those initiatives should be adequately funded and expanded all along the US–Mexico border.

To deny unaccompanied migrant children their rights both to seek asylum and to family unity is unconscionable, irrespective of what country they are from. Systematic violations of those rights by both the USA and Mexico must stop without further delay.

Courtyard at the shelter México Mi Hogar in Juarez, Chihuahua, Mexico. (Amnesty International, March 2020)

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