



## **The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and Endangering the Lives of Children at the U.S. Border**

**December 21, 2018**

### **Background**

Kids in Need of Defense (KIND) visited Tijuana, Mexico to learn about the experiences of unaccompanied children living in the refugee camp that has been set up along the border. We spoke with children living in the formal camp set up by the Mexican government, children living on the streets in the informal camps along the border wall, and children living in private and state-run shelters. KIND staff met with both U.S. and Mexican immigration officials, staff from the Mexican children protection agency (DIF) as well as representatives from international organizations serving the children trapped in Tijuana. Finally, KIND was also able to interview volunteers from U.S and Mexican nongovernmental organizations who are providing safe shelter and legal information to these children.

### **Acknowledgments**

This report was written by Jennifer Podkul, Senior Director of Policy and Advocacy, with contributions by Lisa Frydman, Vice President of Regional Policy and Initiatives and Maria Odom, Vice President of Legal Services, and edited by Megan McKenna, Senior Director of Communications and Public Engagement. KIND would like to thank Dr. Alan Shapiro MD, FAAP, member, American Academy of Pediatrics Immigrant Health Special Interest Group, for his expertise during the mission to Tijuana, and the American Academy of Pediatrics for its partnership and vital work on these issues.

### **Introduction**

Kids in Need of Defense (KIND) visited the formal and informal refugee camps and shelters in Tijuana, Mexico during the week of December 12, 2018 to look at the conditions that unaccompanied children are facing and their ability to access U.S. protection. We found children living in squalid conditions, in grave danger, fearful, and suffering greatly while waiting to be allowed to present at the port of entry. We learned that unaccompanied children are systematically being prevented from applying for protection in the United States, a significant violation of U.S. and international law.

KIND saw what has now become a classic refugee situation – but lacking significant protections that are a minimum in most refugee camps around the world. Children are languishing in dangerous and unsanitary makeshift camps. There is no running water and in some cases, irregular access to food. We saw children who had become sick from living outside in cold and wet conditions for weeks and needing medical care – including a toddler who suffered a seizure. We saw a child scraping the remains of a can of formula for more, hungry, and crying when her mother said there was no more food.

We learned of a girl who was selling her body every night in order to provide food for her 13-year-old sister. We learned of people exploiting children by offering false promises of safe shelter and subjecting children to abuse and exploitation after they were able to convince the children to go with them. We found many children were too scared to accept assistance from anyone since they did not know who to trust.

All this suffering, abuse, and exploitation is happening in camps that are only steps away from, and in the shadow of, the U.S. border wall.

Beyond the physical conditions, we found that the U.S. government was not allowing the very few unaccompanied children who were able to reach the U.S. border to apply for asylum and turning them back to Mexico, a violation of U.S. and international law. The Mexican government for its part was blocking unaccompanied children from reaching the border, sending the children back to the streets or turning them over to Mexican child welfare officials, who detained them and offered them only two options – apply for asylum in Mexico or be sent back to their home country. Mexican officials were not offering the children their third legal option – seeking U.S. protection, a grave violation of these children’s rights.

### **No Official Protection Process**

The only way adults and children with families at the U.S. border can apply for U.S protection is through an unlawful practice known as “metering,” in which they are being told by Mexican government and other officials to put themselves on an unofficial list and wait until they are called to ask for asylum. The list is not officially being kept or regulated by government or other officials; we found that the migrants are managing it themselves.

U.S. and Mexican immigration officials claim no responsibility for the list. However, Mexican immigration officials liaise with U.S. officials each day to learn how many asylum seekers the U.S. will process that day and convey that information to the migrant managers of the list. KIND observed Mexican immigration officials tell an adult Honduran asylum seeker who presented at the San Ysidro port of entry that the United States was “full” and that he had to put his name on a waitlist.

U.S. officials are validating the unlawful metering system by communicating daily with Mexican immigration officials about how many people from the list can present themselves each day.

### **Unaccompanied Children Blocked from U.S. Border**

KIND learned that unaccompanied children are not even able to put themselves on the list – both U.S. and Mexican officials are telling them that they are not eligible to be on it. The children are being told – erroneously – by Mexican officials and others that they are not allowed to ask for protection in the United States and that their only option is to ask for asylum in Mexico or to return to their home country. They are not telling children of their third legal option - to apply for protection in the United States. Both Mexican immigration officials and Mexican child welfare officials confirmed that they are telling children this.

Unaccompanied children are being prevented by Mexican officials from even reaching the U.S. border, another egregious legal violation. While attempting to comply with the Trump Administration’s demand that asylum seekers present themselves at ports of entry,

unaccompanied children are being physically blocked by both Mexican officials and U.S. Customs and Border Protection (CBP) officials from presenting themselves at the U.S. border.

Directly in front of the gate that CBP has designated as the port in which asylum claims will be processed, Mexican private security guards and Mexican immigration officials stop any child they believe is unaccompanied. They inform these children that they are not allowed to pass to present themselves to U.S. officials. Children may be turned back to the streets of Tijuana or held until Mexican officials can bring them to the custody of Mexican child welfare agency, DIF.<sup>1</sup> Some children with whom we met said that they were forced to wait for hours until the DIF representative could come to get them, and others reported being told incorrectly by Mexican immigration officials that the United States no longer accepts asylum seekers from Central America.

Mexican immigration officials confirmed this policy. They told KIND that when they detect an unaccompanied child seeking to enter the port of entry they stop them from entering and refer them to Mexican child welfare officials. They said that according to Mexican protocol, these children would be prevented from accessing their legal right to ask the United States for protection. This is a violation of their basic rights as migrants and their rights as potential refugees.

Although it is unclear if U.S. officials are specifically telling Mexican child welfare officials to not allow children to ask for protection in the United States., U.S. officials have been put on notice that this is occurring and they have done nothing to correct this misinformation.

KIND met many children who believed they had to hide from the Mexican child welfare authorities to avoid detention and deportation. DIF's actions are having the perverse effect of causing children to hide from them – the officials who are supposedly there to protect them. KIND met an 11-year-old boy who had attached himself to unrelated adults so he would not be detected as unaccompanied and then deported to his country. This spontaneous creation of “families” can cause children to be vulnerable to further abuse and exploitation.

### **United States is Violating Domestic U.S. and International Laws**

Despite the blockades, several unaccompanied children with whom KIND spoke managed to reach U.S. territory to request protection. They were told by U.S. officials that they were not allowed to ask for protection in the United States. This response by U.S. border officials is false and violates the Trafficking Victims Protection Reauthorization Act (TVPRA) that Congress enacted a decade ago to specifically protect this vulnerable population and ensure their access to U.S. territory. U.S. officials are violating the TVPRA each time they stop a child from entering the country and call Mexican officials to take the child back into Mexican custody.

Children have a right to tell their story to an immigration judge to ensure they are not sent back to harm. This response by U.S. officials also violates U.S. asylum law and the 1951 Convention Relating to the Status of Refugees to which the United States is a party. The U.S. is also violating its own laws by expecting Mexican officials to support the metering system.

In one case, two Mexican children reported that they told U.S. officials that they were too scared to return to Mexico. Instead of transferring these children to the custody of the Office of Refugee

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<sup>1</sup>DIF - [Desarrollo Integral de la Familia](#)

Resettlement (ORR) for screening as the TVPRA requires, the officials ordered the children to sign a form indicating that they had no fear of return. The children felt they had no choice but to sign the forms, and they were sent back to Mexico. Unsafe in Mexico and turned away from the U.S., the children are now living in a shelter on the border trying to figure out what to do next since it is not safe for them to return to their home countries.

KIND also met children who told us that they had tried to present themselves to border agents between official ports of entry, only to be shot at with rubber bullets or turned around by U.S. agents from whom they sought protection.

Excluded from the waiting list used by adults to access the port of entry, and unable to access the port themselves, many children who do not feel safe remaining in Mexico or returning to their country of origin are left considering whether or not they should try to turn themselves in to Border Patrol agents between a formal port of entry. The children who KIND interviewed fully understood the risks of trying to enter this way, but many felt they were left with no choice and that this was their only option to access safety.

### **Protection Gauntlet – Lack of True Information**

For unaccompanied children living in the camps or shelters, access to information about their rights and options depends largely on those with whom they happen to come into contact. There is no centralized system for ensuring children receive information about all their rights, including the right to ask for protection in the United States. They are gathering information on an ad hoc basis from other people living in the camps, from NGOs providing know your rights presentations, from the International Organization for Migration (IOM), which is offering assistance to those who want to return to their country of origin, from DIF, or the Mexican asylum agency (COMAR).<sup>2</sup>

The information provided to children and the accuracy of that information varies widely. A significant amount of misinformation about the U.S. and Mexican protection frameworks and the rights available under those laws is being shared.

We learned that none of the agencies involved in dealing with the children – DIF, COMAR, or IOM – ensure that children receive information about seeking protection in the United States.

### **Unaccompanied Children in Mexican Custody**

The Mexican asylum system is still in a nascent stage. Mexico is currently unable to process all of the asylum claims it has received this year,<sup>3</sup> and it is still developing appropriate protocols for assessing unaccompanied children's cases.

In addition, many child migrants do not feel safe in Mexico. Only a very small number of unaccompanied children of the many thousands who cross into Mexico each year seek asylum there because they fear staying in Mexico and/or they have family in the United States to care

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<sup>2</sup> Comisión Mexicana de Ayuda a Refugiados

<sup>3</sup> [https://www.gob.mx/cms/uploads/attachment/file/413017/COMAR\\_2018.pdf](https://www.gob.mx/cms/uploads/attachment/file/413017/COMAR_2018.pdf)

for them. In 2017, 259 unaccompanied children applied for asylum in Mexico;<sup>4</sup> from January – August 2018, 217 children applied.<sup>5</sup>

Mexican law dictates that DIF conduct a “Best Interest Determination” (BID) for any migrant child before deciding on a course of action in their case to figure out the best and safest option for these children. DIF is conducting limited and flawed BIDs, however, notably not factoring in reunification with close family members who may be best suited to care for the children to ensure their safety and well-being. As mentioned above, many of these children fear staying in Mexico or returning to their home country, but a determination that the U.S. may be safest for them and the best place for them to apply for protection is not part of the BID process. This is a glaring omission. Mexico has ratified the Convention on the Rights of the Child (CRC) yet is violating its provisions on BIDs.<sup>6</sup>

DIF routinely contacts IOM to facilitate the return of children to their countries of origin. IOM also does not provide information to children about the right to seek protection in the United States, but instead facilitates their rapid repatriation.

KIND has learned of children who were at risk of being returned to their countries of origin even before a BID had been performed. KIND met with four Honduran children who were seeking “voluntary assisted return” with assistance from IOM. One child stated that although his mother is in the United States and he planned to seek protection in the U.S., he was taking voluntary return and would return to the U.S. with a smuggler as quickly as possible because he said he had no other way of reaching the United States. DIF workers themselves said a child who wishes to seek protection in the United States may have no other choice but to accept removal to their country of origin and subject themselves to the life-threatening journey again.

## **Conclusion**

The governments of the United States and Mexico are violating domestic and international law by blocking unaccompanied children in Tijuana from seeking protection in the United States. These children are trying to follow the laws regulating access to asylum that have been in place for many years – only to find that they are no longer being implemented and that in reality, the U.S. government is actively putting in place policies and procedures that deny them access to U.S. protection.

These alarming violations of U.S. and international law are already claiming the lives of children, as we have seen in the recent murders of the two boys who were seeking protection in the United States.<sup>7</sup> More murders and deaths of the most vulnerable are likely unless the United

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<sup>4</sup>[https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS\\_2013\\_A\\_4TO\\_TRIMESTRE\\_2017.pdf](https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS_2013_A_4TO_TRIMESTRE_2017.pdf)

<sup>5</sup> [https://www.gob.mx/cms/uploads/attachment/file/413017/COMAR\\_2018.pdf](https://www.gob.mx/cms/uploads/attachment/file/413017/COMAR_2018.pdf)

<sup>6</sup> See Article 12 of the Convention on the Rights of the Child requiring due consideration of the child’s wishes in all procedures and decisions affecting the child; Convention on the Rights of the Child General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, at paras 43-45, explaining that assessment of the best interests of the child must include the child’s express views.

<sup>7</sup> <https://www.reuters.com/article/us-usa-immigration-mexico-hondurans/officials-say-two-honduran-migrant-youths-killed-in-mexico-idUSKBN10I07R>

States truly allows unaccompanied children and other vulnerable groups to seek protection – consistent with its domestic and international legal obligations.

## **Recommendations**

### Governments:

The Mexican and U.S. governments must work together to ensure there is a pathway to protection for unaccompanied children. The two governments must eliminate the physical and procedural barriers blocking children from seeking protection. Bilateral negotiations between Mexico and the United States must address children's access to protection as provided for by international as well as Mexican and U.S. law.

The United States must not turn around a child who states or manifests a fear of return to his or her country of origin and must stop violating U.S. law and international conventions. The U.S. must adhere to its obligations under the TVPRA, which include allowing a child to ask for protection from a CBP official and to be admitted to the United States to have their case heard by an immigration judge.

The government of Mexico must also not interfere with a child's right to present their claim to protection at the U.S. border. Mexican officials should never block a child from physically accessing U.S. territory to make a protection claim.

The Mexican child protection law<sup>8</sup> must be implemented in the most protective way possible to ensure safe, durable solutions for children migrating on their own. It must take into account children's wishes, consistent with Mexican obligations under the CRC. Children should not have to choose between receiving services and basic needs like - shelter, medical and mental health attention, and food, while in Mexico, and seeking protection in the United States. They should not have to forego protection and place themselves in heightened danger in order to try to seek protection in the U.S.

Mexico and the United States have a shared responsibility to provide access to care and protection to migrants and refugees. The U.S. government must uphold international and U.S. law, while Mexico must provide care and safety to migrants and refugees on its territory.

The United States and other stakeholders should address the root causes that are driving people to take the life-threatening journey to try to enter the United States by helping El Salvador, Honduras, Guatemala promote child protection and the rule of law and address corruption and the gang and narco-trafficker violence that pushes most children and families to flee.

### Protection Agencies:

Child protection entities, both those working domestically in countries of origin as well as international organizations, must ensure that children are provided complete and accurate information about their legal options along the journey to their final destination. Any entity conducting a BID and making recommendations about a child's placement must consider all of the child's legal options and consider reunification with appropriate family members who are

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<sup>8</sup> [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA\\_200618.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA_200618.pdf)

able to care for the child, regardless of the country in which the family members are living, and must give significant weight to the child's wishes and interests. International organizations and domestic non-governmental organizations should work together to develop materials to inform government partners working to ensure child protection about available legal options.

These children are facing complex legal systems and choices and should be given access to lawyers to help them navigate these systems and access protections. Legal organizations should also develop child-friendly materials that can be safely accessed by children living in camps and on the street to notify children of their rights in countries of transit and destination.

**END**

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