



Blocked From Safety: Unaccompanied Children along the U.S.-Mexico Border

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Background

Beginning in December 2018, Kids in Need of Defense (KIND) conducted a series of visits to different points along the United States-Mexico border to learn about conditions and challenges experienced by unaccompanied children seeking protection and access to United States ports of entry. Following KIND's initial trip to Tijuana in December 2018, we published [*The Protection Gauntlet*](#), in which we reported concerns that unaccompanied children in Tijuana were being systematically prevented from accessing the San Ysidro port and therefore protection in the United States. This report provides an update to *The Protection Gauntlet* and explains the danger and the challenges that unaccompanied children currently face in Tijuana and other parts of the U.S.-Mexico border.

Acknowledgments

This report was written by Lisa Frydman, Vice President for Regional Policy and Initiatives, Maria Odom, Vice President for Legal Services, Juliann Bildhauer, Senior Director for Legal Training and Technical Assistance, and Rachel Dotson, Senior Director for Gender and Migration Initiatives and edited by Megan McKenna, Senior Director of Communications and Public Engagement and Jennifer Podkul, Senior Director of Policy and Advocacy.

Introduction

KIND visited the U.S.-Mexico border several times from December 2018 – March 2019 to assess the protection needs of unaccompanied children.¹ KIND staff spoke with unaccompanied children living on the streets, in civil society shelters, and in Mexican state or municipal child protection shelters. We also met with Mexican child welfare, immigration, and refugee agency officials and with U.S. immigration officials, staff from civil society shelters, civil society organizations on both sides of the border providing services to unaccompanied children, and international organizations focused on refugee and child protection.

Throughout these border trips, we found children living in unsafe and extremely dangerous conditions, afraid, confused, and with deteriorating mental health. KIND observed that one

¹ KIND traveled to Tijuana three times from December 2018 to February 2019; to Tapachula, Mexico in mid-February; and to the Rio Grande Valley and the Juarez-El Paso border region in mid-March.

child who had been waiting on the Mexican side of the border for months had begun cutting himself, another had stopped eating, a third was suicidal, and a few others suffered from the mumps. A teenage boy told us he could no longer wait in Tijuana and would instead risk crossing the border with a smuggler or on his own. KIND learned of another girl—a survivor of sexual abuse—who had run away from a shelter to cross the border with a smuggler; no one heard from her again. We also learned of a 15-year-old unaccompanied girl staying in a hotel with an adult male, suffering profuse vaginal bleeding and lacking medical care.

KIND met with children in Tijuana who had been waiting months to present at the San Ysidro Port of Entry (POE) to seek U.S. protection, but who were trapped in Tijuana and blocked from accessing the United States. We learned of a group of unaccompanied children being preyed upon by human traffickers in Tijuana after being forced to wait for months to access the POE. In the Rio Grande Valley, we saw children camping out on the international bridge waiting for an opportunity to present themselves at the POE.

Although distinctions exist along different parts of the border, during these visits KIND found an unambiguous pattern of unaccompanied children being prevented by Mexican and/or U.S. officials from reaching the U.S. border to apply for international protection—a violation of their rights under U.S. and international law. We found that U.S. and Mexican government policies and practices prevent unaccompanied children from accessing U.S. ports of entry, drive unaccompanied children to attempt high-risk entries between the ports, trap unaccompanied children in peril on the Mexico side of the border, and lead children to return to danger in their countries of origin.

CBP unlawfully turns away unaccompanied children at U.S. ports of entry

Across multiple ports of entry, unaccompanied children are being turned back by U.S. Customs and Border Protection (CBP) or told to wait in Mexico. Refusing to process an unaccompanied child or turning them back to Mexico violates both U.S. asylum law and the Trafficking Victims Protection Reauthorization Act (TVPRA), as well as international obligations of the United States as a party to the 1967 Protocol Relating to the Status of Refugees.²

Following KIND's visit to Tijuana in December, we shared our concerns with CBP about unaccompanied children being turned away from the San Ysidro POE in violation of the TVPRA. Although in late February, KIND observed some children being able to approach the POE when accompanied by an attorney, KIND interviewed other children in that same time period who had been turned away. KIND staff visited Tijuana, Mexico on April 25 and learned from local and international organizations that unaccompanied children have been able to access the San Ysidro port of entry alone or accompanied by volunteer lawyers and/or advocates,³ confirming KIND's previous findings.

² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx>

³ KIND did not directly observe the port during this trip.

Civil society organizations in El Paso, Texas, and in Reynosa, Mexico, informed KIND of CBP turn-backs of unaccompanied children, including as recently as early April 2019.

When children are turned away from ports of entry, KIND learned it often leaves them no choice but to take serious risks in order to reach the safety of the United States. For example, staff at a civil society shelter in Reynosa told KIND that after some unaccompanied children there were turned back at the POE, out of desperation, some attempted to cross the Rio Grande River to try to enter between ports. Others traveled through cartel-controlled areas to reach ports that they had heard were processing unaccompanied children.

In addition to unlawful turn-backs of children that CBP knows to be unaccompanied, CBP officials inadvertently turn away unaccompanied children they have not identified as children or as unaccompanied. For example, about halfway between Juárez and the El Paso del Norte POE, CBP officials standing on the bridge check for U.S. passports, or for visas or other authorization to enter the United States. CBP agents do not routinely or systematically ask individuals on the bridge or approaching the port their age – running the risk that they may fail to identify unaccompanied children, particularly older teenagers who may easily be mistaken for young adults, and may tell them to wait in Mexico. CBP claims to process unaccompanied children immediately and without delay at ports where adult asylum seekers must register on a waitlist⁴ to apply for asylum. But KIND has heard from civil society organizations in Nogales, as well as along other parts of the border, that unaccompanied children are turned away from ports and told ports are full because CBP does not identify them as unaccompanied children.⁵

Mexican government blocks unaccompanied children from accessing U.S. protection

Mexican officials continue to deny unaccompanied immigrant children access to U.S. ports of entry, in flagrant disregard of the children's rights under Mexican, U.S., and international law. Mexican immigration officials and private security guards prevent children from accessing certain ports of entry, and Mexican child welfare officials refuse to let children in the agency's custody approach U.S. ports of entry.

After KIND's first visit to Tijuana in December 2018, KIND and other civil society and international organizations raised concerns about officials from Mexico's federal immigration

⁴ For more information on the asylum waitlist and the unlawful practice of "metering" occurring at U.S. ports see https://www.humanrightsfirst.org/sites/default/files/BARRIED_AT_THE_BORDER.pdf;

https://supportkind.org/wp-content/uploads/2018/12/Protection-Gauntlet_12-21-18-FINAL.pdf;

⁵ Other harmful and illegal policies, such as the "Migrant Protection Protocols," more commonly referred to as "Remain in Mexico" has led to the return of over 400 asylum seekers from U.S. ports of entry to Mexico to wait there during the pendency of their asylum claims. On April 8, a federal judge issued a preliminary injunction ordering a halt to these returns pending a decision on the merits of the case. See <https://www.aclu.org/legal-document/innovation-law-lab-v-nielsen-order-granting-motion-preliminary-injunction>. Although this policy does not technically apply to unaccompanied children, with each new policy or practice restricting access to U.S. territory to seek international protection, children's safety and rights are jeopardized.

agency (INM) and federal security agency physically blocking unaccompanied children from accessing the San Ysidro port and turning them over to Mexico’s child protection agency (DIF).⁶

When we returned to Tijuana in late February 2019 and throughout the first three weeks of March, neither INM agents nor Mexican security appeared to be stopping unaccompanied children seeking access to the port. On March 21, 2019, however, it was reported that Mexican security officials prevented three unaccompanied children from reaching the port.⁷ Any such interference with a child’s ability to access the port undermines Mexico’s laws on children and obstructs children’s right to seek protection and to have their best interest carefully considered.

Civil society organizations in Reynosa, Mexico, and attorneys working in the Rio Grande Valley of Texas told KIND that INM agents in Reynosa prevent unaccompanied children from approaching the U.S. ports. In other areas, INM officials, including those in INM’s Grupo Beta – or humanitarian assistance unit—also prevent children from reaching U.S. ports, the organizations told KIND.

In Texas’s Rio Grande Valley, we saw children sleeping in tents on the international bridge waiting for a chance to present themselves and ask for protection. As in other places along the border, unaccompanied children were told that they are not able to place themselves on the “wait list” to be allowed to ask for protection.⁸

Mexican officials have prohibited civil society actors from helping unaccompanied children to access the POEs, and Grupo Beta agents restrict access of unaccompanied children to the United States by controlling how many migrants—including unaccompanied children—can sleep on the international bridge in Matamoros. This restricted access to the U.S. is leaving children in incredibly dangerous conditions in Matamoros and gives many of them no choice but to sleep outside and be exposed to the elements for months at a time. A child who was traveling alone explained he had to wait to try to access the port because he was scared to cross the river himself due to the crocodiles in the water.

Children turned away by CBP or blocked by INM or Mexican security agents have no way of accessing ports of entry. They are faced with either crossing between ports – which may lead them into the hands of human traffickers or smugglers—or to ceding their claim for protection in the United States and possibly returning to danger or death.

⁶ <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>

⁷ <https://www.sandiegouniontribune.com/news/story/2019-03-29/unaccompanied-children-stuck-in-tijuana-hoping-to-reach-u-s>

⁸ For more information on unaccompanied children being prohibited from registering for the asylum waitlist see <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>

Children denied access to the United States live in exceedingly dangerous circumstances in Mexican border towns

Unaccompanied children turned back at U.S. POE or waiting in Mexican border towns to access POEs live in high-risk conditions. In border areas like Ciudad Juárez and Tijuana, violence has increased in recent years, including violence targeting migrants.⁹ Unaccompanied children, like the two Honduran teenagers who were tortured and brutally murdered in Tijuana in December 2018, are primary targets.¹⁰

Some children denied access to the United States end up in civil society shelters along the border—which range from shelters licensed to house children to shelters licensed to house adults but not children, as well as unlicensed shelters. With few safe and appropriate shelters available, unaccompanied children find themselves at risk of harm in shelters, on the streets, or taken in by strangers, and are easy prey for human traffickers and their persecutors. KIND planned to meet with a girl at a shelter in Tijuana who had learned that a gang member who tried to force her to be his girlfriend was on his way to Tijuana to find her. The shelter where she was staying had no ability to protect her. Before we were able to meet her, she ran away from the shelter to try to go to the United States on her own.

KIND staff met three unaccompanied teenage girls (two 15-year-olds and one 13-year-old) who were staying at an unlicensed shelter in a remote location near Tijuana that housed both adults and unaccompanied children together. One of the 15-year-olds was over four months pregnant and had been rushed to the hospital the night before because of dizziness and symptoms of dehydration. At the shelter, the girls were exposed to narcotics and inappropriate conditions, and media was granted free access to them without consideration of their privacy, safety, or protection needs.

Mexico prevents children in child protective custody from seeking U.S. protection

Unaccompanied children who end up in DIF custody are prevented from seeking protection in the United States. While Mexican law¹¹ requires DIF, through the offices of the Child Protection Authority,¹² to conduct a best interest determination (BID) for every unaccompanied child prior to any determination to send a child back to his or her country of origin. In reality, very few unaccompanied children in Mexico receive a BID.¹³

⁹ <https://www.24-horas.mx/2018/10/08/regresa-la-violencia-a-ciudad-juarez/>;

<https://www.jornada.com.mx/ultimas/2018/10/25/en-tijuana-uno-de-cada-10-homicidios-en-el-pais-7122.html>

¹⁰ <https://www.theguardian.com/world/2019/feb/16/tijuana-migrant-child-murders-mexico-us-asylum>

¹¹ Mexico's General Law on Rights of Children and Adolescents (Ley General de Derechos de Niños, Niñas, y Adolescentes, LDGNNNA).

¹² Child Protection Authority or the Procuraduría de Protección de Niños, Niñas, y Adolescentes.

¹³ In no small part failure of the Child Protection Authority to conduct BIDs for unaccompanied children stems from lack of resources – lack of sufficient personnel, training, and time to perform in depth BIDs. The United Nations Children's Agency, UNICEF, studied the costs and budget of the offices of the Child Protection Authority across Mexico and determined that each office receives somewhere between 7% to 27% of the funds they need to meaningfully fulfill their duties. <http://sitios.dif.gob.mx/pdmf/wp-content/uploads/2018/12/InformeCosteo.pdf> at p. 41-48.

The federal Child Protection Authority has made important advances to comply with its obligation to guarantee the rights and best interests of unaccompanied children and has taken the position, consistent with Mexican law, that unaccompanied children must receive a BID that considers the United States as an option for the child. Recently, the federal Child Protection Authority accompanied to U.S. POEs some children in DIF custody for whom seeking protection in the United States was determined to be in their best interest, ensuring a safe approach to a port of entry for these children and compliance with international and Mexican law.

However, state and municipal offices of the Child Protection Authority—the offices that have custody over, and determine the fate of, the majority of unaccompanied children taken in by DIF—have been reluctant to fulfill their mandate on unaccompanied children. These state and municipal offices do not inform children of their right to seek protection in the United States and do not permit children in DIF custody to apply for U.S. protection.

The offices of the Child Protection Authority in Tijuana and in Tapachula told KIND that when they conduct a BID for an unaccompanied child they only consider two options—stay in Mexico or return to country of origin. They do not consider seeking protection in the United States, regardless of the child’s circumstances—for example, whether it is unsafe for them to stay in Mexico, whether they have family in the United States—or the child’s wishes. By failing to take the child’s desires into consideration and by performing BIDs that do not actually meaningfully consider the child’s best interests, DIF-conducted BIDs infringe on children’s rights under both Mexican law and the international Convention on the Rights of the Child.¹⁴

However, consistent with Mexican and international law, the office of the Child Protection Authority in Juárez informed KIND that they conduct a BID for every unaccompanied child in DIF custody and consider the child’s wishes, including to seek protection in the United States. Although they sometimes find that going to the United States is in a child’s best interest, they interpret Mexican law, which does not specifically authorize or require them to accompany children to the U.S. POE, as a prohibition to doing so. They also do not permit children to approach the U.S. POE on their own because they believe it is too dangerous for children to go by themselves.

This leads to the perverse result that Mexico returns children to their country of origin even when Mexico knows that doing so is contrary to their best interest, and may involve return to danger. KIND learned of one teenager from El Salvador who had fled gang violence and made his way to Juárez, where he was taken into DIF custody. Although the Child Protection Authority had determined that it was in his best interest to seek asylum in the United States, he was sent back to the life-threatening danger he had escaped. The Child Protection Authority would neither accompany him nor permit him to approach the POE on his own. Advocates in Juárez

¹⁴ 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.

worked to change the position of the Child Protection Authority, but as the process dragged out, the child ultimately requested return to El Salvador.

Mexico's weak asylum and child protection systems fail to offer viable protection

While Mexico has enacted progressive laws related to refugee status and child welfare, in reality Mexico's asylum and child protection systems remain weak and fail to provide adequate protection to migrant and refugee children. The majority of unaccompanied children taken into INM or DIF custody in Mexico are quickly repatriated to their countries of origin, and contrary to Mexican law—in many cases prior to receiving a BID, and in some cases without being informed of the right to seek asylum in Mexico.

We met with unaccompanied adolescent girls in Tijuana who painfully recounted their experience in DIF custody during their first attempt to reach the United States. The girls—who had fled gang violence in El Salvador—shared that once in DIF custody they were rapidly deported, even though they had articulated their fear of return.

Migration and child protection officials do not spend sufficient time with children to identify protection needs and frequently discourage children from seeking refugee status, telling children they will face long-term detention if they seek protection. Children who might consider seeking asylum in Mexico are dissuaded by the prospect of long-term detention and the lack of appropriate shelter options, especially for children who require long-term shelter care.¹⁵ Some children plan to return to their countries and attempt to migrate again after arrival, rather than remain in detention in Mexico.¹⁶ KIND spoke with Honduran children in Tijuana who, for example, were already planning their return to the United States as Mexico was preparing their paperwork for “voluntary assisted return.”

Children who apply for refugee status in Mexico despite the barriers described above face an asylum system that lacks the capacity to adequately process their cases. Mexico has seen an over 2,000 percent increase in asylum applications since 2013¹⁷ and Mexico's refugee agency (COMAR) does not have the necessary resources or personnel¹⁸ to process these applications. The weaknesses in Mexico's child protection and asylum systems result in the denial of applications of children with legitimate protection needs.¹⁹ In Juárez, for example, of the ten asylum applications submitted by unaccompanied children since 2017, all have been denied by COMAR.

¹⁵ Aside from one open-door DIF shelter in Tabasco that accepts only a limited number of unaccompanied children, DIF shelters are locked and the majority of unaccompanied children in those shelters receive limited education and recreation. DIF transfers a low number of unaccompanied children seeking asylum to unlocked shelters run by civil society organizations in Mexico City and Comitán. Children fare much better in these unlocked shelters.

¹⁶ Childhood Cut Short, p. 31.

¹⁷ COMAR website, <https://www.gob.mx/comar>

¹⁸ In Chiapas, the Mexican state with by far the highest number of asylum applications in Mexico, as of February 2019 the COMAR office had only 9 officials to hear cases and only two who are qualified to interview child asylum applicants.

¹⁹ Childhood Cut Short p32.

These obstacles prevent the vast majority of children with protection needs from seeking and receiving asylum in Mexico. In 2017, the most recent year for which full statistics are available, less than 5 percent of the unaccompanied children detained in Mexico applied for asylum there, and less than .5 percent were granted asylum.²⁰

Conclusion

A serious failure of child protection is occurring along the U.S. southern border. Children fleeing violence and death threats in their countries and seeking protection in the United States are being blocked or denied access to U.S. territory by the U.S. and Mexican governments. These children are trying to follow the laws regulating access to asylum that have been in place for many years. They reach the border only to find that the laws are no longer being followed and that in reality, the U.S. government is actively putting in place policies and procedures that deny them access to U.S. protection and trap them in Mexican border towns where human trafficking, sexual violence, and murder proliferate.

These alarming violations of U.S. and international law endanger the health and safety of children. Children denied the ability to ask for protection in the United States and summarily repatriated to their country of origin run the risk of return to danger, of undertaking the dangerous journey again, and of falling prey to human traffickers. Mexican authorities fail to ensure compliance of their own child protection and immigration laws when their actions deny children the ability to ask for protection.

Recommendations

Mexico and the United States have a shared responsibility to provide access to care and protection to migrants and refugees. **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. Mexico must provide care and safety to migrants and refugees on its territory, as well as critically needed mental health and medical services.

The United States must not turn around a child who states or manifests a fear of return to their country of origin. 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 adjudicated by immigration officials. To ensure that unaccompanied children do not inadvertently get turned away, CBP officials should ask every individual who approaches

²⁰ INM Statistical Bulletin 2017,

http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros alojados_y_devueltos_2017; COMAR Statistics 2013- 2017,

https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS_2013_A_4TO_TRIMESTRE_2017.pdf

the port of entry to seek asylum their age. CBP should ask those claiming to be under the age of 18 CBP if they are unaccompanied.

The United States should immediately end all efforts to deny asylum seekers access to the United States including the practice of metering, which violates U.S. asylum law and international obligations under the Refugee Convention and Protocol, and leave asylum seekers in grave danger along the Mexican border. In addition to harming adults, these efforts make it more difficult for unaccompanied children to access protection at the ports of entry.

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

The Mexican General Law on the Rights of Children and Adolescents must be implemented in the most protective way possible to ensure safe, durable solutions for children migrating on their own. Consistent with the law, Mexican immigration officials, including Grupo Beta, should not take action to undermine children's rights or best interests. As required under this law unaccompanied children in Mexican custody should receive a best interest determination (BID), and no unaccompanied child should be repatriated prior to completion of a BID. Consistent with Mexican obligations under the Convention on the Rights of the Child, BIDs must take into account children's wishes and potential reunification with appropriate family members who can care for the child, regardless of the country in which the family members are living. BIDs should consider all of the child's legal options, including the possibility of the child seeking protection in the United States. Children should not have to choose between receiving services and help with their basic needs—including shelter, medical and mental health attention, and food—while in Mexico, and seeking protection in the United States.

Mexico's federal office of the Child Protection Authority should issue guidance clarifying the mandate of state and municipal offices of the Child Protection Authority to defend and restore unaccompanied children's rights and to issue restitution orders that provide for the child's best interest. The guidance should clarify that when seeking protection in the United States is determined to be in the best interest of a child, an appropriate restitution order should include measures that ensure the child's access to a U.S. port of entry – including, for example, through accompaniment by the Child Protection Authority.

The Mexican government should increase the budget for COMAR and should continue to build capacity of its asylum system by hiring more individuals trained to adjudicate refugee cases, increasing COMAR's presence throughout the country, and streamlining processes and data collection to reduce the time it takes from filing an application, to an interview, and to decision.

The federal government and state governments of Mexico should increase the budgets for federal- and state- level DIFs and federal- and state-level offices of the Child Protection Authority to ensure they have the staffing and resources needed to fulfill their broad mandate

under the General Law on the Rights of Children and Adolescents to protect, defend, and restore children's rights. Mexico's federal government should provide additional funds to states with relatively low levels of resources and significant numbers of migrant children, including Chiapas, Veracruz, and Tabasco, to strengthen protection for migrant children in those states.

The United States and other stakeholders should address the root causes that are driving people to take the life-threatening journey to the United States by helping El Salvador, Honduras, and Guatemala promote child protection, education, and the rule of law. They must also address corruption, gang and narco-trafficker violence, and sexual and gender-based violence that pushes most children and families to flee. A long-term commitment to foreign assistance to support these efforts is key.

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