

# Maritime Interdictions of Unaccompanied Children

Since the July 2021 assassination of President Jovenel Moïse, Haiti has experienced a rapidly deteriorating security, human rights, and humanitarian situation. In November 2022 the UN Refugee Agency (UNHCR) called for a moratorium on forced returns to Haiti.<sup>1</sup> Since then, the situation has become more chaotic, including multiple gang attacks over the past month across the capital of Port-au-Prince targeting prisons, airports, and law enforcement. Catherine Russell, the head of UNICEF, stated that as many as three million children in Haiti are in need of humanitarian assistance as of April 2024.<sup>2</sup> The increasing levels of political instability, gang violence, trafficking, hunger, and suffering in Haiti have created a humanitarian crisis – displacing thousands of Haitians and causing many to make a dangerous maritime journey in search of safety and protection in the United States. Those who make the journey often do so in overcrowded vessels that are incapable of withstanding heavy seas – often resulting in loss of life before ever reaching safety.

Despite the risk, maritime migration in the region is on the rise. Since the summer of 2021, the U.S. Coast Guard has interdicted<sup>3</sup> more than 27,000 people attempting to migrate by sea, the most of any similar period in nearly three decades.<sup>4</sup> This includes women, men, and children mostly from Cuba and Haiti. The number of unaccompanied children moving by sea is also on the rise. Numbers of unaccompanied children encountered by the Coast Guard have increased approximately tenfold over the past two years, yet between July 2021 and early September 2023, of the nearly 500 unaccompanied children interdicted by the Coast Guard, only five were allowed to enter the United States to seek care and protection.<sup>5</sup> The rest were delivered back to the countries they left, and it is often unclear where they go once they return. Last year, the U.S. government also enacted rules disqualifying Haitians and Cubans interdicted at sea—including unaccompanied children—from accessing the dedicated Parole Process for Cubans, Haitians, Nicaraguans, and Venezuelans (CHVN Parole).<sup>6</sup>

While the current crisis in Haiti has placed much attention on the children fleeing, it is important to use this moment to ensure the safety and well-being of all children migrating by sea, irrespective of their nationality. Concerted efforts must be made to address the unique vulnerabilities children at sea face and provide them with the necessary support and protection.

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1 UNHCR, UNHCR Calls on States to Refrain from Forced Returns of Haitians, November 3, 2022, [www.unhcr.org/news/news-releases/unhcr-calls-states-refrain-forced-returns-haitians](https://www.unhcr.org/news/news-releases/unhcr-calls-states-refrain-forced-returns-haitians). See also, UNHCR, International Protection Considerations with Regard to People Fleeing Haiti, March 20, 2024.

2 Vanessa Buschschlüter, “Haiti situation ‘catastrophic’ and growing worse, UN warns,” April 23, 2024. BBC News. <https://www.bbc.com/news/world-latin-america-68880579>

3 The U.S. Coast Guard is tasked with enforcing U.S. immigration laws at sea, vested in Title 14 USC 89 and Title 14 USC 2 – which authorize the Coast Guard to make “inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction,” and “engage in maritime air surveillance or interdiction to enforce or assist in the enforcement of the laws of the United States.” See, <https://uscode.house.gov/view.xhtml?req=granuleid:USC-2000-title14-section89&num=0&edition=2000> and <https://www.govinfo.gov/content/pkg/US-CODE-2017-title14/html/USCODE-2017-title14-partI-chap1-sec2.htm>.

4 Seth Freed Wessler, “When the Coast Guard Intercepts Unaccompanied Kids,” December 7, 2023. ProPublica. <https://www.propublica.org/article/when-the-coast-guard-intercepts-unaccompanied-kids>.

5 Seth Freed Wessler, “The Border Where Different Rules Apply,” December 6, 2023. New York Times. <https://www.nytimes.com/2023/12/06/magazine/us-coast-guard-children-detained.html>.

6 See American Immigration Council, “The Biden Administration’s Humanitarian Parole Program for Cubans, Haitians, Nicaraguans, and Venezuelans: An Overview,” October 31, 2023. <https://www.americanimmigrationcouncil.org/research/biden-administration%E2%80%99s-humanitarian-parole-program-cubans-haitians-nicaraguans-and>.

## KIND's recommendations for ensuring that children interdicted at sea are protected from the first moment of encounter:

- **Children should be entitled to both procedural and substantive legal protections wherever the government exercises jurisdiction or effective control of a child.** This includes within the territorial sea and contiguous zone as well as on the high seas wherever the U.S. government has authority to enforce its national immigration laws.
- **Governments should develop a systematic policy on the collection and public dissemination of qualitative and quantitative data on children in the context of migration in order to inform a comprehensive policy aimed at child protection.** Such information should be available for all stakeholders, including children, in full respect of privacy rights and data protection standards.
- **Children should be promptly identified during all interdiction operations or other migration-control measures undertaken by the U.S. government, and anyone claiming to be a child should be treated as such.** If age is disputed, children should have access to a free legal representative and interpreter throughout a formal age determination procedure that is conducted in a safe and child-friendly environment. Once identified, children should promptly be referred to child protection authorities and other relevant services and treated as outlined in the Trafficking Victims Protection Reauthorization Act (TVPRA).
- **The U.S. government should adopt a fundamentally rights-based approach that recognizes children's need for protection and ensures appropriate screening and care while in federal custody.** Licensed child welfare professionals, who are trained and equipped to identify a child's psychological, physical, and emotional needs, should play a central role in the identification, screening, and care of children in custody.
- **The standards set forth by the Flores Settlement Agreement should be applied to all children in U.S. federal custody – including when interdicted at sea.** The Flores Settlement Agreement, consistent with international and domestic child welfare law, places limits on the amount of time the government can detain a child, the conditions under which they can be detained, and favors the release of children to their caregivers without delay.
- **No child should be repatriated to their country of origin unless repatriation is in their best interests.** At a minimum, children should not be returned without adequate screening and an opportunity to apply for humanitarian protection. KIND's [Child Migrant Return and Reintegration Program](#) works closely with governments in Guatemala and Honduras to model a reception system that provides returning children with the necessary legal, case management, psychosocial, and educational supports. The ongoing crisis in Haiti has drastically weakened the country's child protection system administered by L'Institut du Bien-Etre Social et de Recherches (IBESR). It is KIND's position that safe and dignified return and sustainable reintegration in Haiti is not possible given the current situation.