

Children at the Border:

The Screening, Protection and Repatriation
of Unaccompanied Mexican Minors



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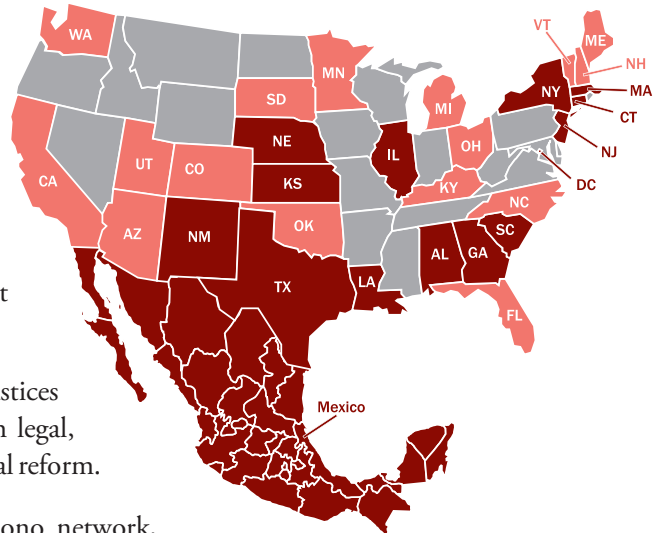
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Glossary of Acronyms and Terms

Within the United States

- DHS** The Department of Homeland Security. Within DHS:
- CBP** Customs and Border Protection has primary responsibility for protecting the borders and ports of the U.S. Within CBP:
 - OBP** The Office of Border Patrol (Border Patrol or BP) guards the borders of the U.S. to prevent undocumented aliens, smugglers and drugs and other contraband from entering the U.S.; and
 - OFO** The Office of Field Operations processes the people, goods and conveyances entering and leaving the U.S. at U.S. ports along the land borders and seaports of the U.S.
 - ICE** Immigration and Customs Enforcement has primary responsibility for immigration enforcement within the interior of the U.S., and for the removal of deportable or excludable adults and minors from the U.S.
 - USCIS** U.S. Citizenship and Immigration Services has primary responsibility for processing immigrant visa petitions, naturalization petitions and asylum applications.
- HHS** The Department of Health and Human Services. HHS takes custody of unaccompanied alien minors who are provisionally admitted into the U.S. Within HHS:
- ORR** The Office of Refugee Resettlement provides people in need with critical resources to aid in integration into the United States. Within ORR:
 - DUCS** The Division of Unaccompanied Children's Services supervises privately run shelters that provide for the care and least restrictive placement of unaccompanied alien children.
- DOJ** The Department of Justice. Within DOJ:
- EOIR** The Executive Office of Immigration Review is responsible for adjudicating immigration cases and interpreting U.S. immigration laws by conducting immigration court proceedings, appellate reviews and administrative hearings.
- DOS** The Department of State is responsible for entering into agreements with foreign countries to establish repatriation and reintegration processes.
- TVPRA** The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, among other things, mandates screening of Mexican children before they are repatriated to identify victims or potential victims of trafficking or persecution, and children who do not consent to be returned to Mexico.
- UAC** Unaccompanied Alien Child, also referred to as a UAM (Unaccompanied Alien Minor): a non-citizen who has no lawful immigration status in the United States, has not attained 18 years of age, and with respect to whom there is no parent or legal guardian in the United States available to provide care and legal custody.

Within Mexico

DIF El Sistema Nacional para el Desarrollo Integral de la Familia (The National Agency for Family Development). DIF is the government social welfare network which, at the municipal and state level within Mexico, has primary responsibility for the temporary custody and family reunification of repatriated unaccompanied minors. The activities of the state and municipal DIF agencies are supported and, to a limited degree, coordinated by the national DIF.

INM Instituto Nacional de Migración. INM is Mexico's primary agency with responsibility for immigration into Mexico and the migration of unaccompanied minors across Mexico. Within INM:

OPIs Oficiales de Protección a la Infancia are trained to receive and interact with repatriated minors.

SRE Secretaría de Relaciones Exteriores. SRE is the Mexican Ministry of Foreign Affairs. Among other things, SRE has oversight responsibility for the various Mexican Consulates on the U.S. side of the Mexico-U.S. border and, like DIF and INM, collects statistics on the unaccompanied minors repatriated to Mexico.

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INTRODUCTION

Every year tens of thousands of Mexican minors, many of whom are vulnerable to trafficking or other forms of abuse, make the perilous journey north and attempt to cross the border into the United States. Until late 2008, the United States, as a matter of policy and practice, turned around any unaccompanied Mexican children caught at or near the border with little or no evaluation of the risks they faced upon return to Mexico. In December 2008, Congress changed this “revolving door” policy. The William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (the TVPRA) mandated that the Department of Homeland Security (DHS) interview every unaccompanied Mexican minor in order to make the determination that the child (i) is not a potential victim of trafficking, (ii) has no possible claim to asylum, and (iii) can (and does) voluntarily agree to go back home. Unless all these questions are answered in the affirmative, the child is not to be immediately returned to Mexico, but rather must remain to be evaluated for a claim to protection in the United States.

The TVPRA further provided that the United States ensure safe repatriation of all minors, including unaccompanied Mexican minors, primarily through repatriation programs and bilateral agreements to be negotiated by the Department of State (DOS). The TVPRA also set standards for the care and custody of unaccompanied minors in the United States, required that federal agencies create programs to prevent the exploitation of unaccompanied minors, and provided more child-friendly procedures for child asylum claims.

Appleseed and Appleseed México (together, “Appleseed”) undertook this investigation to determine the extent to which the TVPRA has improved the screening and protection of unaccompanied Mexican minors at the border and after repatriation. More than two years after its passage, the promise of the TVPRA remains unfulfilled. While U.S. policy has changed, at the border the “revolving door” continues to be the practice. Moreover, U.S. attention to unaccompanied children has focused on children from Central America and elsewhere, when the vast majority of unaccompanied children crossing U.S. borders are Mexican.

In the United States, TVPRA screening is not conducted either in a manner or in environments likely to elicit information that would indicate whether the minor is a potential victim of trafficking or abuse, and whether the child can and does voluntarily agree to return to Mexico. This failure predictably follows DHS's decision to assign TVPRA screening duties to its law enforcement branch, Customs and Border Protection (CBP), a force intended to repel external threats to the United States and, not surprisingly, without any child welfare expertise. The minimal training and tools provided to CBP officers have done little to equip them to satisfy the Congressional mandates of the TVPRA. As a result, the expected post-TVPRA influx of unaccompanied Mexican minors into the U.S. system designed to evaluate their rights to protection has not materialized, leaving many of these children vulnerable to trafficking and other forms of exploitation, including by criminal gangs and drug cartels.

On the Mexican side of the border, the repatriation process from the United States to Mexico moves quickly, yet the social service system does not ensure that minors are ultimately sent to safe and secure environments. While Mexican authorities have established a system of shelters staffed by child welfare workers, that system is under-resourced and its focus is on rapid screening and family reunification, with little attention paid to the threats posed to minors either in their home settings or by gang activity. U.S. and Mexican officials also do not coordinate well to identify and address the problems posed by minors who attempt to cross the border repeatedly, face serious problems, or are being used to smuggle other persons or drugs across the border.

In light of these findings, Appleseed recommends a number of concrete steps the United States should take to improve how it treats unaccompanied Mexican minors at the border, and to come into compliance with the letter and spirit of the TVPRA. We also offer recommendations to the Mexican government designed to enhance its ability to deal with the root causes of underage migration, and to both governments to improve the repatriation process along their lengthy shared border.

Methodology

This report follows months of research and a comprehensive evaluation of the current detention and repatriation system as experienced by unaccompanied Mexican minors crossing the U.S.-Mexico border. The report draws on the pro bono contributions of a team of 32 lawyers and legal assistants at Akin Gump Strauss Hauer & Feld, DLA Piper, Mayer Brown, and Jáuregui, Navarrete y Nader.

In 2009 and 2010, members of the team conducted site visits at 14 different locations in the United States and Mexico. The locations were selected because they were major crossing points that presented somewhat different variations on the conditions encountered by minors making the trip across. In Texas, our team visited Brownsville, Harlingen, McAllen, and Hidalgo; in Arizona, we visited Nogales, Tucson and Phoenix; and in California, we visited Otay Mesa, Chula Vista, and San Diego. On the Mexican side of the border, we visited Matamoros, Reynosa, Nogales, and Tijuana.

We interviewed over 130 unaccompanied minors in the 14 cities we visited, some individually and some in group settings. Of these minors, 18 were Mexican children who had been repatriated to Mexico and 5 were Mexican minors in CBP custody; the

balance, a majority of whom were not Mexican, were in shelters run by the Division of Unaccompanied Children's Services (DUCS) within the Office of Refugee Resettlement (ORR). During the course of our visits, we also met with more than 40 officials at the local CBP Ports of Entry, Customs and Border Patrol Field Offices, DUCS facilities, Instituto Nacional de Migración (INM) offices, DIF shelters, YMCA shelters, and Mexican Consulates. On the U.S. side, the officials we interviewed in the course of our field work included employees of DHS, DOS, CBP and ORR/DUCS; on the Mexico side, we interviewed Consuls General and other consular employees of the Mexican Ministry of Foreign Affairs (SRE), state and municipal officials from Mexico's National Agency for Family Development (DIF), and psychologists, social workers, lawyers and other staff employees of both the DIF and the YMCA shelters we visited.

Prior to and during the course of our field visits, we consulted with local legal service providers who regularly represent immigrant children in immigration proceedings. We also interviewed recognized policy experts in the field, including those mentioned in the Acknowledgements above. Our work was informed by these discussions, as well as by our review of much of the pertinent literature, including reports issued by the Women's Refugee Commission,¹ the Center for Public Policy Priorities,² and the Congressional Research Service,³ among numerous others.⁴ Additionally, the team reviewed relevant United States anti-trafficking legislation,⁵ the settlement agreements in *Flores v. Reno*⁶ and *In re Hutto*,⁷ and the repatriation arrangements in place between local governments on both sides of the United States/Mexico border. Further, we reviewed pertinent Mexican studies regarding the reasons why minors seek to enter the United States, the applicable Mexican law, and the government and private programs available to unaccompanied minors.⁸

We also reviewed studies and statistical reports provided by Mexican authorities in response to requests for information that we submitted to Mexico's national DIF system, to the local DIF in several Mexican states and municipalities, and to the SRE. In addition, in February 2010, we issued Freedom of Information Act (FOIA) requests to the United States Departments of Health and Human Services, Homeland Security (including separate requests to CBP and ICE within DHS) and State. As of the time this report was finalized in March 2011, we had received only limited numbers of documents in response to those FOIA requests, some of which were heavily redacted.

As noted in the Acknowledgements section, we met with representatives of DOS, DHS and HHS to discuss the issues raised by our investigation of U.S. screening and repatriation practices. In addition, we provided to both CBP and DOS a written summary of our preliminary findings and recommendations, and invited their comments. And finally, we shared with representatives of the Mexican Embassy to the United States and with representatives of the DIF, INM and SRE in Mexico City our preliminary findings and recommendations concerning conditions on the Mexican side of the border.

SECTION 1:

Executive Summary of Findings and Recommendations

In 2008, Congress determined to halt the revolving door through which unaccompanied Mexican minors had been repatriated at the U.S.-Mexico border without inquiry into their particular circumstances or motivations for crossing. With this change in the law, U.S. officials must now conduct an inquiry into the vulnerability of unaccompanied Mexican children to trafficking and other forms of abuse, and may repatriate them quickly only if the children are able to make, and do make, a voluntary decision to return. Yet these requirements of the TVPRA have not been translated into practice. On the Mexican side of the border, children are treated with greater initial concern and compassion, but the overwhelming desire and incentive to reunify children with their families leads Mexican authorities to return children home without any meaningful understanding of what caused them to leave in the first place. As a result, the promise of the TVPRA—U.S. protection of children at risk of trafficking, persecution and exploitation, and safe and secure repatriation for those returned to Mexico—remains unfulfilled.

Appleseed’s two-year investigation of the implementation of the TVPRA’s provisions relating to unaccompanied Mexican minors gives rise to a number of findings, and leads to related policy recommendations. These recommendations are practical and achievable, *if* the U.S. government has the will to turn the TVPRA’s mandate into reality at the border. Mexican officials too can improve the conditions for repatriated unaccompanied minors through increased coordination and greater attention to the underlying factors that cause children to leave their homes and communities and attempt to cross the border.

Appleseed's core findings and recommendations are set forth below:

UNITED STATES:

FINDING:

CBP Is the Wrong Agency to Interview Unaccompanied Mexican Children.

In March 2009, when the TVPRA became effective, DHS placed the responsibility for screening unaccompanied Mexican minors with CBP. This screening requires the agency to interview children to determine whether they have been trafficked, fear persecution, and can make an independent decision to return to Mexico. CBP, however, is a law enforcement agency charged with detecting and apprehending undocumented aliens at the border; it has no child welfare expertise. CBP officers are ill-equipped to conduct the kind of child-centric interviewing required by the TVPRA.

RECOMMENDATION:

Transfer TVPRA Screening Responsibilities to USCIS.

DHS already has an agency that routinely interviews children: USCIS, which conducts asylum interviews of all unaccompanied minors who fear persecution. Given its role as a benefits determination agency, and its experience in evaluating claims by children, USCIS, not CBP, is the DHS agency that should be charged with screening unaccompanied Mexican children under the TVPRA. A cadre of appropriately trained staff should be developed within USCIS to handle the screening process.

FINDING:

Border Patrol Facilities Are Inappropriate Environments for Interviewing Children.

CBP's facilities are secure buildings, guarded and staffed by uniformed and armed agents. Children are placed in cold holding cells and afforded minimal food, bedding, and medical care. In some facilities, children are held in cells within sight or hearing of adults, possibly including traffickers. Uniformed officers interview children in open areas, or in cells, often not in private. These facilities provide no environment for a child to feel safe and secure enough to divulge sensitive information about trafficking or other abuse.

RECOMMENDATION:

Provide Safe, Secure and Child-Friendly Environments for TVPRA Interviews.

As it is unlikely that border patrol facilities can be configured to provide a child-friendly environment, new facilities should be used, and where necessary built, that allow a child to feel comfortable enough to talk about trafficking or other abuse.

FINDING:

CBP Officers Have No Specialized Training to Conduct TVPRA Interviews.

The TVPRA mandates that all U.S. federal personnel who have substantive contact with unaccompanied minors be given “specialized training” to work with these children and identify victims of trafficking, persecution and other forms of abuse. CBP officers have received no such specialized training. The limited TVPRA training CBP has provided to its officers is superficial and insufficient to ensure that they are able to identify children at risk of trafficking, abuse or persecution.

RECOMMENDATION:

Develop Specialized Training in Consultation with Child Welfare Experts, as Explicitly Required by the TVPRA.

All personnel involved in the determination of the status of unaccompanied Mexican minors should be trained and qualified to interview children, identify juvenile victims of trafficking and other forms of abuse, understand and explain available U.S. immigration relief, speak Spanish fluently, and demonstrate some understanding of the culture and geography of Mexico.

FINDING:

The Forms Used to Interview Unaccompanied Mexican Minors Are Inadequate.

CBP Form 93, the form used by CBP to determine whether unaccompanied Mexican minors are victims or potential victims of trafficking, or are at risk of persecution, provides no meaningful guidance for the interviewer. Form I-770, the form used to solicit and confirm a minor’s voluntary and independent decision to return to Mexico, contains insufficient information for them to make an informed decision, and does little to dispel the minors’ common perception that their only realistic choice is to return to Mexico. Compounding the limitations of these forms, CBP personnel do not use them consistently and are not adequately trained to supplement the forms with information necessary for their intended purpose.

RECOMMENDATION:

Develop Forms and Guidance to Elicit Sensitive Information from Unaccompanied Minors and to Ensure that a Child’s Decision to Return Is Independent and Voluntary.

The forms currently used in TVPRA interviews must be replaced or substantially revised if they are to serve as meaningful tools for those interviewing unaccompanied Mexican minors and as a meaningful explanation of rights for the children interviewed. The revised Form I-770 should be provided or read to the child in Spanish in all cases (except when the minor speaks only an indigenous language), and supplemented with a short video accurately explaining the child’s options in

simple, intelligible terms. These forms and video should be developed with the assistance of child welfare experts and immigration NGOs, and supplemented by substantial written guidance and training.

FINDING:

Communications Between U.S. and Mexican Officials Are Geared Toward Repatriation and Not the Best Interests of the Child.

Communications between U.S. and Mexican officials at the border are designed more for the two governments' convenience than they are to comply with their treaty obligations or to serve the best interests of the child. U.S. officials routinely fail to notify detained children of their right to meet with a Mexican consular official, and to notify Mexican consular officials, before the repatriation decision is made, that they have a Mexican child in their custody. Some U.S. officials rely upon Mexican officials to inform them if repatriation is inappropriate, failing to appreciate that the Mexican government's strong predisposition is to return Mexican minors to Mexico, irrespective of the risks of trafficking or abuse. Upon repatriation, U.S. officials often do not communicate to the Mexican authorities valuable information that might assist in the child's safe return. And, in the few instances when minors are transferred to DUCS, U.S. officials do not consistently provide to the Mexican consulates timely information on the status and location of the child.

RECOMMENDATION:

U.S.-Mexico Communications Concerning Unaccompanied Minors Should Promote the Best Interests of the Child, and Comply with International Law.

U.S. officials should provide prompt notification to the Mexican consulate upon initial apprehension and upon any change in the custodial status of an unaccompanied Mexican minor. The intergovernmental role played by Mexican consular officials should be clarified, and understood to allow them to provide factual information to CBP concerning children in U.S. custody, but not to influence the determination of whether a minor should be repatriated under the TVPRA.

FINDING:

The Failure to Fully Implement the TVPRA Puts Children at Risk.

Cumulatively, these findings reflect a failure to implement the TVPRA at the border, leaving children vulnerable to the very issues that concerned Congress in 2008—trafficking, persecution and other forms of exploitation. While the full dimension of the problem is hard to determine, federal agencies expected a substantial increase in the number of unaccompanied Mexican minors remaining in the United States as a result of TVPRA screening. That influx has not materialized.

RECOMMENDATION:**DHS Should Use Pilot Programs to Swiftly Put New Policies into Effect.**

Appleseed's U.S. recommendations can and should be put into place as swiftly and broadly as possible. Because implementation of these recommendations may pose unforeseen challenges, and because facilities and trained personnel may be difficult to obtain, DHS should implement a pilot program to test the recommended procedures, especially where uniform, national changes are not possible in the near term. This pilot program should be implemented immediately with a goal of full compliance along the border within two years.

FINDING:**DHS Does Not Publish, and Appears Not to Maintain, Important Data Regarding the Unaccompanied Minors Apprehended at the Border.**

Even after passage of the TVPRA, DHS does not publish data concerning how many Mexican UACs it apprehends each year, how many of the apprehended minors have crossed the border and been detained before, how many are screened pursuant to the TVPRA, how many are repatriated, how many are transferred to the custody of HHS (that is, to ORR/DUCS shelters) or the reasons for such transfers. As to most of this data, it appears that DHS does not compile, and may not currently have any effective means to compile, the information. The absence of this data limits Congress' and the public's ability to assess the degree to which DHS is complying with its TVPRA obligations, and undermines the government's (especially DHS's own) ability effectively to address important child migration issues, including the identification and protection of trafficking victims and the challenges posed by repeat crossers, many of whom are likely caught up in smuggling trades.

RECOMMENDATION:**Track and Publish Data on Unaccompanied Minors Screened Pursuant to the TVPRA.**

DHS should establish a national database of all detained unaccompanied minors, which would include biographical information, previous detentions, adults that have accompanied the minor, sites of apprehensions, and locations of repatriation and shelter by DUCS facilities. The data should include sufficient information to allow U.S. officials (and others) to discern and track unaccompanied minor migration patterns, and allow U.S. agencies to identify repeat crossers, including those who may be engaged in the smuggling of persons or drugs, as well as those who were previously repatriated but were not successfully reintegrated into a stable family or other local structure. Finally, to enhance public understanding, the United States should track and publish how many unaccompanied Mexican children are apprehended by CBP each year, and of those children, how many are referred to DUCS and how many are repatriated.

MEXICO:

FINDING:

The Absence of Consistent National Policies and Practices Puts Children at Risk of Further Exploitation.

Mexico does not have uniform laws or policies governing the rights of migrating minors or the responsibilities of the various agencies who assume custody of them after their repatriation from the U.S.-Mexico border. Instead, a patchwork of laws and regulations governs the shelter, treatment, and protection of unaccompanied minors in INM or DIF custody. The DIF system is not a fully integrated national welfare system, but composed of semi-autonomous state and local units and a national oversight body. As a result, the rights and protections afforded to the minors vary significantly depending on location, and best practices are not easily implemented nationwide.

RECOMMENDATION:

Mexico Should Develop National Standards to Protect Repatriated Minors' Welfare.

Mexico should implement a national law to govern the protection and care of repatriated minors on a national basis, and to replace the myriad diverse laws and regulations that currently exist. More specifically, Mexico should promulgate national standards for the shelter and treatment of all repatriated minors in state and municipal DIF facilities to regulate, among other things, social welfare assistance, medical and psychological services, physical conditions, and the conditions for and means of family reunification.

FINDING:

Mexico's Overriding Emphasis on Swift Family Reunification Fails Adequately to Consider the Child's Best Interests.

Following repatriation, the DIF system endeavors to return unaccompanied minors to their families as swiftly as possible without conducting a careful analysis of whether reunification is in the child's best interests. As a result, children who have fled exploitative or abusive circumstances may find themselves returned to the same circumstances that drove them to migrate across the border in the first place. Without addressing the sustainability of the home environment, Mexican practice exposes children to further possible abuse and neglect, and ensures that a certain number of minors will attempt to cross again and again until they succeed. Although the national DIF is aware of and trying to address the problem, the numbers of repatriated children and the lack of available resources have hindered progress in this area.

RECOMMENDATION:**Mexico Should Develop National Standards to Ensure Family Reunification Is Appropriate for the Child.**

Mexico should develop national standards that encourage DIF to take a more proactive role in providing social assistance to migrating minors and protect children from being returned to environments that place a child's physical or psychological health at risk. DIF should consistently conduct home visits in cases of apparent neglect or abuse, provide care by professionals trained in treating children at risk, counsel families, supervise and assist in the adoption process for children without parents or legal guardians, and create specialized shelters and guidance programs for children who are at risk of drug addiction or criminal behaviors.

FINDING:**Mexico Lacks a Shared, Integrated Database to Identify Repatriated Minors and Help Prevent Their Further Exploitation.**

Although Mexico compiles far more information on repatriated minors than does the United States, its databases are separately maintained by the three principal agencies that deal with this population—SRE, INM and DIF—without coordination or shared access among the agencies. As a result, the agency most responsible for the reintegration of the repatriated minor, DIF, often lacks information collected by the other two that could provide important assistance in the successful reunification and protection of the minor. Further, the separate record-keeping practices of the three agencies causes minors to be interviewed by at least three sets of officials in close succession, concerning substantially the same topics, which serves neither the best interests of the child nor the interests of efficiency or consistency. And finally, each of the current databases lack certain information that could help the DIF social welfare agencies identify repeat crossers and better protect the minors in their care.

RECOMMENDATION:**SRE, INM and DIF Should Develop a Shared, Integrated Database of Repatriated Minors.**

The Mexican agencies that handle repatriated minors should develop a shared, integrated database which maintains a record of each repatriated minor and would serve to identify repeat crossers and promote child welfare beyond family reunification. This database should include, among other things, biometric information, the number of times a minor has crossed the border (legally or illegally), the cities to which the minor has migrated and the routes(s) traveled, the places where the minor has been detained, any criminal arrest record, and the reasons why the minor has attempted to migrate. The particular form of the shared database would require technical coordination among the three agencies, but it must be designed to be accessible to DIF, reduce the amount of repetitive interviewing undergone by repatriated minors, and include robust security and privacy provisions to protect migrating children.

SECTION 2:

The Profile of Unaccompanied Mexican Children Encountered at the Border

In 2009, Customs and Border Protection (CBP) apprehended roughly 15,500 unaccompanied Mexican children at or near the U.S.-Mexico border.⁹ Many embarked on the perilous journey to the United States seeking a better life through economic and educational opportunities. Some migrated to escape intolerable circumstances at home. By the time they crossed the border, some arrived in the United States as victims of human trafficking or as pawns of Mexico's violent gangs. Though their motivations for attempting the trip varied, each traveled a dangerous journey rife with potential for abuse and exploitation. In 2008, with the screening and repatriation requirements of the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (the TVPRA), Congress endeavored to provide a degree of protection to this vulnerable population. Understanding who these children are, why they came to the United States, and the dangers to which they were exposed during their journey, is key to understanding the challenges faced by those responsible for conducting TVPRA screening, to creating effective screening procedures, and to realizing the protections intended by the TVPRA.

How: The Perilous Journey

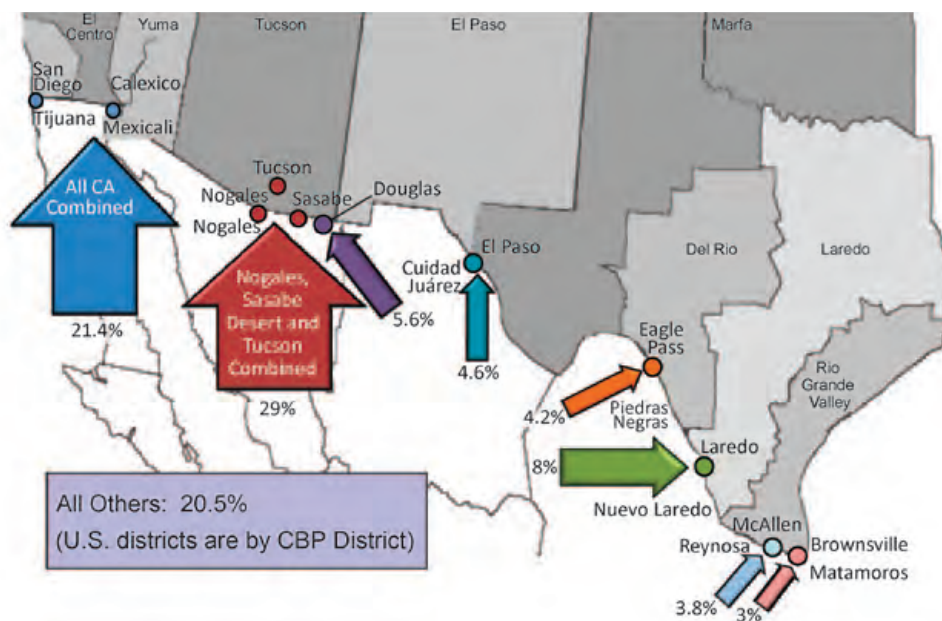
The journey to and across the U.S. border is filled with danger, and leaves the children vulnerable to a variety of abuse and exploitation. Within Mexico, young persons may travel by foot, by bus or by train to reach their intended crossing point. In many cases, they will sneak onto a bus or a train, and un-ticketed train travel can result in serious injuries, even death. Along the travel route, the possibility of abuse—being robbed, assaulted or sexually violated, by individuals, by criminal gangs, and even by Mexican law enforcement officers—is real and ever-present. And, as they approach the border, most of these children, just as many adults do, search out and have to pay for the services of a “*coyote*” or a “*pollero*”—a hired guide who makes a living smuggling would-be immigrants across the aggressively-defended U.S. border. For most Mexican minors, the cost of a *coyote* is extremely high. According to some analysts, it has grown higher in recent years as U.S. enforcement efforts have increased the risk of apprehension; it

now usually exceeds \$1,000 per crossing, and we heard figures as high as \$2,000 and \$2,500.¹⁰ The *coyote* may accept a portion of the fee up front, with the balance to be paid upon a successful crossing—and if the customer cannot pay immediately, the debt will need to be worked off or paid later, on the U.S. side of the border.

The border crossing itself can be attempted in one of two principal ways—either at an official port of entry, or along a stretch of border between two ports. Those who try a port of entry crossing typically will either attempt to conceal their presence in a vehicle (often in a car trunk or under car seats or floorboards), or present false identification and immigration documents. In between the official ports of entry, the attempted entry will take as many forms as the geographical and security conditions permit—a subterranean tunnel, a long trek through harsh desert terrain, a small boat or raft across the river, or a dangerous swim. Usually, the minor is not alone but in a group assembled by the *coyote* for the crossing. He or she may even have traveled and crossed the border in the company of a parent or a relative, but then become “unaccompanied” for official purposes when the family group splits up in the effort to evade apprehension.¹¹

The areas of the Southwest border favored by Mexican children attempting to cross are essentially the same as those chosen by their adult counterparts. In 2008 and 2009, the CBP Border Sectors that reported the highest numbers of detained deportable aliens were, in order: Tucson (by far the highest; it includes the port of Nogales and wide stretches of the Sonoran and El Sásabe deserts); San Diego; the Rio Grande Valley (including the heavily traversed ports of McAllen and Brownsville); Laredo, Texas; and El Centro, California (which includes the Caléxico-Mexicali crossing).¹² This ranking corresponds closely to the data reported by Mexico’s DIF concerning the locations where repatriated unaccompanied children were detained, which is summarized by the arrows in the following figure:¹³

Unaccompanied Minors: Location of Apprehensions in 2009



In recent years, the Tucson Sector has received an increasing percentage of those seeking to enter the United States. This trend is largely attributed to increased enforcement efforts across other parts of the border. Border fences, high tech surveillance and more border patrol agents have caused people to attempt to cross in more remote and dangerous places.¹⁴ The lack of water, sparse population, extreme temperatures, and rough terrain make crossing in this area particularly dangerous.¹⁵ Border Patrol agents report that smugglers mislead would-be immigrants about the dangers associated with the crossing, lying about the length of the journey and the extreme risks involved.¹⁶

Why: Children’s Reasons for Crossing the Border

A number of factors lead Mexican children to embark on the hazardous journey to the United States. Many are motivated by the desire to improve their situation, some are sent by family in Mexico, others travel to join family already in the United States. Most children have multiple, inter-related motives for undertaking this difficult journey, which makes it difficult to categorize and quantify those motives.

According to many reports and our own investigation, the most pervasive motive for children to leave home and attempt to enter the United States appears to be the search for better economic opportunity. Put simply, the prospect of a job or an education can lead to better employment, and thus a better life for these children and their families.

The second-most commonly cited reason that we found for children to attempt to cross on their own is family reunification. One or both of the children’s parents, or a close family member, may already be living and working in the United States. The child either will be “sent for,” or try on his or her own initiative to join up with parents or other family member(s) living in the United States. Family reunification likely has taken on greater importance in recent years. Increased border protection has reduced the fluidity of travel across the border and the opportunity for undocumented Mexican adults working in the United States to visit their families in Mexico on a regular basis. As a result, some parents attempt to bring their children to live with them in the United States, eliminating the need for frequent border crossings.

The 2009 study commissioned by DIF, the Mexican social services organization responsible for the treatment and protection of unaccompanied minors, provides a more nuanced perspective. According to the study, based on interviews of 40 Mexican and 8 Central American children housed in DIF shelters, motivations vary significantly by gender. In general, boys may seek to migrate to become better providers, achieve economic success or, in some cases, to escape the “head of the household” responsibility associated with being the only male in the household. For girls, on the other hand, the desire to escape domestic abuse and sexual violence tends to play a more significant role.¹⁷

While surveys of the repatriated children do exist, the precision or reliability of their results should not be overstated. In its annual tabulation of statistics, for example, the Mexican Ministry of Foreign Affairs—Secretaría de Relaciones Exteriores (SRE)—includes a table on the motives for the unaccompanied minors’ migration.¹⁸ We witnessed the questioning by consular officials on the topics summarized in this table; it is extremely cursory and limits the responses to a short list of possible answers, none of which includes abuse, exploitation or trafficking. More fundamentally, abused

youngsters are unlikely to reveal their true circumstances.¹⁹ Accordingly, surveys will under-represent the incidence of sexual abuse, family violence, gang intimidation, coercion, and other exploitation.

Many minors attempt to cross multiple times until they succeed in avoiding apprehension and joining up with family members or finding work in the United States. One girl recently interviewed in a Matamoros shelter had been caught three times trying to reach her father in Kansas—once in Houston, once in San Antonio, and once while crossing the Rio Grande—only to be sent back to Mexico each time.²⁰ A 2008 SRE survey found high rates of “recidivism” among border-crossing minors in many areas, including 50% in McAllen, Texas, 48% in Yuma County, Arizona and between 39% and 42% in San Diego and Calexico, California.²¹

A large percentage of these children are at risk of becoming victims of sex or labor trafficking. The risk factors for this type of victimization are numerous, including the three key elements that distinguish this population—their youth, their minimal level of education, and their separation from home or any other form of protective environment. According to the U.S. State Department (DOS), Mexico “is a large source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically forced prostitution and forced labor.”²² Employers and “sex tourists” within the United States lure women, boys and girls especially into sexual servitude or forced labor with false job offers.²³ Even the high cost of crossing places juveniles in jeopardy, causing some young migrants to assume unsustainable levels of debt they will be coerced into repaying. The growing control over cross-border migration exercised by Mexico’s drug cartels, which regard human trafficking as an important potential source of revenue and minors as easy and valuable prey, further increases these risks.²⁴

Children who reside near the border or who seek to cross it may become caught up with organized gangs that smuggle immigrants or contraband. Mexican consular officials refer to such children as the “*menores del circuito*”—minors who are engaged in the smuggling of drugs, or the smuggling of other minors and adults, across the border, and who may have become *coyotes* or *polleros* themselves. These are an important subset of the “recidivist crossers,” children who have settled in or around the border cities and attempt to enter into the United States on a regular basis. When these children are apprehended and repatriated, they simply attempt reentry as soon as they return to Mexico. In many cases, Mexican officials believe, the minors are recruited by organized criminal gangs precisely because they make useful mules; if caught, they are likely to be sent straight back to Mexico, and are then available to smuggle or do other work again. With the growing strength of Mexican cartels along the border, it may be near impossible for a *menor del circuito*, once recruited, to escape this cycle of illicit trade, and significant numbers of minors risk retaliation should they decline recruitment or otherwise refuse to do the gang’s bidding.

Nearly All of the Unaccompanied Mexican Children Apprehended by CBP Are Immediately Repatriated

According to figures provided to Appleseed in September 2010, CBP apprehended 40,398 children in FY 2009;²⁵ out of these 43%, or about 17,371, were unaccompanied.²⁶ For the first 11 months of FY 2010 (through August 31, 2010), CBP

reported that it apprehended 29,624 minors, but that a higher percentage—59%, or approximately 17,478—were unaccompanied. In both years, a certain portion of these children were reported to be from countries other than Mexico (principally the Central American nations to Mexico’s south)—12% in FY 2009, and 18.5% in FY 2010.²⁷

Assuming for simplicity’s sake that the percentage of all apprehended children that are unaccompanied is identical in both the Mexican and non-Mexican populations, the CBP figures suggest that, in FY 2009, CBP apprehended approximately 15,286 unaccompanied minors from Mexico; and that in FY 2010, on an annualized basis, CBP apprehended approximately 15,540 unaccompanied Mexican minors.

These estimates of apprehensions derived from the CBP data coincide roughly with the repatriation figures reported by the Mexican authorities. Mexico’s national DIF, for example, annually publishes detailed demographic statistics on the unaccompanied repatriated children and adolescents that are taken into custody by the municipal and state DIF agencies.²⁸ Because nearly all repatriated Mexican unaccompanied minors pass through a DIF facility, even if only briefly, the DIF statistics should provide a good approximation of the numbers of minors apprehended in the United States and sent back to Mexico. In 2009, DIF reports that Mexican authorities took back in a total of 15,534 unaccompanied minors who had been apprehended by the U.S. Border Patrol,²⁹ a figure quite close to the numbers of unaccompanied Mexican minors that we estimate CBP apprehended in each of FY 2009 and FY 2010 based on the more limited data provided to us by CBP. Whatever the exact number, these U.S. and Mexican figures, taken together, strongly indicate that even after the effective date of the TVPRA, the overwhelming percentage of Mexican unaccompanied minors who are detained by CBP at the border are immediately repatriated, and that only a tiny fraction of them are being transferred to the temporary custody of the Division of Unaccompanied Children’s Services (DUCS) within the Office of Refugee Resettlement (ORR).³⁰

SECTION 3:

The Legal Regime for Mexican Minors Apprehended at the Border

Upon encountering United States authorities near the border, unaccompanied Mexican minors enter into a complex structural and legal framework designed to determine whether they should be repatriated immediately or given at least temporary shelter in the United States. If they are repatriated, the mechanics of their repatriation are governed by an umbrella agreement between DHS and SRE, implemented by local agreements at different border areas.

If they are not immediately repatriated, unaccompanied Mexican minors apprehended at the border will be channeled into the same system that receives all other unaccompanied children—the non-Mexican unaccompanied children who are apprehended at the border as well as the unaccompanied alien minors, from whatever country, who are apprehended in the interior of the United States. For unaccompanied Mexican children detained at the border, this alternative system delays reunification with families left behind in Mexico. On the other hand, the system permits orderly adjudication of the minors' claims to U.S. residence and, pending that adjudication, provides them with shelter in DUCS facilities, food, education, medical services, pro bono legal services (when available), access to their consulate and, potentially, reunification with their families or an appropriate guardian in the United States.

The U.S. Agencies Responsible for Detained Unaccompanied Minors

Several United States agencies interact with unaccompanied minors at the border and beyond, with separate federal departments responsible for apprehension, screening, custody, adjudication of claims to remain in the United States, and removal.

Apprehension

Along the border and at ports of entry, CBP, an agency within the Department of Homeland Security (DHS),³¹ is generally responsible for policing and handling

immigration matters. At or near the Mexican border, unaccompanied children (as well as adults) typically are apprehended by CBP agents who detain would-be immigrants between official ports of entry and who conduct traffic stops and enforcement operations in zones just inland from the border or, less commonly, in the ports of entry themselves. DHS has delegated to CBP the discrete responsibility to determine whether Mexican unaccompanied children should be repatriated or kept in the United States for further immigration proceedings.³²

Custody

Unaccompanied minors who are not immediately repatriated at the border by CBP are transferred to the United States Department of Health and Human Services (HHS)—specifically ORR/DUCS.³³ A Juvenile Coordinator of the Immigration and Customs Enforcement (ICE) arm of DHS is responsible for the transfer of unaccompanied minors who are apprehended by CBP (or for children apprehended in the interior by ICE) to DUCS. From that point, DUCS retains custody of all unaccompanied minors in the United States until they are released to a relative or other guardian, repatriated, or granted lawful, documented residence in the United States.

Adjudication of Rights

Once transferred to DUCS, and so long as not released to a relative or other guardian, unaccompanied children are housed in facilities designed for children or placed in foster care while their cases are heard in immigration court. The United States immigration courts are within the Executive Office of Immigration Review (EOIR), part of the United States Department of Justice (DOJ).

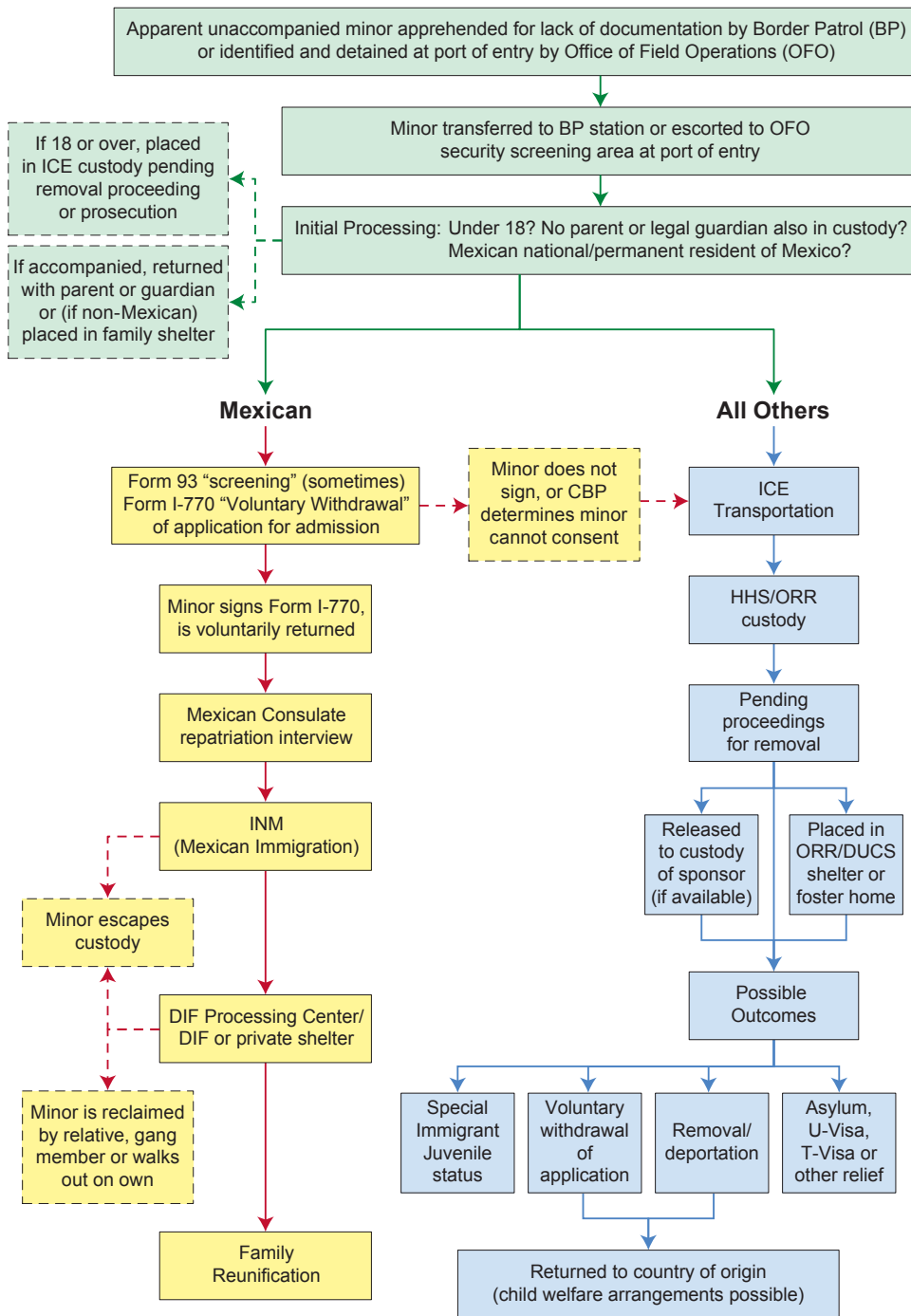
Children who successfully assert asylum claims may avoid immigration court proceedings. A claim of asylum triggers an interview with an asylum officer from United States Citizenship and Immigration Services (USCIS), another agency within DHS, which may then grant asylum. USCIS now also adjudicates petitions for Special Immigrant Juvenile status, relief available to children who have been abused, abandoned or neglected, and for whom reunification with one or both parents is not possible.

Except in the unusual case of a rapid grant of asylum by USCIS, or unless the child elects to accept voluntary return at some earlier point, all of these processes will likely take many months, and possibly more than a year, before the minor's right to remain in the U.S. or to avoid removal is determined.

The Decision-Making Process at the Border Under the TVPRA

The TVPRA contains “contiguous country” provisions meant to determine whether an unaccompanied Mexican child detained at the border will be repatriated immediately or, instead, afforded the protections that unaccompanied children from all other countries receive—the opportunity to be sheltered in the United States at least temporarily while the child's possible right to remain can be considered in an orderly fashion. In practical effect, these provisions apply only to Mexican nationals or minors whose primary residence is Mexico.³⁴ No other unaccompanied minors face the risk of immediate repatriation.

What Happens to Minors Apprehended at the Border



Determining Whether the Detained Person Is “Unaccompanied” and a “Minor”

When an apparent minor is apprehended at the border, CBP officers must answer certain threshold questions that pre-date passage of the TVPRA—namely, is the individual an alien, and if so, is he or she indeed “unaccompanied” and a “minor.” These three basic elements of the statutory definition of an “unaccompanied alien child” seem straightforward enough: a noncitizen who “(A) has no lawful immigration status in the

United States; (B) has not attained 18 years of age; and (C) with respect to whom— (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”³⁵

The determination of immigration status usually is answered easily, but the latter two elements can be complicated. First, CBP officers must decide whether the apparent minor is under 18. Given that a substantial percentage of unaccompanied minors crossing the border are between the ages of 15 and 17, and that many travel without official documents and may not provide reliable answers when asked about their age, determining an accurate age can be difficult. The price of an erroneous determination can also be quite high. Anyone determined to be 18 or older is subject to transfer to an adult detention facility, where he or she might remain for months or in some cases even years in prison-like conditions entirely unsuited for minors. Forensic age-determination techniques (including radiographs and dental exams) have been developed and are used by certain agencies, such as ICE, but not without criticism.³⁶ In any event, at least as of now, CBP agents do not appear to use any forensic or other sophisticated age-determination techniques. We were advised by several CBP agents that they just take the youngsters at their word with respect to age—though some children reported being questioned vigorously about their age—and will not use independent means to try to verify age unless what the person says is entirely unbelievable.

In addition, CBP must determine whether the apprehended child is “unaccompanied.” In practice, Appleseed and other observers have found confusion and inconsistency in the application of this element. The easiest case arises when a child is detained at the border together with one or more parents; in that situation, the child clearly is “accompanied” and typically will be placed into some form of family detention if not released. Beyond that case, the determination of whether a child is accompanied grows murkier. A putative adult relative who is apprehended with the child may or may not be assumed to be the child’s parent or legal guardian. This finding presents risks on either side: the child may be released to someone who may be trafficking or otherwise poses a threat to the child,³⁷ or the child may be separated from family. Even if he or she has a parent in the United States, CBP or ICE must treat a child as “unaccompanied” when the parent is unwilling or unable to retrieve the apprehended minor.³⁸

Precursor To the TVPRA: The Flores Agreement

The *Flores* Agreement, which still is in force, established the principle that minors are “particularly vulnerable” and are entitled to be treated “with dignity, respect and special concern”; it also mandated that children should be placed in the “least restrictive setting” appropriate for the child, provided the child’s appearance in immigration proceedings can be assured. The *Flores* Agreement arose out of the 1997 settlement of *Flores v. Meese*, brought in 1985 on behalf of a class of minors in the custody of immigration authorities.³⁹

The *Flores* Agreement contains several specific provisions to put these principles into practice.⁴⁰ These provisions include a requirement that the Immigration and Naturalization Service (INS), (subsequently, DHS), except in narrowly-defined circumstances, release an unaccompanied child from initial custody within 3 days (72 hours), thus setting a benchmark that was later incorporated into the TVPRA.⁴¹ Other provisions in the *Flores* Agreement include standards for programs housing children (such as physical facilities

and educational programming) and a presumptive rule that minors be released, in order of preference, to a parent or legal guardian, to an adult relative, or to an adult or entity designated by the child's parent or legal guardian.

The time frame for decision-making at the border is short. If an apprehended unaccompanied minor from Mexico is to be repatriated, U.S. immigration law requires the child to make a voluntary, independent decision to withdraw his or her "application for admission" to the United States. Under both the *Flores* Agreement and the TVPRA, CBP has only 48 hours after apprehension to decide whether the child can consent to repatriation or whether he or she should be transferred instead to the custody of ORR/DUCS within HHS. The TVPRA also requires that any unaccompanied child apprehended by the U.S. authorities (usually CBP or ICE) who has not agreed to be repatriated must be transferred to ORR within 72 hours. These two- and three-day periods reflect the obligation of the U.S. government to place children in an appropriate setting quickly after apprehension.

The TVPRA's Legal Requirements for Unaccompanied Children

The TVPRA is a "reauthorization" act; it retained in force (as amended) the provisions of the Trafficking Victims Protection Act (TVPA) of 2000⁴² and the Trafficking Victims Protection Reauthorization Act of 2005⁴³ "to enhance measures to combat trafficking in persons."⁴⁴ The amended TVPRA contains a section titled, "Enhancing Efforts to Combat the Trafficking of Children" at 8 U.S.C. § 1232 (Section 1232). Section 1232 contains the provisions designed to improve the treatment of all unaccompanied minors in the United States.⁴⁵ These include determination of asylum claims by USCIS (rather than by immigration courts), access to counsel and child advocates, changes to Special Immigrant Juvenile Status (a form of relief available to abused, abandoned or neglected unaccompanied minors, discussed further below), and the establishment of statutory standards of care by HHS, which since 2003 has been responsible for the custody of unaccompanied children within the United States.

Section 1232(a)(2) also provides "Special Rules for Children from Contiguous Countries." Although literally applicable to both Mexico and Canada, the predominant impact of this section is on the treatment of Mexican-national children or children who last habitually resided in Mexico, who account for nearly all of the children who arrive from the two immediate neighbors of the United States. Section 1232(a)(3) calls upon DHS (without specifying which agency within DHS) to make three "screening" determinations on a "case by case" basis for such unaccompanied children—within 48 hours⁴⁶ of the child's apprehension, and "in any event" before sending the child back to his or her country of origin or habitual residence:

- (a) whether the child has *not* "been a **victim of a severe form of trafficking**,⁴⁷ and there is no credible evidence" that the child will be "at risk of being trafficked" upon return to Mexico;
- (b) whether the child does *not* have a "**fear of returning**" to Mexico "owing to a credible fear of persecution"; and
- (c) whether "the child is able to make an **independent decision to withdraw the child's application for admission**" to the United States. [Emphases added.]

If—and only if—all three inquiries are answered in the affirmative, an immigration officer “may” permit a Mexican national (or Mexican resident) unaccompanied minor whom the officer also determines is “inadmissible” under U.S. immigration law to “withdraw” his or her application for admission and to be returned to Mexico.⁴⁸ (Under immigration law, being caught at the border constitutes an “application for admission” to the United States.) If, on the other hand, the answer to any one of these three inquiries is “no,” or if no determination of all three criteria can be made within 48 hours, the TVPRA mandates that the child shall “immediately” be transferred to HHS custody (that is, to ORR/DUCS). Once transferred to HHS, Mexican unaccompanied minors are treated in accordance with those procedures applicable to all unaccompanied minors apprehended in the interior, or those from countries other than Mexico who are apprehended at the border, as laid out in Section 1232(b).⁴⁹

On paper at least, the TVPRA worked a significant change in the previous law, under which Mexican unaccompanied minors were routinely and swiftly repatriated after apprehension. Prior to the TVPRA, CBP’s practice was to “offer”—some might say impose upon—nearly all unaccompanied Mexican minors (and generally not other unaccompanied minors) the option of “voluntary return” to Mexico immediately after apprehension.⁵⁰ As noted before, the repatriation option is exercised through a voluntary “withdrawal” of the detainee’s de facto “application” for admission to the United States. The withdrawal of that application is documented by signing a form (Form I-770)⁵¹ acknowledging that “I am in the United States illegally and ask that I be allowed to return to my country, which is named below.”

Since passage of the TVPRA, DHS no longer is permitted to process unaccompanied detained Mexican children through these steps as a matter of course. Congress mandated that DHS must screen each unaccompanied Mexican child who comes into its custody—on a “case by case” basis—and only if a child meets all three of the Section 1232 screening criteria can it permit that minor to choose immediate repatriation.

Congress also included in the TVPRA several requirements for U.S. government agencies to ensure that any repatriation of unaccompanied minors is “safe” and “sustainable”:

- Section 1232(a)(1) requires DHS, in conjunction with DOS, DOJ and HHS, to “develop policies and procedures to ensure that unaccompanied alien children in the U.S. are safely repatriated to their country of nationality or of last habitual residence.”
- Section 1232(a)(5)(A) requires DOS, in conjunction with HHS and DHS, as well as NGOs and other national and international agencies and experts, to create a “pilot program” to “develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into the country of nationality or last habitual residence.” DOS has established a small pilot program with El Salvador; none has been established for Mexico.
- Section 1232(a)(5)(B) requires DHS to consult DOS’s Country Reports on Human Rights Practices and Trafficking in Persons Report in assessing whether to repatriate an unaccompanied child to a particular country.
- Section 1232(a)(5)(C) requires DOS and HHS, with assistance from DHS, no later than 18 months after the date of enactment of the TVPRA (December 23, 2008),

and annually thereafter, to provide a report to Congress including, among other things, “a description of the policies and procedures used to effect the removal of such children from the U.S. and the steps taken to ensure that such children were safely and humanely repatriated to their country of nationality or of last habitual residence, including a description of the repatriation pilot program created pursuant to [Section 1232(a)(5)(A)].” The report called for by Section 1232(a)(5)(C) was submitted to Congress by DOS (on behalf of all three agencies) on August 11, 2010, but as of February 2011 had not been published on any agency or Congressional website.

- With respect to unaccompanied minors from Mexico, Section 1232(a)(2)(C) requires the Secretary of State to negotiate agreements with Mexico that would advance anti trafficking aims by ensuring that repatriated minors are delivered to Mexico’s “appropriate employees or officials, including child welfare officials where available,” that they be delivered only during “reasonable business hours,” and that the border personnel of the parties to these agreements be trained to implement these agreements.⁵² DOS has not yet entered into agreements with Mexico as required in Section 1232(a)(2)(C), regarding the repatriation of unaccompanied minors to Mexico.

U.S./Mexico Consular Access and Repatriation Agreements

Although no new agreements have been negotiated specifically pursuant to TVPRA Section 1232(a)(2)(C), several existing multilateral and bilateral treaties and agreements between the United States and Mexico govern the repatriation of all Mexican nationals, including special rules for unaccompanied minors. These treaties also govern the consular contacts that are supposed to occur between the two nations in matters of immigration and repatriation.

Under the 1963 Vienna Convention on Consular Relations (Vienna Convention)—to which the United States is a signatory—and specific consular agreements between the United States and Mexico,⁵³ all Mexican nationals in the United States are guaranteed certain rights of access to Mexican consular officers. Article 36 of the Vienna Convention requires that (a) consular officers are free to communicate with and have access to nationals of their state, and vice versa; (b) if the foreign national requests consular notification, authorities of the receiving state shall “without delay” inform the consular officials of the sending state upon taking custody of a national of the receiving state; and (c) consular officers have the right to visit their nationals in custody in the receiving state.⁵⁴ The Vienna Convention further provides that “consular functions consist in safeguarding ... the interests of minors and other persons lacking full capacity who are nationals of the sending State ...”⁵⁵ Mexican unaccompanied minors thus have the right to communicate with Mexican consular officials, to have the consulate notified when they are taken into custody, to be informed of this right of consular notification, and to be visited by a consular official while in custody. At the same time, Mexican consular officials have the right to be notified of Mexican unaccompanied minors taken into custody by CBP and ORR/DUCS.

The specific U.S.-Mexico consular agreement most relevant to Mexican unaccompanied minors is an April 2009 agreement between DHS Secretary Janet Napolitano and Mexican Secretary of Foreign Affairs Patricia Espinosa that provides a template for formalized

local arrangements for the expedited and humane repatriation of Mexican nationals. This 2009 Bilateral Agreement is implemented through thirty Local Arrangements for the Repatriation of Mexican Nationals (Local Arrangements),⁵⁶ which are based largely upon a 2004 Memorandum of Understanding between DHS and SRE (2004 MOU). Both the 2004 MOU⁵⁷ and the April 2009 Bilateral Agreement⁵⁸ provide that:

- Repatriations should be conducted in a manner consistent with respect for the human rights and dignity of Mexican nationals found in the United States in violation of immigration law.
- All detained Mexicans are entitled to notification by DHS of their right to contact a Mexican consular official and to meet in private with that official.
- Points of repatriation are to be established in a manner consistent with scheduled hours of operation and staffing availability. Every effort should be taken by Mexico to ensure that mutually designated points of reception are fully staffed with appropriate local, state and/or federal entities responsible for the health, welfare, and safety of Mexican nationals.
- Points of contact are to be identified to receive and/or convey information about incidents involving reported mistreatment or potential human rights concerns.
- Unaccompanied minors and other vulnerable individuals are to be repatriated during daylight hours to ensure their safety. Mexican participating agencies are to make every effort to have the appropriate family welfare representatives available to receive such persons upon repatriation from the United States.
- Timely special notification and information should be provided by DHS authorities for cases where additional preparation will be required to receive an unaccompanied minor or an individual with medical, mental, or other special needs.

These principles formed the basis for a series of Local Arrangements between the United States and Mexico that set forth the specific locations and hours where repatriation will take place and provide contact information for the U.S. and Mexican officials involved.⁵⁹ The Local Agreements generally provide for repatriation of children during daylight hours and at certain locations only. They also establish communication protocols to address challenges posed by daily operations, and they include a periodic review system to update and improve arrangements as circumstances evolve over time.⁶⁰

The Process for Children Not Immediately Repatriated

Referral to ORR/DUCS Custody; Social Services and Legal Assistance

Unaccompanied Mexican children who cannot be returned to Mexico within 48 hours under the terms of the TVPRA are to be transferred to the custody of HHS. Thereafter, U.S. laws and institutions apply the same rules to unaccompanied children from Mexico as are applied to those from any other country. Removal proceedings are commenced to determine whether the child is removable and whether the child is entitled to any immigration relief. The essential elements of this treatment for minors not immediately repatriated include:

- Swift transportation, via ICE personnel and vehicles, to a DUCS shelter near the border.
- Placement in the “least restrictive” setting consistent with assuring the minor’s appearance at scheduled immigration hearings. The primary goal, consistent with the appearance requirement, is to place the child with a parent, family member or suitable friend who is willing to come forward and act as the child’s sponsor.⁶¹ If no suitable sponsor comes forward or can be found—as often happens—or if ORR determines that release to a sponsor poses a high risk that the child will not appear at his or her immigration proceedings, the child may be placed in one of several alternative settings. A child could be placed in a DUCS-sponsored foster care facility, a DUCS shelter (possibly the same shelter near the border where the child was sent initially) or, depending on whether the child poses a risk of flight or of harm to others, some form of more institutionalized “staff secure” or “secure” facility.
- Educational programs, medical and mental health treatment, recreational facilities, and social welfare services to the children housed in DUCS facilities and, to a lesser extent, to the children in the care of sponsors and foster homes.
- Access to legal counsel. TVPRA Section 1232(b)(5) calls upon HHS to “ensure to the greatest extent practicable” that all UACs in its custody “have counsel to represent them in legal proceedings.”⁶² Not all children receive pro bono legal services, but when they do, counsel can greatly assist them in establishing the child’s right to continued or permanent residence in the United States.⁶³

None of the potentially significant benefits of being placed in the DUCS system accrue to the children who are immediately repatriated to Mexico. For unaccompanied Mexican children detained at the border, access to this alternative path depends entirely on the outcome of the initial CBP screening. CBP, then, truly is the “gatekeeper” for these children.

The DUCS system itself illustrates the benefits that can be gained by shifting responsibility for immigrant juveniles away from law enforcement agencies. Prior to 2003, INS, a law enforcement agency, was responsible for the custody and care of unaccompanied minors. INS employed a harsh, institutional juvenile detention model that paid almost no attention to the special needs of children and often placed them at appreciable physical and psychological risk.⁶⁴ In contrast, the DUCS system, though hardly perfect, endeavors to place minors in the least restrictive available setting, incorporates child welfare principles, and attempts to meet the physical, psychological, educational, and (with the assistance of pro bono attorneys) legal needs of the minors in its custody.⁶⁵

Substantive Legal Grounds for an Unaccompanied Child’s Continued or Permanent Residence in the United States

For children who face serious risks, and for those who cannot be safely returned to Mexico, U.S. law recognizes that the United States has an obligation to provide not just temporary protection, but the opportunity of a new, more secure life in the United States. The TVPRA expanded several of the avenues available to unaccompanied children for achieving continued or permanent residence in the United States. The principal grounds

for relief from removal potentially available to unaccompanied minors (provided they make it past the initial screening and are not immediately repatriated) are:

1. **Special Immigrant Juvenile Status.** One route to permanent residence for unaccompanied minors in the United States is Special Immigrant Juvenile Status (SIJS). This remedy is available to an unaccompanied child who cannot be reunited with one or both parents due to abuse, neglect, or abandonment, and who obtains a judicial determination that it is not in his or her best interest to return to his or her (or a parent's) country of origin.⁶⁶ To qualify for SIJS, a child must first petition and be declared dependent on a state juvenile court. The TVPRA changed this route to relief by removing the requirement that DHS consent to the State Court's jurisdiction, allowing HHS to offer consent in place of DHS. Once a child obtains SIJ Status, he or she can usually obtain a status adjustment to become a legal permanent resident. In FY 2009, 1,144 minors obtained permanent residence through this process.⁶⁷
2. **Visas for Victims of Severe Forms of Trafficking (T Visas).** Under the TVPA of 2000, an unaccompanied minor who has experienced a "severe form of trafficking" can qualify for a non-immigrant "T Visa."⁶⁸ A child must show that he or she was a victim of a severe form of trafficking (defined as sex trafficking or forced labor),⁶⁹ is physically present in the United States on account of trafficking, and would suffer "extreme hardship involving unusual and severe harm upon removal."⁷⁰ Though permanent residence is not automatically granted, the T Visa provides a potential path to permanent resident status. Trafficking victims, including those under the age of 18, regardless of immigration status, have access to certain benefits and services accorded to persons granted refugee status under 8 U.S.C. § 1157.⁷¹
3. **Asylum.** In the TVPRA, Congress provided unaccompanied minors with a more child-friendly asylum procedure, giving initial jurisdiction over all unaccompanied minors asylum applications to USCIS, rather than forcing the minors to defend their asylum applications in immigration court.⁷² As is the case for adults, an unaccompanied minor who has a well-founded fear of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group may qualify for asylum.⁷³ If asylum is granted, that child can obtain benefits from ORR, apply for U.S. lawful permanent residency and, eventually, citizenship. The persecution must be by the government, or by a group that the government cannot, or will not, control.⁷⁴ In the contemporary Mexican and Central American context, a number of unaccompanied minors may have such well-founded fears of persecution not so much because of religious, racial, or political persecution, but because of their identity in socially marginalized and devalued groups, such as homosexual or transgendered communities, or because of their unwillingness to accede to the pressures of the gang violence that is increasingly prevalent in Mexican society.⁷⁵ If the child is granted asylum, he or she is eligible to receive social services and benefits under the Unaccompanied Refugee Minors Program.⁷⁶

In addition to these three substantive grounds for U.S. residence that the TVPRA made more accessible to unaccompanied minors, an unaccompanied Mexican minor allowed temporary entry into the United States could, like unaccompanied children from any

other country, also seek to establish permanent residency under one of the following grounds for relief from removal:

1. **Withholding of Removal Under INA Section 241(b)(3).** An individual's removal is prohibited to a country where the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.
2. **Withholding of Removal and Deferral of Removal Under the U.N. Convention Against Torture (CAT).** An individual's removal is also prohibited to a country where it is more likely than not that the individual would be tortured. In such instances, an individual is granted withholding of removal under federal regulations implementing U.S. obligations under the CAT found at 8 C.F.R. Sections 208.16(c) and 208.17.
3. **U Visa.** The U Nonimmigrant Status (U Visa) is available for victims of crimes who have suffered mental or physical abuse as a result of those crimes and who are willing to assist law enforcement and government officials in the investigation of the criminal activity. Those who have been granted a U Visa may later adjust their status to lawful permanent resident.
4. **Family-Based Immigration.** U.S. citizens or legal permanent residents can petition for certain family members to receive family based immigrant visas. Once the family petition is approved, the intending immigrant must file for adjustment of status. The Attorney General or the Secretary of Homeland Security may adjust the status of an alien to that of a lawful permanent resident if a visa petition on behalf of the alien has been approved, an immigrant-visa is immediately available at the time of the alien's application for adjustment of status, and the alien is not otherwise inadmissible to the United States.

SECTION 4:

The TVPRA: An Unfulfilled Promise

With the passage of the TVPRA, Congress rejected the routine practice of immediate repatriation of unaccompanied Mexican minors at the border. It decided that an unaccompanied minor must stay in the United States for adjudication of any available immigration remedies, unless DHS makes a determination within 48 hours that the child is *not* a victim or potential victim of trafficking, has *no* credible fear of persecution, and *is* willing and able to choose voluntary return to Mexico.⁷⁷ Despite this substantial change, today, in most cases, no meaningful screening is being conducted. The revolving door at the border keeps spinning.

The primary explanation for the continued status quo lies with DHS's decision to assign its new TVPRA screening responsibilities to CBP, a law enforcement body with neither the expertise nor resources to make these critical determinations in any meaningful manner. Compounding the problem, border patrol facilities are not a suitable environment for interviewing minors to uncover abuse and exploitation. Moreover, CBP officers have been provided neither the training nor the tools to conduct adequate TVPRA screenings. Finally, communications between U.S. and Mexican authorities with respect to unaccompanied minors are inconsistent, often depriving U.S. officials of potentially useful information when making repatriation decisions and leaving Mexican officials in the dark as to the locations of Mexican children in U.S. custody. With the promise of the TVPRA unfulfilled, minors are not being informed of their rights, have little or no comprehension regarding their options, and are encouraged to believe that they have no real choice other than to return to Mexico, regardless of their circumstances. On the whole, then, unaccompanied Mexican children still are being returned to whatever conditions led them to migrate north, even if those conditions include an abusive home environment, or exploitation by traffickers, gangs, and drug cartels.

CBP Is the Wrong Agency for TVPRA Screening

Congress delegated the TVPRA screening responsibilities to DHS without further specification.⁷⁸ DHS then assigned this responsibility to CBP, its law enforcement component charged with protecting the border against external threats. DHS could have assigned its new TVPRA responsibilities to USCIS, the benefits determination branch that already conducts screenings for adults and unaccompanied children with potential asylum claims. More than any other single factor, this decision has resulted in the absence of any meaningful screening under the TVPRA.

The choice of CBP to conduct TVPRA screenings is understandable as a matter of convenience: this is the agency whose officers pursue, apprehend, and initially detain undocumented aliens at or near the border, including unaccompanied Mexican minors. It is not, however, comprehensible in terms of a natural fit between the agency and the Congressionally assigned function. CBP is not “just” a law enforcement agency; it has a unique role in U.S. law enforcement, summed up in its own Mission Statement as follows:⁷⁹

We are the guardians of our Nation’s borders.

We are America’s frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American public against terrorists and the instruments of terror.

We steadfastly enforce the laws of the United States while fostering our Nation’s security through lawful international trade and travel.

We serve the American public with vigilance, integrity and professionalism.

As the agency’s website goes on to say: “Securing America’s borders from those who will do harm is CBP’s top priority. It deploys the government’s largest law enforcement work force to protect at and between ports of entry, supported by air and marine assets.”⁸⁰ To carry out this mission, CBP employs its “personnel, tactical infrastructure and technology”—including roads, fences, lights and unmanned aerial surveillance—“to gain and maintain effective control of U.S. land border areas.”⁸¹

CBP officers are highly trained, uniformed, and armed, and are regularly placed in dangerous situations. The daily duties of Border Patrol officers involve “the detection, prevention and apprehension of terrorists, undocumented aliens and smugglers of aliens at or near the border by maintaining surveillance from a covert position...”⁸² The demands of the job, difficult at all times, have only increased in recent years, as the violence spawned by organized Mexican cartels that smuggle humans, drugs, and guns has spilled over the border and affected residents on both sides.

Given these assignments, it is unsurprising that CBP officers have no particular expertise in the handling, much less the protection, of minors. Nor has CBP ever had a specialized unit dedicated to the treatment of minors. Instead, minors are detained and processed by the same agents who detain and process adult undocumented immigrants at the border, including smugglers who are a principal focus of CBP’s enforcement efforts. All of these agents receive the same basic training courses, and they do not include, so far as we could determine, anything on the unique vulnerabilities of minors, how to communicate with them, or how to conduct the screenings called for by the TVPRA.

An unaccompanied minor's initial interaction with a CBP officer is rarely pleasant, and can often be traumatic. The initial apprehension typically occurs in the frontier somewhere along the border, though in some cases CBP identifies a child at an official border crossing (*i.e.*, port of entry). (At the port of entry, CBP agents are called Office of Field Operations (OFO) officers; for ease of reference we will refer to all CBP agents, either stationed along the border or at a port of entry, as "CBP officers.") At port of entry checkpoints, minors sometimes are found hidden in a searched car at a border checkpoint or caught trying to enter using false papers. Along the border frontier, minors (often with adults, sometimes with human smugglers) cross treacherous deserts, rivers, and mountains to evade detection. When caught by CBP officers, they are arrested and placed in cars or vans to be taken to a border patrol facility for questioning, sometimes in handcuffs (though handcuffing children is against CBP policy). Some minors we interviewed reported being hit, kicked, manhandled or roughly handcuffed during their initial apprehension, or insulted and cursed at by CBP officers. It can come as no surprise then that CBP officers appear to have little enthusiasm for their TVPRA screening duties, or that unaccompanied minors are unlikely to reveal sensitive information to the officers who just arrested them.

RECOMMENDATION:

Transfer TVPRA Screening Responsibilities to USCIS

CBP officials maintain that the agency can perform the TVPRA screening functions, and that it is committed to the training and has adopted the procedures necessary to do the job. Experience has shown, though, that CBP's core focus on law enforcement, detection, and apprehension makes its personnel unsuited to perform the sensitive child-centric screening mandated by the TVPRA and its management unwilling to embrace the training and culture shift that the TVPRA requires.

Applesseed therefore recommends that another entity be tasked with the TVPRA screening duties. The branch within DHS that is the most natural fit for this task is USCIS, the immigration benefits determination arm of DHS. USCIS already is responsible for interviewing all unaccompanied children applying for asylum, and has, since 1998, implemented and followed detailed guidelines for interviewing child asylum seekers.⁸³ USCIS also conducts "credible fear" interviews, initial evaluations of adult asylum seekers at the border, inquiries that require skills similar, though not identical, to TVPRA screening interviews. While this change would require additional resources for USCIS, removing the screening responsibility from CBP would also free up personnel better devoted to law enforcement tasks at the border.

HHS is another possible candidate to conduct TVPRA screening, as it already is responsible for all unaccompanied minors in the United States not immediately repatriated and has substantial experience dealing with traumatized children. However, the TVPRA as currently written delegates the screening duties to DHS; allowing HHS to execute this function would require either a statutory amendment or a new arrangement between the departments that would allow DHS to retain the final TVPRA determination. Both options present significant hurdles.

Appleaseed received suggestions that DHS delegate its TVPPRA screening responsibilities to NGOs, which have personnel trained in the evaluation and protection of at-risk children. Delegation to NGO contractors does have precedent in this context; DUCS contracts NGOs to manage and staff many of the shelters that house UACs across the United States. On the other hand, delegating the care and custody of children is of a different order than delegating a statutory decision-making responsibility. It is unclear whether DHS would have the authority to delegate this responsibility to contractors or confidence in the decisions made by those contractors.

Whichever new agency undertakes screening responsibilities, it should have a specifically dedicated child welfare unit that employs individuals with training and expertise in child interviewing and protection. CBP's role following apprehension of an apparent unaccompanied minor should be limited to an initial determination that the minor is, in fact, under 18, unaccompanied, and of Mexican origin. Upon that initial determination, the minor would be transferred without delay to the custody of the new agency or unit, which would conduct further screening pursuant to the TVPPRA.

Border Patrol Facilities Are Inappropriate Environments for Interviewing Vulnerable Unaccompanied Minors

The detention setting of a border patrol facility makes it especially unlikely that unaccompanied children will divulge sensitive information to their arresting CBP officers. These secure facilities, though not all identical, share physical and logistical features that are intimidating to the minors detained in them:

- The detention facility is a general purpose CBP building—imposing, well-guarded inside and out, and staffed by uniformed agents for the initial detention and screening of both minors and adult detainees apprehended within that CBP sector.
- The holding cells are bare, unadorned, air-conditioned rooms that usually have a bench and an unenclosed toilet. The rooms are kept quite cold (“*hieleras*”—“ice boxes”—is the term many minors use for them), despite the fact that the minors often arrive not just cold but also wet. Generally, neither beds, pillows, nor fresh clothes are provided to the children, and even blankets are not usually available.
- While children are segregated from adults at these facilities, the holding cells are often in sight of each other. At the Ft. Brown CBP Facility in Brownsville, Texas, for example, multiple cells are clustered in a semi-circle around an open area where CBP officers sit. The cells are made of cinder block a few feet up, with glass windows up to the ceiling, allowing CBP officers to view the occupants, and the occupants to view each other. Thus, detained adults can see the children, and vice versa.
- Medical (or medically trained) staff is limited or nonexistent, and children's cuts and bruises sometimes go unattended, even though CBP officers have first-aid kits and will attempt to address more serious medical needs.
- Food is minimal, limited in most cases to cold sandwiches and/or packaged snacks to eat and water and juice to drink. Aside from its limited nutritional and comfort

value for a minor who has arrived to a CBP station after days of eating little or nothing, the quantity of the provisions appears inadequate for the period of detention. Some minors reported that the food and drink runs out after one serving, even if the minor's stay lasts a day or longer.

Given these conditions, minors in CBP custody have no sense whatsoever that they are in a safe and secure place. In some CBP facilities, TVPRA screenings are conducted in empty cells, and when children are detained in groups, they may be interviewed at the same time by different CBP officers. In other CBP facilities, CBP officers sit at a row of metal desks, interviewing children across the desks in an open area, within sight and earshot of detained adults. In all cases, nothing in the physical environment is designed to provide a sense of warmth and comfort for the child. Everything about this experience tells these unaccompanied children that they are in a detention center run by a powerful U.S. law enforcement agency and that the alternative to repatriation is to be “locked up” in the United States. It is unreasonable to expect that most children in this environment would divulge sensitive information that would indicate that they had been trafficked or otherwise feared abuse. Indeed, one CBP agent we spoke with told us that he does not expect Mexican minors to trust him or his colleagues in this “police station” environment. Trafficking victim guidance issued by DHS concurs with this view: “ICE recognizes that in order to successfully investigate and prosecute traffickers, victims must be stable and free from fear and intimidation to be effective witnesses.”⁸⁴

RECOMMENDATION:

Provide Separate, Safe, and Child-Friendly Environments for TVPRA Interviews

One CBP officer forthrightly recommended to Appleaseed that unaccompanied Mexican minors be transferred immediately to a separate, friendlier “hub facility” where they can be questioned by someone in plain clothes, preferably a social worker who is child-trained. Appleaseed concurs with this suggestion, and recommends that DHS remove unaccompanied Mexican minors from CBP facilities immediately after making a determination that the individual is in fact unaccompanied, Mexican, and a minor, so that TVPRA screening can be conducted in an environment conducive to a trustful exchange.

This may well require new facilities—regional centers not far from the border—yet it is clear that removing children from CBP facilities is necessary to comply with the Congressional mandate. Removing children from CBP facilities should also free up CBP officers to concentrate on their core law enforcement responsibilities.

CBP Officers Are Not Adequately Trained to Conduct TVPRA Screening

The TVPRA requires all personnel who have substantive contact with unaccompanied children, including Mexican minors at the border, to receive “specialized training” to “work with unaccompanied alien children, including identifying children who are victims of severe forms of trafficking in persons, and children for whom asylum or special immigrant relief may be appropriate.”⁸⁵ Nevertheless, and despite the fact that the

TVPRA screening requirements added an entirely new dimension to the CBP officers' portfolio, CBP leadership has failed to recognize that intensive training of existing officers, or the creation of a new cadre of personnel, would be needed to effectuate the Congressional mandate.

From the information Appleseed reviewed, CBP officers are not receiving *any* training ("specialized" or otherwise) on how to work with children in general, and in particular how to identify the conditions specified by the TVPRA. Our Freedom of Information Act (FOIA) requests to the agencies yielded no indication of any specialized training, and CBP refused to share with us any of their training modules on the claim that disclosure would reveal law enforcement methodologies. A September 2010 report by the DHS Office of Inspector General, which focuses on the Department's compliance not with the TVPRA, but with the earlier *Flores* Agreement, states that as part of their basic training, CBP officers "receive instruction on CBP's responsibilities for the care and treatment of juveniles in its custody."⁸⁶ This OIG Report goes on to note the existence of a one-hour electronic "refresher" course, titled "Unaccompanied Juveniles/Minors and the *Flores v. Reno Settlement Agreement*," available to CBP personnel through the agency's Virtual Learning Center (VLC).⁸⁷ The OIG report found that about 35% of CBP's agents completed the course in FY 2008, and less than 40% in 2009.⁸⁸ It also quoted a number of CBP officers and managers who had little or no familiarity with the refresher course, or who were aware that it was required to be viewed on an annual basis.⁸⁹

In addressing these observations from the OIG, CBP management made no claim that any TVPRA, child screening, or related materials were included in its basic training curriculum for new agents and officers. On the contrary: in response to the spotty attendance record for the existing one-hour VLC "refresher" course, CBP management said that it had held off sending to the field a reminder about attendance "pending the revisions of the course to include the updated material from the [TVPRA]," and reported expected completion of the revised video course by the end of calendar 2010.⁹⁰ A request for funds to develop the revised course material, produced in response to our FOIA request and dated July 23, 2009, reflects what CBP has in mind: expanding the existing video by 30 minutes, developing "approximately 30 screens of new content," and creating a new one-hour course for delivery at the basic training academies "using the same content contained in the VLC course," for a total cost of \$36,000.⁹¹

Indeed, to this date, the only significant change in practice adopted by the CBP in response to the TVPRA has been the creation of a new two-page screening form—CBP Form 93—and a short accompanying memo sent to its offices in the field. That memo, dated March 20, 2009, together with the new form, appear to have been sent out either on or a few days after the March 20, 2009 effective date of the TVPRA. (A copy of the memo, with the redactions made by CBP in response to our FOIA request, is annexed as Exhibit 3 to the Appendix to this report; a copy of Form 93, as produced with redaction by CBP, is found at Exhibit 5 to the Appendix.) The memo devotes approximately one page to the new screening requirements, and Form 93, which we discuss separately below, devotes less than one page to the determinations called for by the screening process.⁹² Neither the memo nor the form itself could be characterized as "specialized training" that would equip CBP officers to deal with and screen detained Mexican minors. Senior CBP officials do not contend otherwise.

Comments we received from CBP officers in the field confirm that CBP has not provided any meaningful TVPRA-related training to its agents. When asked generally about their training to work with detained migrant children, the most common response we heard from agents and officers was “on the job”; another, slightly less common response we heard is that since the CBP officers have children, nieces or nephews of their own, they have sufficient experience to deal with children. Two CBP officers with whom we spoke were unaware of training on the TVPRA screening requirements. Another CBP officer we interviewed said that the agents had received no formal training on the TVPRA screening requirements or how to conduct the TVPRA screening, but that they did receive an email notifying them of the effective date of the TVPRA and that the Standard Operating Procedures (SOPs) were being updated. The same officer noted that agents attend formal trainings only when there is a “big change” in the law (apparently, the TVPRA did not qualify). Yet another officer with whom we spoke, who was in charge of the processing of unaccompanied minors at her facility, seemed thoroughly unfamiliar with the TVPRA screening requirements and procedures. She repeatedly told us that her staff relies largely upon Mexican consular officials to make these determinations.

Only one CBP officer whom we interviewed claimed that CBP agents receive training on TVPRA compliance, but his understanding of the rules for repatriating Mexican-national unaccompanied minors raises doubts about his claim, and suggests that whatever training he is referring to is not only inadequate, but seriously amiss. In this officer’s understanding, if a child indicates that he does not want to return to Mexico, the child then is screened under the TVPRA to determine whether he should be placed in ORR custody—the implication being that no screening is conducted for children who request voluntary return, and that the screening process may be used to reject a minor’s decision to remain in the United States. Indeed, according to this officer, if the child opts to stay in the United States but the subsequent TVPRA screening does not indicate that the child may be a victim of trafficking or may have a credible fear of persecution, the child nonetheless will be repatriated. If screenings worked as this officer claimed to have been instructed they should, they would effectively eliminate the third TVPRA requirement, which prohibits a child being repatriated unless he makes an “independent decision” to accept voluntary return, regardless of whether the child is a trafficking victim or has a credible fear of persecution.

Case Study: José

“José” is a 16-year-old Mexican national from San Felipe in Baja California. In 2010 he decided that he wanted to reunite with his family in Houston, Texas. José paid a *coyote* in San Felipe \$250 to guide him across the border near Ciudad Camargo, Tamaulipas, a Mexican city near McAllen, Texas. José crossed the Rio Grande at night with a group of 22 Mexican nationals. He was the only minor in the group. Three days after he crossed the border, José and eight other adults were detained by Border Patrol while they were sleeping in the brush. José was transported to McAllen, Texas for detention and screening. The CBP officer who interviewed José told him that he could not see an attorney or a judge because he was a Mexican minor, and because this was his first time crossing the border. José was then told that he had to sign a document, written in Spanish, which stated that he refused to see a judge. He signed the form. That same day, José was returned to Mexico.

The problems posed by CBP's inadequate training are exacerbated by the scant attention CBP pays to the cultural and language skills of the officers interacting with these children. Apparently, Spanish fluency is not a job requirement for CBP officers who handle these children; CBP officials told us that officers who work along the border simply learn Spanish quickly. This "on-the-job" language training may be sufficient for an officer whose job is to apprehend unauthorized adult border crossers, but it hardly qualifies that officer to interview a child to determine whether he or she has been trafficked or is otherwise a victim of abuse.

Whether or not CBP has rolled out its expanded-format video by the time this report goes to press, three things are clear: (i) for the past two years, CBP has implemented no training program at all concerning how to interview, screen, and elicit reliable information needed to make the determinations called for by the TVPRA; (ii) the kind of training that CBP envisions in this area could not reasonably provide to the vast majority of CBP law enforcement agents the specialized skills, understanding, and sensitivity they would need in order meaningfully to carry out their TVPRA screening responsibilities; and (iii) there is no current commitment at CBP to the kind of training and expertise that would be commensurate with the responsibility that Congress has assigned to DHS.

RECOMMENDATION:

Develop Specialized Training in Consultation with Child Welfare Experts, as Explicitly Required by the TVPRA

Whether the TVPRA screening duties remain with CBP, or are transferred to another agency, it is clear that a significant commitment to specialized training must be made. The TVPRA requires it. The training should ensure, at a minimum, that the personnel responsible for screening detained unaccompanied minors are qualified to:

- Work with unaccompanied children, including the use of techniques for interviewing children;
 - Identify and communicate with juvenile victims of trafficking and other forms of abuse;
 - Speak Spanish fluently (and, as needed in the particular area, provide indigenous language interpretation);
 - Understand Mexico's geography, social conditions as they relate to migration, and social services structure, including the DIF system; and
 - Explain to a child the DUCS shelter system and the possible grounds for admission (SIJS, asylum, T-visa, etc.) that the minor may have under U.S. law, as well as the basic elements of a removal proceeding and the consequences of being ordered removed.
-

CBP's Screening Forms Are Inadequate and Inconsistently Used

To conduct TVPRA screenings, CBP relies on two forms—CBP Form 93 and Form I-770. CBP Form 93 provides an outline for the first two TVPRA determinations—that the child is not a potential victim of trafficking and does not have a credible fear of persecution. (An unredacted copy of Form 93 is annexed as Exhibit 5 to the Appendix to this report.⁹³) Form I-770—“Notice of Rights and Request for Disposition”—is the tool used to determine whether “the child is able to make an independent decision” to return to Mexico. Neither of these documents, either as drafted or as used in the field, is sufficient to make accurate evaluations as required by the TVPRA.

CBP officers with whom we spoke confirmed that Form 93, a two-page screening form, is their primary tool or guide to make the trafficking and persecution determinations required by the TVPRA. On its face, the form lacks the depth or detail sufficient to draw out the information for an agent to evaluate whether a child has a credible fear of persecution or has been trafficked, or would be at risk of being trafficked if immediately repatriated. For example, the screening form directs CBP officers to ask just three questions to determine whether an unaccompanied minor has a credible fear of persecution:

- 1) “Why did you leave your home country or last country of residence?”;
- 2) “Do you have any fear or concern about being returned to your home country or being removed from the United States?”; and
- 3) “Would you be harmed if you were returned to your home country or country of last residence?”

The questions are formulaic, not designed to elicit information from a child regarding what potentially are very sensitive and personal issues. The perfunctory nature of the three “credible fear” questions on Form 93 is highlighted by contrasting them with the credible fear worksheet used by USCIS with adults at the border (Form I-870), which is five full pages, and USCIS’s Asylum Office Basic Training Manual section on Children’s Asylum Claims, which spans 54 pages.⁹⁴ While these latter two documents are used with individuals who have already expressed some fear of persecution, their length and granularity point to the need for a more in-depth examination of a child’s potential fear of persecution.

CBP Form 93 is equally deficient with respect to identifying victims or potential victims of trafficking. The form does not set forth any direct trafficking-related questions. Instead, the form provides a list of trafficking indicators and suggested areas to pursue in determining whether a child is a victim of trafficking. These include: “[w]as the child recruited for one purpose and forced to engage in some other job?,” “[h]as the child ever been threatened with deportation or law enforcement action for failing to comply with instructions?,” “[i]s the child engaged in any type of labor?,” and “[h]as the child been able to freely contact friends or family via phone, internet or mail?”. While these are standard trafficking indicators used by numerous organizations, many of these inquiries have no relevance to children who have been caught just as they crossed the border, and none of them probe what the child can expect to encounter if he or she is returned swiftly to Mexico. Moreover, while the form appropriately recognizes

that follow-up inquiry will be needed (if one or more trafficking indicators are present “the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario”), it contains no guidance on how to craft “age appropriate questions” and, as discussed above, CBP officers are not trained on how to use the form or interview children.

Inadequate as Form 93 is, Appleseed’s investigation indicates that CBP officers routinely fail to use the form at all. Roughly half of the children we interviewed who had been, or were about to be, repatriated were not asked *any* questions that might elicit information about whether they have a credible fear of persecution upon return. Likewise, approximately half of the children stated that they were not asked any questions that would touch upon the trafficking indicators set out in the form. For the most part, the children we interviewed recalled being asked only the most basic information: name, age, birth date, parents’ names, where they are from, and their addresses. Several children indicated that their interviews lasted only a few minutes.

In addition to Form 93, the CBP interview process is supposed to include Form I-770, which in theory is designed to inform unaccompanied minors of their rights and to enable a determination that the child is competent to (and has) made “an independent decision” to return to Mexico. (A copy of Form I-770 is annexed as Exhibit 6 to the Appendix to this report.) Specifically, CBP agents are required to use Form I-770 to notify unaccompanied minors of their right to call a family member or adult friend, the right to be represented by a lawyer, and the right to a hearing before a judge in order to determine whether the unaccompanied minor may remain in the United States. Form I-770 is used also to document minors’ decisions to accept voluntary departure. Unaccompanied minors are supposed to be provided the form to read and sign. If they cannot read, a CBP agent is supposed to read the form to them.

Our investigation indicates that most unaccompanied Mexican minors do not understand their rights and are not making an “independent decision” to return to Mexico. Even though Form I-770 explicitly states that “no [minor] can be offered or permitted to depart voluntarily from the United States except after having been given the notice [of their rights],” approximately three-quarters of the children we interviewed who had been repatriated, or were about to be repatriated, stated that they were not informed of their rights. Notably, many children stated that they were never asked whether they wanted voluntary departure; they were simply told that they would be returning to Mexico. Some children believed that they had no option but to return to Mexico. Two of the children we interviewed were told (erroneously, of course) that they could not stay in the United States because they were Mexican.

Case Study: María

“María” is a 14-year-old Mexican national from Reynosa, directly across the border from McAllen, Texas. She lives with her father and brother in Reynosa, while her mother and two sisters live in the United States. María decided that she wanted to live with her mother, and paid a *coyote* \$400 to take her across the Rio Grande. She crossed the river at night, on an inflatable boat, and was detained by Border Patrol a few hours later while waiting for her sister to come get her. The CBP officer who

interviewed Maria told her that she had a right to a hearing before a judge, but he did not explain to her why she might want such a hearing or what would happen to her if she chose to have a hearing. María believed that she had only two options: return to Mexico or go before a judge and risk being sent to prison. As a result, María did not request to remain in the United States, even though she was scared to go back to Reynosa because of the escalating drug violence. The CBP officer never uncovered this information, however, because he never asked her why she had left Mexico or whether she had any fear of returning to Mexico.

Apparently, little effort is made to ensure that the contents of Form I-770 are communicated to Mexican minors in Spanish. We were told by CBP agents that Form I-770 exists in both English and Spanish, a fact confirmed by some of the children we interviewed. Nevertheless, it appears that CBP does not routinely provide the Spanish version to unaccompanied Mexican minors. More than half of the children we interviewed were told to sign a form written in English that they could not read and that was not read or explained to them. In fact, several children said that they did not know whether the form was in English or Spanish because they were not given an opportunity to read the form before being required to sign it.

Even if unaccompanied Mexican minors were given the opportunity to review Form I-770 in a language they understood, the form's language does not meaningfully inform the average child of the rights he or she has or, more importantly, the consequences of exercising (or not exercising) those rights. For example, Form I-770 does not adequately explain to a child the right to a hearing before a judge, and what will happen if the child exercises this right. The form states only that:

The judge will decide whether you must leave or whether you may remain in the United States. If for any reason you do not want to go back to your country, or if you have any fears of returning, you should ask for a hearing before a judge. If you do not want a hearing before a judge, you may choose to go back to your country without a hearing.

The form does not, however, explain the consequences of refusing voluntary return and requesting a hearing before a judge, or the consequences of returning to Mexico. Most notably, the form does not explain that if a minor chooses a hearing before a judge that minor will first be sent to a shelter (DUCS) facility. Nor does the form explain that the minor, pending the determination of whether he or she can remain in the United States, will have access to a variety of social services and possibly legal representation. Appleseed's investigation found no evidence that CBP agents supplement the form by orally providing this information. Those repatriated children we interviewed who were informed of their rights by CBP seemed to have little understanding of what might happen to them if they did not agree to voluntary return. The children understood only that repatriation was the alternative to continued incarceration, and that a judge was on hand to rule on whether they would remain locked up. Not surprisingly, they chose repatriation.

Case Study: Anita

Notwithstanding the lack of training and adequate tools, it is apparent that at least some CBP officers take their screening responsibilities seriously, and that appropriate outcomes of the screening process can and do occur. The following case study illustrates the point:

Anita is a 15-year-old girl from Monterrey, Mexico, who came to the United States to escape an abusive father and the violent drug cartel, “Los Zetas.” Anita’s mother—now deceased—wanted her to live with her sister in the United States because she feared her husband’s violent behavior. Anita’s sister was in the process of trying to adopt her when “Los Zetas” began threatening the family because of a brother-in-law’s involvement with a rival drug gang. The family decided that Anita needed to leave Mexico immediately for her safety, and Anita’s sister and husband came to get her. Their first attempt to get to the U.S.-Mexico border from Monterrey was thwarted by “Los Zetas,” who were blocking the road and ordered them to turn around or risk being killed. The next day the road was clear and they managed to make it to the border.

Anita tried to cross the bridge into the United States using fake papers, but she was caught and detained by OFO agents. She was repeatedly yelled at by the agent who detained her, who wanted to know who she had traveled with to the border. She would not tell him, and was eventually interviewed by a different agent. During the interview, the agent asked her whether she was afraid to return to Mexico and she said yes, explaining that Los Zetas was threatening her family. She also was asked if she had been harmed on the way to the border, and she told them about the encounter with Los Zetas. As a result of this interview, Anita was sent to a DUCs facility rather than being repatriated to Mexico. Anita is now seeking asylum in the United States.

Mexican unaccompanied minors also are not provided any real opportunity to seek guidance from an adult (other than the CBP officer) in order to help them make their decision. For unaccompanied minors from contiguous countries, Form I-770 makes clear in the “Instructions to Officers” that the purpose of the right to call a family member or adult friend is so that the minor “can seek advice as to whether they should voluntarily depart or whether they should request a deportation hearing.” But the form that is provided to the children provides no such instruction. Instead, it simply says: “You may call your mother or father or any other adult relative. You may call your adult friend.”⁹⁵ Most children forego this opportunity, because they either do not understand the role the adult may play or the import of the decision they are making. In addition, the form fails to advise the detained minor of the right to meet with a Mexican consular officer. Although, as discussed below, Mexican consuls currently tend to prioritize repatriation above other concerns, a consular officer still can offer detained children a measure of comfort and help the child arrive at a better understanding of the circumstances and decision the child confronts.

In sum, the information and resources provided to Mexican unaccompanied minors gives them no genuine ability to make an informed, independent decision about whether it is in their best interest to accept voluntary return to Mexico.

Not only does Form I-770 make an informed independent decision unlikely, but CBP has failed to develop any standards or guidelines to evaluate whether, as the TVPPRA

requires, an unaccompanied minor is “able to make an independent decision to withdraw the child’s application for admission to the United States.”⁹⁶ Neither Form 93 nor Form I-770, or any other materials used by CBP officers, provide any guidance on how to ascertain whether a child is capable of making an independent decision regarding voluntary return. Our discussions with CBP officers in the field indicate that no uniform guidelines or standards exist for this purpose. On the contrary, it appears that CBP failed to incorporate suggestions by USCIS on assessing the decision-making capacity of minors. According to documents produced pursuant to FOIA, in March 2009, as an inter-agency task force within DHS was developing its approach to TVPRA implementation, a CBP attorney reached out to USCIS for that agency’s input on the issue of determining consent.⁹⁷ In September 2009, a USCIS staffer wrote that “[i]t does not look like any of our substantive suggestions were incorporated.”⁹⁸

Case Study: Daniel

“Daniel” is a 16-year-old boy from Nayarit, on Mexico’s west coast. He says that he and a 27-year-old friend, both of whom were working in construction, had planned for months to go to the U.S. and work whatever jobs they could find. Daniel’s brother lives in the U.S., but he doesn’t know exactly where. He never told his parents he was leaving; they would not have approved.

With the money he and his friend had saved, they bought a bus ticket to Guadalajara and from there took a plane to Tijuana. They planned to take a small boat up the coast past San Diego, but got frightened and instead flew east to Reynosa to cross the Rio Grande from there. When Daniel and his friend got to Reynosa, they hired a *coyote*, about 40 years old, to take them across the river by boat. About 27 passengers were in this boat, mostly adults but a few other 16- and 17-year-olds as well. The group was spotted by Border Patrol nearly as soon as the boat landed on the other side; everyone scattered and ran, but all were caught except the *coyote*.

Daniel says he was put in metal handcuffs and taken to a station not too far from the entry port bridge. There were two buildings, one larger, one smaller. Once inside, Border Patrol had all the men drop their pants to see if they were carrying anything, then had all of the adults go one way, and the other three—Daniel and two other minors, one a girl—go the other way.

Border Patrol interviewed Daniel for about 15 minutes, in Spanish, and they took his fingerprints. He was asked his name, where he was from, who were his parents, and whether he had traveled alone (he said yes, even though he hadn’t). They gave him juice and a sandwich. After the questioning, they gave him a form in Spanish, and told him that if he signed the form, he’d be free to go to back to Mexico. He understood that if he didn’t sign the form he would stay locked up and would go before some kind of judge or judicial officer in the U.S. who would decide whether he would stay locked up for a longer time. He knew this because he overheard an officer saying that to one of the adults in his group who had been caught. He signed the form, but didn’t read it.

The officers did not ask Daniel how he got to Reynosa, or whether he was scared to go to back to Mexico, or whether he had been forced by anyone to go to the U.S. They never asked him why he was going to the U.S. at all. They did not tell him he could make a phone call, or that he could go before a judge (but he did hear them say that to one of the adults), or that he could have a lawyer, or that he could speak with the

Mexican consulate. He felt nervous talking to these agents, that all of his information would stay in the computer “up there.”

Daniel stayed at the Border Patrol station about a day and a half. The following day, he was brought to the *albergue* in Reynosa, and he’s been here about a week. His mom has to come get him, but she works, so it’s not easy for her to get here. His parents aren’t going to be happy with him. “Will you try to cross again?” Daniel is asked. “Why would I be going back to Nayarit if I planned to cross again? No, I just want to go home.”

The absence of direction for determining whether an unaccompanied minor is able to make an independent decision to return to Mexico has led to inconsistent practices across CBP. In the Nogales and Tucson, Arizona regions, for instance, CBP has adopted a policy that children under the age of 14 will be considered unable to make an “independent decision” to return voluntarily, and thus any such child will be transferred to ORR/DUCS custody unless a parent or legal guardian picks them up within eight hours of apprehension. The Mexican Consulate in Nogales told Appleseed that since enforcement of the TVPRA began, 53 Mexican-national unaccompanied minors picked up in Arizona had been sent to DUCS facilities as a result of the local “13 and under” policy.

While it may well be appropriate to utilize a presumption that children under a certain age are incapable of making an independent decision regarding voluntary return, the “13 and under” policy has not been implemented in the other border regions that we visited, nor do they seem to have any similar policy. In the Rio Grande Valley, for example, CBP officers are provided no guidance on the “independent decision” analysis. When asked how they determine whether an unaccompanied minor is able to make an “independent decision” to return to Mexico, one CBP officer told us that the determination is made by a Mexican consular officer, who interviews the unaccompanied minor and consults with the unaccompanied minor’s parents. Our investigation found, however, that the Mexican consular interviews generally occur immediately prior to repatriation, when the decision to accept voluntary repatriation already has been made. Moreover, the interviews conducted by the Mexican consulate are focused on obtaining certain basic information, not on determining whether a child should be repatriated in accordance with the TVPRA requirements. At another CBP station, we were informed that the “independent decision” determination is made on a case-by-case basis—in other words, by talking to the child to assess whether the child has the capacity to make a decision. That would seem to make sense, except that CBP officers have no child welfare expertise, no specialized training, and no guidelines to evaluate whether a child is mature enough to make an “independent decision” regarding voluntary return.

RECOMMENDATION:**Develop Forms and Guidance to Elicit Sensitive Information from Unaccompanied Minors and to Ensure that a Child's Decision to Return Is Independent and Voluntary**

The forms currently used to make TVPRA evaluations are flawed, and need to be revised, regardless of which agency has the responsibility for TVPRA screening. In addition, more specific guidelines and protocols must be developed to ensure that the determinations are as accurate as possible. All forms, guidelines, and protocols should be developed in consultation with experts on child interviewing techniques. Appleaseed therefore recommends that:

- CBP Form 93 should be revised (or an entirely new form should be created) with input from NGOs and from USCIS, which has expertise in credible fear interviews and child asylum claims, to ensure that the interview asks all questions relevant to fear of persecution. The new or revised form should anticipate recurring situations faced by Mexican minors, who often are subject to gang victimization or other forms of social group persecution. This form should also include specific questions and comprehensive guidance to help elicit information that will identify victims of trafficking, all tailored to the circumstances common to Mexican minors, including their risk of being trafficked upon return.
- The screening process should recognize the general inability of younger minors to make an independent decision, as well as their general inability to care for themselves. Unaccompanied minors under 14 years old should be referred to ORR/DUCS custody, unless the interviewer determines that reunification with a parent or documented legal guardian (on either the United States or Mexico side of the border) will take place within 48 hours, would not pose a risk of abuse, and that the child and his parent or guardian have a safe, secure means of transport home. Communication with the relevant Mexican consular officials and social service providers should be required and facilitated before making this determination.
- Form I-770 needs to be revised as well as supplemented by other communications which make clear to minors that they have the right, if they wish, to call a family member in the United States or Mexico, meet with a Mexican consular officer, and call and meet with an attorney from the list of legal services providers in the relevant district. Form I-770, and any additional materials used to advise children of their rights, must ensure that unaccompanied Mexican minors understand the possible consequences of remaining in the United States versus returning to Mexico, so that the “independent” decision required by the TVPRA is a genuine informed choice. The written form should be in Spanish (or provided in an indigenous language the child understands) and read to the child if there is any doubt about the child's ability to read. In consultation with outside experts, DHS also should develop and use a short Spanish-language video that accurately describes the possible consequences of the child's decision in simple, straightforward terms.

- A child should not be deemed competent to make an independent decision to return unless the child understands: (a) in whose custody he or she would be placed and the family reunification process in Mexico; (b) the kind of shelters available in the DUCS system; (c) the removal proceedings the child will face, the child's rights in those proceedings and the consequences of being ordered removed; and (d) the potential length of stay in the DUCS system while the child's immigration status is determined.

Communications Between U.S. and Mexican Officials Are Geared Toward Repatriation and Not the Best Interests of the Child

The local Mexican consulates play a significant role in the repatriation of unaccompanied Mexican children. Parts of this role are formal, arising out of the Vienna Convention and the various bilateral covenants and agreements between Mexico and the United States, while other parts are informal, including regular discussions between Mexican SRE officials and U.S. CBP officers. While both CBP officers and Mexican consular officials report that they have good lines of communication and that their protocols for repatriation generally work well, their emphasis is on rapid repatriation rather than the rights of the child. CBP routinely fails to provide notice of a minor's right to consult with a Mexican consular officer before the repatriation decision is made, while at other times CBP defers unduly to Mexican officials' judgments when making TVPRA determinations. In addition, Mexican officials sometimes are left in the dark about the status of unaccompanied minors in the United States, and U.S. officials do not share information they learn from unaccompanied minors who are repatriated, even though that information may help ensure safe repatriation.

Pursuant to the Vienna Convention and U.S.-Mexican bilateral agreements, detained Mexican minors have the right to be advised promptly that they may contact a Mexican consular representative; Mexican consular officials have a right to be notified when Mexican nationals are detained by U.S. authorities; and at the child's request, Mexican consular officials have the right to interview and assist the child who is in custody.⁹⁹ These obligations are regularly ignored by CBP. Neither the I-770 Form nor the screening interview advises detained Mexican minors of their right, if they wish, to consult with a Mexican consular officer.¹⁰⁰ Furthermore, notification to a Mexican consular official that an unaccompanied minor is in U.S. custody usually occurs after the decision to repatriate (or, in the rare case, to transfer the minor to ORR/DUCS) has been made.

On the other hand, CBP officers sometimes defer unduly to Mexican authorities. Appleseed learned that at some ports of entry, CBP officers may forego temporary detention and simply accompany the minor to the middle of the border crossing area and hand him or her over to a Mexican immigration officer. Other CBP officers indicated that they rely on information from Mexican consular officials when making TVPRA determinations. While in theory the use of such information is not a problem, in practice the Mexican authorities we interviewed see their primary role as a speedy conduit for the repatriation of as many of the apprehended Mexican children as possible, and to offer a supportive hand to these children as they begin their journey home. In other words,

Mexican officials are predisposed against a conclusion that Mexican children are likely to be placed at risk if repatriated. The primary concern of most of the consular officials we interviewed was to see that “their” (*i.e.*, Mexican) detained children were repatriated to the Mexican side of the border as swiftly and safely as possible, *not* kept on the U.S. side (even in DUCS shelters).

Given this bias, Mexican officials understandably did not express any particular concern over the lack of communication from CBP prior to the decision to repatriate Mexican children. Several Mexican consular representatives did, however, express concern about the harsh treatment they believed Mexican minors occasionally received at the hands of CBP officials during arrests and, to a limited degree, the poor conditions of custody in CBP border stations.

Until Mexican consular officials prioritize the best interests of the child ahead of the near-automatic repatriation, little good will be gained by insisting on more scrupulous observance of the Vienna Convention notification rights in the immediate post-apprehension time frame. If anything, introducing Mexican officials into the screening process would likely tilt the scales even further in favor of a repatriation outcome. Such consultations may also encourage CBP officers to minimize their own duty to comply with the TVPRA, on the theory (which some U.S. officials already express) that the Mexican consulates can be relied on to ensure that a victimized minor is not improperly repatriated.

At the same time, Mexican officials expressed understandable concerns about the lack of timely and accurate notice when CBP has decided that it will not repatriate a minor. Particularly when a younger child is determined to be incapable of independent decision making and therefore is slated for transfer to ORR/DUCS custody, Mexican officials believe that prompt notification could allow them to identify a parent or proper legal guardian close by, on either side of the border, and establish communication between the child and parent. Doing so would, at a minimum, ease the anxieties of separation for both parent and child, and could shorten the time for reunification. Mexican consular officials also expressed concern about the lack of communication of whereabouts of minors who are transferred to ORR/DUCS custody. Mexican consular officials reported that in some cases they are provided no information about the child’s location for days. If the minor is moved to another location or released to the custody of a sponsor, it can take even longer to establish the minor’s whereabouts.

Finally, CBP officers do not routinely share with Mexican consular officials information obtained during their screening of a minor. Sharing such information upon repatriation could lead to safer and more secure repatriation and reunification in Mexico, particularly in cases where a minor has made multiple attempts to cross the border.

RECOMMENDATION:

U.S.-Mexico Communications Concerning Unaccompanied Minors Should Promote the Bests Interests of the Child, and Comply with International Law

The U.S. government has specific obligations to communicate to Mexican officials the status of unaccompanied minors in its custody. Failure to abide by these obligations can create needless anxiety for the child and for the child's family members. This problem can be addressed through better computerized record-keeping and more diligent communication protocols on the U.S. side. DHS should ensure that CBP officers follow these requirements while also ensuring that these communications do not compromise the independence of TVPRA screening. Applesseed recommends that DHS promulgate consular notification guidelines that address the sensitivities of consular notification in the context of TVPRA screening of unaccompanied Mexican minors, including the following:

- U.S. authorities should notify the Mexican consulate as soon as practicable after apprehension that an unaccompanied Mexican minor is in U.S. custody, and upon any change in a child's custodial setting.
- U.S. authorities should promptly notify unaccompanied Mexican minors of their right to contact the Mexican consulate, and explain the right in a manner the minor can comprehend. If the minor wishes to communicate with a consular officer, CBP should, before the repatriation decision is made, arrange for a consular visit if practicable, and if not, a telephone call between the minor and the consular officer; in either case, the privacy of the communication should be assured.
- U.S. authorities should consider any factual information provided by Mexican authorities in making a determination about a child's protection under the TVPRA, including information concerning a child's contact with known traffickers or other indicia of abuse. However, U.S. authorities must exercise their own independent judgment in making TVPRA determinations.
- U.S. authorities should share with Mexican officials family information received from an unaccompanied Mexican child relevant to that child's safe repatriation or reunification.
- The United States and Mexico should collaborate in using enhanced databases to (i) diagnose patterns and sources of migration; (ii) adopt more effective measures to address the "recidivist" issue; and (iii) develop strategies, possibly including high-impact experimental programs, to address the pattern of "legacy" migration from certain communities that account for a disproportionate number of the Mexican minors who migrate north.

Failure to Follow the TVPRA Puts Children at Risk

By placing the responsibility for TVPRA screening in the hands of a law enforcement agency with no background in child welfare, no appropriate facilities for interviewing children, and no significant training or tools, DHS all but guaranteed that little would

change at the border. In fact, very little has changed; the unaccompanied Mexican minors who are apprehended at the border are, for all practical purposes, just as vulnerable to trafficking and other forms of exploitation after the passage of the TVPRA as they were before.

And while HHS officials expected the TVPRA to lead to a significant increase in the number of Mexican minors who would be referred to temporary shelters in the United States, clearly the expected influx has not materialized.

We could not obtain comprehensive before-and-after comparisons, chiefly because DHS did not track its processing of unaccompanied minors before the TVPRA and even today does not publish (and appears not to maintain) records of the numbers of unaccompanied Mexican minors who are detained at the border but who are not repatriated, or of the shelters to which they are sent. The evidence in the field, however, is telling. In our visits to 9 DUCS facilities in Brownsville and Harlingen, Texas, San Diego, California, and Phoenix, Arizona from August 2009 through February 2010, we encountered few Mexican minors. During those visits, we interviewed every Mexican-national unaccompanied minor in the shelters, totaling only 13 children. Of these, not one of the Mexican-national children we interviewed had been transferred to DUCS because it was determined that the child might be a victim of trafficking or have a credible fear of persecution.¹⁰¹

The Mexican consulates confirmed to us that there has been no evident increase in the referral of Mexican minors to DUCS in 2009, and that the number grew only slightly in 2010. In our meeting with the Mexican consulate in Nogales, we were told that of the 5,507 Mexican-national unaccompanied minors that had been detained by CBP in that region through November 30, 2009, there was not a single case in which CBP had transferred a child over the age of 13 to the DUCS system. Since that time, the Mexican consulates in Brownsville and McAllen had started receiving notice from CBP of Mexican-national unaccompanied minors who had been transferred to the DUCS system (the consulates refer to them as “Wilberforce kids”), but the number of minors in custody ranged only from the low teens to about 20 at any one time.

ORR officials confirm that the number of Mexican minors referred has increased, but only slightly, and not nearly to the level ORR expected when the TVPRA was enacted. During our Brownsville site visit in February 2010, we were told by a DUCS field officer that there were approximately 28 unaccompanied Mexican minors at DUCS facilities in Brownsville and Harlingen, 18 of whom had been apprehended at the border. Of these, ten were age 12 or younger and had been transferred to DUCS because CBP determined that they could not make a voluntary decision to return to Mexico. The remaining eight children were older than 12 and, according to the DUCS field officer, were transferred to DUCS because their screening by CBP had raised red flags of possible labor or sex trafficking. In May 2010, we met with ORR officials and were told that 24% of the population then in DUCS consisted of Mexican minors, but a large portion of these children were believed to have been apprehended in the interior, and thus transferred to DUCS automatically, and not as a result of TVPRA screening at the border. In November 2010, we were provided an opportunity to interview unaccompanied Mexican children 12 and older who had been detained at the border and been transferred to DUCS facilities in the Rio Grande Valley. At that time, we were provided with a list of only nine Mexican

nationals 12 or older in these DUCS facilities who had been detained at the border. Of those, two were 12 years old, three were 13, and four were 15 or older.

The absence of adequate TVPRA screening ensures that some number of Mexican children who are victims of trafficking or persecution, or who face a serious risk of being trafficked or persecuted upon their return to Mexico, or who have other valid claims to remain in the United States, are not receiving even the temporary shelter in the United States that the TVPRA was meant to provide. Precisely how many Mexican minors are being disserved by U.S. noncompliance cannot be determined. What can be said, however, is that the concerns which ultimately led Congress to require “case by case” screenings, and to provide meaningful shelter for Mexican children at risk, are every bit as pressing as they were when the TVPRA went into effect nearly two years ago.

A discrete and particularly vexing challenge is posed by the repeat crossers referred to as the *menores del circuito*, the minors who likely are involved in the human smuggling and/or drug trafficking trades. As a general rule, U.S. authorities do not prosecute these minors, nor do they refer them to state juvenile justice authorities or to their Mexican counterparts for some form of prosecution, treatment or other alternative to prosecution. As is true generally for unaccompanied minors detained at the border, the *menores del circuito* are simply repatriated to Mexico, except that unlike most other minors, they often escape from INM or DIF custody shortly after repatriation. In effect, as minors, their near-automatic repatriation gives them a form of immunity from prosecution, and therefore makes them especially attractive recruiting targets for the organized gangs and cartels which increasingly dominate the border smuggling trades. At the same time, the U.S. approach to these minors, when they are detained, creates no disincentive or deterrent that might cause them to decline enlisting in these unlawful and dangerous trades—there is no real consequence, on either side of the border, to getting caught, and no one in a position of authority to intervene and at least try to break the cycle that makes the child an attractive human guide or drug smuggler for the cartels. Whether one views these minors as juvenile offenders who endanger others, or as coerced into this line of work by the cartels and therefore victims of a form of trafficking, the reality is that their routine repatriation cannot be deemed “safe” repatriation under any interpretation of the TVPRA. Moreover, by failing to identify more precisely who these minors are and to develop (in coordination with the Mexican authorities) programs of intervention, CBP’s repatriation practices have had the perverse effect of increasing the numbers of vulnerable minors who get caught up with the gangs or cartels and who seek, repeatedly, to cross the U.S. border unlawfully.

RECOMMENDATION:

DHS Should Use Pilot Programs to Swiftly Put New Policies into Effect

DHS should proceed to implement these recommendations swiftly, on a trial basis in one or two high-volume border crossing areas in the first instance. The operational details of any change of the kind recommended are inevitably complex, and the funding for new, highly-trained screening personnel and the physical shelters to perform their work along the entire border may not be easy to obtain.

These factors—as well as the unique expertise that several NGOs can bring to the new screening process—strongly suggest that one or more “pilot programs” be used to test, refine and improve the new screening procedures recommended in this report. The performance of the new systems should be carefully evaluated after 12 months, again with the participation of qualified NGOs, and adjustments made in light of that evaluation. The goal, however, needs to be real compliance with the TVPRA—and responsible handling of apprehended Mexican children—along the entire border, and no more than two years should be the outside limit for comprehensive implementation of the new screening process.

The United States should re-evaluate the practice (where it occurs) of immediate repatriation of unaccompanied minors apprehended smuggling drugs or other people into the United States. The relative impunity of minors in the United States makes them attractive to recruiters in Mexico, and contributes to their victimization by criminal gangs.

RECOMMENDATION:

DHS Should Track Its Progress Through a Database of All Mexican UACs and Enhance Its Public Reporting

To track the effectiveness of TVPRA screening, DHS should establish a computerized national database of all CBP and ICE detained unaccompanied minors, whether repatriated or referred to HHS custody. It would include the minor’s name; age; gender; nationality, state and city or village of origin; site of apprehension; what adults may have accompanied the minor; whether the minor previously had been detained in the United States; and the location of repatriation or, in non-repatriation cases, the location of the DUCS shelter to which the child was remanded. The creation of the database would serve several objectives, in addition to allowing DHS to comply with its Congressionally mandated reporting requirements under the TVPRA. This database will enhance the ability of U.S. officials (and others) to discern and track unaccompanied minor migration patterns and will therefore allow the United States and Mexico to adopt more effective efforts to address the underlying causes of migration. It will also enhance the United States’ ability to identify recidivists, or repeat crossers, including those who may be engaged in the smuggling of persons or drugs, as well as those who were previously repatriated but not successfully reintegrated into a stable family or other local structure. Furthermore, it will facilitate better, prompt communication with Mexican consular and other officials regarding the location of Mexican minors placed into temporary shelter in the United States.

To enhance public understanding, DHS should publish annually, by district, how many unaccompanied Mexican children CBP apprehends each year, and of those children, how many are referred to DUCS and how many are repatriated.

SECTION 5:

The Mexican Side of the Repatriation Process

The Mexican repatriation and reintegration process is inextricably linked with TVPRA goals. The contiguous country provisions of the TVPRA were not designed for the purpose of integrating children into U.S. society, but to provide at least a temporary haven for those who are potential victims of trafficking or persecution, and to ensure the safest possible repatriation for those who decide to return or are ultimately removed.¹⁰² Necessarily, these TVPRA objectives will require close interaction between U.S. and Mexican authorities to promote the safe repatriation and sustainable reintegration of unaccompanied Mexican minors. And, while the TVPRA itself has no binding force in Mexico or on Mexican officials, it is the Mexican authorities who ultimately bear the responsibility of ensuring that repatriated Mexican minors are successfully reintegrated into their communities.

Several Mexican government entities are involved in the repatriation process of Mexican unaccompanied minors, including SRE, the National Immigration agency, INM, and DIF. After a child is apprehended, SRE officials are responsible for interviewing the child to gather biographical data. Following the interview, a CBP officer or SRE official escorts the child to the border crossing, and hands the child over to an INM officer. The child is processed at the INM border facility, and within hours is handed over to DIF social services. All of these entities are focused on an overriding goal—the speedy reunification of minors with their families in their states of origin. This narrow focus comes with some costs: among other things, it leaves little opportunity for a careful assessment of the consequences that might accompany reunification. In some cases, returning the child to a family member or place of origin may perpetuate exploitation of the child, or lead the child to risk re-crossing the border. Exacerbating this problem is the lack of an integrated national database that agencies can use to identify children who cross repeatedly, and the lack of a means to prevent them from leaving the facilities at will, or from refusing assistance. While all of the relevant Mexican entities have made demonstrable progress in recent years providing for the particular needs of unaccompanied minors, significant problems remain within the current Mexican repatriation system.

Since its formation in 2003, Appleseed México has been concerned with the issues of underage migration from and within Mexico. Beginning in 2010, Appleseed México has worked with a number of Mexican bodies, including DIF, to address these issues, advancing legislative initiatives and regulatory reforms within Mexico along the lines recommended in this report.

The Mexican Ministry of Foreign Affairs and Its Consular Officials

As discussed above, the SRE has entered into agreements with DHS governing the mechanics of repatriation of all Mexican citizens, including unaccompanied minors, along the U.S.-Mexican border.¹⁰³ These agreements are specific to particular localities along the border. For example, they designate the local Mexican consulate and DHS authorities responsible for coordinating repatriation at each border crossing point. Further, they require that persons with special needs, including unaccompanied children, be repatriated during daylight hours, and they specify the locations where such repatriation may and may not take place.

The repatriation process begins when CBP notifies the designated local Mexican consular official that it has detained one or more unaccompanied children determined eligible for expedited removal.¹⁰⁴ After notification and prior to repatriation, the consular official will briefly interview each child, either in person or over the phone,¹⁰⁵ to determine whether the child will have any special needs upon repatriation and to gather data about unaccompanied children for the SRE electronic database—Sistema de Protección Consulado.

The consular official collects biographical information and asks questions designed to determine whether the child is suffering from any significant medical or psychological problems. The consular official ascertains the location of the child's parents and the reasons the child came to the United States. In theory, this information is intended to assist the consulate in identifying any social services the child will need upon repatriation, though the extent to which this information is actually used was not evident from our investigation.¹⁰⁶

Once the children have been interviewed, CBP takes the children to the border to be handed off to INM at a time and place specified in the local repatriation agreement. At some locations, such as McAllen and Reynosa, a CBP officer walks the children to the hand-off with the INM official. At other locations, such as Brownsville, the local Mexican consular official walks the children to the hand-off with the INM official. In some cases, minors escape from the custody of the consular officials while they are being escorted across the border.

The Mexican Immigration Service and Its Child Protection Corps

The next step in the repatriation process is transfer of the child to INM. INM is the Mexican agency responsible for managing and controlling the flow of migrants and immigrants to and from Mexico. In contrast to CBP, INM does not consider itself a law enforcement authority, but rather a migration assistance agency. In 2008, in cooperation with UNICEF, INM created a special corps of INM agents called "OPIs" (Oficiales de

Protección al Infancia, or Child Protection Officers), who specialize in attending to the needs of unaccompanied children. OPIs receive initially not less than 30 hours of UNICEF-certified training in the handling of children, and periodic refresher training thereafter.¹⁰⁷

When available, an OPI receives unaccompanied minors from the CBP agent or Mexican consular official at the border during repatriation. The children are taken to an INM station and interviewed by the OPI (or other INM agent if an OPI is not available). Like the consular officials who interview the children before they are repatriated, OPIs are concerned with gathering data about children being repatriated and determining whether these children have any special needs. The main objective of the OPIs' interviews, however, is to determine the child's nationality so that, if the child is not Mexican, INM can make the necessary notifications and begin another repatriation process. INM does not have the capabilities to hold children for any lengthy period of time. As a general matter, the children are passed on to a DIF processing center or shelter within hours of arriving at the INM station.

In some instances, however, the DIF system may be bypassed altogether. Family members are sometimes allowed to pick up children directly from the INM station. And, as INM stated on its Website in 2010, some older children and the *menores del circuito* may simply refuse to go to a DIF facility.¹⁰⁸ The precise percentage of minors who manage to avoid entering into the DIF system is unknown.¹⁰⁹

DIF and Non-Governmental Social Service Organizations

The DIF system consists of a network of shelters across Mexico's border states. DIF facilities, as well as privately run facilities, are responsible for the shelter, treatment, and protection of unaccompanied minors who are in the midst of repatriation and reunification.

DIF Is a Social Service Organization Responsible for the Treatment and Protection of Unaccompanied Minors

DIF is the Mexican government organization responsible for social assistance to unaccompanied migrating children in Mexico. Although DIF shelters and treats both unaccompanied migrating children apprehended in Mexico and those repatriated from the United States, DIF estimates that 98% of the children are within the latter group.¹¹⁰ The DIF system bears the primary responsibility in Mexico for the safe repatriation of unaccompanied children.

The DIF system is highly decentralized, with 32 autonomous state systems and 1,459 municipal systems. Funding for DIF programs comes from many sources—much of it is local and comes from municipal revenues and donations. The state DIF organizations and the national DIF organization also provide funding for a number of programs operated by the local DIF chapters.¹¹¹ Sometimes, local charitable organizations, such as the YMCA, provide facilities and staff for DIF in connection with local DIF programs.

DIF's Border Shelter System

The National DIF heads up a program, begun in 1996, called the Programa Interinstitucional de Atención a Menores Fronterizos, or the Inter-Agency Program for

DIF: The First Lady of Mexico's Organization

DIF has its roots in the "Drop of Milk Program" begun in 1929 by a group of women to distribute milk to needy children in the Mexico City area. Over the years, several national associations and institutes were formed to provide support for children and families around the country; they were merged by presidential decree into the DIF system in 1977. The DIF leadership is quasi-political: its national director has traditionally been the First Lady of Mexico; governors' spouses are usually the presidents of the state DIF organizations, and municipal presidents' spouses are usually the presidents of the local DIF chapters. The state DIF organizations report to the governors of the Mexican states, and municipal DIF organizations report to the heads of the municipal governments. A large permanent staff of salaried employees supports and directs the activities of the DIF at the national, state, and local levels. Local DIF chapters also rely on volunteer groups to staff some of their programs.

Attention to Minors at the Border.¹¹² A key element of the program was the creation of a network of processing centers and shelters for repatriated unaccompanied minors in six Mexican states along the U.S.-Mexican border (*i.e.*, Baja California, Chihuahua, Coahuila, Nuevo Leon, Sonora and Tamaulipas).

These DIF facilities are of three types: (a) public processing centers ("*modulos de atención*"); (b) public shelters ("*albergues*"); and (c) private shelters. A child will be sent from INM to a processing center if one is locally available. In localities where there is no DIF processing center, the children are sent directly to a DIF shelter for processing. Where they exist, the public processing centers are intended to attend to the most basic needs of children who have just been repatriated; typically the children stay at these facilities for only a few hours. If the DIF processing center cannot quickly locate a family member for reunification, the child is sent to a public or non-governmental shelter.

Currently, the DIF system along the U.S. border includes six active processing centers,¹¹³ 14 public shelters,¹¹⁴ and five private shelters.¹¹⁵ Some sources report a few additional private shelters that may not yet have been added to DIF lists or that may not officially be part of the DIF system.¹¹⁶ On the next page is the most recent DIF map showing the shelter locations.

Private shelters clearly are considered an integral part of the DIF system. It is less clear how much control the national, state, and local DIFs have over the operation of the private shelters. It is also unclear how much control the national DIF has over the activities of the state and local DIFs, whether involving public or private shelters.

Shortcomings in the Repatriation Process

While the Mexican government has made significant strides in the care and protection of repatriated children, there is no single federal law governing the rights of minors and no consistent set of national standards for the treatment of repatriated children in DIF and private facilities. An overriding policy of family reunification is the *de facto* rule. Our visits revealed that, in almost all cases, DIF facilities opt for swift family reunification in lieu of an in-depth evaluation of a child's motives for crossing the border



or an evaluation of the child’s home environment. Further, while SRE, INM, and DIF each gathers information about repatriated children, there is no comprehensive and integrated national database that all agencies can access for critical information on each repatriated child—such as special needs, home environment, motive for crossing the border, or previous attempts to cross the border.

Mexico Lacks a Clear Legal Framework to Govern the Care of Repatriated Children

A welter of national, state and local laws, conventions, regulations, guidelines and memoranda of understanding nominally govern the activities of the various DIF entities.¹¹⁷ The function of the national and state DIFs has been described as one of establishing rules and providing instruction, while the municipal DIFs are charged with executing programs.¹¹⁸ However, we did not observe any evidence of a standardized set of required procedures or regulations for the protection of unaccompanied minors. During our visits to a number of DIF shelters, we repeatedly requested copies of protocols or regulations. While we were told that they existed, we were never able to obtain a copy.

The National DIF did however provide us with a guide—“Technical Guide for Personnel Who Work in Shelters for Migrant and Repatriated Children”—which provides step-by-step advice on how to receive and care for unaccompanied children. While the guide contains helpful advice, it is clear that the processes it suggests are not binding on the shelters to which it applies.¹¹⁹ If processing centers and shelters had the time and resources to apply the programs set forth in the guide, we have no doubt that children in the shelters would benefit. However, it appears that in most instances the shelters have neither the time nor the resources to pursue these programs, nor are they required to do so.¹²⁰

In addition to lacking resources, the DIF system suffers from the lack of a clear legal framework in Mexico that would promote the widespread use of best practices to protect the interests of unaccompanied children. According to a recent study by the Mexican law firm Jáuregui, Navarrete y Nader, S.C., none of the existing Mexican federal statutes provides adequate standards for the protection of unaccompanied children, and there is

not compatibility or consistency among state, local, and federal laws.¹²¹ This often results in confusion regarding whether local or federal authorities are responsible for lending social assistance to unaccompanied minors. It also means that the scope of a minor's rights and the level of protection they receive vary significantly depending on location.

RECOMMENDATIONS:

Mexico Should Develop National Standards to Protect Repatriated Minors' Welfare

Mexico should develop a new federal law to govern the protection and care of repatriated minors on a national basis, and replace the quilt work of diverse laws and regulations—at the federal, state, and local level—that currently exist.

DIF should promulgate nationwide standards for the shelter and treatment of all repatriated children in DIF and private facilities. These standards would regulate social welfare assistance, medical and psychological services, physical conditions, and the conditions for and means of family reunification.

The Mexican Government's Overriding Emphasis on Family Reunification Should Be Balanced with Concerns for Detecting and Preventing Trafficking and Other Abuse

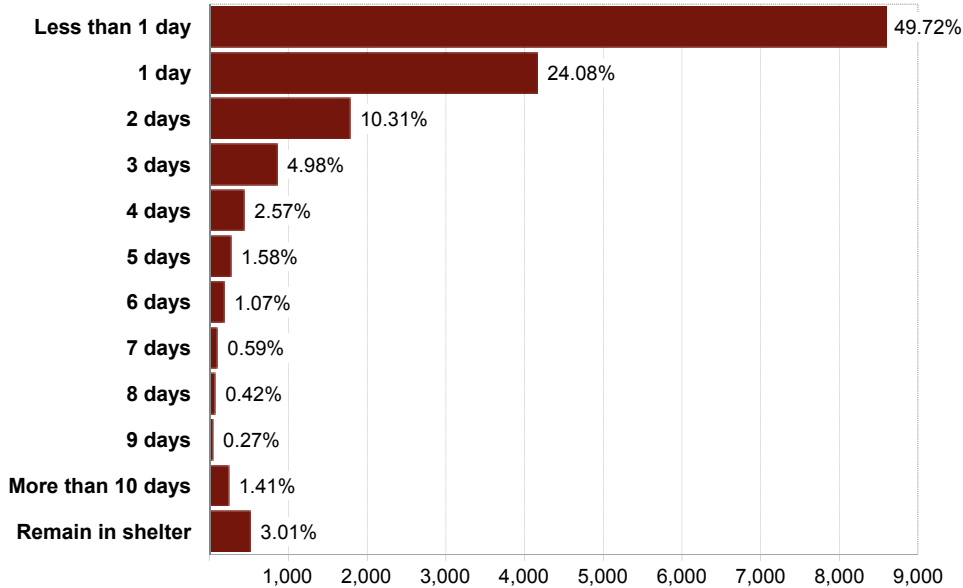
DIF strongly emphasizes family reunification for two primary reasons. First, family reunification is presumptively in the child's best interests. Second, the processing centers and shelters have limited space to hold children. Children must be moved out of a facility quickly lest the facility become overwhelmed with incoming repatriated children. Almost 50% of the children stay in the facility less than a day; 24% leave the facility after one day; 11% after two days; and 5% after three days. Fewer than 2% of children remain in a shelter more than ten days.¹²² This data is captured in the graph shown on the next page.

The majority of these children are picked up by relatives, although some are entrusted to friends or are allowed to leave on their own. A few are returned to the INM (non-Mexican children or Mexican children who may claim a right to enter the United States).¹²³

The facilities and services available to children who are delivered to a processing center or shelter differ widely from city to city and state to state.¹²⁴ Some facilities visited by our team provided not only good food and clothing, but also medical treatment and psychological and social services. Regardless of size, the DIF facilities we visited were clean and appeared well kept. Further, there are indications that in some cities new facilities are being constructed or old facilities are expanding. However, even where one or more trained social workers, psychologists, lawyers, or medical professionals are on staff or on call, their ability to provide individualized attention to the children that pass through the DIF facilities is limited due to the large numbers of children who must be processed within a short span of time.

To process repatriated children, some localities rely heavily on non-governmental shelters, such as those run by the YMCA in four municipalities. In Tijuana, for example, the DIF processing center that initially receives repatriated children from INM is a

Unaccompanied Minors Repatriated to Mexico by Time Spent in DIF Shelters – 2009



four-room mobile trailer designed for quick processing. Although the facility is clean and cheerful and has a psychologist on staff and a doctor on call, it is designed to house only a few children at any given time. Its primary function is to provide for the children's immediate needs, obtain basic biographical information from the children, perform the initial ground work regarding family reunification, and transfer the children to one of several other facilities. The majority of the children who are processed at this facility (*i.e.* children between ages 13 and 17) are transferred to the YMCA. Others, such as those from Tijuana, are transferred to the Centro Para la Protección Social de la Niñez DIF Municipal de Tijuana. Younger children are sent to the Albergue Temporal del DIF Estatal.

YMCA facilities are designed to imitate a "home-like" environment, providing children with basic necessities. While the YMCA delivers a valuable and admirable service, there is no evidence that it has the resources or authority necessary to evaluate whether family reunification is appropriate, or whether the child should be transferred to a government facility for shelter and protection. According to our interviews, if the YMCA suspects or is informed of child abuse or trafficking, it will notify DIF that the child should be transferred to another facility equipped to handle the child; however, the director of the Tijuana YMCA reports that child abuse or trafficking is rarely an issue. In fact, the YMCA's primary goal is to reunify the children in its care with a parent or guardian. Often, because of the reunification process begun by the DIF processing center, a parent or guardian is waiting to pick up the child when he or she arrives at the YMCA or soon thereafter. If reunification takes longer, the YMCA maintains contact with the child's family and cares for the child until a family member arrives. Reunification typically occurs within two or three days of the child's arrival at the YMCA.

Significantly, because the YMCA is not a government facility, its administrators do not believe they have the legal authority to hold the children. As a practical matter,

therefore, the children are free to leave upon their arrival at a YMCA facility. Up to 20% of children leave the YMCA without a family member or guardian.¹²⁵ While the YMCA has strict rules governing reunification, including requiring documentation of parentage or notarized permissions from parents before the YMCA will release a child, the child can easily bypass these requirements simply by walking out of the facility at will.

The problem of minors walking out of shelter facilities without authorization is not limited to non-governmental shelters. Although governmental shelters have legal authority to hold children until they are retrieved by family members or returned to their home localities, DIF has limited ability to guard its facilities against children escaping, and many are allowed to leave “voluntarily” or with “friends.” Furthermore, if a gang member demands that a DIF shelter turn over someone in its custody, the shelter has little practical option but to accede to such demands.¹²⁶ DIF’s statistics represent that nearly 3% of minors (484 children) escaped from DIF shelters in 2009, 9% (1,555 children) were allowed to leave “voluntarily”(apparently unaccompanied), 7.5% (1,310 children) were allowed to leave with “friends,” and 2.5% (420 children) left in unspecified ways.¹²⁷

In municipalities that do not rely on a YMCA or other private shelters, the DIF shelters usually have professionals on staff or on call who have the training to determine whether a child has been subjected to violence or sexual abuse, or has physiological problems that militate against family reunification. In Nogales, for example, the DIF shelter has on staff a psychologist, a social worker, an attorney, and a part-time physician. Further, the national DIF encourages psychological counseling as part of its suggested guidelines for personnel working with children in DIF shelters.¹²⁸ Those guidelines make clear that the overriding goal of all of the processing centers and *albergues* is to have the children returned to their place of origin, preferably with a family member.

DIF officials claim that efforts are made to determine whether a child’s home is safe and free from abuse and neglect. To be sure, DIF interviews repatriated children concerning the circumstances, including abuse, that led them to migrate and might make family reunification inappropriate. Yet DIF could not point to any case where a repatriated minor was not reunited with his or her family.¹²⁹ In fact, the DIF shelters do not appear to have any mechanisms in place to enable an independent determination of whether a child’s home is safe for return, particularly for children whose homes are outside the local area. There is no evidence that DIF utilizes home visits or home studies to ascertain whether a child will be in danger of abuse or neglect if returned home. Any information that DIF collects regarding a minor’s home life likely comes from the minor himself, if he or she is inclined to share such information. Further, most DIF shelters are not equipped to engage in the kind of patient, expert interaction with minors that may be necessary for minors to divulge intimate and painful information about their home environment. The great majority of repatriated minors stay in a DIF shelter for less than three days (if they even reach a DIF shelter), and the staffs at these facilities are stretched thin.

Case Study: Juan Pablo

“Juan Pablo” lives in Reynosa with his parents, in a “*colonia*.” In Mexico, colonias are clusters of makeshift homes, often just corrugated metal shacks over dirt floors, with little or no water, sewer or other utilities, that house the poorest of the poor. Juan Pablo has nine brothers and sisters; most of them work in the maquiladoras in Reynosa.

Juan Pablo, who had just turned 18 when we spoke with him in The Port Isabel [Adult] Detention Center, says he made the journey across the Rio Grande approximately 40 times in search of a better life in the United States. His goal was to live and work with his uncle in Missouri, who has a job in a chicken processing plant. He started crossing the border when he was 12, and each time he was caught by Border Patrol, repatriated to Mexico, and sent to the DIF shelter in Reynosa to be picked up by his mother. He never stayed at the DIF shelter for more than a day, never spoke at any length with a social worker or psychologist while he was there, and was never offered any counseling or other support services after he left. Nor did the DIF offer any services to his parents that might help them prevent Juan Pablo from continuing to cross the border. Instead, his mother would collect him, a DIF employee would tell her that she needed to get him to stop, and she would respond that she had tried, but could not control him.

Juan Pablo was 17 the last time he tried to cross, and was apprehended near Corpus Christi, Texas. He was told by Border Patrol that he had been given too many voluntary departures and, as a result, he would be sent to a DUCS facility until he turned 18, at which time he would be deported with a 10-year bar against re-entry. When he turned 18, Juan Pablo was transferred from DUCS to the adult center where we met with him, and was deported to Mexico the day after our interview.

Although DIF operates in nearly 1,500 communities across Mexico, the DIF shelters and agencies along the border do not appear to coordinate closely (if at all) with the DIF facilities in the home municipalities and states of repatriated children. We found no evidence that the DIF shelters on the border engaged in any consultation with DIF authorities in the minor’s home locality, either to facilitate home visits or to determine whether family reunification was in the best interests of the minor. To the extent there is any contact between these DIF facilities, it is limited to travel arrangements when the minor’s family is unable to retrieve the child or pay for the trip home.

Information regarding how minors who are not retrieved by a family member are returned to their home locality was conflicting. Some DIF representatives stated that all minors are accompanied by a DIF representative all the way to their home locality. Others indicated that older children are allowed to return home by themselves, but younger children are accompanied by a DIF representative. Other studies have suggested that minors generally are allowed to return home alone.¹³⁰ The likelihood is that different states and localities follow different transportation protocols. The national DIF has indicated that the process is under review to bring all state and municipal DIF in line with single national strategy.¹³¹ We did not find evidence of a system actually in place to ensure that minors who were allowed to return home unaccompanied actually arrived there safely.

In sum, despite the fact that at least some children leave home to escape the abuse and neglect they experienced within their families or home communities,¹³² virtually nothing is done to assess the suitability of the environment to which the child is returned or to provide alternative placements. When they return to their place of origin, therefore, these repatriated children likely encounter the same conditions which led them migrate initially, and will have a powerful incentive to try to cross the border again.

RECOMMENDATIONS:

Mexico Should Develop National Standards to Ensure Family Reunification Is Appropriate for the Child

The Mexican policy of swift family reunification keeps Mexican authorities from identifying children who are victims of family or other abuses, violence, or neglect. National standards should be implemented that balance the desire for family reunification with the need to detect and prevent trafficking and other abuse of repatriated children.

- The standards should encourage DIF to take on a more proactive role in providing social assistance to the migrating minor rather than, as is currently the practice, making family reunification the overriding (and in some locales the exclusive) objective.
- The standards should provide DIF with the authority to conduct home visits in cases of apparent neglect or abuse, provide care from professionals trained in treating children at risk, provide counseling to families, deny reunification where the child's physical or mental health is threatened by the home or family environment, supervise and assist in the alternative placements when necessary, and create specialized shelters and guidance programs for children who show signs of drug addiction, or criminal behaviors.
- The standards should include measures to prevent adolescents from refusing to go to a DIF facility or leaving DIF and private shelters unsupervised.
- The standards should tighten procedures regarding the release of a child to an adult who is neither a parent nor guardian, in order to protect against the child being claimed by traffickers or gang members.
- The standards should provide uniform procedures for the transportation of children to their family home.
- DIF should implement a publicity campaign designed to make government officials more aware that norms of family reunification should be tempered in light of the potential for sexual exploitation and other abuse within families, and to inform abused children that services and alternatives are available through DIF.

Mexico Lacks an Integrated Database of Information Regarding Unaccompanied Children

Currently, the migration databases maintained by SRE, INM and DIF are not integrated. Each agency gathers and maintains its own data, and does not share it with the others. As a result, the agency most responsible for the protection and reintegration of repatriated

minors, DIF, lacks information collected by the other two that could provide important assistance in the successful reunification and protection of the minor. Further, children are exposed to multiple interviews by three different agencies in succession, covering substantially the same topics. If SRE's data were accessible by INM, and then by DIF, INM could supplement that information with any additional information INM required, and DIF would have the benefit of both agencies' data—including, most importantly, any red flags signaling the need for urgent intervention—by the time child arrived at a DIF processing center or shelter. Based on Appleseed Mexico's work on this issue (including discussions with the relevant agencies and outside software firms), we believe a database can be developed that would allow SRE, INM and DIF to share access to the pertinent data while, at the same time, incorporating data confidentiality and system security safeguards in accordance with the requirements of Mexican law.

In addition to providing for available information about repatriated minors to be shared among agencies, Mexican authorities should seek to augment that information. The database should include, in particular, the number of times a minor has crossed the border, the cities to which the child has migrated, the places where the child has been detained, any crimes the minor is alleged to have committed, and the reasons why the minor has attempted to migrate. Such information, when accessible and maintained by all entities involved in the repatriation process,¹³³ can be of significant value in promoting a child's social welfare beyond family reunification.

A database that would enable Mexican authorities to identify unaccompanied children who attempt to cross the border more than once is particularly important. It is a significant ordeal for a child to attempt a border crossing, to be apprehended and interrogated by CBP, and to be repatriated through the SRE/INM/DIF process. Children do not attempt such a crossing more than once without powerful incentives. In many cases, they are seeking to reunify with family or to obtain economic opportunity, but in other cases, particularly for girls and young women, they are seeking to escape abuse or persecution at home.¹³⁴ Some children are involved with drug gangs and human traffickers—they may be forced to work as *coyotes* or couriers, or they may be involved in such activity voluntarily.¹³⁵ Whatever their reason for attempting to cross the border more than once, these children deserve particularly close scrutiny by Mexican and U.S. authorities. Yet Mexican officials lack data regarding the percentage of minors who attempt to cross the border multiple times and lack particularized data about those children. While there is evidence that multiple crossing attempts are a significant problem in some localities,¹³⁶ the extent of the problem of multiple border crossings remains largely unknown.

RECOMMENDATIONS:

SRE, INM, and DIF Should Develop a Shared, Integrated Database of Repatriated Minors

- The database should enable the identification of repeat crossers, and promote child welfare beyond family reunification. The database should include identifying information, the number of times the minor has crossed the border (both legally and illegally), the cities to which the child has migrated, the places

where the minor has been detained, any crimes the minor has committed, and the reasons why the child has attempted to migrate.

- The database should include a “red flag” field alerting the users of the information to the possibility that the child has suffered physical or psychological harm or abuse, and needs urgent attention. Such red flag indicators should not only be recorded in the database, however, but communicated orally to the receiving DIF facility.
 - The database should include biometric information. Biometric information, such as fingerprints, iris scans or photographs, may help identify children who are repeat crossers, *coyotes*, or children who are being exploited or trafficked by criminal enterprises.
 - The database’s information should be retrievable by SRE, INM, and DIF, and should have robust confidentiality and security protections to ensure that the information about minors cannot be accessed by potential traffickers or any other non-authorized personnel.
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END NOTES

- 1 *Women's Refugee Commission, Halfway Home: Unaccompanied Children in Immigration Custody* (2009) [hereinafter *Halfway Home*], available at http://womensrefugeecommission.org/docs/halfway_home.pdf.
- 2 *Amy Thompson, Center for Public Policy Priorities, A Child Alone and Without Papers: A Report on the Return and Repatriation of Unaccompanied Undocumented Children by the United States* (2008), available at <http://www.cppp.org/repatriation/A%20Child%20Alone%20and%20Without%20Papers.pdf>.
- 3 *Chad C. Haddal, Congressional Research Service, Unaccompanied Alien Children: Policies and Issues* (2007); *Chad C. Haddal, Congressional Research Service, Unaccompanied Alien Children: Policies and Issues*, (2009); *Charles Doyle, Congressional Research Service, An Abbreviated Sketch of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (P.L. 110-457): *Criminal Law Provisions* (2009).
- 4 In addition to the publications cited in notes 1-3 above, leading U.S. studies in the field include: *Jacqueline Babba & Susan Schmidt, Harvard University Committee on Human Rights Studies, Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.* (2006); *Olga Byrne, Vera Institute of Justice, Unaccompanied Children in the United States: A Literature Review* (2008), available at <http://www.vera.org/download?file=1775/UAC%2Bliterature%2Breview%2BFINAL.pdf>; *Christopher Nugent, Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*, 15 B.U. Pub. Int. L.J. 2 (2006), available at <http://www.bu.edu/law/central/jd/organizations/journals/pilj/vol15no2/documents/15-2NugentArticle.pdf>.
- 5 Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 22 U.S.C. § 7101, *et seq.* (2000); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875, 22 U.S.C. § 7101, *et seq.* (Dec. 19, 2003); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 22 U.S.C. § 7101, *et seq.* (Jan. 10, 2006); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 22 U.S.C. § 7101, *et seq.* (Dec. 23, 2008).
- 6 Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997) [hereinafter *Flores Agreement*], available at <http://centerforhumanrights.org/children/Document.2004-06-18.8124043749>.
- 7 Settlement Agreement, *In re Hutto Family Detention Center*, No. 07-164 (W.D. Tex. Aug. 26, 2007), modified at Modification to Settlement Agreement, *In re Hutto Family Detention Center*, No. 07-164 (W.D. Tex. 2009), available at <http://www.legalactioncenter.org/clearinghouse/litigation-issue-pages/treatment-detention>.
- 8 The materials include: *Genero y Desarrollo, Asociacion Civil, Los Riesgos de la Esperanza: Discriminación por Genero y Violencia Ejercidas Contra Niñas, Niños y Adolescentes Migrantes* (2009) [hereinafter *Riesgos*]; *Comision Nacional de los Derechos Humanos, Niñez Migrante, Trata y Explotación Infantil en México* (2009), available at <http://www.cndh.org.mx/publica/libreria/varios/ninezMigrante.pdf>; *DIF Nacional y UNICEF MEXICO, Niñez Migrante en la Frontera Norte: Legislación y Procesos* (2004) [hereinafter *Niñez Migrante*], available at http://www.unicef.org/mexico/spanish/mx_resources_publicacion_ninos_migrantes.pdf.
- 9 A demographic profile of these apprehended Mexican minors is annexed as Exhibit 1 to the Appendix to this report.
- 10 A recent econometric study of human smuggling along the Southwest border confirms a correlation between increased enforcement activity and rising smuggling costs, but also notes that several additional variables affect the average price paid to a smuggler, including the location and terrain of the border

- crossing, the age, sex, and physical condition of the migrant, and the distance for which the smuggler was hired (*i.e.*, all the way from a migrant's home or just across the border itself). See Byron Roberts, Gordon Hanson, Derrick Cornwall & Scott Berger, *Off. of Immigr. Stat., Department of Homeland Security, An Analysis of Migrant Smuggling Costs along the Southwest Border* (2010), available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf>.
- 11 As we were advised by several Mexican officials, the risks associated with trying to evade apprehension (including dehydration and death in the desert Southwest, or drowning in the Rio Grande) are leading an increasing number of families to try the reverse of the traditional reunification pattern, which entails the parent or parents migrating first. In this newer scenario, a family will first send the underage child across at a Port of Entry. If the child avoids detection, the family will attempt to follow, but if the child is apprehended, the family will reclaim him or her on the Mexican side of the border, and decide whether to try again.
- 12 *2009 Annual Yearbook, Off. of Immigr. Stat., Department of Homeland Security 93* (2009), available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf.
- 13 *DIF Nacional, Dirección General de Protección a la Infancia, Anuario Estadístico 40* (2009) [hereinafter *DIF Anuario 2009*].
- 14 See Ted Robbins, *Illegal Immigrant Deaths Set Record In Arizona*, NPR, Oct. 6, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=130369998>.
- 15 *Id.*
- 16 *Id.*
- 17 *Riesgos, supra* note 8. This study further describes how both boys and girls, but especially boys, may take part in “legacy migration,” a multi-generational pattern of migration prevalent in certain communities. In these communities, traveling to find work in the United States has been such a common and long-standing practice that boys grow up planning eventually to make the journey as a rite of passage.
- 18 *Dirección General de Protección a Mexicanos en el Exterior, Encuesta Consular 2008 A Menores No Acompañados 5* (2008) [hereinafter *Encuesta Consular 2008*], available at http://www.sre.gob.mx/images/stories/dgpme/estadisticas/encuestaconsular_menores2008.pdf.
- 19 The obstacles to obtaining reliable information in this area are many: among other factors, minors often lack the intellectual and emotional development to fully understand, much less clearly communicate, their own actions and motives; by the time they are apprehended, they tend to suffer a combination of exhaustion, hunger, confusion and fear; they are questioned initially by a law enforcement officer in a setting that is not designed or likely to foster candid communication; and then they usually are questioned repeatedly thereafter by a battery of other adult authority figures. These factors, present in nearly every case, are especially problematic when a minor has been physically or sexually abused or exploited: the shame, embarrassment and fear associated with the experience make it less likely still that a true and complete narrative will be told.
- 20 Melissa Del Bosque, *Children of the Exodus, The Texas Observer*, Nov. 4, 2010, available at <http://www.texasobserver.org/cover-story/children-of-the-exodus>.
- 21 *Encuesta Consular 2008, supra*, note 17, at 7.
- 22 *U.S. Dep't of State, Trafficking in Persons Rep. 10th ed. 232-35* (2010), available at <http://www.state.gov/documents/organization/143187.pdf>.
- 23 *Id.*
- 24 See Melissa Graham, *Council on Hemispheric Affairs, Mexico's New War: Sex Trafficking* (2010), available at <http://www.coha.org/mexico%E2%80%99s-new-war-sex-trafficking/>.
- 25 “Fiscal years,” or “FY,” for U.S. agencies correspond to the period October 1–September 30; fiscal 2000, for example, covers the period October 1, 1999 to September 30, 2000.
- 26 In a September 2010 report, the DHS Office of Inspector General (OIG) stated that CBP's Border Patrol agents apprehended “about 18,000” UACs, and that another “approximately 2,000” UACs were detained by OFO personnel in U.S. ports of entry in the March to September 2009 period. *Department of Homeland Security, Office of Inspector General, Publ'n No. OIG-10-117, CBP's Handling of Unaccompanied Alien Children 3* (2010) [hereinafter *2010 OIG CBP Report*], available at <http://trac.syr.edu/immigration/library/P5017.pdf>. This suggests at least 2,700 more unaccompanied alien minors were detained by CBP in fiscal 2009 than were counted in the figures CBP provided to Applesseed. The same report notes that OFO began to track unaccompanied minors, separate from all juveniles, on March 23, 2009, the effective date of the TVPRA, but is silent on when such tracking by Border Patrol commenced. *Id.* In another one-page summary document supplied in December 2010 in response to an Applesseed FOIA request, CBP listed a total of 17,767 detentions of unaccompanied minors in FY 2009 by Border Patrol alone, of which 14, 792 were claimed to be Mexican UACs.
- 27 Tables provided by CBP at meeting held in Washington, D.C. on September 8, 2010.
- 28 The most recent such DIF study is *DIF Anuario 2009, supra*, note 12. The statistics published by the Mexican agencies are tabulated on a calendar, not a fiscal year, basis. As is true for the CBP figures, the Mexican figures represent “events,” not individuals. In both cases, the figures will overstate somewhat the

number of individual minors apprehended or repatriated, because the same individual may be apprehended or repatriated more than once in a given reporting period. In addition to the DIF figures referred to in the text, Mexico's national immigration agency, the INM, as well as Mexico's foreign service, the SRE, also publish detailed statistics on repatriated unaccompanied minors. The format of the three agencies' statistics have many common elements, but the overall and by-category counts may vary slightly from one agency to another.

- 29 *DIF Anuario 2009*, *supra*, note 12, at 41.
- 30 CBP has not published or provided to us the number of Mexican unaccompanied children it transfers to ORR/DUCS. It has provided only the *total* number of unaccompanied children transferred, the majority of whom are from countries other than Mexico. ORR/DUCS, on the other hand, does keep track of the nationality of the children in its custody, but in the case of the Mexican minors (as with all the minors in its custody), it is not apparent which governmental body (CBP, ICE or another federal or state agency) transferred the child, and thus whether the minor was apprehended at the border or elsewhere. According to ORR, in 2008 about 7,200 unaccompanied children were transferred to their facilities. Of these children, approximately 10% (or roughly 720) were from Mexico. http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm.
- 31 DHS was created by Congress pursuant to the Homeland Security Act of 2002. The Act eliminated the Immigration and Naturalization Service (INS), which was part of the Department of Justice, in early 2003 and transferred the INS's immigration and enforcement responsibilities to DHS and its component agencies.
- 32 Another DHS agency, ICE, has primary responsibility for immigration enforcement throughout the interior of the United States, as well as "custody management for detainees and other persons subject to removal proceedings" and the enforcement of final removal orders. ICE apprehends both adults and children in the interior of the United States.
- 33 The Homeland Security Act of 2002 transferred the custody of unaccompanied children from INS to ORR.
- 34 Though literally the contiguous country provisions apply to unaccompanied Canadian children as well, they were clearly designed for Mexican children. Very few, if any, Canadian children try to migrate across the U.S. border alone, and the issues of trafficking and migration addressed by the TVPRA have never been a policy concern with respect to Canadian children.
- 35 Homeland Security Act, 6 U.S.C. § 279(g)(2) (2002).
- 36 The Women's Refugee Commission report found that DHS employees often lack the expertise and tools to make reliable age determinations in borderline cases, and have tended to rely on one or another forensic technique when multiple methods, including proper behavioral assessments, were more likely to produce reliable age determinations. See *Halfway Home*, *supra* note 1, at 6. Shortly before that report was issued, the enactment of the TVPRA required HHS to develop procedures for reliable age determinations, taking into account multiple forms of evidence, including the nonexclusive use of radiographs. TVPRA § 235(b)(4). In September 2010, the DHS Office of Inspector General issued a report in which it reviewed the age-determination techniques used by ICE, noting some problems in the use of radiological exams, but was silent as to the methods used by CBP at the border. *Department of Homeland Security, Office of Inspector General, Publ'n No. OIG-10-122, Age Determination Practices for Unaccompanied Alien Children – Update* (2010) [hereinafter *2010 UAC OIG Report*], available at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-122_Sep10.pdf. On September 15, 2010, HHS issued revised guidelines for age determinations; they provide that forensic techniques may be used only as a last resort, and that borderline results are to be resolved in favor of the lowest age in the range. *U.S. Dept. of Health and Human Services, Administration for Children and Families, Program Instruction, Log No. 09-02* (2010), available at http://www.acf.hhs.gov/programs/orr/whatsnew/ORR_Program_Instructions_on_Age_Determination_of_UAC.pdf. According to the *2010 UAC OIG Report*, ICE did not agree to be bound by the HHS guidelines, and intends to issue its own protocols by the end of 2010, but again, there is no mention of CBP's procedures in the *2010 UAC OIG Report*.
- 37 Regrettably, this risk is not limited to relatives; we heard reports that Mexican children have been trafficked even by their own parents or grandparents.
- 38 Many undocumented immigrant parents reasonably fear that, if they retrieve their child at a CBP station or an ICE center, they will be apprehended as well, and the entire family deported.
- 39 *Flores Agreement*, *supra* note 6.
- 40 *Flores* is one of the few instances where U.S. immigration law explicitly recognized that children require special consideration and treatment which may differ from the treatment generally accorded to adults. Indeed, although the U.S. (alone with Somalia among all the countries of the world) has not ratified the leading international treaty concerning the human rights of children, the UN Convention on the Rights of the Child (CRC), this general "Statement" of the *Flores Agreement* echoes the "best interests of the child" standard that underlies the CRC and informs the practices of many countries in the area of the migration of children. The CRC provides that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best

- interests of the child shall be the primary consideration.” United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, *available at* <http://www2.ohchr.org/english/law/crc.htm>.
- 41 TVPRA § 235(b)(3).
- 42 Pub. Law 106-386, 114 Stat. 1464 (October 28, 2000).
- 43 Pub. Law 109-164 (January 10, 2006).
- 44 In several provisions in addition to those discussed here, the TVPRA requires the U.S. to carry out a variety of new and enhanced efforts to combat trafficking both internationally and within the United States, as well as to prevent the use of child soldiers.
- 45 TVPRA § 235(a)(4).
- 46 The TVPRA’s use of “severe form of trafficking” picks up a defined term from the TVPRA of 2000, and means: “a person who has been subjected to: (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor and services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” 22 U.S.C. § 7102(8).
- 47 TVPRA § 235(a)(2)(B). Of course, because the option to “withdraw” (that is, consent to immediate repatriation from the border) exists only for Mexican (or in rare cases, Canadian) unaccompanied minors, CBP must also determine that the unaccompanied minor is in fact a Mexican citizen or last resided in Mexico. In practice, therefore, nationality of origin may play the most important role in determining the fate of any unaccompanied minor apprehended near the border.
- 48 TVPRA § 235(a)(4).
- 49 This option is not intended to be available for unaccompanied minors who are detained at the border but come from countries other than Mexico or Canada. That is not to say that unaccompanied minors from Central American nations (say Guatemala or El Salvador) are not occasionally or mistakenly “VR-ed” (“voluntarily returned”) to Mexico. A non-Mexican minor apprehended at the border may identify him or herself as Mexican in order to return to Mexico and avoid being placed in longer-term custody in the United States or repatriated all the way back to his/her country of origin (thus facilitating another effort at crossing successfully into the U.S.).
- 50 A copy of Form I-770 is attached as Exhibit 6 to the Appendix to this report.
- 51 TVPRA § 235(a)(2)(C).
- 52 United Nations Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261 [hereinafter *Vienna Convention*].
- 53 These include the Consular Convention between the United States of America and the United Mexican States of 1942, U.S.-Mex., August 12, 1942, 57 Stat. 800; and the Memorandum of Understanding on Consular Protection of United States and Mexican Nationals, U.S.- Mex., May 7, 1996, Dept. of State File No. P96 0065-0984/0987.
- 54 *Vienna Convention, supra*, note 51, at Art. 36.
- 55 *Id.* at Art. 5(h).
- 56 Press Release, U.S. Department of Homeland Security, Secretaries Napolitano and Espinosa Announce Agreement on Mexican Repatriation (April 3, 2009), *available at* http://www.dhs.gov/ynews/releases/pr_1238786603076.shtm.
- 57 Memorandum of Understanding between the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States and the Department of Homeland Security of the United States of America on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals, U.S.- Mex., February 20, 2004, *available at* <http://www.cppp.org/repatriation/Appendix%20F.pdf>.
- 58 Model Agreement for the Repatriation of Mexican Nationals, among the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States and the Department of Homeland Security, *available at* <http://www.appleseednetwork.org/bPublicationsb/RecentReports/ChildrenattheBorder/tabid/678/Default.aspx>.
- 59 *See, e.g.*, “Local Agreement for the Repatriation of Mexican Nationals,” dated April 2, 2009, for Brownsville and McAllen, Texas, among the Mexican Consulates in Brownsville and McAllen, INM authorities in the State of Tamaulipas, CBP authorities in the counties of Carneron, Willacy, Kenedy, Brooks, Hidalgo and Starr, Texas, and ICE authorities [hereinafter *Local Agreement for Brownsville and McAllen*], *available at* <http://www.appleseednetwork.org/bPublicationsb/RecentReports/ChildrenattheBorder/tabid/678/Default.aspx>.
- 60 *Id.* In addition to the local and regional agreements discussed above, several states have executed MOUs with agencies of Mexico specifically regarding the repatriation of minors.
- 61 Background checks and, in some cases, a suitability inspection of the proposed sponsor’s home will be conducted. TVPRA Section 1232(c)(2) & (3) requires that HHS determine that the sponsor will provide for the child’s physical and mental well-being and will not pose a potential risk to the child; requires home studies for children who have been victims of trafficking or of physical or sexual abuse; and authorizes HHS to provide follow-up services for children who could benefit from on-going social welfare assistance.

- 62 As discussed further below, some unaccompanied Mexican children can establish a right to continued or permanent residence under U.S. laws that offers protection for child victims of abuse or neglect, trafficking, persecution and violent crimes.
- 63 In early 2009, the Women's Refugee Commission estimated that 60 percent of all unaccompanied children in immigration proceedings were not represented by an attorney, and that representation generally was more available to children housed in a shelter or custodial setting as opposed to those who had been reunited with family or another sponsor. *Halfway Home*, *supra*, note 1, at 23. The past two years have seen an energetic expansion of the pro bono representation of unaccompanied children, though universal representation is still a long way off. This expansion has been accomplished through a variety of public interest groups including: Kids in Need of Defense (KIND), established with the goal of connecting every unaccompanied immigrant minor in legal proceedings with a pro bono lawyer; South Texas Pro Bono Asylum Representation Project (ProBAR); law school clinics; and the Vera Institute's Know Your Rights training program.
- 64 See *Human Rights Watch, Detained and Deprived Of Rights: Children in the Custody of the U.S. Immigration and Naturalization Service* (1998), available at <http://hrw.org/legacy/reports98/ins2/>.
- 65 As the Woman's Refugee Commission's investigation found, however, the DUCS system is far from ideal and still calls out for continual monitoring and significant improvement. The conclusion of its *Halfway Home* report, published in February 2009, notes the following shortcomings: "In part perhaps because of the expanding number of children in their custody, DUCS facilities have become increasingly impersonal and bureaucratic; children are sometimes inappropriately placed into facilities that are more secure than necessary and/or appropriate; DUCS shares children's confidential information with ICE; and a lack of effective grievance and monitoring procedures has led to inconsistent provision of services and at times failed to identify abuse." *Halfway Home*, *supra*, note 1, at 35.
- 66 8 U.S.C. § 1101(a)(27)(J).
- 67 *Off. of Immigr. Stat., Department of Homeland Security*, *supra*, note 11, at 22.
- 68 8 U.S.C. § 1101(a)(15)(T). Those include (1) current status as a T non-immigrant; (2) continuous physical presence in the U.S. for at least three years since the date of admission as a T non-immigrant; (3) admissible for an adjustment of status under Section 245(1) of the Immigration and Nationality Act; (4) have good moral character; (5) have assisted or continuing assistance in the investigation or prosecution of trafficking; and (6) in lieu of assistance, would suffer extreme hardship on removal. 73 Fed. Reg. 75540, 75541-43 (Dec. 12, 2008); 8 CFR 245.23.
- 69 22 U.S.C. 7102(8).
- 70 8 U.S.C. § 1101(a)(15)(T)(i).
- 71 67 Fed. Reg. 4784, 4790 (Jan. 31, 2002).
- 72 TVPRA § 235(d)(7).
- 73 8 C.F.R. § 208.13. The TVPRA exempts an unaccompanied child from the one-year filing deadline, meaning that a child may file for asylum even after the child has been in the United States for a year. TVPRA § 235(b)(7)(A).
- 74 *Id.*
- 75 See generally *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, United Nations High Commissioner for Refugees (UNHCR), Division for International Protections, Geneva (March 2010), available at <http://www.unhcr.org/refworld/docid/4bb21fa02.html>, and authorities cited therein.
- 76 8 U.S.C. 1522(d). Such benefits include the full range of assistance, care, and services available to all foster children in a State, family tracing and reunification, indirect financial support for housing, food, clothing, medical care and other necessities, education, English language training, mental health services, career or college counseling and training, assistance with the adjustment of immigration status, cultural activities, recreational opportunities, support for social integrations and cultural and religious preservation. *Id.* See also *Unaccompanied Refugee Minors*, available at http://www.acf.hhs.gov/programs/ort/programs/unaccompanied_refugee_minors.htm (last visited Feb. 24, 2011).
- 77 *Id.*
- 78 CBP Mission Statement and Core Values, available at <http://www.cbp.gov/xp/cgov/about/mission/guardians.xml> (last visited Feb. 24, 2011).
- 79 Border Security, available at http://www.cbp.gov/xp/cgov/border_security/ (last visited Feb. 24, 2011).
- 80 Office of Technology Innovation and Acquisition, available at http://www.cbp.gov/xp/cgov/border_security/otia/ (last visited Feb. 24, 2011).
- 81 We are CBP!, available at http://www.cbp.gov/xp/cgov/careers/customs_careers/we_are_cbp.xml (last visited Feb. 24, 2011).
- 82 See Associated Press, *Mexican Teen Dies after Arizona Border Incident*, Jan. 6, 2011, available at http://news.yahoo.com/s/ap/20110106/ap_on_re_us/us_border_shooting (describing death of 17-year-old Mexican minor at Nogales); Olivia Torres & Christopher Sherman, *Sergio Adrian Hernandez Huereka Death Sparks Anger in Mexico*, *The Huffington Post*, June 9, 2010, available at <http://www.huffingtonpost.com>.

- com/2010/06/09/sergio-adrian-hernandez-huereka_n_605557.html (describing shooting of 15-year-old boy in rock-throwing incident).
- 83 USCIS Asylum Division, *Asylum Officer Basic Training Course, Guidelines for Children's Asylum Claims* (Rev. 2009), available at http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBT%20Lesson29_Guide_Children%27s_Asylum_Claims.pdf.
- 84 Department of Homeland Security, *Human Trafficking Indicators*, available at http://www.dhs.gov/xlibrary/assets/ht_ice_human_trafficking_indicators_pamphlet.pdf.
- 85 8 U.S.C. § 1232(e).
- 86 2010 OIG CBP Report, *supra*, note 25, at 21.
- 87 *Id.*
- 88 *Id.* at 22.
- 89 *Id.* at 22-23. DHS cited to the 2010 OIG CBP Report to substantiate its claim, in response to questions from Appleaseed, that it “put in place mandatory training for CBP personnel in repatriating unaccompanied alien children.” See Letter from Alice C. Hill dated October 12, 2010, attached as Exhibit 9 hereto. Unfortunately, the 2010 OIG CBP Report does not support this proposition. See 2010 OIG CBP Report, *supra*, note 25, at 21-24.
- 90 2010 OIG CBP Report, *supra*, note 25, at 23-24.
- 91 See Exhibit 2, OTD Business Case, Part 1, pg. 4.
- 92 See Exhibit 5.
- 93 Remarkably, CBP and DHS have never published Form 93, and CBP provided the document only with substantial redactions in response to Appleaseed’s FOIA requests. Despite this unwillingness to publish the full form, copies have long been circulated among CBP agents and in the legal community that represents unaccompanied minors (we received a copy both from a BP agent and a pro bono lawyer in 2009), and the form does not reflect any information that is not readily available on the DHS Website. See Department of Homeland Security, *supra*, note 84.
- 94 USCIS Asylum Division, *supra*, note 83.
- 95 Notably, Mexican-national unaccompanied minors may request voluntary departure without having contacted a family member or friend while non-Mexican unaccompanied minors “must establish communication, telephonic or otherwise, with one of the persons listed in the notice before they can be offered voluntary departure.”
- 96 TVPRA § 235(a)(2).
- 97 See emailed meeting invitation dated March 9, 2009, and March 10, 2009 emails (8:41 a.m., 9:38 a.m., 2:26 p.m., and 2:33 p.m.), produced by DHS in response to Appleaseed’s FOIA requests. Copies of these emails are annexed as Exhibit 7 to the Appendix to this report.
- 98 Email dated September 23, 2009, produced by DHS in response to Appleaseed’s FOIA request. A copy of this email is annexed as Exhibit 8 to the Appendix to this report.
- 99 See *Vienna Convention*, *supra* note 51, at Art. 36; Local Agreement for Brownsville and McAllen, TX, *supra*, note 58, Art. 4.
- 100 See Exhibits 5 and 6.
- 101 The Mexican minors that we interviewed in the DUCS facilities had been referred to the DUCS facilities for a variety of reasons, including a number that were being held as material witnesses or who had been arrested within the United States for being undocumented.
- 102 See Part III.B.3.
- 103 See Part III.C.
- 104 This procedure applies to children that have been apprehended along the border in the U.S. If a child is stopped by CBP officers from entering the U.S. at a point of entry, CBP will typically contact INM officials to collect the child. The local Mexican consulate will not become involved unless INM officials are not available.
- 105 At least one large point of entry, the Mexican consulate has an office co-located at the CBP facility, and can readily interview the children in person. At other locations, the consular official will travel to the CBP facility to interview the children or will interview them by phone.
- 106 Some consular officials indicated that the information they gathered was made available to INM officials or DIF officials; others indicated that SRE’s database information was not shared with INM. It appears that different protocols are followed in different localities. In any event, as discussed below, regardless of whether INM receives information from Mexican consular officials, INM officials conduct their own interviews with repatriated minors. No one suggested that INM or other officials outside SRE had access to SRE’s computer database of information on repatriated minors.
- 107 See UNICEF por los derechos de la niñez migrante, available at http://www.unicef.org/mexico/spanish/proteccion_12170.htm (last visited Feb. 23, 2011); E-mail from Oliver Bush, Director de Relaciones Inter-institucionales, INM, to Maru Cortazar, Directora Ejecutiva, Mexico Appleaseed June 13, 2010 9:54PM.

- 108 INM stated on its Website in 2010 that “[i]t is important to point out that some menores de circuito (border types) or in certain age ranges refuse to be sent to the [DIF] shelters and in other cases family members come to the INM offices to pick them up or they go by themselves to their houses.” The originally posted Website was http://www.inm.gob.mx/index.php?page/menores_fronterizos_antecedentes (last visited Apr. 14, 2010).
- 109 The statistics reported by INM for repatriated children include all minors, whether they are accompanied or unaccompanied, whether they are *menores de circuito*, whether they refuse any help, or whether they are transferred to a DIF facility. See *Estadísticas Migratorias*, available at http://www.inm.gob.mx/index.php?page/estadisticas_migratorias (last visited Feb. 23, 2011).
- 110 *DIF Anuario 2009*, *supra*, note 12, at 34.
- 111 See *DIF Sistema Nacional para el Desarrollo Integral de la Familia, Lineamientos Generales Para La Radicación, Aplicación, Comprobación y Justificación de Recursos Financieros Proporcionados Por el SNDIF a Los Sistemas Estatales DIF Para el Programa Interinstitucional de Atención a Menores Fronterizos* (2005), available at <http://www.difcoahuila.gob.mx/pagina/lineamientos/fronterizos.pdf>.
- 112 The principal objectives of the Program are: (1) to better coordinate the efforts of the various public and private organizations; (2) to develop a robust and integrated information system concerning immigrant and repatriated children; (3) to provide standardized and quality treatment of immigrant and repatriated children at shelters set up in border cities and towns; (4) to improve the reintegration of such children into their places of origin; (5) to train and qualify the personnel working directly with such children; (6) to study, develop and revise the legal framework applicable to the problem; and (7) to mount campaigns to draw attention to the problem and the rights of the children involved. *Niñez Migrante*, *supra*, note 8, at 11.
- 113 One each in Tijuana and Mexicali (Baja California), Juárez (Chihuahua), Agua Prieta, Nogales, and San Luis Colorado (Sonora). Five more processing centers are planned in Acuna and Piedras Negras (Coahuila) and Matamoros, Nuevo Laredo, and Reynosa (Tamaulipas). *DIF Anuario 2009*, *supra*, note 12, at 28.
- 114 Two in Tijuana, one in Mexicali, two in Juarez, one in Ojinaga (Chihuahua), one in Acuna, one in Piedras Negras, one in Monterrey (Nuevo Leon), one in Agua Prieta, one in Nogales, one in Matamoros, one in Nuevo Leon, and one in Reynosa. *Id.*
- 115 One in Tijuana, one in Mexicali, two in Juarez, two in Piedras Negras, and one in Agua Prieta. *Id.*
- 116 See SIIMMON, available at <http://www.siimmon.org/eng/mapa.htm> (last visited Feb. 24, 2011); E-mail from Alejandro Sánchez, Departamento de Infancia Migrante, DIF, to Robert Mendez, Associate, DLA Piper April 13, 2010 10:15 PM.
- 117 See *DIF Tamaulipas Manual de Organización 2005-2010 19-49*, available at: <http://www.ordenjuridico.gob.mx/Estatal/TAMAULIPAS/Manuales/TAMYUC01.pdf>; *Niñez Migrante*, *supra*, note 8, at 11-12; Jauregui, Navarrete y Nader, S.C. “Propuesta de Ley Federal y Acuerdo Bilateral entre Mexico y Estados Unidos para la Protección y Repatriación Segura de Menores No Acompañados,” [hereinafter *Propuesta de Ley Federal*], pp. 4-8 (undated), to be available at <http://www.appleseednetwork.org/bPublicationsb/RecentReports/ChildrenattheBorder/tabid/678/Default.aspx>.
- 118 See ¿Que es el DIF?, available at <http://www.dif.gob.mx/transparencia/queesdif/queesdif.htm> (last visited Feb. 23, 2011).
- 119 *DIF Nacional y UNICEF MEXICO, Guía Técnica Para El Personal Que Labora En Los Albergues De Tránsito Para Niñas, Niños Y Adolescentes Migrantes Y Repatriados* (2006) 10 [hereinafter *Guía Técnica*]. One example of the kind of sound advice contained in the *Guía Técnica* that appears rarely to be followed is the admonition, which is emphasized in all capital letters, that children not be interviewed as soon as they arrive at the DIF facility. *Id.* at 14. The reason is that the children will already have been interviewed several times before they arrive at the processing center or shelter, and another interview as soon as they arrive is not conducive to making them feel safe or cooperative. Yet at every DIF facility we visited, the first thing the DIF personnel did was conduct another interview—often asking the same questions that had already been asked by the CBP, the Consular officials, and the INM personnel. Given the imperative the local DIF personnel feel to reunite children with their families as soon as possible, and to make room in the facilities for more children, their perceived need to obtain as much information as they can as quickly as possible is understandable. But it is not consistent with the best practice strongly advocated by the national DIF.
- 120 We also have received a copy of a national DIF publication titled “Cuadernillo de Bienvenida Para Niñas, Niños y Adolescentes Migrantes y Repatriados” [hereinafter *DIF Notebook*]. The *DIF Notebook* contains a suggested script for welcoming children at a shelter and advice on addressing a wide range of topics with children and adolescents—including answering questions about their sexuality and warning of the dangers of border crossings. As with the *Guía Técnica*, the *DIF Notebook* is certainly a useful resource for DIF shelter personnel. We saw no evidence, however, that it was systematically used by DIF shelter personnel, or that there was time for it to be used in the typically short time children are at DIF shelters.
- 121 *Propuesta de Ley Federal*, *supra*, note 116, to be available at <http://www.appleseednetwork.org/bPublicationsb/RecentReports/ChildrenattheBorder/tabid/678/Default.aspx>.
- 122 *DIF Anuario 2009*, *supra*, note 12, at 42.
- 123 *Id.* at 43.

- 124 See *Center for Public Policies Priorities*, *supra*, note 2; *Niñez Migrante*, *supra*, note 8. We did not visit all DIF facilities and cannot speak to the quality of the facilities in every state and locality.
- 125 In 2008, YMCA shelters served 3,949 children in four cities. According to the YMCA, 79.66% were reunified with their families in Mexico. “YMCA Homes for Migrant Youth—Annual Report 2008,” Mexican Federation of YMCAs, pg. 3 (2009). That left over 800 minors served by the YMCA in the four cities in 2008 who appear to have departed the shelters on their own.
- 126 E-mail from Dora Ordoñez, Directora de Enlace y Concertación, DIF, to Maru Cortazar, Directora Ejecutiva, Mexico Appleseed Aug. 15, 2010 6:33PMDIF.
- 127 *DIF Anuario 2009*, *supra*, note 12, at 43.
- 128 *Guía Técnica*, *supra*, note 122, at 13.
- 129 E-mail from Dora Ordoñez, Directora de Enlace y Concertación, DIF, to Robert Mendez, Associate, DLA Piper Mar. 19, 2010 2:21PM. If a child has no known family, the DIF border shelter makes contact with the state DIF for the child’s point of origin, so that they can look for a public or private institution appropriate to the minor’s age, schooling, and psychological profile. *Id.*
- 130 See *Center for Public Policies Priorities*, *supra*, note 2, at 62.
- 131 E-mail from Dora Ordoñez, Directora de Enlace y Concertación, DIF, to Robert Mendez, Associate, DLA Piper Mar. 19, 2010 2:21PM.
- 132 See *Riesgos*, *supra*, note 8, at 12-13, 39-55, 67, 76.
- 133 *Proposal for a Federal Mexican Law*, *supra*, note 116, at 20-21. Another organization has proposed an even more extensive information system regarding unaccompanied minors, which could be contributed to and shared not only among Mexican authorities but also among U.S. authorities. See SIMMON System, available at <http://www.siimmon.org/eng/sistema.htm> (last visited Feb. 23, 2011).
- 134 See *Riesgos*, *supra*, note 8, at 12-13, 39-55, 67, 76.
- 135 “Children Without Borders: A Mapping of the Literature on Unaccompanied Migrant Children to the United States, Migraciones Internacionales,” Vol. 5, Num. 3, enero-junio, 2010, pp. 89-90, El Colegio de la Frontera Norte, A.C [hereinafter *Children Without Borders*].
- 136 A DIF survey of minors who had crossed multiple times in Ciudad Juarez found that some had been repatriated as many as 10 times. “*Children Without Borders*,” pp. 89-90. The Brownsville Consulate estimates that anywhere from 15% to 32% of repatriated minors are recidivists involved in illegal activity.

appendix



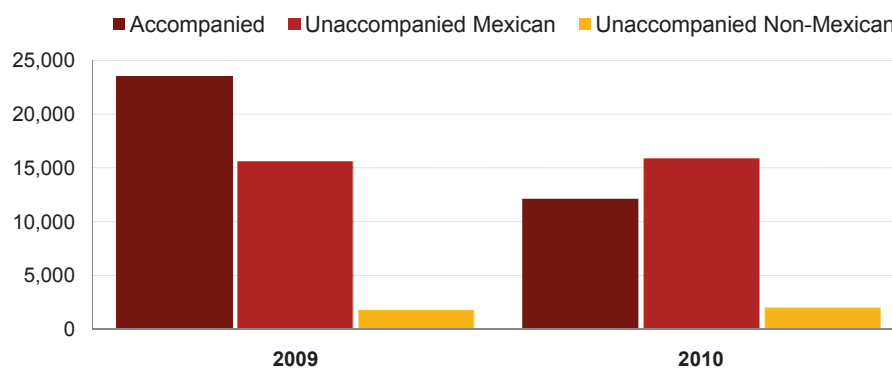
ExHIBIT 1:

Who: The Demographic Statistics

Several different agencies record some sort of statistics on unaccompanied Mexican children at different points in their journey. They include INM, SRE, DIF, DUCS and CBP.¹ Some of the numbers that would be most helpful to our analysis are not available from any one source, or even a combination of sources. Given these limitations, the picture of unaccompanied Mexican minor migration that can be pieced together by amalgamating different data sources is necessarily incomplete.

Our best estimate from this data is that in 2009, CBP apprehended approximately 15,500 unaccompanied Mexican children, and that nearly all of these children were repatriated to Mexico. In contrast, the number of unaccompanied non-Mexican children apprehended by CBP was approximately 2,000. Only this first group—unaccompanied Mexican children—was subject to immediate repatriation. (Reference chart below from DHS data.)

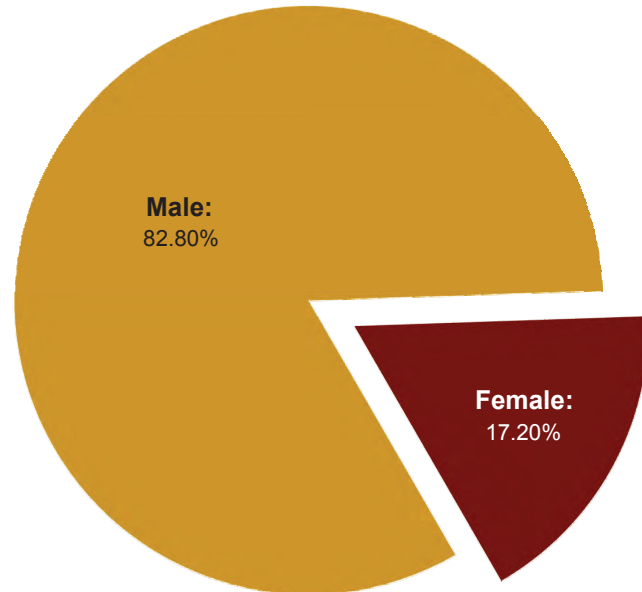
Minors apprehended by CBP



¹ CBP statistics are reported through the Office of Immigration Statistics.

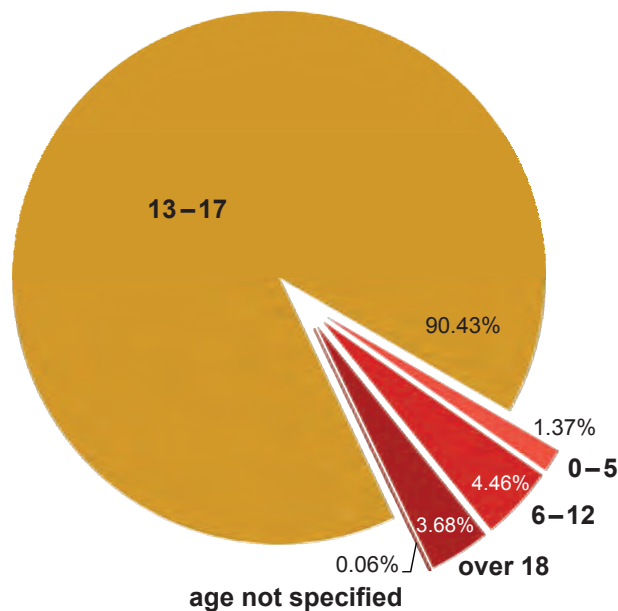
According to statistics compiled by Mexican authorities, the repatriated minors were predominantly (over 80%) male² and predominantly (over 90%) between 13 and 17 years of age, with most of the remainder between 6 and 12 years of age.

Unaccompanied Minors Repatriated to Mexico – 2009 By Gender



Source: DIF Nacional Dirección, General de Protección a la Infancia, Anuario Estadístico 2009

Unaccompanied Minors Repatriated to Mexico – 2009 By Age

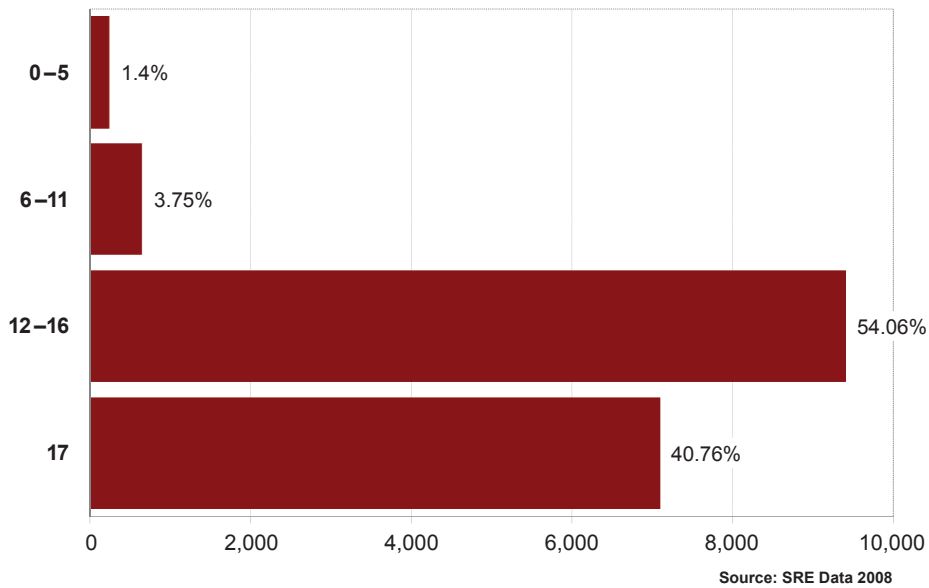


Source: DIF Nacional Dirección, General de Protección a la Infancia, Anuario Estadístico 2009

² There is some regional variation in this pattern by state. In 2009, for example, the repatriated minors from Sonora were nearly 95% male, whereas female children and adolescents accounted for over 20% of the repatriated minors from Michoacán. *DIF Anuario 2009, supra*, note 12, at 10.

Unaccompanied Minors Repatriated to Mexico – 2008

By Age



appendix

Exhibit 1

A-3

Migrating minors come from both the North and South of Mexico. As a general matter, proximity to the United States is not itself a significant driver of migration for this population. The six Mexican states along the U.S. border—from west to east, Baja California, Sonora, Chihuahua, Coahuila, Nuevo León³ and Tamaulipas—together accounted for only 23.2% of the unaccompanied minors repatriated to Mexico in 2009.⁴ Only two of those states—Sonora with 1,139 repatriated minors (6.61% of the total) and Tamaulipas with 923 (5.36%)—were among the top ten states from which minors repatriated in 2009 had originated.⁵ In contrast, the top four states of migration—Oaxaca, Michoacán, Guanajuato and Guerrero—all lie much further to the south, and together accounted for 30.6% of the unaccompanied children repatriated to Mexico in 2009. Adding Puebla, the 6th-ranked state (after Sonora), these five central and southern Mexican states accounted for 36.8% of the children apprehended and sent back to Mexico in 2009.⁶

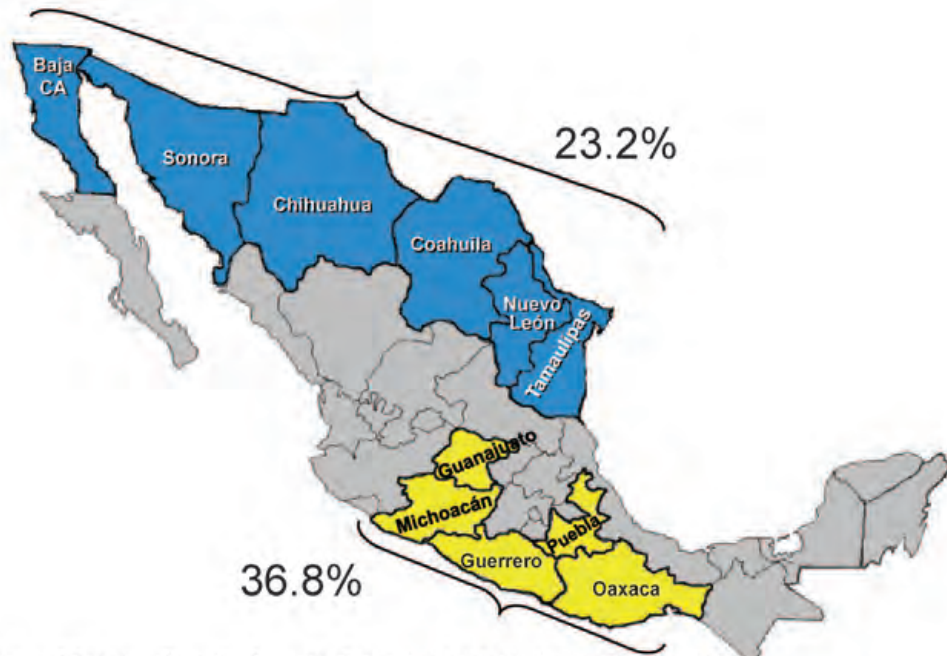
³ Due to the thin panhandle of Tamaulipas, Nuevo León does not actually share a border with the U.S., but its close proximity and strong commercial ties with the U.S. commonly lead Mexican studies to include it as one of Mexico's border states.

⁴ *DIF Anuario 2009*, *supra*, note 12, at 129. Mexico has 32 states (including the Federal District) in all.

⁵ *Id.*

⁶ *Id.*

Unaccompanied Minors Repatriated to Mexico – 2009 By State of Origin



Source: DIF Nacional Dirección, General de Protección a la Infancia, Anuario Estadístico 2009

appendix

Exhibit 1

A-4

In most of Mexico's states, more than two-thirds of the repatriated children came from smaller towns, villages and the countryside.⁷ The exception to this pattern are the three border states that rank highest among Mexican states as sources of repatriated minors—Sonora (ranked 5th overall), Tamaulipas (7th) and Chihuahua (11th). Between 66% and 81% of the children who migrated from these border states came from the leading three or four cities within the state.⁸

Just how many of these rapidly repatriated minors migrated to seek refuge from violence, abuse, neglect or persecution, and how many risk being trafficked upon their return, cannot be determined. What we do know, however, is that whatever led them to migrate, nearly all of the unaccompanied Mexican minors encountered by CBP are extremely vulnerable, and their journeys are marked by often tremendous hardships. All of these factors make effective screening extremely difficult—yet all the more important.

⁷ *Id.* at 9.

⁸ *Id.*

EXHIBIT 2:

OTD Business Case Parts 1 and 2

OTD Business Case Part 1

1. Project title (Customer provides)	TVPRA, Trafficking and Flores Settlement Agreement Training for Unaccompanied Alien Children	
2. Project # (Front Office assigns # after B/C signed)	09-OFO-054	TRAEN Code <small>(Application to be submitted by PM at later date)</small>
3. Point of contact (Customer provides lead poe for duration of project)	Name: (b)(6),(b)(7)(C) Title: Project Manager Office: OFO/APP Alternate contact: (b)(6),(b)(7)(C)	(b)(6),(b)(7)(C) Date Prepared: 12-5-08 (b)(6),(b)(7)(C)
4. Type of request (Customer provides)	<input type="checkbox"/> New Development <input checked="" type="checkbox"/> Revision <input type="checkbox"/> Delivery of Existing Course <input type="checkbox"/> Needs Assessment <input type="checkbox"/> Curriculum Review <input type="checkbox"/> Media Conversion (only) for Existing Course <input type="checkbox"/> Job Analysis <input type="checkbox"/> Training Standards Review <input type="checkbox"/> Level 3 (behavior/job performance) Evaluation <input type="checkbox"/> Curriculum Revision <input type="checkbox"/> Other (explain)	
	if existing course to be delivered, identify course length in hours: Existing VLC 1.05 hour	
	Is this a course that is (or will be) offered on a recurring basis? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No if "Yes", provide detail as to frequency if known: Annually	
	Is this a required course? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", the course is required by: <input checked="" type="checkbox"/> Regulation <input type="checkbox"/> CBP/DHS Directive <input type="checkbox"/> Other Policy Memo If available, provide US Code, CFR, CBP Directive, or other citation for the requirement: William Wilberforce Trafficking Victims Protection Reauthorization Act and The Flores v. Reno Settlement Agreement	
5. Project Purpose (Customer provides)	Briefly describe the purpose of the proposed project. The training will enhance and/or provide a specific skill set required by CBP Officers and agents responsible for the apprehension and processing of Unaccompanied Alien Children at POEs or between POEs and anywhere in CBP's area of responsibility. This 1.05 hour VLC course was developed in January, 2009 and needs to be updated.	
6. Major topics (Customer provides)	List the major topics to be covered in this training event: Identifying children who are victims of severe forms of trafficking in persons, children for whom asylum or special immigrant relief may be appropriate. Identifying UAC, Flores vs. Reno Settlement, guidance. The existing course Unaccompanied Minors-Flores v. Reno 2009 – 1.05 Hours needs to be updated. New course will not exceed 2 hours on VLC.	
7. DHS/CBP Strategic Goals & CBP Priorities (Customer provides)	<p>A. Describe how this project links to specific DHS and CBP strategic goals and CBP priorities. (Note that ability to link will create a stronger business case.)</p> <p>CBP Strategic Goals I: Preventing Terrorism at Ports of Entry; CBP Strategic Goal II: Facilitating Legitimate Trade and Travel; CBP Strategic Goal</p> <p>B. If there is not a direct link to specific DHS and CBP strategic goals and CBP priorities, describe how CBP will benefit from this project, and identify potential risks to the CBP mission if this project is not undertaken.</p>	

Appendix

Exhibit 2

A-6

OTD Business Case Part 1

8. Classified Information <small>(Customer provides)</small>	Will this project contain some level of protected information? Full BI required <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown												
9. Subject Matter Expertise <small>(Customer provides w/ Assignment of SMEs TBD separate from business case)</small>	Will this project require the use of Subject Matter Experts (SMEs)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> OFO to provide.												
10. Students / Trainees <small>(Customer provides)</small>	Job Title(s)/Series(s)/Grade Level, if relevant: GS-1895, 1896, 1881, 1833, 1896, Agriculture Specialists CBP Office(s) (e.g. OFO, OTD, OBP, A&M): OFO, OBP, A&M Number of personnel needing training: All employees that may encounter alien juveniles, 40,000 Estimate number of students/trainees per location below: <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Headquarters</td> <td><input type="checkbox"/> Field Offices</td> <td><input type="checkbox"/> Land Border Ports</td> </tr> <tr> <td><input type="checkbox"/> Seaports</td> <td><input type="checkbox"/> Airports</td> <td><input type="checkbox"/> Air Branches</td> </tr> <tr> <td><input type="checkbox"/> STCs</td> <td><input type="checkbox"/> SECTORS</td> <td><input type="checkbox"/> Air Units</td> </tr> <tr> <td><input type="checkbox"/> Marine Units</td> <td><input type="checkbox"/> Air/Marine Operations Center (AMOC)</td> <td><input type="checkbox"/> Surveillance Support Branch (SSB/P3)</td> </tr> </table> Other sites (describe): Will supervisors require training themselves in order to properly supervise those who have completed this training? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Headquarters	<input type="checkbox"/> Field Offices	<input type="checkbox"/> Land Border Ports	<input type="checkbox"/> Seaports	<input type="checkbox"/> Airports	<input type="checkbox"/> Air Branches	<input type="checkbox"/> STCs	<input type="checkbox"/> SECTORS	<input type="checkbox"/> Air Units	<input type="checkbox"/> Marine Units	<input type="checkbox"/> Air/Marine Operations Center (AMOC)	<input type="checkbox"/> Surveillance Support Branch (SSB/P3)
<input type="checkbox"/> Headquarters	<input type="checkbox"/> Field Offices	<input type="checkbox"/> Land Border Ports											
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<input type="checkbox"/> STCs	<input type="checkbox"/> SECTORS	<input type="checkbox"/> Air Units											
<input type="checkbox"/> Marine Units	<input type="checkbox"/> Air/Marine Operations Center (AMOC)	<input type="checkbox"/> Surveillance Support Branch (SSB/P3)											
11. Target date(s) <small>(OTD PM completes in consult w/customer, TPSC and Delivery pool)</small>	Customer's request for target date of project completion: September 2009 War Supplemental Funding on President's desk for signature. This will support funding of project.												
12. Facilities <small>(OTD PM completes in consult with delivery pool)</small>	For projects that will result in training programs, identify possible facilities for training delivery. <input checked="" type="checkbox"/> Field Operations Academy <input checked="" type="checkbox"/> Border Patrol Academy <input checked="" type="checkbox"/> Professional Development Center <input type="checkbox"/> Advanced Training Center <input type="checkbox"/> Canine Enforcement Training Center <input type="checkbox"/> National Canine Facility <input checked="" type="checkbox"/> Other (Describe) VLC												

Appendix

Exhibit 2

A-7

OTD Business Case Part 2

13. Possible delivery method(s) <small>(TPSD completes w/customer)</small>	<p>More than one option below may be selected for a blended learning delivery method.</p> <table style="width: 100%; border: none;"> <tr> <td><input checked="" type="checkbox"/> Classroom Training</td> <td><input type="checkbox"/> On-the-Job Training (OJT)</td> </tr> <tr> <td><input checked="" type="checkbox"/> Job Aid(s) (electronic)</td> <td><input checked="" type="checkbox"/> Job Aid(s) (paper-based)</td> </tr> <tr> <td><input type="checkbox"/> Train-the-trainer</td> <td><input type="checkbox"/> Instructional video Practical Exercises</td> </tr> <tr> <td><input type="checkbox"/> Satellite broadcast</td> <td><input type="checkbox"/> Audicast</td> </tr> <tr> <td><input type="checkbox"/> Coaching</td> <td><input type="checkbox"/> Video Conferencing (VTC)</td> </tr> <tr> <td><input checked="" type="checkbox"/> *Web-based training</td> <td><input type="checkbox"/> *Computer Based Training (CBT)/CD-ROM</td> </tr> </table> <p style="text-align: center;">*For Web-based and CBT/CD-ROM, indicate the Level of Interactivity:</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Level I - linear, text, and some graphics</td> </tr> <tr> <td><input checked="" type="checkbox"/> Level II - scenarios and some audio/video</td> </tr> <tr> <td><input type="checkbox"/> Level III - branching, extensive audio/video</td> </tr> </table> <p>Other Training Methods or Details/Notes: Develop an ILT Overview from VLC for delivery in OFO, A&M, CBP, Agriculture Specialists basic academics NTE 2 hours</p>	<input checked="" type="checkbox"/> Classroom Training	<input type="checkbox"/> On-the-Job Training (OJT)	<input checked="" type="checkbox"/> Job Aid(s) (electronic)	<input checked="" type="checkbox"/> Job Aid(s) (paper-based)	<input type="checkbox"/> Train-the-trainer	<input type="checkbox"/> Instructional video Practical Exercises	<input type="checkbox"/> Satellite broadcast	<input type="checkbox"/> Audicast	<input type="checkbox"/> Coaching	<input type="checkbox"/> Video Conferencing (VTC)	<input checked="" type="checkbox"/> *Web-based training	<input type="checkbox"/> *Computer Based Training (CBT)/CD-ROM	<input type="checkbox"/> Level I - linear, text, and some graphics	<input checked="" type="checkbox"/> Level II - scenarios and some audio/video	<input type="checkbox"/> Level III - branching, extensive audio/video
<input checked="" type="checkbox"/> Classroom Training	<input type="checkbox"/> On-the-Job Training (OJT)															
<input checked="" type="checkbox"/> Job Aid(s) (electronic)	<input checked="" type="checkbox"/> Job Aid(s) (paper-based)															
<input type="checkbox"/> Train-the-trainer	<input type="checkbox"/> Instructional video Practical Exercises															
<input type="checkbox"/> Satellite broadcast	<input type="checkbox"/> Audicast															
<input type="checkbox"/> Coaching	<input type="checkbox"/> Video Conferencing (VTC)															
<input checked="" type="checkbox"/> *Web-based training	<input type="checkbox"/> *Computer Based Training (CBT)/CD-ROM															
<input type="checkbox"/> Level I - linear, text, and some graphics																
<input checked="" type="checkbox"/> Level II - scenarios and some audio/video																
<input type="checkbox"/> Level III - branching, extensive audio/video																
14. Project Needs <small>(If development, TPSD completes w/customer. If delivery or other, customer completes with assigned OTD division PM)</small>	<p>Identify the amount of assistance needed (full, some, no) on the following topics:</p> <p>FULL Writing</p> <p>FULL Graphics</p> <p>FULL Authoring technology-delivered training (e.g., computer-based)</p> <p>Training implementation</p> <p>Instructors needed for delivery</p> <p>Other types of support (please explain):</p>															
15. Accreditation <small>(TPSD completes w/customer)</small>	<p>is accreditation of the end product desired? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Only for ILT courses</i></p> <p>If "Yes", provide accreditation program name: FLETA</p>															

Appendix

Exhibit 2

A-8

OTD Business Case Part 2

16. Cost Estimate <small>(If development, TPSPD completes w/customer. If delivery or other, customer completes with assigned OTD division PM)</small>	Estimated annual cost: \$36,000 (b)(6) estimate to update and expand the existing Unaccompanied Minors VLC course and produce a 1-hour ILT course using the same content is \$36,000. The following assumptions apply: <ul style="list-style-type: none"> (b)(6) will update and expand the existing Unaccompanied Minors VLC course from 1.5 hour to 2 hours. The expansion will require approximately 30 screens of new content. (b)(6) will develop a new, 1-hour ILT course, for delivery at the academies, using the same content contained in the VLC course. Pilot support for both the WBT and ILT is included in the estimate, assuming the Pilots are conducted locally. No contractor travel is expected. 																		
17. Sources of Funding <small>If development, TPSPD completes w/customer. If delivery, customer completes w/OTD division PM. PM works w/MSD to verify funding is available in NTP. If other, customer completes w/OTD PM.</small>	Please indicate in the appropriate column the amount of funding for travel, contracts, and supplies/equipment your organization will provide for this project. As a general rule, customers fund all travel (2*) and supplies/equipment (26/31). If OTD funding is requested, please indicate in the appropriate column. Please note that this is just a general estimate and that it does not represent a commitment on the part of OTD. <table style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;"></th> <th style="text-align: center; border-bottom: 1px solid black; width: 150px;"><u>Customer</u></th> <th style="text-align: center; border-bottom: 1px solid black; width: 100px;"><u>OTD</u></th> </tr> </thead> <tbody> <tr> <td>OC 21 (Travel)</td> <td></td> <td></td> </tr> <tr> <td>OC 25 (Contracts)</td> <td style="text-align: center;">\$36,000</td> <td></td> </tr> <tr> <td>OC 26 (Supplies)</td> <td></td> <td></td> </tr> <tr> <td>OC 31 (Equipment)</td> <td></td> <td></td> </tr> <tr> <td style="border-top: 1px solid black;">TOTAL</td> <td style="border-top: 1px solid black; text-align: center;">\$36,000</td> <td></td> </tr> </tbody> </table> <p>NOTE: Funding provided by FY09 Supplemental Appropriations spend plan for the Unaccompanied Alien Children initiative.</p> <p>For delivery-only request, is funding available in the NTP? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>		<u>Customer</u>	<u>OTD</u>	OC 21 (Travel)			OC 25 (Contracts)	\$36,000		OC 26 (Supplies)			OC 31 (Equipment)			TOTAL	\$36,000	
	<u>Customer</u>	<u>OTD</u>																	
OC 21 (Travel)																			
OC 25 (Contracts)	\$36,000																		
OC 26 (Supplies)																			
OC 31 (Equipment)																			
TOTAL	\$36,000																		
18. Notice	<p>Notice: Any tasks requested by the Customer that are not listed in this OTD Business Case document, must be put in writing and agreed to by both the Customer's AC or executive level manager, and the OTD AC or DAC, signed by both parties, and attached as an addendum herein.</p>																		
19. Signatories <small>(Required by both parties: Customer's AC or executive level manager* & OTD AC or DAC)</small> <small>*GS15 or higher, who may have to defend case to the TAB</small>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top; padding: 5px;"> <div style="background-color: black; color: white; text-align: center; padding: 5px;">(b)(6),(b)(7)(C)</div> <div style="text-align: center; margin-top: 5px;">(Signature)</div> </td> <td style="width: 50%; vertical-align: top; padding: 5px;"> <div style="text-align: center; margin-top: 5px;">(Signature)</div> </td> </tr> </table>	<div style="background-color: black; color: white; text-align: center; padding: 5px;">(b)(6),(b)(7)(C)</div> <div style="text-align: center; margin-top: 5px;">(Signature)</div>	<div style="text-align: center; margin-top: 5px;">(Signature)</div>																
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20. Name, Title, & Date	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top; padding: 5px;"> Name (Customer): Thomas Winkowski Title: Assistant Commissioner Date: 7/23/09 </td> <td style="width: 50%; vertical-align: top; padding: 5px;"> Patricia M. Duffy Assistant Commissioner (OTD) Date: </td> </tr> </table>	Name (Customer): Thomas Winkowski Title: Assistant Commissioner Date: 7/23/09	Patricia M. Duffy Assistant Commissioner (OTD) Date:																
Name (Customer): Thomas Winkowski Title: Assistant Commissioner Date: 7/23/09	Patricia M. Duffy Assistant Commissioner (OTD) Date:																		

OFO Routing - Signatories should be only those who can commit funds. BCAS should be routed through the FRM Training Team first, then to FRM Financial Management for funding concurrence, then to the Deputy XD for FRM. If funding issues are in excess of \$50,000 they will be routed to the AC for OFO

Appendix

Exhibit 2

A-9

EXHIBIT 3:

CBP Memorandum RE: Interim Guidance on Processing
Unaccompanied Alien Children (March 20, 2008)



U.S. Customs and
Border Protection

(b)(2)

MEMORANDUM FOR:

MEMORANDUM FOR: All Chief Patrol Agents
All Division Chiefs

(b)(6) & (b)(7)(C)

FROM: David V. Aguilar
Chief
U.S. Border Patrol

SUBJECT: Implementation of the William Wilberforce Trafficking Victims
Protection Reauthorization Act of 2008

In December 2008, Congress approved the William Wilberforce Trafficking Victims Protection Reauthorization Act (WVPRA). Included in the WVPRA 2008 are new requirements for the Department of Homeland Security (DHS) to enhance efforts in combating the trafficking of children along the borders of the United States and at U.S. ports of entry.

In accordance with the WVPRA, Customs and Border Protection (CBP) has developed Interim Guidance for Processing Unaccompanied Alien Children (UAC), and created CBP Form 93 - Unaccompanied Alien Child Screening Addendum (attached). The provisions of this Act become effective Monday, March 23, 2009.

Personnel will continue to process unaccompanied alien children according to current procedures. Agents will also screen all UAC using CBP Form 93 (screening addendum) for possible victimization. The completed form will become a part of the A-file or voluntary return packets. Agents should use the form in hard copy until made available in e3 Processing and on the CBPnet under CBP forms. As a reminder, all personnel should be current with annual training requirements including Unaccompanied Minors - Flores v. Reno and Human Trafficking Awareness Training.

Sectors should ensure that when a UAC is processed under 240 proceedings, the ICE Field Office Juvenile Coordinator (FOJC) and the Department of Health and Human Services - Office of Refugee Resettlement (HHS/ORR) are notified as soon as possible to arrange placement. Please continue to use local FOJC points of contact when notifying ICE of a UAC in custody. HHS - ORR can be reached at (b)(2) or via e-mail at (b)(2). Both the FOJC and ORR should receive an electronic or faxed copy the ORR Division of Unaccompanied Children Services Form.

All Chief Patrol Agents will ensure that a copy of this memorandum and attached interim guidance is available to all personnel. Staff may direct questions to Assistant Chief (b)(6) & (b)(7)(C) (b)(2), (b)(2) Operations Officer (b)(6) & (b)(7)(C) (b)(2), (b)(2) or Supervisory Border Patrol Agent (b)(2), (b)(2).

Appendix

Exhibit 3

A-12

**U.S. Customs and Border Protection
Interim Guidance on Processing Unaccompanied Alien Children in accordance with
TVPRA**

The William Wilberforce Trafficking Victims Protection Reauthorization Act, 2008 (TVPRA) was signed into law on December 23, 2008. The TVPRA will significantly impact CBP operations regarding unaccompanied alien children (UAC) apprehended by CBP at and between the ports of entry. Below are specific guidelines that all CBP officers and agents should use to determine the appropriate immigration proceedings and applicable procedures for the treatment of UAC. CBP is obligated to initiate the changes from the TVPRA beginning March 23, 2009. The TVPRA mandates, with limited exceptions, that all UAC CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA).

The term "UAC" is defined by section 462(g) of the Homeland Security Act of 2002 (6 USC § 279(g)) as a child who:

- (A) has no lawful immigration status in the United States¹;
- (B) has not attained 18 years of age; and
- (C) with respect to whom:
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

CBP created CBP Form 93, Unaccompanied Alien Child Screening Addendum, for additional guidance (attached). If there is a reasonable claim or suspicion that an alien in CBP custody is under 18 years of age and the other criteria listed in the definition above are met, then the alien shall be treated as a UAC. The TVPRA requires Health and Human Services (HHS), in consultation with DHS, to identify procedures to make a prompt determination of age of an alien in CBP custody. CBP will continue to follow established procedures regarding age determination.

(b)(2) & (b)(7)(E)

The TVPRA clarifies family reunification procedures for CBP. (b)(2) & (b)(7)(E)
HHS is responsible for the determination that
any other proposed (b)(2) & (b)(7)(E)
is capable of providing care and
physical custody.

(b)(2) & (b)(7)(E)

Appendix

Exhibit 3

A-13

CBP will process UAC expeditiously and complete the documentation necessary for case processing. If the UAC is (b)(2) & (b)(7)(E) of age, or unable to understand his or her rights, the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand.

Special Rules for Children from Contiguous Countries (UAC Screening):

The TVPRA states that any UAC determined to be a national or habitual resident of a country that is contiguous with the United States shall undergo a screening process before the UAC may be returned.

UAC Screening: CBP may allow a UAC who is a national or habitual resident of a country that is contiguous with the United States (i.e. Canada and Mexico) to withdraw the application for admission and/or be voluntarily returned if CBP determines that all three of the below-listed criteria exist.

1. (b)(2) & (b)(7)(E)
(b)(2) & (b)(7)(E) his/her country of nationality or last habitual residence.
 - a. CBP must determine whether the UAC is able to make an independent decision on a case by case basis. However, there are a few factors that CBP may take into consideration:
 - i. (b)(2) & (b)(7)(E)
 - ii. (b)(2) & (b)(7)(E)
 - b. The guidelines above do not alleviate the need for the officer or agent to determine the ability of the UAC to make an (b)(2) & (b)(7)(E) on a case-by-case basis (b)(2) & (b)(7)(E)
The basis for all determinations regarding (b)(2) & (b)(7)(E) will be annotated in the narrative of the Form I-213.
2. The UAC does not have (b)(2) & (b)(7)(E) his or her country of nationality or last habitual residence (b)(2) & (b)(7)(E)
 - a. CBP will use the UAC Screening Addendum, CBP Form 93, to provide the UAC with an opportunity to express (b)(2) & (b)(7)(E) (b)(2) & (b)(7)(E)

Appendix

Exhibit 3

A-14

3. The UAC has not been a victim of a severe form of trafficking in persons and there is no credible evidence that the UAC is at risk of being trafficked upon return to his or her country of nationality or last habitual residence.
 - a. CBP developed a UAC Screening Addendum, CBP Form 93, to assess the likelihood that a UAC has been a victim of trafficking or is at risk of being trafficked.

(b)(2) & (b)(7)(E)

If CBP determines that the UAC meets **all** of the above criteria, then the UAC may be processed as a withdrawal or voluntary return. Current policies regarding repatriation, as outlined by local Repatriation Agreements, remain in effect. UAC must be returned to appropriate trained officials of contiguous countries during reasonable business hours.

If a UAC does **not** meet all of the above criteria or if CBP **cannot** make a determination within (b)(2) & (b)(7)(E) of apprehension of the UAC, then the UAC shall be placed in removal proceedings under section 240 of the INA and immediately transferred to ORR.

Visa Waiver Program (VWP)

UAC who apply for admission under section 217 of the INA who are determined to be ineligible for admission under that section or to be inadmissible to the United States under section 212 of the INA (other than for lack of a visa), or who are in possession of and present a fraudulent or counterfeit travel documents should be refused admission into the United States. CBP may continue to process these UAC as VWP Refusals with the Screening Addendum used as a guide for assessing the risk of trafficking and/or credible fear. Generally, a UAC applying for admission under the VWP who expresses (b)(2) & (b)(7)(E) to his or her country of nationality or last habitual residence (b)(2) & (b)(7)(E) or who has been a victim of trafficking or who is at risk of being trafficked should be referred for a limited review hearing by an Immigration Judge using Form I-863. UAC who are or who may be victims of trafficking will also be referred to ICE-OI and custody will be transferred to ORR. UAC apprehended by CBP and amenable to removal under section 217 of the INA will be placed in removal proceedings under section 240 of the INA and custody will be transferred to ORR.

All Other Children:

UAC who do not meet the exceptions above and whom CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the INA. Immediate notifications to the Juvenile Coordinator within ICE Detention and Removal Operations (DRO) and ORR, Division of Unaccompanied Children's Services (DUCS) must occur. Notification must occur within (b)(2) & (b)(7)(E) from the apprehension or discovery of a UAC or any claim or suspicion that an alien in custody is unaccompanied and (b)(2) & (b)(7)(E) this will expedite the transfer of custody and placement of UAC into ORR facilities.

Appendix

Exhibit 3

A-15

Interim Unaccompanied Alien Children Guidance
Page 4 of 8

CBP will process UAC expeditiously and complete the documentation necessary for inclusion in the alien file (A-file). A Form I-770 must be completed and a copy provided to all UAC. If the UAC is (b)(2) & (b)(7)(E) the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand. The attached A-file Preparation Guide has been designed to assist officers and agents in ensuring that all appropriate documents have been completed.

When CBP issues an NTA to a UAC (b)(2) & (b)(7)(E) of age, it may be necessary to delay service of the NTA until custody can be transferred to ORR. ORR should sign the NTA and other legal documentation and receive all copies of legal documentation on behalf of the UAC.

Custody of the UAC will be transferred to ORR (generally through DRO) as soon as possible. Consistent with the language of the TVPRA, custody must be transferred to ORR no later than (b)(2) & (b)(7)(E) after determining that a child is a UAC. This does not preclude an earlier transfer as existing CBP policy seeks to accomplish custody transfer of all UAC within (b)(2) & (b)(7)(E).

While awaiting transfer to an ORR-designated facility, UAC must be held in a suitable area in compliance with the Flores Settlement Agreement. CBP will separate UAC from unrelated adults whenever possible. Where such separation is not immediately possible, a UAC should not be detained with an unrelated adult for more than (b)(2) & (b)(7)(E). All post-arrest facilities, including temporary holding areas, will provide access to:

- toilets and sinks;
- drinking water and food, as appropriate;
- emergency medical assistance;
- adequate temperature control and ventilation; and,
- adequate supervision to protect UAC from others.

When a UAC is apprehended and is amenable to criminal prosecution, notification to ORR within (b)(2) & (b)(7)(E) and transfer to ORR within (b)(2) & (b)(7)(E) is necessary.

UAC A-File Preparation Guide

Not all forms will be used in every case. Follow existing local procedures to determine which forms are required based on the circumstances of the case. *For children (b)(2) & (b)(7)(E) of age, ORR will sign all legal documentation as well as receive all copies of legal documentation on behalf of the UAC.* Additional documentation may be required by local policy.

- Record of Deportable/Inadmissible Alien (I-213 and continuation).
The original is placed in the A-file; no copy is provided to the UAC. The apprehending officer or agent should obtain as much detailed biographical information as possible. The following information must be included in the narrative of the Form I-213, if known:

(b)(2) & (b)(7)(E)

- Notice to Appear (I-862)

(b)(2) & (b)(7)(E)

- Notice of Rights and Request for Disposition (I-770).
The original is placed in the file and a copy is provided to the UAC. Ensure that appropriate boxes are completed on both sides. The apprehending officer or agent and UAC both sign.
- UAC Screening Addendum (CBP Form 93).
The original is placed in the file, no copy is provided to the UAC.
- Warrant of Arrest (I-200) (not applicable for arriving aliens).

~~U.S. Customs and Border Protection~~
~~Immigration Services~~

Appendix

Exhibit 3

A-17

Interim Unaccompanied Alien Children Guidance
Page 6 of 8

Typically, the original and one copy are placed in the file; another copy is provided to the UAC. This form should be signed by the authorized issuing official. The certification of service on the UAC is signed by the apprehending officer and by the UAC.

- **Notice of Custody Determination (I-286)** (not applicable for arriving aliens).
Typically, the original and one copy are placed in the file; a copy is provided to the UAC. This form should be signed by the authorized issuing official. The certificate of service on the UAC is signed by the apprehending officer and by the UAC.
- **Biographic Data for Travel Documents (I-217) or Single Journey Letter**
The original is placed in the file.
- **Fingerprints (IR-84 and/or FD-249)**
This applies to UAC **(b)(2) & (b)(7)(E)**.
- **Photograph**
A photograph will be placed in the file. All UAC must be photographed.
- **Modified Oranres Rights **(b)(2) & (b)(7)(E)** (I-848 and I-848a)**
The original is placed in the file and a copy is provided to the UAC. Explain the rights to UAC of all ages. This is signed by the apprehending officer or agent and the UAC.
- **Notice to Detain, Remove, or Present Alien (I-259)** (for arriving aliens only).
The original is placed in the file; a copy is provided to the carrier who brought the alien into the United States.
- **Sworn Statement**
The original is placed in the file and a copy is provided to the UAC. Ensure that all pages are signed by the officer/agent and that the UAC initials all pages.
- **Withdrawal of Application for Admission/Consular Notification (I-275)**
The original is placed in the file and a copy is given to the UAC, if allowed to withdraw his or her application for admission. A copy should also be forwarded to the appropriate U.S. consular officials.
- **Notice of Refusal of Admission/Parole into the U.S. (I-160A)** (arriving aliens only).
The original is placed in the file and a copy is provided to the UAC.
- **List of Free Legal Services**
A copy must be provided to the UAC. Follow local guidelines to document appropriately.
- **Consular Notification as defined by 8 CFR 236.J.**
The original is placed in the file.
- **Discretionary Checklist and Third Party Notification (OFO only)**
The originals are placed in the file.

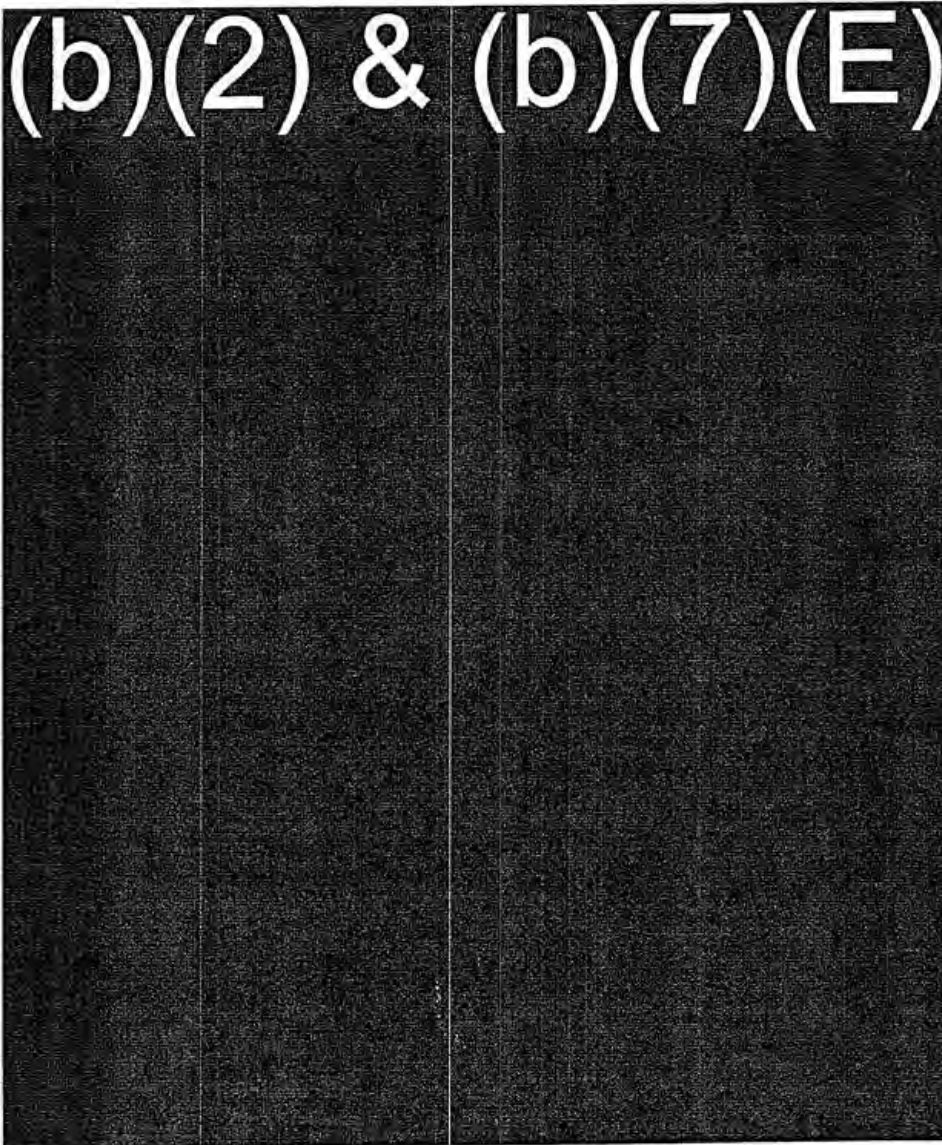
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

Appendix

Exhibit 3

A-18

(b)(2) & (b)(7)(E)



Appendix

Exhibit 3

A-19

EXHIBIT 4:
CBP Form 93 (Redacted)

.....

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM
Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name: _____

A NUMBER (if any)

A _____

Credible Fear Determination

(b)(2) & (b)(7)(E)

Human Trafficking

Definition: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for indicators of human trafficking.

Trafficking Indicators and Suggested Questions

(b)(2) & (b)(7)(E)

CBP Form 93 (03/09)

LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY

Appendix

Exhibit 4

A-22

After interviewing the Unaccompanied Alien Child, reviewing the circumstances noted at time of apprehension and the information provided to me by the child, and based on my training and experience as a CBP Officer/Border Patrol Agent:

The Unaccompanied Alien Child **DOES NOT** appear to be a victim or potential victim of a severe form of trafficking, has not expressed a fear of returning to his/her country of nationality or last habitual residence, and has made an independent decision to request withdrawal or voluntary return. This Unaccompanied Alien Child will be processed according to established policy and procedures.

Name and Title of Interviewing Officer	Signature of Interviewing Officer	Date & Time
Name and Title of Authorizing Officer	Signature of Authorizing Officer	Date & Time

The Unaccompanied Alien Child **MAY** be a victim or potential victim of a severe form of trafficking; and/or expresses a fear of returning to his/her country of nationality or last habitual residence; and/or is unable to make an independent decision to withdraw his/her application for admission or for voluntary return; or no determination could be made within 48 hours of apprehension. This child is being referred to the Department of Health & Human Services as per 8 U.S.C. 1232.

Immediate notifications have been made to:

Health and Human Services (All Cases)

Date: _____ Time: _____
Office Contacted:
Name of Person Contacted:
Telephone of person Contacted:
E-mail notification to:

U.S. Immigration and Customs Enforcement (Office of Investigations)(Trafficking) :

Date: _____ Time: _____
Office Contacted:
Name of Person Contacted:
Telephone of person Contacted:
E-mail notification to:

U.S. Immigration and Customs Enforcement (Field Office Juvenile Coordinator)(All Cases) :

Date: _____ Time: _____
Office Contacted:
Name of Person Contacted:
Telephone of person Contacted:
E-mail notification to:

This Unaccompanied Alien Child will be processed according to established CBP policy and procedures for UAC.

Name and Title of Interviewing Officer	Signature of Interviewing Officer	Date & Time
Name and Title of Authorizing Officer	Signature of Authorizing Officer	Date & Time

CBP Form 53 (03/09)

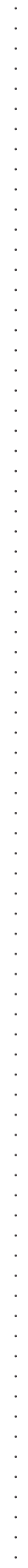
LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY

Appendix

Exhibit 4

A-23

EXHIBIT 5:
CBP Form 93



DEPARTMENT OF HOMELAND SECURITY
 U.S. Customs and Border Protection
UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM
 Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name: _____

A NUMBER (if any)

A _____

Credible Fear Determination

Why did you leave your home country or country of last residence?

Do you have any fear or concern about being returned to your home country or being removed from the United States?

Would you be harmed if you were returned to your home country or country of last residence?

Do you have any questions or is there anything else you would like to add?

Human Trafficking

Definition: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for indicators of human trafficking.

Trafficking Indicators and Suggested Questions

- | | | |
|---|----------------------------------|---------------------|
| • Lack of Possession/Control of Documents | • Debts to Smugglers/Traffickers | • Overly submissive |
| • Unreasonable Fear/Anxiety/Nervousness | • Isolation from Others | • Forced Acts |
| • Child Carrying Improper Items for Age | • Restricted Movements | |
| • Behavior does not correspond to Age | • Coached Responses | |

Is the child in possession of identification documents; if not, who has control of the documents?

Was the child coached on what to say to law enforcement and/or immigration officials?

Was the child recruited for one purpose and forced to engage in some other job?

Is the child engaged in any type of labor?

Is the child earning a salary? If so, is the salary being garnished to pay off a debt?
 (Paying off a smuggling fee alone is not considered trafficking.)

Was the child forced to perform sexual acts for money or services?

Did the child have freedom of movement?

Has the child or family been threatened with harm if the victim(s) attempts to escape?

Has the child ever been threatened with deportation or law enforcement action for failing to comply with instructions?

Has the child been harmed or deprived of food, water, sleep, medical care or other life necessities?

Has the child been able to freely contact friends or family via phone, internet or mail?

If the child has signs of torture/malnourishment/trauma/fatigue/emotional abuse, ask and document how he/she received the injuries.

Appendix

Exhibit 5

A-26

After interviewing the Unaccompanied Alien Child, reviewing the circumstances noted at time of apprehension and the information provided to me by the child, and based on my training and experience as a CBP Officer/Border Patrol Agent:

The Unaccompanied Alien Child **DOES NOT** appear to be a victim or potential victim of a severe form of trafficking, has not expressed a fear of returning to his/her country of nationality or last habitual residence, and has made an independent decision to request withdrawal or voluntary return. This Unaccompanied Alien Child will be processed according to established policy and procedures.

_____ Name and Title of Interviewing Officer	_____ Signature of Interviewing Officer	_____ Date & Time
_____ Name and Title of Authorizing Officer	_____ Signature of Authorizing Officer	_____ Date & Time

The Unaccompanied Alien Child **MAY** be a victim or potential victim of a severe form of trafficking; and/or expresses a fear of returning to his/her country of nationality or last habitual residence; and/or is unable to make an independent decision to withdraw his/her application for admission or for voluntary return; or no determination could be made within 48 hours of apprehension. This child is being referred to the Department of Health & Human Services as per 8 U.S.C. 1232.

Immediate notifications have been made to:

Health and Human Services (All Cases)

Date: _____ Time: _____
 Office Contacted: _____
 Name of Person Contacted: _____
 Telephone of person Contacted: _____
 E-mail notification to: _____

U.S. Immigration and Customs Enforcement (Office of Investigations)(Trafficking) :

Date: _____ Time: _____
 Office Contacted: _____
 Name of Person Contacted: _____
 Telephone of person Contacted: _____
 E-mail notification to: _____

U.S. Immigration and Customs Enforcement (Field Office Juvenile Coordinator)(All Cases) :

Date: _____ Time: _____
 Office Contacted: _____
 Name of Person Contacted: _____
 Telephone of person Contacted: _____
 E-mail notification to: _____

This Unaccompanied Alien Child will be processed according to established CBP policy and procedures for UAC.

_____ Name and Title of Interviewing Officer	_____ Signature of Interviewing Officer	_____ Date & Time
_____ Name and Title of Authorizing Officer	_____ Signature of Authorizing Officer	_____ Date & Time

EXHIBIT 6:
Form I-770

.....

U.S. Department of Homeland Security

Notice of Rights and Request for Disposition

Allen's Name: _____ FINS #: _____ A Number (if any): _____ Event No: _____

A-

Your Rights.

You have been arrested because Immigration Officers believe that you are illegally in the United States. When you are arrested in the United States you have certain rights. No one can take these rights away from you. This paper explains your rights.

You have the right to use the telephone.

You may call your mother or father or any other adult relative. You may call your adult friend. If you do not know how to use a telephone, the Immigration agent will help you.

You have the right to be represented by a lawyer.

Attached to this paper is a list of lawyers who can talk to you, and help you, for free. A lawyer can fully explain all your rights to you, and can represent you at a hearing.

You have the right to a hearing before a judge.

The judge will decide whether you must leave or whether you may stay in the United States. If for any reason you do not want to go back to your country, or if you have any fears of returning, you should ask for a hearing before a judge. If you do not want to have a hearing before a judge, you may choose to go back to your country without a hearing.

Reading this Notice:

- I have read this notice.
- This notice has been read to me.

Right to Use Telephone:

- I have contacted my parent(s) or a legal guardian by telephone.
- I have contacted an adult friend or relative by telephone.
- I do not want to talk to anyone by telephone.

Completion of the following is optional:
The person contacted is: (Relationship)

The person contacted is: (Name)

Right to be Represented by a Lawyer:

- I have spoken with a lawyer.
- I do not want to speak with a lawyer.

Right to a Hearing:

- I understand my right to a hearing before a judge.

- I request a hearing before a judge.

Signature: _____

Date: _____

I do not want a hearing before a judge.

I am in the United States illegally and ask that I be allowed to return to my country, which is named below.

Country: _____

Signature: _____

Date: _____

Appendix

Exhibit 6

A-30

INSTRUCTIONS TO OFFICERS

This advice is required to be given to all persons who are taken into custody and who appear, are known, or claim to be under the age of eighteen and who are not accompanied by one of their natural or lawful parents. No such person can be offered or permitted to depart voluntarily from the United States except after having been given this notice.

The required procedure distinguishes between two classes of minors.

1) The first class are those minors apprehended in the immediate vicinity of the border and who permanently reside in Canada or Mexico. These persons shall be informed that they have a right to make a telephone call to any of the persons mentioned in the notice. The purpose of this call is so that they can seek advice as to whether they should voluntarily depart or whether they should request a deportation hearing. We are required to make a record of any refusal to accept our offer of a telephone call.

2) As to all other minors, **they must not only be given access to a telephone, they must establish communication, telephonic or otherwise, with one of the persons listed in the notice** before they can be offered voluntary departure.

The DHS retains the right to decide when to allow telephone calls. The only prohibition is that the minor cannot be asked to voluntarily depart until after telephone access is provided. If the minor is not offered voluntary departure but is put into deportation proceedings by issuance of a Notice to Appear, this procedure is not necessary. It is our duty to make reasonable efforts to contact the person of the minor's choice, but after unsuccessful efforts to reach that person, we can facilitate contact with another such person. Whenever the minor elects to pursue a process, such as a call to a foreign country, which is operationally unacceptable, we can always proceed to issue a Notice to Appear.

The minor must tell the type of person that he/she talked to but need not give us that person's name or identifying information. If a minor, **of his/her own volition**, asks to contact a consular officer, this will satisfy the requirements of the notice.

The officer need not read the notice to the minor unless the minor is under 14 years of age, or unable to understand the notice. The officer must ask the minor whether he/she wanted to make a call, whether a communication was made and, if made, to whom. The officer must also verify whether the minor wanted voluntary departure or a hearing, and must sign and date the form to show this was done.

Officers are not to offer any advice to any minor as to what he/she should or should not do.

To be completed by the Officer:

I verify that: _____ A- _____

1.a. The subject named was given this notice to read.
b. I read this notice to the name subject in the following language: _____

2. I asked this subject whether he/she wanted to make a telephone call, and offered assistance in the use of the telephone.

3.a. The subject told me that he/she did not want to make a telephone call, or
b. The subject told me that he/she established communication and the form was marked to indicate it;
c. The subject was unable to establish telephone communication with the desired individual. The following number of attempts were made: 0 _____

4.a. The subject requested a hearing.
b. The subject admitted deportability and requested to return to his/her country voluntarily, without a hearing.

5.a. A Notice to Appear was issued because, the subject was unable to establish contact with any of the individuals specified after making the number of attempts indicated above (Item 3 c), and after assistance to establish contact was given or offered.

Signature of Officer _____

Date _____

Appendix

Exhibit 6

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EXHIBIT 7:
UAC Interim Protocol Memoranda

.....

Appendix

Exhibit 7

A-34

Subject: [REDACTED] (b)(6)
Location: [REDACTED]

Start: Mon 3/9/2009 3:30 PM
End: Mon 3/9/2009 4:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

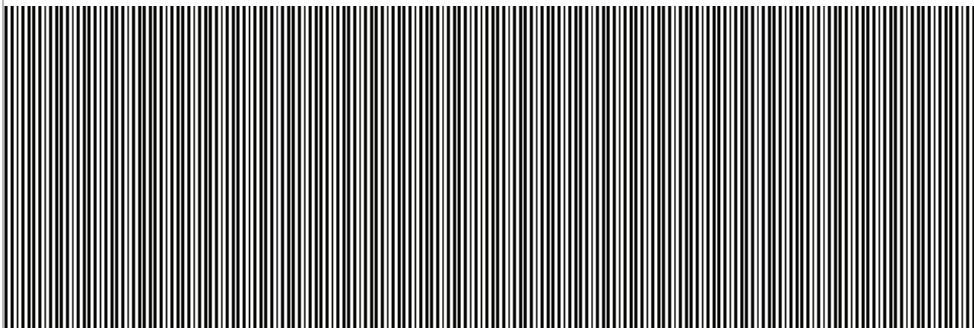
Required Attendees: [REDACTED] (b)(6)

All,

Let's meet at 4:30 today to discuss the potential options for the Asylum Division's role in contiguous screening. We will discuss the 3 options laid out in my Friday email, in order to determine what options we will take back to CBP as possible or not possible from our perspective.

(b)(6), if you are unable to join us, we will fill you in on Tuesday.

(b)(6)



From: (b)(6)
Sent: Tuesday, March 10, 2009 8:41 AM
To: (b)(6)
Subject: RE: UAC Interim Protocol

The CBP OCC attorney is named (b)(6). Her interest in Asylum has been focused on our guidance on capacity in order to help inform CBP's decision of when a UAC is able to make an independent decision.

From: (b)(6)
Sent: Tuesday, March 10, 2009 9:38 AM
To: (b)(6)
Subject: RE: UAC Interim Protocol

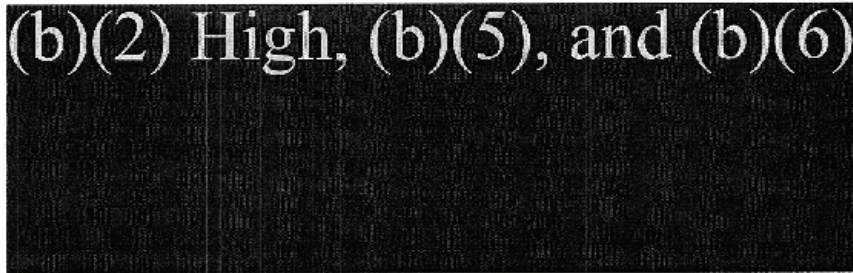
Definitely give (b)(6) a call. Do we know who is working on this from the CBP counsel's office? We shouldn't have to be reviewing their products for legal accuracy....

From: (b)(6)
Sent: Tuesday, March 10, 2009 9:34 AM

(b)(6)
Subject: FW: UAC Interim Protocol

All,

(b)(2) High, (b)(5), and (b)(6)



From: (b)(6)
Sent: Tuesday, March 10, 2009 8:46 AM
To: (b)(6)
Cc: (b)(6)
Subject: FW: UAC Interim Protocol

Good Morning

Attached is a draft of the TVRPA Screening Protocol that OFO has sent through the Tasking Process

3/23/2010

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Appendix

Exhibit 7

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From: (b)(6)
Sent: Tuesday, March 10, 2009 1:34 PM
To: (b)(6)
Subject: RE: UAC Interim Protocol

Even better. I'll only be out tomorrow so will be here and available on Thursday. Should you need me, feel free to call.

(b)(6)
Associate Counsel
Office of the Chief Counsel, USCIS
(b)(6)

From: (b)(6)
Sent: Tuesday, March 10, 2009 2:33 PM
To: (b)(6)
Subject: RE: UAC Interim Protocol

For the Thursday meeting, I think you are referring to the inter-agency initial jurisdiction drafting session from 1 to 5. We're hoping to keep contiguous screening out of it, but it certainly wouldn't hurt to know we can pull you in if necessary. Will you be back in the office on Thursday?

From: (b)(6)
Sent: Tuesday, March 10, 2009 2:30 PM
To: (b)(6)
Subject: RE: UAC Interim Protocol

Sounds good for today's call. I will actually be in Vermont tomorrow but will likely be able to join in a 2:30 call.

And then for the meeting on Thursday, I know there is a lot to cover at the meeting, much of which does not require my input. Is there any way that I could be at the ready and you can let me know when the screening piece is coming up for discussion?

Thanks,
(b)(6)

(b)(6)
Associate Counsel
Office of the Chief Counsel, USCIS
(b)(6)

From: (b)(6)
Sent: Tuesday, March 10, 2009 2:26 PM
To: (b)(6)
Subject: RE: UAC Interim Protocol

Thanks (b)(6) and I are going to discuss initial jurisdiction stuff in 5 minutes. Tomorrow though, your presence would be very helpful as I just got a call from (b)(6) at DHS PLCY that there will be a conference call tomorrow at 2:30 between OGC and the components to focus on initial jurisdiction and contiguous screening. I will forward on the details when I get them.

From: (b)(6)

3/23/2010

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Appendix

Exhibit 7

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EXHIBIT 8:
Clearance Request Memoranda

EXHIBIT 9:

Alice C. Hill/Steven H. Schulman Correspondence



**Homeland
Security**

December 9, 2010

Mr. Steven H. Schulman
Attorney At Law
Akin Gump Strauss Hauer & Feld, LLP
Robert S. Strauss Building
1333 New Hampshire Avenue, NW
Washington, D.C. 20036-1564

Dear Mr. Schulman:

Thank you for your letter dated October 12, 2010, outlining your findings and recommendations related to the mandates of the Trafficking Victim Protection Reauthorization Act (TVPRA) and the repatriation of unaccompanied Mexican minors.

The Department of Homeland Security (DHS) considers the handling of unaccompanied children and combating human trafficking both domestically and abroad to be important issues warranting careful attention by DHS officers and employees. Since the implementation of the TVPRA, our Customs and Border Protection (CBP) office has addressed many of the concerns that have been identified in your initial findings.

CBP internal audits as well as reviews by the Office of the Inspector General have allowed them to refine its procedures and track our progress in these important areas. The recently published "CBP's Handling of Unaccompanied Alien Children, OIG-10-117," illustrates our efforts to enforce the spirit and mandates of the TVPRA. In particular, we have put in place mandatory training for CBP personnel on repatriating unaccompanied alien children. This training supports refined procedures that are focused on making repatriation an efficient process that protects children's health, well-being and human rights.

Although we are unable to provide a response without conducting a thorough review of your entire report, we will look forward to the opportunity to review the report and to discuss your findings. We hope that future interactions will serve to correct any misunderstandings relating to the ways in which DHS, and in particular CBP, address these important issues. Also, in response to your inquiry concerning the FOIA request filed with DHS on these topics, last month the Department released to David Nachman, with DLA Piper in New York, records

www.dhs.gov

Appendix

Exhibit 9

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relating to the implementation of the provisions of Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 and the number and demographic profile of unaccompanied alien children detained and repatriated by DHS.

Thank you again for taking the time to share a portion of your upcoming report with us. As you noted, our exchanges thus far have been candid and productive, a fact I also appreciate. Issues related to human trafficking are of great importance to the Department, and we are committed to fight trafficking in the most effective manner possible.

Sincerely yours,



Alice C. Hill
Senior Counselor to the Secretary
Office of the Secretary

Appendix

Exhibit 9

A-41

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

STEVEN H. SCHULMAN
202.887.4071/1.202.887.4288
sschulman@akingump.com

October 12, 2010

Judge Alice Hill (Ret.)
Senior Counselor to the Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20016

Dear Judge Hill:

Thank you for taking the time on September 8, 2010 to meet with me and my colleagues working with Appleseed and Mexico Appleseed on issues relating to compliance with the mandates of the Trafficking Victim Protection Reauthorization Act ("TVPRA") and the repatriation of unaccompanied Mexican minors. We appreciated the candid exchange of ideas and your colleagues' openness to our preliminary findings and recommendations. As we discussed at the end of the meeting, we write to present those preliminary conclusions and recommendations relevant to DHS in writing in order to provide the Department with an opportunity to respond in writing if you so wish.

Preliminary Findings

1. The Congressionally-mandated child-protection obligations of Section 235 of the TVPRA are incompatible with the law enforcement mission of CBP. This conclusion has several bases, including our observations and discussions with CBP officers, who, while acting in good faith, acknowledged that CBP is not the appropriate agency to conduct the TVPRA screening. In some cases, it was obvious that child-protection duties interfered with the agents' law enforcement mission.
2. While in some cases the determination of whether an unaccompanied Mexican child should be immediately repatriated is fairly obvious, CBP facilities do not provide appropriate conditions in which children will disclose sufficient information to allow for informed TVPRA screening determinations.
3. CBP officers are not adequately trained to carry out the mandates of the TVPRA, especially given that their law enforcement demands substantially outweigh their regular ability to focus on child-centric interview techniques. Our investigation on this score would, of course, be assisted by the disclosure of any CBP training materials pursuant to Appleseed's request under the Freedom of Information Act (we have received no

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Exhibit 9

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response yet from CBP, though pursuant to our FOIA request, USCIS provided the enclosed training materials.¹ While we understand your position that these materials would be “law enforcement sensitive,” we find it hard to believe that redaction would not protect sensitive portions of any training materials, and ask that the Department consider whether it could disclose at least parts of any such materials as currently exist.

4. In some locations, there is a de facto policy that any minor under the age of 14 cannot withdraw his or her admission to the United States, while in other locations, there is no such policy. Where the policy is in place and strictly enforced, it sometimes leads to unwarranted transfers of minors to ORR, and a prolonged stay in the United States. Where the policy is not in place, insufficient attention may be paid to the general inability of younger minors to make independent decisions.
5. We have been told, both in the field and at our September 8 meeting, that DHS immediately, regularly, and closely consults with Mexican officials regarding the status of Mexican UAMs. While of course the U.S. should comply with its consular notification obligations under the Vienna Convention, the immediate and direct involvement of Mexican consular officials with Mexican UAMs may unduly influence the determination of whether the child qualifies for immediate repatriation under the TVPRA (particularly a determination of whether the UAM is capable of withdrawing his or her application for admission to the United States). DHS should not abdicate its screening responsibilities to Mexican officials. The attached flow chart, produced by USCIS pursuant to FOIA on September 23, illustrates this problem. Notably, this chart does not even mention TVPRA screening.
6. On the other hand, once UAMs have been referred to HHS custody, the U.S. government does not adequately, timely and consistently notify Mexican officials of the custodial situation of Mexican UAMs in the United States.

¹ The OIG’s recent report, “CBP’s Handling of Unaccompanied Alien Children” (OIG-10-117), refers to *Flores v. Reno* training course, and notes that this course is scheduled to be updated next month to incorporate TVPRA related material. It would be helpful at least for you to clarify whether, as of now, CBP officers are provided with any specific TVPRA-related training; the OIG’s report strongly suggests not.

appendix

Exhibit 9

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Page 3

appendix

Exhibit 9

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7. The questionnaire used to evaluate whether an unaccompanied minor should be repatriated pursuant to Section 235 of the TVPRA (Form 93) is not likely to elicit sufficient information to allow an accurate determination under the TVPRA—a problem only made worse in the absence of well-designed training.
8. Form I-770 does not adequately explain to an unaccompanied minor his or her right to remain in the United States. The mere recitation of the I-770 cannot alone be sufficient to meet the Department’s obligation to determine whether an unaccompanied Mexican minor has waived his or her right to remain in the United States. In addition, it is unclear whether this form has been translated into Spanish, or whether Spanish language forms are used.
9. The number of Mexican UAMs being transferred to ORR, while increased from prior years, is far lower than expected by ORR, or even by DHS, and is a strong indicator that TVPRA screening is not robust. (We appreciate the four-pages of data you provided us at our September 8, 2010 meeting, and of course will use this as part of our findings with respect to the number of UAMs screened and referred to ORR.)
10. It is unclear to what extent CBP officers assigned to conduct TVPRA screenings of unaccompanied Mexican minors have sufficient Spanish-language skills. Specifically, we have not seen any indication that these CBP officers are required to be proficient in Spanish. At our meeting, your colleagues indicated that CBP officers “learn on the job.”
11. Minors in the drug trafficking or human smuggling trades are routinely and swiftly repatriated, permitting the continued use of these minors for illegal activities. These “menores de circuito” are not tracked by U.S. or Mexican authorities, or diverted to safe rehabilitative programs or the juvenile justice system, and thus are ripe for continued exploitation in these illicit trades. Section 235(c)(1) of the TVPRA requires DHS, HHS, DOS and DOJ to “establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.”

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Preliminary Recommendations

1. USCIS should have the responsibility for screening Mexican UAMs pursuant to the TVPRA. Unlike CBP officers, USCIS personnel are trained to perform similar screening functions, including credible fear interviews and asylum interviews for UAMs. Without this fundamental change, the changes suggested by any other recommendation are unlikely to alter significantly the problems with current implementation of the TVPRA contiguous country provisions.
2. CBP's involvement with Mexican UAMs should be limited to an initial determination that the individual is likely to be unaccompanied and a minor, and to notification of Mexican consular officials that the minor is in custody. USCIS personnel should conduct the TVPRA screening. While USCIS should welcome the assistance of Mexican consular officials, USCIS must be scrupulous to make an independent decision about whether a child should be transferred to ORR for further evaluation rather than immediately repatriated.
3. TVPRA screening should be conducted in a child-friendly atmosphere, not at CBP border facilities. We recognize that this might require new facilities – for instance, “regional” centers not far from the border – but it is clear that removing children from CBP facilities is necessary to comply with the Congressional mandate. Quickly removing children from CBP facilities will also save CBP space and resources better devoted to law enforcement.
4. Form I-770 must be revised as well as supplemented by oral communication that makes clear to minors that they have the right, and will be provided the means, to call a family member in the United States or Mexico; meet with a Mexican consular officer; and call and meet with an attorney from the list of pro bono counsel available in the relevant district.
5. Aside from privileged attorney-client communications, any calls or meetings that result from the minor electing to exercise any of these rights must be monitored to determine whether the child (i) is a victim of any severe form of trafficking, or at risk of being subject to any severe form of trafficking (whether in Mexico or elsewhere) upon return to Mexico, (ii) has a credible fear of persecution in the event of being returned to Mexico; and (iii) is capable of making an independent decision to repatriate voluntarily, without undue influence from Mexican consular officials.

appendix

Exhibit 9

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appendix

Exhibit 9

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6. Before making a decision to repatriate voluntarily, the child must be advised of the possible consequences of that decision – that is, an explanation of the Mexican repatriation and reunification process, on the one hand, and on the other hand, a summary of the ORR/DUCS shelter system in the relevant area, the child’s rights when remitted to ORR/DUCS custody, and the approximate length of custody in the ORR/DUCS system while the child’s application for admission to the United States is determined.
7. Any personnel responsible for TVPRA screening must be trained to deal with children and have at least these competencies:
 - fluency in Spanish (and, as needed in the particular area, indigenous language capabilities);
 - strong cross-cultural communication skills, particularly as they relate to sensitive topics such as abuse and fear;
 - awareness of indicia of past abuse and trafficking;
 - understanding of Mexico’s social services system;
 - understanding of and ability to apply the Section 235 screening criteria; and
 - a general understanding of the possible grounds for relief – *e.g.*, SIJS, asylum, T-visa – that an unaccompanied minor may have under United States law.
8. The screening process needs to recognize the general inability of younger minors to make an independent decision, as well as their general inability to care for themselves. Unaccompanied minors under 14 years old would be referred to ORR/DUCS custody, unless the social worker determines that reunification with a parent or documented legal guardian (on either the United States or Mexico side of the border) will take place within 48 hours, would not pose a risk of abuse, and that the child and his parent or guardian have a safe, secure means of transport home. Communication with the relevant Mexican consular officials and social service providers presumably will be needed, and should be encouraged and facilitated, to make this determination.
9. DHS should implement these recommendations swiftly, perhaps on a trial basis in one or two high-volume border crossing areas in the first instance. The operational details of any change of the kind recommended are inevitably complex, and the funding for new, highly-trained screening personnel and the physical shelters to perform their work along the entire border may not be easy to obtain. The performance of the new systems should be evaluated after 12 months and adjustments made in light of that evaluation. The goal,

Judge Alice Hill
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Page 6

however, needs to be real compliance with the TVPRA—and responsible handling of apprehended Mexican children—along the entire border, and no more than two years should be the outside limit for comprehensive implementation of the new screening process.

10. DHS should establish a computerized national database of all CBP- and ICE-detained unaccompanied minors, whether repatriated or referred to HHS custody. The database of this subset of “A-_____” cases (perhaps to be called “M-_____ cases”), would include the minor’s name; age; gender; nationality; state and city or village of origin; site of apprehension; what adults may have accompanied the minor; whether the minor previously had been detained in the United States; and the location of repatriation or, in non-repatriation cases, the location of the ORR shelter to which the child was remanded. Such a database will allow DHS to comply with its TVPRA reporting requirements and allow the tracking of individual and aggregate unaccompanied minor migration patterns, enhancing the efforts of the United States and neighboring countries to address the underlying causes of migration.
11. DHS should work with HHS, DOJ and DOS, as well as the Mexican government, to reduce the use of minors in drug trafficking and human smuggling. Attention must be paid to the availability of juvenile criminal proceedings, on either side of the border, as an alternative to the immunity that many underage smugglers currently enjoy.

We look forward to your response to these findings and recommendations, and are happy to meet again to discuss them. In addition, we would appreciate any assistance you can provide with respect to the CBP response to our FOIA request, which has been pending since February 2, 2010. In particular, we look forward to the disclosure of any TVPRA materials used by CBP as well as the March 23, 2009 memo regarding CBP TVPRA implementation that was mentioned in our meeting. (Notably, USCIS has already produced a similar TVPRA implementation memo without redaction.)

appendix

Exhibit 9

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AKIN GUMP
STRAUSS HAUER & FELD LLP
Attorneys at Law

Judge Alice Hill
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Again, thank you for taking the time to meet with us and engage in a thoughtful discussion of these matters. Our report is nearing completion; accordingly, we look forward to hearing from you at your earliest convenience.

Respectfully,

/s/

Steven H. Schulman

cc: Betsy Cavendish, Appleseed
Domingo Llagostera, Akin Gump
Allissa Pollard, Akin Gump
Nada Ismail Taha, Akin Gump
David Nachman, DLA Piper
Brooke Killian, DLA Piper
Robert Jenkins, Mayer Brown
Marcia Maack, Mayer Brown

appendix

Exhibit 9

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Photo of U.S.-Mexico border is from iStockphoto and is used for illustrative purposes only.



Appleseed

Sembrando la Semilla de la Justicia



Rio Duero 31
Col. Cuauhtémoc
México D.F. C.P. 06500
México

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