

A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection

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Executive Summary

The routine human rights abuses and due process violations of unaccompanied alien children (UAC) by US Customs and Border Protection (CBP) have contributed to a mounting humanitarian and legal crisis along the US–Mexico border. In the United States, the treatment of UAC is governed by laws, policies, and standards drawn from the *Flores Settlement*, the *Trafficking Victims Protection Reauthorization Act (TVPRA)*, and CBP procedures and directives, which are intended to ensure UAC’s protection, well-being, and ability to pursue relief from removal, such as asylum. As nongovernmental organizations and human rights groups have documented, however, CBP has repeatedly violated these legal standards and policies, and subjected UAC to abuses and rights violations. This article

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draws from surveys of 97 recently deported Mexican UAC, which examine their experiences with US immigration authorities. The study finds that Mexican UAC are detained in subpar conditions, are routinely not screened for fear of return to their home countries or for human trafficking, and are not sufficiently informed about the deportation process. The article recommends that CBP should take immediate steps to improve the treatment of UAC, that CBP and other entities responsible for the care of UAC be monitored to ensure their compliance with US law and policy, and that Mexican UAC be afforded the same procedures and protection under the TVPRA as UAC from noncontiguous states.

Keywords

unaccompanied migrant children, migration, deportation, US–Mexico border, Mexico, mistreatment

Introduction

The detention and rapid deportation of noncitizens to their country of origin is a critical public policy, public health, and human rights concern (Ataiants et al. 2018). Several professional associations, including the American Public Health Association, American Academy of Pediatrics, and American Psychological Association, have issued statements articulating the psychological trauma and health risks imposed on “unaccompanied alien children” (UAC) in US detention centers (Linton, Griffin, and Shapiro 2017; APHA 2018; Henderson 2018). The US Code defines UAC as persons younger than age 18 without lawful US immigration status, who do not have a parent or legal guardian in the United States “available to provide care and physical custody.”¹ In 2014, there was an unprecedented increase in the number of UAC migrating to the United States, with US Border Patrol officers at the US–Mexico border apprehending² 67,339 UAC from Mexico, El Salvador, Guatemala, and Honduras, an all-time recorded high at that time (Figure 1; CBP 2019). This number has fluctuated since 2014, with recent figures suggesting that migration of this population is again on the rise. The Border Patrol apprehended 73,235 UAC from these countries in fiscal year (FY) 2019 at the southwestern border, compared to 48,325 in FY2018 (ibid.).

UAC are predominately boys between 13 and 17 years of age, yet the population also includes girls, including elementary school-aged and pregnant girls

(Krogstad, Gonzalez-Barrera, and Hugo Lopez 2014; UNHCR 2014a). UAC primarily migrate from a geographic region labeled the “Northern Triangle” (i.e., El Salvador, Guatemala, and Honduras) and from Mexico (Kandel 2017). They migrate to the United States for distinct and often a combination of reasons, including family reunification (Donato & Sisk 2018), economic opportunity, and to escape severe violence (UNHCR 2014a). A 2014 United Nations High Commissioner of Refugees (UNHCR) report, which summarized 404 interviews with UAC from Central America, found that 58 percent were forcibly displaced from their home countries due to harm warranting international protection, including violence from organized crime (i.e., gangs and drug-trafficking organizations) and exploitation by human smugglers (UNHCR 2014a).

This article draws on surveys with recently returned Mexican UAC to understand their experiences of being apprehended and processed through the immigration enforcement apparatus. It provides a unique look at the discrepancies between the letter of US laws and policies related to treatment of UAC, and the actual practices of US Customs and Border Protection (CBP), which encompasses the Border Patrol and customs agents at ports of entry. Hiemstra discusses this kind of examination as a form of “periscoping” into the hidden processes of the state (2017), while Coleman and Stuesse discuss the methodological challenge of the vanishing that occurs post deportation and how a focus on studying state policies often misses the more complex policies at work (2015). In sum, the results illuminate CBP’s maltreatment of Mexican UAC and violations of their due process rights, which are largely hidden from the public under the guise of “national security.”

¹ 6 U.S.C. § 279(g)(2).

² CBP records as apprehensions both persons attempting to evade detection and asylum seekers who present themselves to federal officials to initiate this process.

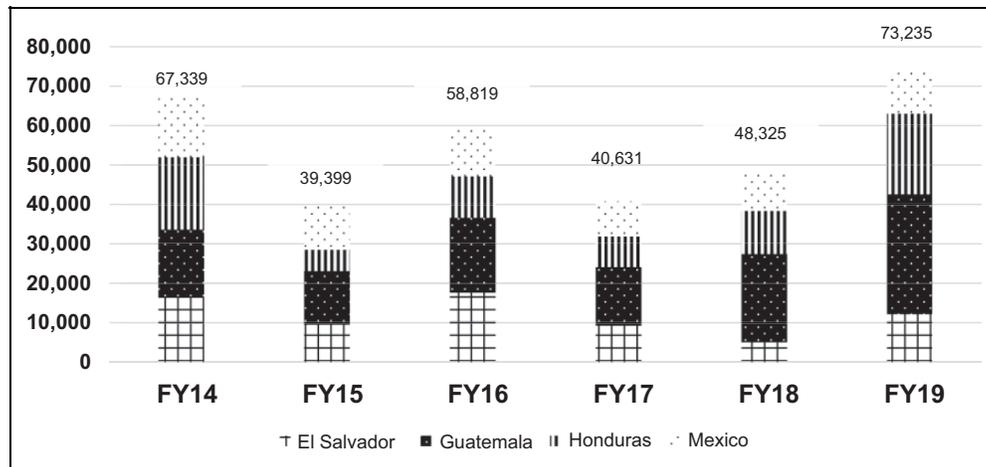


Figure 1. Totals of Unaccompanied Alien Children (UAC) Apprehensions at Southwestern Border by US Customs and Border Protection (CBP) per Fiscal Year.

Source: US Customs and Border Protection.

Policy Context of Apprehension, Detention, and Removal of UAC

CBP is the primary entity that encounters and detains UAC along the US–Mexico border, typically in close proximity to the border or at ports of entry (Kandel 2017). Once CBP personnel determine that an apprehended minor is unaccompanied, there are specific policies that should govern their treatment within the US immigration system, namely the *Flores* Settlement, CBP procedures and directives, and the Trafficking Victims Protection Reauthorization Act (TVPRA).³ These laws and policies seek to ensure UAC’s overall well-being and that they are informed of their rights and granted access to the US immigration courts, where they can seek asylum and other forms of relief from removal. Consistent with empirical evidence of poor treatment of adults in the custody of US immigration enforcement agencies (Sabo et al. 2014; Slack et al. 2015; Martínez et al. 2017; Slack, Martínez, and Whiteford 2018), however, nongovernmental organizations (NGOs) and human rights groups have documented that CBP officials regularly violate these laws and policies, subjecting UAC to abuses and human rights violations (Appleseed 2011; GAO 2015; ACLU 2018).

Flores Settlement Agreement. The *Flores* Settlement Agreement arose from a class-action lawsuit filed by

advocacy groups such as the Center for Human Rights and Constitutional Law (CHRCL) against the US government regarding the mistreatment of UAC and violations of their due process rights during the 1980s. Jenny Lisette Flores, one of four named plaintiffs, was detained in an Immigration and Naturalization Service (INS) facility for two months alongside adults, and was subjected to regular strip searches (Wu 2018). The 1997 decision of *Flores v. Reno* established a national policy for the detention, treatment, and release of migrant children, given their particular vulnerability (Kandel 2017). Under the agreement, immigration authorities are required to meet specified standards of care for children in custody. The federal government generally cannot detain children for more than 20 days (Wu 2018). In addition, children must be provided facilities with adequate temperature control and ventilation, access to sufficient food and water, emergency medical care, toilets and sinks, adequate supervision, and be kept separate from unrelated adults.⁴

Customs and Border Protection Policies. CBP recognizes UAC as an “at-risk population” that may require additional care while in custody (CBP 2015, 19). CBP personnel are required to “treat all individuals with dignity and respect,” and to use force against migrants only when “objectively reasonable” (ibid., 2, 4). The agency has also issued memoranda and internal guidelines on

³William Wilberforce Trafficking Victims Protection Reauthorization, Pub. Law No. 110-457, 122 Stat. 5044 (2008).

⁴8 CFR § 236 (1997).

the procedures its personnel should follow when processing UAC. Per a CBP internal memorandum issued in 2009, CBP should consider UAC ages 14 or younger as “generally incapable” of making an independent decision to voluntarily return to their countries of origin (GAO 2015, 23). This age directive can, however, be circumvented by considering factors such as the minor’s intelligence, education level, and familiarity with the US immigration process (ibid.). Nevertheless, it is unclear what this directive implies for CBP’s treatment of unaccompanied children younger than 14.⁵ The memorandum on guidelines for the treatment of UAC was heavily redacted (AILA 2020). Moreover, despite the issuance of the memo, CBP records indicate that the majority of Mexican UAC younger than 14 are returned to Mexico. According to the US Government Accountability Office (GAO), “CBP policy states that UAC under age 14 are presumed generally unable to make an independent decision, but GAO’s analysis of CBP data and a random sample of case files from fiscal year 2014 found that CBP repatriated about 93 percent of Mexican UAC under age 14 from fiscal years 2009 through 2014 without documenting the basis for decisions” (GAO 2015, 2).

Trafficking Victims Protection Reauthorization Act. First passed in 2000 and subsequently reauthorized on several occasions, including as recently as 2019, the TVPRA mandates that CBP officers must screen UAC from contiguous countries (Mexico and Canada) within 48 hours to determine whether the child can be immediately repatriated or is potentially eligible for immigrant status.⁶ Prior to screening, CBP gives all UAC “The Notice of Rights and Request for Disposition” (Form I-770), which serves to inform them of their rights to use a telephone, to legal representation, and to a hearing before an immigration judge (GAO 2015). If the minor is younger than 14 or unable to understand Form I-770, CBP must read and explain the form in a language comprehensible to the child (ibid.). UAC must be screened for (1) severe

human trafficking or susceptibility to being trafficked upon return to their country of origin, (2) credible fear of return to their home country, and (3) the ability to make an independent decision to repatriate via voluntary return.⁷

UAC who are not victims of human trafficking, do not possess a credible fear of return, and are deemed by CBP able to make an independent decision regarding voluntary return can withdraw their application for admission, waive their right to a hearing before an immigration judge, and return to their home country.⁸ If an immigration judge determines that a UAC has no relief available, they issue an order of removal and the UAC is deported (Garcia and Manuel 2014). UAC sign Form I-770 to document their decision to proceed with an immigration hearing or voluntary return (GAO 2015).

CBP relies on questions and indicators from Form 93, the agency’s form for screening UAC for human trafficking and fear of return, which include their reasons for leaving their home country, whether they were engaged in forced labor (i.e., trafficking), and if they had freedom of movement during their travel to the United States (ibid.). Should a child’s responses during screening indicate human trafficking, fear of return, or the inability to make an independent decision, or if a conclusive assessment cannot be made, the minor is transferred to the Office of Refugee Resettlement (ORR) and placed in normal removal proceedings (Kandel 2017). Previous reports have found that very few Mexican UAC are transferred to ORR due to CBP’s lack of adherence to screening protocols (UNHCR 2014b; GAO 2015). Between 2009 and 2014, CBP repatriated approximately 95 percent of all Mexican UAC (GAO 2015). The vast majority of Mexican UAC are repatriated via voluntary return, but our data indicate frequent violations of TVPRA screening protocols.

Purpose

This study examines the experience of Mexican UAC who are in CBP custody and then returned to Mexico to the custody of the Sistema de Desarrollo Integral de la Familia (DIF).⁹ The US immigration system treats

⁵There is some debate about whether there is a specific rule governing how CBP handles UAC younger than the age of 14. There is, however, strong evidence of distinctions being drawn between those older and younger than 14. The authors believe that CBP should justify this distinction and establish a standardized and transparent procedure for handling younger UAC.

⁶TVPRA, 22 USC § 235 (2000).

⁷TVPRA, 22 USC § 235(a)(2)(A) (2000).

⁸TVPRA, 22 USC § 235(a)(2)(B) (2000).

⁹DIF is Mexico’s national family and social services agency.



Figure 2. Locations of Data Collection Sites and Respondents' States of Origin.

Mexican UAC differently from UAC from noncontiguous states (Table 2). In addition, the existing literature on unaccompanied minors tends to overlook Mexican UAC. This study examines whether the treatment of Mexican UAC in CBP custody complies with US law and internal CBP policies, specifically with regard to (1) conditions in CBP detention facilities, (2) treatment by CBP personnel, and (3) screening for eligibility for relief. This article examines policies relevant to Mexican and Canadian UAC, as opposed to those for UAC from noncontiguous countries (see Table 2).

Methods

Participants

For this study, we surveyed 97 recently returned Mexican UAC about their experiences crossing the US–Mexico border, the conditions they experienced in detention, and treatment by CBP agents. Those surveyed were younger than age 18, had attempted to cross the US–Mexico border, were apprehended by US authorities, and were returned to Mexico within the previous 30 days.

Data Collection

All data were collected through face-to-face surveys conducted in Spanish by trained bilingual research staff in the Mexican border cities of Matamoros, Tamaulipas, and Nogales, Sonora, between August 2016 and August 2017 (Figure 2). (The darker shaded regions of Figure 2 represent the respondents' states of origin.) Each survey lasted between 30 minutes to an hour. We conducted the survey within shelters for unaccompanied migrant children operated by DIF. When UAC are repatriated, immigration authorities transfer custody of Mexican UAC to DIF, which oversees a network of shelters that temporarily house repatriated members of this group and facilitates their reunification with family.

Because the survey instrument dealt with sensitive topics and involved minors, we took precautions to secure approval from shelter staff prior to collecting any data. Research assistants approached youth individually to explain the objectives of the study and invite them to voluntarily participate and, if they agreed, to review the consent materials. Given the high vulnerability of UAC, consent was given orally per our Institutional Review Board (IRB) approval, and no names were documented

Table 1. Demographic and Migration Characteristics of Unaccompanied Alien Children (UAC).

Variables	
Sex, <i>n</i> (%)	
Male	84 (86.6)
Female	13 (13.4)
Age, mean (<i>SD</i>)	15.6 (1.6)
Educational attainment (grade), mean (<i>SD</i>)	7.5 (2.2)
Indigenous language spoken, <i>n</i> (%)	17 (17.5)
Number of prior border crossings, <i>n</i> (%)	
0 (First-time crossing)	46 (52.3)
1–4	27 (30.7)
5–9	4 (4.6)
10+	11 (12.5)
Missing	9 (9.3)
Think they will cross the border in the future, <i>n</i> (%)	
Yes	40 (41.7)
No	38 (39.6)
Don't know	18 (18.8)
Has family living in the United States, <i>n</i> (%)	75 (78.1)
Works to financially support their family, <i>n</i> (%)	67 (69.1)
Considers themselves head of household, <i>n</i> (%)	9 (9.4)
Reported fear of returning to Mexico to CBP	6 (7.3)
Missing	15 (15.4)
Works as a <i>guía</i> , coyote, or transporting drugs, <i>n</i> (%)	30 (30.9)

Note: *N* = 97. Missing data were less than 3% unless otherwise noted as *n* (%) of 97. Percentages may not sum to 100 due to rounding. CBP, US Customs and Border Protection; *SD*, standard deviation.

as part of the study. We emphasized to participants that all information they shared would remain de-identified and confidential, but if they experienced any distress or had concerns, they could withdraw from the study without penalty from the researchers and shelter staff. Youth indicated where they felt most comfortable being interviewed, which most frequently were the common areas of the shelters. This study was approved by the University of Texas at El Paso human subjects review board.

Measures

The survey instrument contained 99 questions to examine the experiences of UAC during their migration, apprehension, processing, and removal from the United States. The survey instrument and methodology were adapted from the Migrant Border Crossing Study

(MBCS), which consists of two separate cross-sectional studies of recently repatriated adult unauthorized Mexican migrants carried out across the US–Mexico border (Slack et al. 2015; Martínez et al. 2017; Slack, Martínez, and Whiteford 2018). We collected data on participants' demographic characteristics, including age, years of education, family characteristics, and region of origin. As stated, we also gathered information on UAC's experiences while crossing the US–Mexico border and their treatment in US custody.

Data Analysis

We used univariate descriptive statistics to provide an overview of participants' demographic characteristics, their migration experiences, and their treatment in US custody. We then conducted a policy analysis to compare UAC's self-reported experiences in US custody to the required treatment of UAC set forth in the relevant US laws and articulated in CBP policies that govern the treatment of non-US citizen minor children (Table 2; CDC n.d.). The survey questions were aligned with key components of the 1997 *Flores* Settlement, Section 235 of the TVPRA, and guidelines set forth in CBP procedure manuals, so that responses would show either adherence to or violation of these policies. More specifically, the questions asked participants about detention conditions (e.g., temperature, provision of food, and availability of medical care), instances of physical and verbal abuse by CBP, whether they were screened by CBP for fear of return to Mexico and human trafficking victimization, and the process of their repatriation. We performed all statistical analyses in Stata 14 (StataCorp 2015).

Results

Participant Demographics

Table 1 describes the demographic and migration characteristics of the sample. Respondents were predominantly male (87 percent), which is consistent with reports on the demographics of unaccompanied minors (ORR 2020). Their mean age was about 15 (ranging between ages 8 and 17), and participants had an average of 7.5 years of formal education. Around 18 percent spoke an indigenous language, in addition to Spanish. Prior to their most recent crossing, more than half (52 percent) had never crossed the border, 31 percent had crossed 1–4 times, 5 percent had crossed 5–9 times, and

13 percent had crossed 10 or more times. When asked if they thought they would cross the border again sometime in the future, approximately 42 percent of participants said “Yes,” 40 percent “No,” and 19 percent “Don’t know.” More than three-quarters had family members living in the United States. Almost 70 percent reported working to support their families in Mexico. Approximately 9 percent of participants considered themselves heads of households. Around 7 percent explicitly expressed fear to a CBP agent of returning to Mexico, with roughly 15 percent of observations missing for this specific question.

Notably, about 31 percent reported involvement in border-specific labor on the fringes of the informal economy, such as working as a *guía* (guide), *coyote* (human smuggler), or *mula* (drug transporter). Mexican children, relative to UAC from Central America, are more frequently recruited by organized crime to be traffickers because of their age and vulnerability (UNHCR 2014a). Criminal actors understand that minors do not face the same consequences as adult migrants if they are apprehended crossing the border as a guide or with a load of drugs. Therefore, they often use minors to carry out these activities since they will just be returned to Mexico (ibid.). Also, many teenagers are physically fit, can endure the strenuous journey, and will work for less money. The UNHCR report found that 38% of the unaccompanied Mexican children interviewed had been recruited into the human smuggling industry, a much higher proportion than minors from noncontiguous countries in the sample of UAC (ibid.). UAC involvement in smuggling and trafficking could also be attributed to migrants’ increased reliance on smugglers to cross the US–Mexico border, which makes them highly vulnerable to exploitation (Kandel et al. 2017).

Treatment While in US Custody

Table 2 summarizes the legal and policy violations experienced by Mexican UAC in our sample. It contrasts key immigration policies related to the handling of Mexican UAC in the United States and participants’ self-reported experiences when last detained in the United States that violate those policies. Overall, the results demonstrate that CBP does not comply with the major policies articulated in the *Flores* Settlement, its internal guidelines, or the TVPRA, as per the detention, screening, or repatriation of Mexican UAC.

Flores Settlement. Participants reported several subpar conditions when last detained by CBP. Approximately 67 percent reported being cold or very cold. Twenty-three percent reported receiving insufficient food. Three of nine participants who requested medical care did not receive it.

Customs and Border Protection Policies. Fifty-seven percent reported that either the majority of CBP officials did not treat them with respect or none did, and 7 percent said that CBP personnel hit, pushed, grabbed, or attacked them physically. Seven percent reported CBP officials threatened them with a weapon (Table 2). UAC who suffered physical abuse further elaborated on their encounters with CBP. A 16-year-old boy, Martín,¹⁰ described an encounter with CBP during his first border-crossing attempt:

Me dieron una cachetada y mi nariz empezó a sangrar [They slapped me and my nose started to bleed].

Ricardo, a 17-year-old boy, also described having been physically assaulted by CBP:

[Me] pegaron con la pistola en la espalda [They hit me with a gun on the back].

Moreover, about 15 percent of participants reported that a CBP agent yelled at, threatened, or verbally abused them. Javier, a 17 year old, recalled some of the derogatory language used by CBP:

Maldiciones en ingles y dos en español, pinche perro y mojado [Curse words in English and two in Spanish, fucking dog and wetback].

Ramón, another 17-year-old boy, recounted being threatened by CBP with a gun:

Que si no [me] detenía [me] iban a disparar [That if I didn’t stop they were going to shoot me].

CBP Internal Memorandum and Trafficking Victims Protection Reauthorization Act. The results of our study demonstrated egregious violations of screening procedures. Around 7 percent of participants reported to CBP

¹⁰Participants’ names were not collected during any part of the study, per the IRB agreement, and participants are given pseudonyms in the report.

Table 2. Policy Violations of UAC while Last Detained in CBP Custody.

Policy Requirement	Survey Question	N	Survey Results
Flores Settlement^a			
Temperature-controlled conditions in detention	• How was the temperature while in American custody?	81	• 66.7% reported being cold or very cold.
Adequate food must be provided to detained children.	• Did [Border Patrol] give you enough food while under the custody of American authorities?	96	• 22.9% reported being provided insufficient food.
Detained children must be provided medical care.	• Did [Border Patrol] give you the medical help that you asked for?	9	• Of those who requested medical care, 33% ($n = 3$) UAC did not receive it.
CBP Policies^b			
Treat all individuals with dignity and respect.	• In general, during your last encounter with American Border Patrol, how did they treat you?	97	• 56.7% reported that none or the majority of CBP agents did not treat them with respect.
Border Patrol agents may only use objectively reasonable force.	• During the time that you were in the custody of Border Patrol this last time they detained you, did someone hit you, push you, grab you, or attack you physically?	95	• 7.4% reported a CBP agent hit, pushed, grabbed, or attacked them physically.
	• Did any Border Patrol agent threaten you with a weapon or with a bladed weapon?	97	• 7.2% reported a CBP agent threatened them with a weapon or bladed weapon.
Border Patrol employees must speak and act with the utmost integrity and professionalism.	• At any moment, did Border Patrol yell at you, threaten you, or verbally abuse you?	97	• 14.6% reported a CBP agent yelled at, threatened, or verbally abused them.
Customs and Border Protection 2009 Internal Memorandum^c			
UAC younger than 14 are considered unable to make an independent decision to elect voluntary return and should be transferred to ORR.	• How old are you?	97	• 11.3% of UAC reported being younger than 14 (age range, 8–13).
TVPRA^d			
Border Patrol agents must screen Mexican UAC for being victims of trafficking.	• Did Border Patrol officials ask you if someone is forcing you to cross the border?	77	• 57.1% reported CBP agent(s) did not screen UAC for forced US–Mexico border cross.
Border Patrol agents must screen Mexican UAC for fear of returning to country of origin.	• Did Border Patrol ask you if you were scared of returning to your home country?	78	• 48.7% reported CBP agent(s) did not screen UAC for fear of returning to their country of origin.
UAC must make an independent decision to waive their rights to a hearing and return to their country of origin to repatriate via voluntary return.	• Did it seem to you that Border Patrol forced you or pressured you to sign the forms?	84	• 14.3% reported that CBP agent(s) forced or pressured them to sign forms.
	• Did Border Patrol explain to you what you were going to sign?	85	• 50.6% reported CBP agent(s) did not explain forms requiring signature.
	• Do you know what form you signed?	84	• 52.4% reported not knowing what forms they signed while in CBP custody.

Note: CBP, US Customs and Border Protection; ORR, Office of Refugee Resettlement; TVPRA, Trafficking Victims Protection Reauthorization Act; UAC, unaccompanied alien child.

^a8 CFR § 236 (1997).

^bCBP (2014, 2015).

^cImplementation of the William Wilberforce Trafficking Victims Protections Reauthorization Act (TVPRA; CBP Internal Memorandum 2009).

^dTVPRA 22 U.S.C. § 235 (2008).

fear of return to Mexico. Yet, they were returned to Mexico rather than being immediately transferred to ORR custody as required by law. In further violation of the TVPRA, one-half reported not being asked by CBP if they feared returning to Mexico, leaving the possibility that fearful youth were not screened. In addition, 57 percent reported not being asked by CBP if they were forced to cross the US–Mexico border, despite 31 percent being engaged in border-specific informal labor (Table 2). Moreover, 11 percent of participants were younger than the age of 14 and were sent back to Mexico, despite the presumption of being “generally incapable” of making an independent decision to voluntarily return to their countries of origin (GAO 2015, 23). Approximately 51 percent reported that CBP did not explain the documents they signed (e.g., Form I-770) prior to their repatriation to Mexico, and nearly half reported not knowing what forms they signed. Fourteen percent reported feeling forced or pressured to sign documents.

Limitations

Research on this topic presents several challenges. It is possible, for example, that UAC underreport abuse from intimidating authority figures. If so, it is likely that our findings underestimate the extent of violations of laws and policies governing the treatment of UAC in US custody. Also, while we were able to focus on UAC in Matamoros, Tamaulipas, and Nogales, Sonora, who relied on DIF services, we did not include Central American UAC or Mexican UAC in ORR custody. Additional research is needed to assess the generalizability of the observations gathered through this study beyond Mexican UAC encountered at the US–Mexico border. Despite these limitations, the study offers important insights into the experiences of a vulnerable and difficult-to-reach population, Mexican UAC who were in CBP custody. Notably, it offers UAC’s perspectives on screening by CBP personnel and on CBP’s compliance with TVPRA protocols.

Discussion

Policy Violations

The study revealed significant legal and policy violations of the *Flores* Settlement, TVPRA, and CBP procedures and directives regarding the treatment of Mexican UAC. First, participants reported conditions when last detained by CBP that directly violated the *Flores*

Settlement. Participants endured cold temperatures, were not fed adequately, and did not receive medical care when they requested it. The denial of medical care is alarming given that seven migrant children have died in CBP custody or after being released in 2018–2019, raising questions about CBP’s diligence in monitoring the health of detained youth (Acevedo 2019).

Next, in violation of CBP policies, constitutional protections, and their human rights, participants reported instances of physical abuse, verbal abuse, and being threatened by a weapon by CBP personnel. Our qualitative data illustrated the combative, even physically violent behavior of some CBP agents with UAC. Participants’ experiences cast doubt on whether CBP agents are using force that is “objectively reasonable” per CBP policy, particularly when interacting with young children who are migrating alone (CBP 2014). Moreover, there has been considerable resistance to changes to CBP officers’ day-to-day responsibilities, because they have largely transitioned from almost exclusively apprehending single adult male border crossers to increasingly assisting in processing children and families who are seeking asylum. This points to a general problem of CBP officers being tasked with responsibilities that may seem to them as conflicting. For instance, among all CBP sectors, 15,056 members of family units (CBP 2020a) and 38,833 UAC were apprehended in 2013 (CBP 2020b), respectively. This represented 12.8% of all Border Patrol apprehensions for that year (CBP 2020c). By 2019, these estimates increased to 474,161 members of family units (CBP 2020a) and 76,136 UAC among all CBP sectors (CBP 2020b), which accounted for 64% of all Border Patrol apprehensions (CBP 2020c).

Furthermore, results from the present study found due process deficiencies, which directly violate the TVPRA and the US Constitution. Participants showed that CBP inconsistently screened or accounted for fear of return, trafficking, or age. Yet these conditions make youth potentially eligible for transfer to ORR and legal status in the United States. A nontrivial proportion of study participants met the criterion for ORR transfer but were instead returned to Mexico. For example, 7 percent expressed fear of return to Mexico during the interview, while 31 percent reported involvement in border-specific labor in the informal economy (working as a *guía*, or transporting drugs), which is listed as an indicator for human trafficking on Form 93 (GAO 2015).

Nearly one in 10 reported being younger than age 14, which may have qualified them for different treatment according to the GAO's explanation of CBP's age guidelines (ibid.).

Our findings also highlight concerns regarding the ability of participants to make an independent decision to voluntarily return to Mexico. Most participants reported that CBP did not explain the forms they signed in custody, and they could not identify the documents they signed. Some UAC noted feeling pressured by CBP to sign forms. Yet Form I-770 is used to inform UAC of their rights and to facilitate their decision on whether to seek a hearing or to elect voluntary return. If CBP personnel do not explain Form I-770 and ensure that UAC understand its content, these children will be less likely to understand their rights or legal options. Furthermore, being forced to sign a form is incompatible with voluntary decision making. As previously mentioned, 11 percent of UAC reported being younger than 14 years old, and some as young as eight. Per CBP guidelines, UAC younger than age 14 are presumed generally incapable of making an independent decision and should be transferred to ORR (GAO 2015). Despite many of the participants having grounds for protection, CBP officers routinely ignore UAC's basic rights.

Overall, the results from our study reinforce concerns raised by academics, NGOs, and immigrant rights groups regarding legal and human rights violations against UAC. The ACLU Border Litigation Project's 2018 report examined documents detailing complaints of abuse from children in CBP custody, which illuminated the failures of CBP to provide humane conditions in detention, use of force that was not "objectively reasonable" (shoving, kicking, and painfully handcuffing youth), and verbal abuse and threats (ACLU 2018). The 2011 Appleseed Report summarized more than 130 interviews with UAC from Mexico and noncontiguous countries, and found that half of the UAC who had been or were about to be repatriated had not been asked any questions by CBP regarding human trafficking or credible fear (Appleseed 2011). Along with the problem of CBP officers not asking UAC the required screening questions, CBP officers also frequently do not refer migrants for a credible fear interview, even if they request asylum or articulate fear of returning to their country of origin (Kerwin 2018). Moreover, in their review of CBP case files of Mexican UAC apprehended in FY2014, the GAO found that CBP agents did not

document the basis for their determinations regarding UAC's ability to make independent decisions on voluntary return (GAO 2015). Thus, the report also questions whether CBP officials sufficiently assess UAC's capabilities to make an independent decision regarding return (ibid.). This raises alarms regarding the need for transparency within CBP and additional safeguards to verify adequate treatment.

In sum, the maltreatment of UAC in CBP custody aligns with what appears to be a broader organizational culture of cruelty aimed at dehumanizing immigrant populations (Thompson 2019), and is consistent with patterned behaviors of CBP treatment of adult migrants and immigrants of Mexican descent that have been documented by NGOs and in academic studies throughout many years (Phillips, Rodriguez, and Hagan 2002; Phillips, Hagan, and Rodriguez 2006; No More Deaths 2008, 2011; Danielson 2013, 2015; Martínez, Slack, and Heyman 2013; Sabo et al. 2014).

Policy Recommendations

Improving the well-being of UAC, including Mexican UAC, requires solutions at the federal policy level. Pervasive anti-immigrant rhetoric and the framing of UAC as "criminal aliens" may influence CBP's handling of young migrants (Heidbrink 2014). More specifically, tasking CBP agents with responsibility for the well-being of Mexican UAC, without oversight or collaboration of child welfare experts, may be at odds with its responsibility for apprehending and removing "illegal aliens" as well as interdicting contraband, or CBP agents may treat these responsibilities as incompatible.

In the short term, CBP should enlist child welfare professionals to care for the UAC in its custody. This study and NGO reports evidence CBP's failures to uphold the *Flores* Settlement and maintain a safe environment for children in detention (Appleseed 2011; ACLU 2018). The TVPRA mandates that personnel who have substantive contact with UAC should undergo specialized training. The GAO found, however, that CBP does not have adequate systems in place to track who (among required personnel) has completed UAC-specific training, and that the prioritization of training requirements varies among supervisors (GAO 2015). UAC, whether from contiguous or noncontiguous countries, should be cared for by licensed child welfare personnel who have undergone rigorous training in trauma-informed care (Ataiants

et al. 2018). Trauma survivors can be retraumatized even by untrained but well-meaning caregivers and community service providers (CSAT 2014), and to a far greater extent by immigration enforcement personnel.

In the absence of significant legislative reform that transfers temporary custody of UAC away from CBP, some children's advocates have recommended that CBP use trained, plainclothes officers with expertise in child welfare to care for detained UAC. The authors find this an inadequate solution: these officers would still work within CBP, and their ability to report abuses or, more likely, to make positive determinations on the need for relief could be influenced by the agency's enforcement mission or by supervisors. We see the need for an immediate response to the violations of child welfare and traumatization of UAC revealed by this study. To that end, we recommend collaboration between the US Department of Homeland Security (DHS) and US Department of Health and Human Services (DHHS) to address the unique needs and vulnerabilities of UAC. One such model of highly integrated collaboration between public health and law enforcement involves Special Victims Units (SVUs), which operate within local law enforcement jurisdictions and are dedicated to addressing the legal, health, and psychosocial needs of victims of interpersonal violence, such as sexual assault, intimate partner violence, dating violence, stalking, and child abuse. These officers, trained in a trauma-informed approach, help to ensure that survivors are treated with respect and compassion throughout their custody, while supporting their navigation of the criminal justice system. In the case of UAC, a special unit could be tasked with overseeing the safety and well-being of UAC detained with CBP, and facilitating family separation decisions through a trauma-informed lens and based on the best interests of the child. SVUs could also train CBP personnel on child-friendly practices and on recognizing signs of abuse and trafficking, topics on which CBP officers have expressed a need for more training (UNHCR 2014b).

In the long term, however, steps should be taken to limit CBP's contact with UAC. Specifically, ORR should be granted immediate custody of Mexican UAC. While ORR has confronted challenges in meeting the needs of UAC in its care, ORR is housed within DHHS; thus, it is external to law enforcement and is a more qualified entity to safeguard the well-being of UAC. ORR facilities are generally state-licensed and are required

to provide housing, food, medical care, mental health services, educational services, and recreational activities (OIG 2019), and to employ staff who are trained to work with children and youth who have experienced trauma (UNHCR 2014b). Within the first 24 hours in ORR custody, UAC undergo an initial intake to identify immediate mental and physical health concerns, and within 5 days UAC are further examined by a medical professional (physician or physician's assistant) and assessed by a mental health clinician (OIG 2019). ORR mandates that each facility employ at least one mental health clinician — to conduct assessments, provide counseling services, facilitate crisis intervention services, and recommend care from external providers — for every 12 UAC in custody (OIG 2019).

Similarly, CBP should not be responsible for screening UAC given the agency's high rates of mistreatment of immigrants in its custody and its inconsistent efforts to ascertain whether UAC have been trafficked, fear returning to their home country, or can make an independent decision. For similar reasons, Heyman, Slack, and Martínez (2019) contend that CBP agents cannot and should not serve as asylum officers given the agency's pervasive abuse of migrants based on findings from their surveys with more than 1,100 randomly selected Mexican deportees (*ibid.*). Moreover, several immigrant advocacy groups and commentators have questioned the degree to which UAC can feel comfortable disclosing fear of persecution or human trafficking victimization to CBP given its enforcement role and documented mistreatment of UAC (Appleseed 2011; UNHCR 2014b; ACLU 2018). In addition, our findings demonstrate that CBP does not adequately explain Form I-770 to UAC, although this form is meant to enable UAC to make independent and informed decisions on whether to seek relief from removal or return to Mexico. Form I-770 does little to dispel minors' common perception that their only realistic choice is to return to Mexico (Appleseed 2011). We support the view of other NGOs and scholars that Congress should pass legislation to transfer TVPRA screening responsibilities from CBP to US Citizenship and Immigration Services (USCIS), given the latter's role in conducting asylum interviews, including with UAC (Appleseed 2011; Ataiants et al. 2018). The TVPRA should guarantee Mexican UAC a hearing before an immigration judge, and ensure that their access to immigration courts is not circumvented by haphazard screening by CBP officials.

If the custodial authority of Mexican UAC remains with CBP, the federal government must establish mechanisms to monitor CBP's detention of migrant youth. Its continued violations of the TVPRA and *Flores* Settlement highlight the need for regular monitoring of detention centers by entities external to DHS. In October 2018, US District Judge Dolly Gee appointed former US Attorney Andrea Sheridan Ordin to monitor compliance with the *Flores* Settlement through unannounced inspections of facilities where UAC are being held. Ordin's appointment lasted for only a year, however, and has done little to change the pattern of abuses and violations of the *Flores* Settlement.

The US House of Representatives recently passed H.R. 4713, which, if enacted into law, would expand the authority of the DHS Office of Civil Rights and Civil Liberties (CRCL) over CBP and other DHS programs. Among several important changes, for example, H.R. 4713 would allow the CRCL officer to report annually to the president and Congress regarding allegations of abuse by DHS personnel and any actions taken by DHS that are responsive to these allegations.¹¹ The CRCL officer could also access any documents needed to investigate abuses by DHS, if necessary through subpoena.¹² This bill, or legislation like it, should be considered and passed by the Senate, and ultimately signed into law by the president. As it stands, CBP often delays responding for long periods of time or ignores CRCL's requests for documented complaints from youth detainees (ACLU 2018).

Overall, the characterization of UAC as "criminal aliens" has been prioritized over their status as children within the US immigration system, thus justifying the need to apprehend, control, and remove them as quickly as possible (Heidbrink 2014). Improving the treatment of UAC necessitates a paradigm shift in how the United States approaches vulnerable noncitizens, including UAC.

Recommendations for Future Research

The study provides new information about the experiences of a "hard-to-reach" population, recently repatriated Mexican UAC. Future studies should further

examine UAC's conditions while in custody, treatment by CBP personnel, and the screening processes outlined by the *Flores* Settlement, TVPRA, and CBP procedures and directives. In the absence of effective oversight of CBP, documentation of UAC's experiences in custody is essential to identifying the dangers faced by children in detention and the degree to which federal officials are complying with their legal responsibilities.

Researchers should also devote greater attention to the mental health needs of UAC, who are subjected to adverse childhood experiences (ACEs) and trauma during all phases of the migration process (Baily et al. 2011; Cardoso 2018). ACEs are defined as traumatic events that occur during childhood, and they include aspects of the child's environment that can interrupt their sense of safety and stability (CDC 2019) and elevate their risk of mental health disorders (Wood 2018). ACEs experienced by UAC include sexual assault and other forms of violence and abuse by gangs, cartels, traffickers, law enforcement personnel, and others (UNHCR 2014a).

Moreover, prior research has found that detention can have deleterious effects on UAC's mental health, such as developmental delay, poor psychological adjustment, and decreased functioning in school settings (Fazel and Stein 2003). Qualitative research and mental health evaluations have documented high rates of PTSD, anxiety, depression, behavioral problems, and suicidal ideation among detained UAC, which can persist after release (Bhabha and Schmidt 2008; Women's Refugee Commission 2009; Linton, Griffin, and Shapiro 2017). The DHHS Office of Inspector General (OIG) concluded in a 2019 report that mental health challenges are so acute among UAC that ORR struggles to address the mental health needs of the children in its custody who have experienced intense trauma (OIG 2019). The results of this study further document the abuse UAC suffer at the hands of CBP and the harmful conditions they endure in detention.

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¹¹Department of Homeland Security Civil Rights and Civil Liberties Authorization Act, H.R. 4713, 116th Congress § 2 (2019).

¹²Ibid.

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