


# Unaccompanied Children at the United States Border, a Human Rights Crisis that can be Addressed with Policy Change

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**Abstract** In recent years, unaccompanied minors have been journeying to the United States (U.S.)–Mexico border in great numbers in order to escape violence, poverty and exploitation in their home countries. Yet, unaccompanied children attempting to cross the United States border face treatment at the hands of government representatives which violates their inherent rights as children. The result is a human rights crisis that has severe health consequences for the children. Their rights as children are clearly delineated in various, international human rights documents which merit increased understanding of and recognition by the U.S. government. This paper calls for the improvement of policies and procedures for addressing the rights of unaccompanied immigrant children; it provides specific, rights-based recommendations which work together to safeguard the rights of the child at the U.S. southwestern border.

## Introduction

In recent years, the United States (U.S.) has faced an unprecedented influx of unaccompanied children attempting to cross the U.S.–Mexican border. These children are fleeing violence, exploitation, and poverty in their home countries in Mexico and Central America. Additionally, after separating from their families, escaping violence and being exposed to further trauma while risking their lives to get to the U.S. border, these children are at risk for being re-traumatized by processes enacted by the U.S. government. U.S. policies and procedures, as well as the immigration officials charged to implement them, are ill-prepared to deal with the arrival of such high numbers of unaccompanied children. The result is a human rights crisis in the U.S. We provide a brief background of the situation facing unaccompanied children, review relevant human rights abuses and human rights documents, and propose policy recommendations for the improvement of U.S. policies and procedures. Overall, U.S. policies and procedures must be improved to promote the wellbeing and health of unaccompanied children.

We emphasize the rights of the child framework, which suggests that children should be brought up “in the spirit of peace, dignity, tolerance, freedom, equality and solidarity” [1]. We utilize the Convention on the Rights of the Child, its optional protocols, general comments, and related legal documents to inform recommendations for safeguarding children’s rights and wellbeing. Specifically, we recommend improving the screening and adjudication processes to be more protective, providing tailored training for those working with unaccompanied minors, reframing the language surrounding the issue (i.e. referring to them as “refuge-seeking children”), ensuring increased professional vigilance and proper intervention when abuse or

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other violence occurs against minors, and passing legislation to provide sustainable protections for children escaping violence in their homelands. Through describing examples of such endeavors, and addressing barriers to these approaches, we call on the U.S. government to ensure these actions are integrated into comprehensive immigration reform.

## Background

### Issue and Magnitude

Children attempting to come to the United States face long dangerous trips without their parents or guardians. Sometimes they travel over 1000 miles and cross several borders on foot, by bus, or atop freight trains. Along the way, they face the risks of exploitation, violence and death [2]. It is estimated that between 75–80% of newly arriving unaccompanied children are victims of human trafficking, as they travel into the U.S. with smugglers who then sell them into forced labor or prostitution [3]. The majority of unaccompanied children are between 13 and 17 years of age [4]; a larger proportion are boys [5]. This group is very diverse: it also includes pregnant girls [5] and a growing proportion of elementary school-age children [4]. In U.S. procedural documents, these children are referred to as “unaccompanied alien children.” The Homeland Security Act defines unaccompanied alien children as those under 18, with no legal immigration status and for whom there is no available parent or legal guardian in the U.S [6].

The number of unaccompanied children crossing the U.S. border spiked in fiscal year (FY) 2014 (October 1, 2013–September 30, 2014), when Border Patrol apprehended nearly 70,000 unaccompanied children; this is a 77% increase compared to FY 2013 [7]. In FY 2016, Border Patrol reported apprehending almost 60,000 unaccompanied children, the second-highest number of apprehensions during 2012–2016 [7].

The majority of unaccompanied children come from the “Northern Triangle” of Central America: in FY 2016, almost one-third (32% or 18,913) arrived from Guatemala, followed by 29% (17,512) from El Salvador and 18% (10,468) from Honduras; an additional 20% (11,926) arrived from Mexico [7]. Between FYs 2012–2016, the number of unaccompanied children from these four countries more than doubled [7].

### History and Context

Escalating and uncontrolled violence is a major factor forcing children to flee from their home countries [2, 5, 8, 9]. In 2012, Honduras was ranked the most violent country in

the world, with a homicide rate of 90.4 per 100,000 people; El Salvador, Guatemala, and Mexico had homicide rates of 41.2, 39.9, and 21.5 respectively, while the global average rate was 6.2 per 100,000 [10]. Such an extraordinary level of violence in the region stems from continuing political turmoil, relative weakness of governmental institutions, widespread domestic and sexual abuse, and the power of organized crime [11]. Three types of organized crime groups—street gangs, Central American drug transporters, and Mexican drug cartels—are primary agents of forced displacement [12].

This systematic widespread violence is demonstrative of extensive violations of children’s right to life, safety, and security. In 2014, the United Nations High Commissioner for Refugees interviewed 404 unaccompanied children from the Northern Triangle and Mexico, finding that 58% raised potential international protection needs [5]. Almost half (48%) were fleeing violent attacks, kidnappings, and extortions from drug cartels and armed gangs. Additionally, 21% suffered abuse from caretakers in their homes; and 38% of Mexican children were escaping exploitation by the human smuggling industry [5]. Overall, children also cited poverty and lack of meaningful economic or educational opportunity as reasons for leaving their home countries [5]. In other cases, children’s migration to the U.S. is linked to the need to reunify with their families who already reside in the U.S [13].

Unaccompanied children have been found to experience many stressful life events, including separation from parents, disappearance or loss of family members, persecution, life threats, and various forms of interpersonal and witnessed violence [14]. Repeated traumatic experiences put migrant children at risk for clinical or borderline mental health problems, that include post-traumatic stress disorder (PTSD), anxiety, and depression [15–19]. Children from Mexico and Central America who were exposed to political or domestic violence in their home countries scored high on depression and symptoms of PTSD [20]. Additionally, Central American immigrant children reported elevated levels of aggression and hyperactivity [20]. A study of war-affected refugee children, with a large proportion of children from South and Central America, revealed that minors were exposed to the multiple forms of trauma, including political violence, traumatic loss, forced displacement, and community violence; children also commonly experienced functional impairment, including academic and behavioral problems, and 30% had PTSD [21].

### Treatment in the U.S

Because of their status as “unaccompanied alien children” and due to their extreme vulnerability, the protection of children who are apprehended without family or caregivers

is the responsibility of the U.S. government. Legal provisions for unaccompanied alien children who enter the U.S. are set by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) [22]. However, current policies and procedures in place that guide the processes once a child crosses the border are fractured, involve numerous government agencies and levels of bureaucracy where there is no single source of responsibility or accountability for the challenges children face (Table 1). As a result, children experience lack of protection and mistreatment while navigating various stages of the U.S. immigration system, including apprehension, screening, custody, and adjudication.

### Apprehension

Children apprehended at or near the U.S. border are detained by U.S. Customs and Border Protection (CBP), a subsidiary agency of the Department of Homeland Security. CBP is tasked with initial screening, short-term custody of unaccompanied children, and separating children based on contiguous or non-contiguous country of origin. The length of stay in CBP detention facilities may not exceed 48 h for children arriving from the contiguous countries of Mexico or Canada and 72 h for minors from other countries [23].

Though minors can be subjected to immigration detention in principle, the TVPRA law requires that children

in government custody are placed in the least restrictive and most humane settings possible. Moreover, according to U.S. welfare standards, decisions regarding children's placement and custody should take into account the principle of "the best interests the child." [24]. Yet children are routinely placed in CBP unlicensed and locked-down detention facilities and handled by immigration officials without specialized training [23]. Moreover, there have been reports of neglect, mistreatment, and abuse by border patrol officials. In June 2014, an administrative complaint was filed with the Department of Health and Human Services on behalf of 116 children held in CBP custody. Reports included being held by CBP for longer than 72 h, inhumane detention conditions, such as placement in cold or freezing temperatures, physical restraint, lack of medical care, as well as verbal, sexual, and physical abuses by immigration officials [25].

### Screening

Under TVPRA, CBP agents conduct screening interviews with children from contiguous countries of Mexico or Canada to determine if they meet eligibility criteria for adjudicating their immigrant status, such as being a victim of trafficking or at risk of human trafficking upon return, fearing persecution in their home country, or being unable to make their own independent decision concerning return to the home country [22]. If no

**Table 1** U.S. Government agencies working with unaccompanied alien children

Agency in charge	Responsibility and decision-making
Department of Homeland Security, U.S. Customs and Border Protection (CBP)	Apprehension, processing and short-term custody for all unaccompanied children Screening of children from contiguous countries of Mexico and Canada to determine eligibility for asylum-seeking or other immigration relief Sending ineligible asylum-seekers home through 'voluntary return' Referring the case to USCIS if there are grounds for asylum-seeking
Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE)	Transporting eligible asylum-seekers from contiguous countries and all unaccompanied children from non-contiguous countries from CBP to the custody of ORR Executing removals
Department of Health and Human Services, Office of Refugee Resettlement (ORR)	Screening children for trafficking, medical and essential needs Care and custody of children in removal proceedings, including releasing children to the custody of 'sponsors'
Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS)	Evaluating asylum applications, conducting asylum interviews, granting asylum Granting T-visa, U-visa, or adjudicating a petition for Special Immigrant Juvenile status If no immigrant status is granted, referring the case to the immigration court for further review
Department of Justice, Executive Office for Immigration Review (EOIR)	Overseeing immigration court proceedings Ordering removal/allowing 'voluntary return' Closing the case administratively/terminating the case/granting protection from removal

This table outlines responsibilities and authority of U.S. government agencies charged with custody, care, and decision-making over unaccompanied alien children

condition is met, children are not placed in immigration proceedings and instead are sent home through ‘voluntary return’—a process pursuant to repatriation agreements between the U.S. and Mexico or Canada [26]. Though ‘voluntary return’ does not bear the same consequences as deportation, procedures leading to ‘voluntary’ repatriation can violate the rights of children. The screening process is rushed (interviews are expected to complete within the 48 h period), and children often do not understand their options and choices. Moreover interviews are taking place in cold holding cells where children are provided with minimum food or medical care, and conducted by CBP uniformed officers not properly trained to detect signs of abuse, trauma, or fearing persecution [27]. NGOs claim that ‘voluntary return’ of Mexican children is geared toward repatriation and convenience for U.S. and Mexican governments rather than serving the “best interests of the child” [27]. As a result, Mexican children are frequently sent home in an expedited manner, without due process and proper counsel. In 2015, the U.S. Government Accountability Office (GAO) reported on multiple shortages of screening process for unaccompanied children on the part of Customs and Border Protection, including inconsistent screening decisions, varying degrees of clarity about screening criteria among staff, and lack of documentation on ‘voluntary return’ decisions [28]. Importantly, while unaccompanied children under 14 are generally considered to be unable to make their own independent decisions regarding repatriation, GAO found that from FY 2009 to FY 2014, 93% of Mexican unaccompanied children under the age of 14 were repatriated without documentation of the rationale for such decisions [28]. Even though repatriation policy goals are designed to assist with family reunification, many minors are returned to the same conditions of domestic abuse, exploitation, or re-exposed to the threat of becoming a victim of human trafficking [27].

### *Custody*

Since 2002, unaccompanied children awaiting adjudication of their immigrant status are placed into the Office for Refugee Resettlement (ORR) custody system, which includes alternative and age-appropriate residential facilities shelters or foster homes as well as secure detention centers [23, 29]. ORR can release unaccompanied children to safe settings with ‘sponsors,’ usually family members or guardians or to a local welfare agency, and this process is facilitated with the involvement of attorneys [29]. Children who do not have sponsors or denied release to sponsors have to stay in ORR detention for the

entire period of adjudication, which, because of immigration court backlog, is on average almost 2 years [30].

### *Adjudication*

Unaccompanied children experience substantial hurdles as they navigate complex and adversarial immigration proceedings. Legal orientation and screening are not provided as necessary services to all unaccompanied children [2]. Without legal orientation, some children are subjected to deportation *in absentia* for failure to appear in immigration court [2, 31]. The most substantial problem is children’s lack of access to free legal counsel. ORR can appoint a child advocate for an unaccompanied child; however, representation by legal counsel is not guaranteed since crossing the U.S. border illegally is a civil offense, not a criminal one [23, 32]. The Immigration and Nationality Act directed the Secretary of Health and Human Services to ensure that all unaccompanied children have legal counsel “to the greatest extent practicable” [33]. In reality, however, children have to rely on pro bono assistance from a network of immigrant lawyers and legal clinics with limited resources [23]. The process is further exacerbated by language barriers, as many unaccompanied children do not speak English and there is shortage of interpreters in immigration courts [32].

Some jurisdictions receiving large numbers of unaccompanied minors, such as New York City and the State of California, have enacted legislation and/or allocated funding that would increase children’s representation in immigration proceedings [34, 35]. Additionally, some federal funding is available to support legal counsel for unaccompanied children [36, 37]. However, even with these additional resources, legal counsel reaches only a fraction of children. In FY 2015, 40.9% or 6827 unaccompanied minors were not represented in removal proceedings [38]. At the same time, legal representation is a key factor in the decisions made by immigration courts: unaccompanied children were ordered deportation in 28% cases when they were represented, and in 77% cases when they did not have an attorney [32]. As a result, a class-action lawsuit, *J.E.F.M. v. Lynch*, was filed, challenging the federal government for failure to provide legal representation for children in immigration proceedings [39].

## **A Human Rights Approach to Addressing Unaccompanied Children**

Conditions of unaccompanied children at the U.S. border demand a comprehensive approach that complies with international obligations and treaties. Multiple components of the human rights framework are relevant to protection

the dignity, health and wellbeing of children arriving to the U.S. Firstly, the framework of the Convention on the Rights of the Child (CRC) takes the most comprehensive approach, and the associated general comments and optional protocols provide specific guidance on how to address the unique issues. We also identify other relevant U.N. conventions and resolutions safeguarding the rights of unaccompanied children. Taken as a whole, this framework outlines fundamental freedoms and conditions that unaccompanied children are entitled to enjoy, including the principles of the best interests of the child as a primary consideration in all decisions affecting the life of the child, the principle of non-refoulement, the right to health, the right to due process, and the right to freedom from all forms of violence.

### Convention on the Rights of the Child

The Convention on the Rights of the Child was adopted by the U.N. General Assembly in November of 1989. From the Universal Declaration of Human Rights, it reaffirms that “childhood is entitled to special care and assistance,” that children need “special safeguards and care, including appropriate legal protection,” and that “there are children living in exceptionally difficult situations” who “need

special consideration” [1]. Unaccompanied children are explicitly defined within this category. The United States is the only United Nations country that has signed but not ratified the CRC. Therefore, the U.S. may agree in principle with the tenets of the CRC, yet they are unwilling to be held legally accountable. The fact that they have signed the CRC does mean that the U.S. upholds the intent behind the CRC and should demonstrate the intention to do their best for unaccompanied children.

There are many specific articles within the CRC that address the human rights, health, dignity, and safety of unaccompanied children travelling across borders (Table 2).

Article 20 of the CRC states that children who are “deprived of his or her family environment...shall be entitled to special protection and assistance provided by the State” [1]. As such, States are obligated to develop alternative care methods for such children. Article 22 specifically lays out obligations for special protection and humanitarian assistance for unaccompanied children who are seeking refugee status. It requests that States assist unaccompanied children with family reunification when possible, and compels States to offer these children the same protection as any other child resident, provided that States are unable to unify them with family. Of particular importance are CRC articles 34, 35, 36, and 39, which would cover thousands

**Table 2** CRC articles relevant in the consideration of U.S. policies and procedures regarding unaccompanied children

Human rights norm/principle	Article
Best interests of the child	Articles 2 and 3 state that all actions regarding children take their best interests into primary consideration
The entitlement of all human beings to basic human rights, regardless of their citizen status	Article 20 states that children who are “deprived of his or her family environment...shall be entitled to special protection and assistance provided by the State” Article 22 requests that States offer refugee children the same protection as any other child resident, provided that States are unable to unify them with family
The right to life and security, including freedom from arbitrary arrest or detention	Article 37 states that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”
The right to freedom from all forms of violence	Article 19 instructs States to take “appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment of exploitation” Article 37 charges that “no child shall be subjected to torture, cruel, inhuman or degrading treatment or punishment”
Protection from armed conflict, trafficking, and exploitation	Articles 34, 35, 36, 39 obligate States to protect all children from armed conflicts, trafficking, and exploitation, including sexual and economic exploitation
The right to health	Article 24 instructs States to recognize the right of the child to enjoy the highest attainable standard of health, and provide necessary medical care to all children
The right to due process	Article 12 directs States to give “due weight” to the views of the child, depending on the child’s age and maturity Article 12 mandates States to provide an opportunity for the child “to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body”

CRC Convention on the Rights of the Child. This table utilizes specific articles from the U. N. Convention on the Rights of the Child to highlight rights violations with regard to unaccompanied minors’ rights

of children who arrive in the U.S. seeking asylum from armed gangs and other violent situations, and Article 37, which implies that children should not be detained except as a measure of last resort, and for the shortest amount of time appropriate.

**General Comments and Optional Protocols to the Convention on the Rights of Child**

There are also general comments to the CRC and optional CRC protocols, which reaffirm and elaborate on procedures for safeguarding human rights of unaccompanied children. General comments are thorough interpretations

of provisions in human rights treaties. Though general comments are non-binding, i.e. not requiring ratification, they represent an authoritative source of meaning and scope of human rights [40]. General comments to CRC have been adopted by the Committee on the Rights of the Child. Optional protocols often follow a treaty in order to expand upon substantive issues within a treaty and they are open for ratification. There are five general comments associated with the CRC [41–45] and two optional protocols, both ratified by the U.S. [46], that are important to the rights and protections of unaccompanied minors as outlined in Table 3.

**Table 3** CRC general comments and optional protocols relevant in the consideration of U.S. policies and procedures regarding unaccompanied children

Human rights norm/principle	General comments and optional protocols
Best interests of the child	GC 6 states that the principle of the best interests of the child “must be respected during all stages of the displacement cycle” for unaccompanied and separated children GC 14 states that decisions and implementation measures made by administrative authorities in areas, including, among others, asylum and immigration, “must be assessed and guided by the best interests of the child” GC 14 instructs states to understand that the best interests of children in a situation of vulnerability (including being a refugee or an asylum seeker) are different and unique, and that states must regard the additional rights of children set by other conventions
The entitlement of all human beings to basic human rights, regardless of their citizen status	GC 6 instructs States to not return a child to their country of origin for reunification when there is risk of harm; acknowledges that the rights within the CRC are directed at non-citizen children, irrespective of nationality or immigration status GC 13 charges States as de facto caregivers for unaccompanied children outside their country of origin
The right to life and security, including freedom from arbitrary arrest or detention	GC 6 states that policing of unaccompanied children is only acceptable in very limited and specific circumstances and must represent the least intrusive option GC 13 defines children’s “placement in ... humiliating or degrading conditions of detention” as mental violence GC 13 urges governments “to make use of institutionalization and detention only as a last resort and only if in the best interest of the child.”
The right to freedom from all forms of violence	GC 6 identifies unaccompanied and separated children as particularly vulnerable to abuse, exploitation, discrimination and maltreatment
Protection from armed conflict, trafficking, and exploitation	Optional Protocol to the CRC on the Involvement of Children in Armed Conflict helps understand armed conflict and violence as factors for minors fleeing their countries Optional Protocol to the Convention on the Rights of the Child—the Sale of Children, Child Prostitution and Child Pornography is relevant to understanding the vulnerability of unaccompanied minors to human trafficking and prostitution
The right to health	GC 15 defends a child’s right to health as an international obligation, and discusses State obligations and procedures to respect, protect and fulfill the right of every child to health; urges a human rights approach to respect the dignity, life, survival, wellbeing, health, development, participation, and non-discrimination of the child
The right to due process	GC 12 obliges States to implement the children’s right to be heard in all immigration and asylum proceedings. It instructs States to provide children “with all relevant information, in their own language” and appoint them a guardian or adviser, “free of charge.”

CRC Convention on the Rights of the Child, GC General comment

This table utilizes specific articles from General Comments and Optional Protocols to the U. N. Convention on the Rights of the Child to highlight special rights violations with regard to unaccompanied minors’ rights

## Other Human Rights Instruments Pertinent to the Rights of Unaccompanied Children

In addition to the Convention on the Rights of the Child, its general comments and optional protocols, there are other human rights instruments, which outline appropriate procedures for assuring the human rights of unaccompanied minors. Those instruments include the 1951 Convention Relating to the Status of Refugees [47] and its 1967 Protocol [48], two authoritative sources of international refugee law, as well as the 1984 U.N. Convention Against Torture [49]. Two of these documents, the Convention Against Torture, and the Protocol Relating to the Status of Refugees, were ratified by the U.S. in 1994 and 1968 accordingly. There are also two significant resolutions adopted by the U.N. General Assembly that must be recognized as having special pertinence to the current influx of unaccompanied children to the U.S.: the 2010 Guidelines for the Alternative Care of Children, which describe the responsibilities of States to ensure appropriate alternative care situations for children without parents [50], and the Resolution Adopted by the General Assembly on December 18, 2013, on the Rights of the Child, which calls upon States to protect minors who are refugees and asylum seekers, particularly those who have been exposed to violence, trafficking or armed conflict [51]. Table 4 provides more detail on these human rights instruments.

## Recommendations

The influx of unaccompanied children across the border is a growing human rights crisis necessitating swift, immediate action by the U.S. government. We recommend five immediate steps that incorporate human rights constructs with the guiding principle of the best interests of the child.

First, the U.S. should improve policies on treatment of unaccompanied children from contiguous countries to prevent routine and expedited repatriation of children to unsafe situations without a hearing. The TVPRA law should be amended to allow children from contiguous countries to undergo the similar removal proceedings as children from non-contiguous countries. Such a policy change involves not only legislative changes, but also substantial human capital and financial costs by increasing workload for ORR and immigration courts. In the immediate term, we recommend improved evaluation/screening process for unaccompanied Mexican children undertaken by CBP agents, as follows: Screening interviews should not be provided in border patrol detention stations, but rather in locales such as child-appropriate ‘hub facilities’ [27] or USCIS offices. Responsibility for screening should be shifted from CBP immigration officers who lack appropriate trauma-informed

training, to USCIS asylum officers who are already interviewing all unaccompanied child asylum seekers. The time limit for screening should be extended to at least 72 h from apprehension to allow sufficient time for transportation of unaccompanied children to screening facilities and for an appropriate screening interview. A potential barrier to these changes is that they demand corresponding amendments in the TVPRA law, the Immigration and Nationality Act, and USCIS and CBP policies. Other barriers may include cost of moving the screening process to other facilities and added workload for USCIS asylum officers. However in the long run, such a policy change may help save CBP time and human resources so that agents can focus on their core duties of preventing criminals and human traffickers from crossing U.S. borders.

Second, the U.S. should improve fragmented and unjust adjudication process, which violates the child’s right to representation. We recommend amending legislation to ensure the right to due process for all minors in immigration removal proceedings. Specifically, we encourage Congress to pass H.R. 4646, “The Fair Day in Court for Kids Act,” a pending legislative bill introduced in February 2016 and co-sponsored by 54 U.S. representatives [52]. The bill guarantees legal counsel for minors and vulnerable categories of immigrants, mandates legal orientation for detained immigrants, and proposes a pilot case management program to increase immigration court appearance rates for undocumented immigrants, including unaccompanied children. Unlike the U.S., a number of Western nations have instituted policies on appointing legal representatives to unaccompanied asylum-seeking children. As an example, Finland, Denmark, and Austria appoint a legal representative for the entire immigration process, beginning from the first contact of the minor with immigration authorities [53]. A potential barrier is that the cost of such comprehensive legal assistance may seem prohibitive given the need to involve the additional number of immigration attorneys for several thousand children facing removal proceedings. Non-cost barriers include changes in the TVPRA law, the INS law, and EOIR policies on handling unaccompanied children, and most importantly the likely opposition from the U.S. Congress, in particular, the House of Representatives, that decided not act on immigration reform during the Obama Administration [54].

Third, we recommend increased training for border patrol officers working with unaccompanied children. Such training is needed to develop CBP personnel sensitivity to the traumatic history of unaccompanied minors, such as exposure to human trafficking and multiple forms of abuse. Moreover, we believe some of the injustices perpetrated by the U.S. government against children placed in Customs and Border Protection custody, including the violation of children’s rights to security, health, and freedom from all

**Table 4** Other human rights instruments relevant in the consideration of U.S. policies and procedures regarding unaccompanied children

Human rights norm/principle	Human rights instrument
Non-refoulement	<p>Article 33(1) of the Convention Relating to the Status of Refugees requests that states withhold the return of refugees to places where they can be at risk of persecution based on their “race, religion, nationality, membership of a particular social group or political opinion.” This provision also binds parties to the Protocol Relating to the Status of Refugees</p> <p>Article 3 of the Convention Against Torture lays out the obligation for the states not to return persons to places where they can be subjected to torture. In concluding observations on the U.S. 3rd to 5th combined periodic reports, the Committee against Torture stated that the U.S. should “take into consideration the current security situation in Mexico and in the Northern Triangle of Central America” and rethink the current use of expedited removal, as appropriate [63]</p> <p>The Guidelines for the Alternative Care of Children advise that children “must not be returned to their country of habitual residence” if: there is reason to believe that their safety is at risk, unless a parent or authorized agency has agreed and is able to take responsibility for the child upon their return; or reunification is generally not in the best interests of the child</p>
Best interests of the child	<p>The Guidelines for the Alternative Care of Children direct States to develop policies and procedures that foster communication and collaboration, and take the best interests of the most vulnerable, unaccompanied children into primary consideration</p> <p>The Resolution on the Rights of the Child, adopted by the General Assembly on December 18, 2013, stresses the importance of ensuring the best interests of the child as a primary consideration when developing policies of integration, non-refoulement, or family reunification</p>
The entitlement of all human beings to basic human rights, regardless of their citizen status	<p>The Guidelines for the Alternative Care of Children state that unaccompanied children should “enjoy the same level of protection and care as national children”</p>
The right to life and security, including freedom from arbitrary arrest or detention	<p>Article 11 of the Convention Against Torture requests that states “keep under systematic review ... arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment ... with a view to preventing any cases of torture.” In concluding observations on the U.S. 3rd to 5th combined periodic reports, the Committee against Torture noted that even with increased placement of unaccompanied children in foster care, many children continue to be detained in corrections-like facilities. The Committee recommends that the U.S. “develop and expand community-based alternatives to immigration detention” and “expand the use of foster care for unaccompanied children” [63]</p>
Protection from armed conflict, trafficking, and exploitation	<p>The Resolution on the Rights of the Child, adopted by the General Assembly on December 18, 2013, calls upon States to protect minors who are refugees and asylum seekers, particularly those who have been exposed to violence, trafficking or armed conflict. It specifically mentions “unaccompanied migrant children and those who are victims of violence or exploitation...for receiving special protection and assistance”</p>

This table outlines human rights principles and norms that pertain to the rights of unaccompanied minor children, using provisions from human rights documents, including: the 1951 Convention Relating to the Status of Refugees, 1967 Protocol Relating to the Status of Refugees, the 1984 U.N. Convention Against Torture, 2014 U.N. Committee Against Torture concluding observations on the third to fifth periodic reports of United States of America, the 2010 Guidelines for the Alternative Care of Children, and 2013 U.N. Resolution on the Rights of the Child

forms of violence, could have been prevented through trauma-informed education among border personnel. The area of training and capacity-building for law enforcement staff working with minor asylum seekers is underdeveloped and understudied; however, promising models can be adopted from the juvenile justice system [55]. Neither costly nor time-consuming, training interventions have potential to improve children’s treatment by law enforcement staff in a short timeframe. This is exemplified by the Mental Health Training Curriculum for Juvenile Justice (MHTC-JJ), an 8 h training program, which has been

delivered to over 2000 staffers working in juvenile justice courts, corrections, and probation. Within a month from initial training of ‘trainers,’ the program demonstrated its capacity to improve communications between staff and justice-involved youth, as well to increase staff’s patience and active listening [56]. More broadly, we recommend that CBP develop trauma-responsive policies on custody of unaccompanied children. Such policies should consider good practices of social services for refugee and asylum-seeking children that prioritize commitment to well-being of children over demands of immigration policy [57].



The proposed policies can also consider trauma-informed approaches developed in juvenile justice. According to the National Child Traumatic Stress Network, essential elements of such approaches include policies and procedures that ensure physical and psychological safety of youth; screening of traumatized youth; clinical interventions for trauma-impairment; staff education; and prevention of secondary traumatic stress among staff [58].

Fourth, we argue for a reframing of the language around this issue. The terminology we utilize creates and reinforces a social reality and shapes the way that we address the issues [59]. Not only does the term “unaccompanied alien children” characterize children as different and unwelcome, but it is also inaccurate. These children are refugees, fleeing poverty, violence, and/or attempting to reunite with family members in the U.S. Specifically, we suggest referring to such children as “refuge-seeking.” Using new language will help to counteract the underlying attitudes of hostility, threat, and deviance transmitted with the use of the term “unaccompanied alien children.”

Finally, we encourage comprehensive immigration reform, including passing legislative measures to safeguard the rights and protections of unaccompanied children in the United States. President Obama’s immigration policies have been controversial if not punitive, as over 2.5 million people were deported from the United States in 2009–2014 [60] – more than under any other presidential administration [61]. Still, some executive actions related to treatment of refugee and migrant children have been promising. For example, the establishment of the Central American Minors (CAM) Refugee/Parole Program allows parents from countries of the Northern Triangle who are lawfully present in the U.S. to bring their children through refugee admission or humanitarian parole [62]. Yet, as the government’s response to the problem of undocumented immigrants relies on deferred action and granting temporary relief, only comprehensive legislative measures can establish sustainable protections for children attempting to escape violence in their home countries.

## Conclusion

The U.S. is failing on a grand scale to protect children who are most vulnerable and seeking refuge, creating an American human rights crisis. In a nation where increasing opposition to immigrants and refugees threatens to further victimize an already marginalized population, it becomes even more important to change our framework and the actions we take. Fortunately, we can highlight clear guidance from the U.N. on how to promote and protect the rights of unaccompanied children. The U.S. must act quickly, however, to improve its screening and adjudication processes, provide

appropriate training for organizations and staff, avoid dehumanizing and inaccurate terminology, and pass comprehensive immigration reform. With these changes, the United States would not only be helping to improve the health and wellbeing of children in America, but they would also be putting their best efforts toward protecting, promoting and fulfilling their international and domestic human rights obligations.

## Compliance with Ethical Standards

**Conflict of interest** Janna Ataiants, Chari Cohen, Amy Henderson Riley, Jamile Tellez Lieberman, Mary Clare Reidy, and Mariana Chilton have declared that they have no conflict of interests.

**Ethical Approval** This article does not contain any studies with human participants performed by any of the authors.

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