UNACCOMPANIED MINORS: HUMANITARIAN CRISIS VS. BORDER CRISIS

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As the world faces its largest refugee crisis since World War II and the attendant unprecedented migration of youths fleeing political upheaval, many nations are re-examining their policies towards those seeking refuge. Over the past several decades, United States policy had been increasingly empathetic towards children arriving to our shores without their parents despite steadily growing anti-immigrant sentiment among large parts of the populace. These competing forces were evident in the Obama Administration's response to the dramatic flow of unaccompanied minors from the Northern Triangle who began arriving in 2014, treating it as both a humanitarian crisis and a matter of border security. As these children continue to arrive, the Trump Administration has done away with the prior administration's relatively balanced approach, choosing instead to view the issue solely through the lens of a border crisis that threatens public safety.

Conforme el mundo enfrenta la crisis de refugiados más importante desde la Segunda Guerra Mundial, y la migración concomitante, sin precedentes, de jóvenes que huyen de la turbulencia política, muchas naciones reexaminan sus políticas hacia quienes buscan refugio. A lo largo de varias décadas anteriores, la política de los Estados Unidos se ha mostrado crecientemente empática hacia los menores que llegan a nuestras playas sin sus padres, pese a un sentimiento crecientemente anti-inmigrante presente entre grandes sectores de la población. Estas fuerzas en contienda fueron evidentes en la respuesta de la administración Obama ante el dramático flujo de menores no acompañados provenientes del Triángulo Norte, que comenzaron a llegar en 2014. Se trató como crisis humanitaria y también como tema de seguridad fronteriza. Conforme estos menores siguen llegando, la administración Trump ha acabado con el tratamiento relativamente equilibrado de la administración previa, para sustituirla por una consideración que pasa tan solo a través de la lente de una crisis fronteriza que amenaza la seguridad pública.

Alors que le monde fait face à sa plus grande crise des réfugiés depuis la Seconde Guerre mondiale et la migration des jeunes sans précédent fuyant les bouleversements politiques, de nombreux pays réexaminent leurs politiques envers ceux qui cherchent refuge. Au cours des dernières décennies, la politique des États-Unis a été de plus en plus empathique envers les enfants qui arrivent sur nos côtes sans leurs parents, malgré le sentiment anti-immigrés qui ne cesse de croître dans une grande partie de la population. Ces forces concurrentes étaient évidentes dans la réponse de l'Administration d'Obama au flot dramatique de mineurs non accompagnés du Triangle du Nord qui ont commencé à arriver en 2014, le traitant à la fois de crise humanitaire et de problème de sécurité frontalière. À mesure que ces enfants continuent à arriver, l'Administration Trump a supprimé l'approche relativement équilibrée de l'administration précédente, choisissant plutôt de considérer le problème uniquement sous l'angle d'une crise frontalière qui menace la sécurité publique.

The world is currently undergoing its worst refugee crisis since World War II, and children have been particularly impacted by it. In 2016, UNICEF reported 11 million child refugees and asylum seekers (UNICEF 2016). In 2016, there were 100,000 unaccompanied minors applying for asylum, three times the number that applied in 2014. Over the last few years, the United States, Mexico, and Canada have seen a dramatic increase in the number of children fleeing gang violence in the Northern Triangle countries of El Salvador, Honduras, and Guatemala. The question of how to manage the arrival of unaccompanied minors has long been a source of debate in policy circles, and the current political climate in the United States has only served to further divide the opposing sides. In the latter half of the twentieth century, the U.S. adopted empathetic policies that recognized the various humanitarian crises that drove children to our shores. However, the current administration, reflecting the national divergence on immigration in general, has chosen to reverse course and adopt policies that see the influx of children as a border crisis.

Unaccompanied minors are generally defined as those under the age of 18 who enter the country without a parent or guardian. The U.S. has a long history of providing additional protections to such children. For instance, in the early 1960s, U.S. policy allowed for the arrival of nearly 14,000 children from Cuba in Operation Peter Pan. In 1975, Operation Babylift placed an estimated 3,000 orphans from Vietnam with adoptive parents in the U.S. However, during the 1980s, the Immigration and Naturalization Service was accused of severe mistreatment of unaccompanied minors, and lawsuits brought on their behalf eventually led to the 1997 *Flores Settlement* which recognized the vulnerable nature of these children and established national standards for their detention, treatment, and release (Human Rights First 2016).

In the new century, the U.S. Congress began to provide greater legal protections to children entering the United States. *The Homeland Security Act* of 2002 provided the first legal definition of unaccompanied minors as a child, under the age of 18, with no lawful status in the United States who either has no parent or legal guardian in the United States or has no parent or legal guardian in the United States that can care for the child (6 United States Code). *The William Wilberforce Trafficking Victims Protection Act* of 2008 further defined the responsibilities of various government agencies, including Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Office of Refugee Resettlement (ORR), U.S. Citizenship and Immigration Services (USCIS), and the immigration courts with regards to the treatment of unaccompanied minors. Specifically, the act requires that the Department of Homeland Security (DHS) transfer any children to the custody of the Department of Health and Human Services (HHS) within 72 hours of identifying that child as an unaccompanied minor. HHS is then required to place the child "in the least restrictive setting that is in the best interest of the child" (8 United States Code). In addition, unaccompanied minors are not subject to expedited removal, a process that allows the government to deport recent arrivals without the ability to see an immigration judge. Finally, unaccompanied minors are able to make an affirmative asylum claim with USCIS rather than a defensive asylum claim in front of an immigration judge.

Within a few years of passage of the *Trafficking Victims Protection Act*, gang-related violence in Guatemala, El Salvador, and Honduras – together known as the Northern Triangle – lead to a dramatic increase in the numbers of unaccompanied minors seeking refuge in the United States. These countries have been some of the most violent in recent years, with murder rates ranging from 39.9 per 100,000 in Guatemala to 90.4 per 100,000 in Honduras. The increase in violence correlates directly with the increase in the movement of unaccompanied minors to the United States and other countries in the Americas. In FY 2009, CBP apprehended less than 20,000 unaccompanied children, with 82% of those apprehended being from Mexico. In FY 2014, the number of apprehensions peaked at nearly 70,000 –77% of whom were fleeing violence and poverty in the Northern Triangle (Kandel 2017).

The Obama Administration had taken a number of steps to try to counter the influx of immigrant children, and these moves reflected the already contentious nature of the policy debate. On the one hand, the administration established a process at the end of 2014 that would simplify and expedite the process by which children could apply for refugee status from within their home countries and also allowed certain

children to be paroled into the United States. On the other hand, they also took steps to try to deter the movement of children out of their homes by conducting a public relations blitz to let it be known that these children would not be able to find refuge here. Although these steps initially seemed to be effective in stemming the flow, the reality proved to be that these migrations were seasonal and climbed again with the arrival of spring. Although numbers never again reached the peak we saw in 2014, 2016 saw nearly 60,000 apprehensions of unaccompanied minors along the southern border (Kandel 2017).

Unlike the Obama Administration, the Trump Administration's approach to unaccompanied minors has come down heavily on the side of enforcement. In doing so, the administration has shifted from viewing the surge as a humanitarian crisis, and has instead tried to frame this as a border crisis while also implying a connection between these children and gang violence in the U.S., particularly through repeated reference to MS-13. Early on, the Department of Homeland Security adopted a narrow definition of unaccompanied minors that excluded children whose parents were already in the United States. This exposed these children to prolonged detention by ICE and expedited removal and would only allow them to make an asylum claim if they could pass a credible fear interview. DHS also decided to criminally charge parents and other family members in the U.S. with trafficking if they assisted or encouraged their children to come to the United States, even if the children do qualify as unaccompanied minors (Kelly 2017). Soon after, advocates also began seeing a concerted effort to initiate deportation proceedings against undocumented sponsors of unaccompanied minors. In the summer of 2017, the administration eliminated the program that allowed for unaccompanied minors to be paroled into the United States (Yee and Semple 2017). Following a strong public outcry against the way that the administration was treating families seeking refuge, the President issued an executive order on June 20, 2018 that, in part, called on the Department of Justice to seek a modification of the Flores Settlement that would allow for the prolonged detention of children. The Department of Justice filed its motion the following day, but was rejected by Federal District Court Judge Dolly M. Gee in early July. Despite this administration's display of a total lack of empathy, unaccompanied minors are still coming into the United States at a pace well above pre-surge rates; with CBP reporting nearly 26,000 apprehensions of unaccompanied minors in the first half of FY 2018 with no indication of a slowdown (Customs and Border Protection 2018).

Throughout our history, America's approach to immigration has swung wildly from welcoming to demonization, and our approach to unaccompanied minors has unfortunately not been immune to this dynamic. We are currently at a low point in the way that we receive some of the most vulnerable and desperate populations in world, but the mass uproar against the administration's treatment of children at the border is an indication that the American public is beginning to take notice and voice their opposition to the policies of cruelty. The majority of the American public views the arrival of children as a humanitarian crisis, but it is far too early to tell if government policy will respond accordingly or if they will continue to treat this issue as a border crisis.

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