

**Deterrence, Detention, & Deportation:  
Child Migrants in the United States & the European Union**

*by Nicole Johnson*



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# Deterrence, Detention, & Deportation:

## Child Migrants in the United States & the European Union

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Scenes of migrants stranded at the southern borders of the European Union (EU) and the United States (US) have become regular news items over the past few years. In response to the ongoing migration crises, debates on immigration policies have increasingly intensified throughout the western world. Meanwhile, unaccompanied minors and families with young children face dangerous conditions as they attempt to cross the southern borders of the EU and the US. These vulnerable groups ultimately may be detained or held in shelters as their applications for asylum or refugee status are processed. This paper discusses the reception conditions child migrants face in both Europe and the United States and how this is justified, given the international framework to protect child migrants and refugees.

### Migration Crises: A Common Transatlantic Challenge

In the European Union, the increasing influx of migrants attempting to enter the EU via the Mediterranean Sea in recent years has created fears of a growing "migration crisis." In April of this year, this issue came to a head after over 700 migrants drowned when a smuggler boat capsized.<sup>1</sup> Of the refugees crossing the Mediterranean in 2015, over 60 percent were fleeing violence in the Middle East and North Africa.<sup>2</sup> In 2014, 54% of asylum applications submitted by unaccompanied minors were citizens of Syria, Afghanistan, Eritrea, or Somalia.<sup>3</sup> To date, around 180,000 migrants have crossed into Europe via the Mediterranean and over 2,000 have died during the journey.<sup>4</sup> Of these migrants, over 3,000 are unaccompanied minors.<sup>5</sup> In 2014 alone, half of the child migrants entering Italy were unaccompanied. As of 2015, two-thirds of child migrants entering the EU were unaccompanied.<sup>6</sup>

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1 "[Mediterranean migrant deaths: EU faces renewed pressure](#)," BBC News, April 20, 2015.

2 David Mepham, "[David Cameron's rhetoric on the EU migrant crisis is cruel and misleading](#)," The Human Rights Watch, published in The Independent, June 23, 2015.

3 "[Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data \(rounded\)](#)," Eurostat, Code: migr\_asyunaa, July 22, 2015. Applications from Afghanistan, Eritrea, Syria, and Somalia in 2014 totaled 12,480 of the 23,075 total applications for asylum submitted by designated unaccompanied minors.

4 "[Flucht über das Mittelmeer: Mehr als 2000 Flüchtlinge ertrunken](#)," Tageschau, August 4, 2015.

5 "[Migrant Crisis: Thousands Of Unaccompanied Children Arriving in Europe](#)," Save the Children, June 9, 2015.

6 Gemma Parkin, "[The EU can no longer stand by while child migrants are drowning](#)," The

In the summer of 2014, a similar crisis was underway along the US-Mexico border. More than 55,000 families and 57,000 unaccompanied children attempted to cross the southern US border, many of whom were seeking asylum from violence in El Salvador, Guatemala, and Honduras.<sup>7</sup> The crisis on the US border is clearly linked to ongoing conflicts in South and Central America; gang violence, poverty, and instability are amongst the main causes motivating children to risk traveling unaccompanied to the United States rather than remaining at home.<sup>8</sup> The summer of 2014 was a focal point in this debate when protestors in border towns such as Murrieta, California blocked busloads of mostly women and children from entering the United States.<sup>9</sup>

Both the US and European governments are responding to these crises with harsher immigration policies. In the United States, deportation quotas of 400,000 a year have resulted in the expulsion of over 2 million migrants since the beginning of Barack Obama's presidency.<sup>10</sup> Europe has responded to its migrant crisis in a similar manner. The EU is deterring migrants from making the journey across the Mediterranean, most recently with its EUNAVFOR Med program targeting smuggler networks.<sup>11</sup>

### Policy of Deterrence

Deterrence appears to be one of the driving forces behind the ill-treatment of unaccompanied minors in both the US and EU. In the US, several Republican House Members responded to the 2014 migration crisis with calls to deport child migrants seeking refuge from violence in South America.<sup>12</sup> Some policy makers believe that special status for unaccompanied minors will only encourage more migration. In Europe, leaders such as Prime Minister David Cameron have called for an end to the "swarm" of migrants and his government is pushing to end automatic benefits for immigrant

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Guaridan, April 21, 2015.

7 Catholic News Service, "[US advocates applaud court ruling on immigrant detention centres](#)," Catholic Herald, July 29, 2015.

8 Alan Greenblatt, "[What's Causing the Latest Immigration Crisis? A Brief Explainer](#)," NPR News, July 9, 2014.

9 Ibid.

10 Erin Siegal McIntyre, "[Death in the desert: The dangerous trek between Mexico and Arizona](#)," Aljazeera America, March 11, 2014.

11 "[Council launches EU naval operation to disrupt human smugglers and traffickers in the Mediterranean](#)," European Council, Press Release on June 22, 2015.

12 "[Unaccompanied Immigrant Children](#)," CSPAN, June 24, 2014. Representative Mike Rogers of Alabama asked, "Why aren't we putting them on a bus like we normally do and sending them back to Guatemala?... I don't know why these children are being treated any differently." Representative Paul Broun from Georgia was similarly scathing, labeling these child migrants "lawbreakers" and calling for the deportation of all illegal immigrants.

families to signal that the UK is not “a land of milk and honey.”<sup>13</sup>

A policy of deterrence impacts migrants of all ages, including migrant children traveling alone or with family members. These children- whether refugees, asylum-seekers, or economic migrants- often face detention and legal hurdles without any guidance from their family or legal guardians. In practice, the United States is utilizing rushed and inadequate processing in order to deter potential future immigrants.<sup>14</sup> By detaining and expediting the forced return of refugees, the flow of migration can be slowed down if not stopped altogether.<sup>15</sup>

Many human rights organizations have called for reforming the reception system of child migrants in the US and the EU. The United Nations High Commissioner for Refugees (UNHCR) specifically has criticized United States policy which, under the Obama Administration, has decided most child migrants do not qualify for asylum or refugee status in the US.<sup>16</sup> While the majority of children’s claims of refugee or asylum status are rejected in the United States, UNHCR reporting indicates that around 60 percent of child migrants entering the US from Central America have a legitimate claim to refugee status.<sup>17</sup> The UNHCR has also been critical of policies in Europe and has highlighted poor reception conditions of unaccompanied children as one of many migration challenges in the region.<sup>18</sup>

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### Rights of Unaccompanied Minors

A comprehensive international framework outlined by the United Nations exists on how to treat refugees, specifically children. The UNHCR outlines the rights given to unaccompanied minors and discourages the detention of minors, whether they travel alone, are trafficked, or are with family members.<sup>19</sup> The UNHCR has continued to emphasize the rights of children in particular to be protected, especially when child refugees or

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<sup>13</sup> Nicholas Watt and Mark Townsend, “[Concerns raised over plan to strip failed asylum seeker families of benefits](#),” The Guardian, August 2, 2015. These comments were made by UK Home Office Minister James Brokenshire, who stated, “What we are looking at now is family groups which continue to maintain that automatically against a backdrop of people trying to present the UK as somehow the land of milk and honey...”

<sup>14</sup> “[A Humanitarian Call to Action: Unaccompanied Children in Removal Proceedings](#),” American Bar Association, June 3, 2015.

<sup>15</sup> “[Locking Up Family Values, Again](#),” Women’s Refugee Commission, October 28, 2014.

<sup>16</sup> “[Child migrants: Does US have a moral obligation to them?](#),” The Christian Science Monitor, July 19, 2014.

<sup>17</sup> Ibid.

<sup>18</sup> “[2015 UNHCR regional operations profile- Europe](#),” United Nations High Commissioner for Refugees, 2015.

<sup>19</sup> “[Children on the Run: Unaccompanied Childrean Leaving Central America and Mexico and the Need for International Protection](#),” United Nations High Commissioner for Refugees, (Washington, DC: UNHCR, March 2015).

asylum-seekers are “deprived of their family environment.”<sup>20</sup> International legal obligations, however, are not always adhered to in practice. The UNHCR and other international organizations are working to end detention of child migrants and ensure detention is only used in the most necessary of situations and for the shortest amount of time possible.<sup>21</sup> Despite these efforts, temporary detention of child migrants is still a common practice throughout the world.<sup>22</sup>

In the United States, unaccompanied minors under the age of 18 can be detained for up to 72 hours in a facility separate from adults, in order to check the child’s documentation and evaluate his or her age.<sup>23</sup> This act of temporarily detaining children has been upheld by the US Supreme Court, although this idea continues to be challenged by human rights groups.<sup>24</sup> After this initial processing, child migrants must be sent to an “appropriate” facility, but only after officials have determined that the child meets the definition of an unaccompanied child.<sup>25</sup>

Detention policies are much less harmonized throughout the EU, which is further complicated by the Dublin II regulation. The Dublin regulation requires refugees to apply for asylum in the EU country of their first entry.<sup>26</sup> However, a 2013 ruling by the EU Court of Justice allows for unaccompanied children to remain in the last country they apply for asylum- even if it is not the country of first entry- if it is deemed to be in the best interest of the child.<sup>27</sup> Unlike the United States, EU Member States have also ratified the UN Convention on the Rights of the Child, which prevents discrimination against migrant children.<sup>28</sup> Despite this, unaccompanied migrant children still face detention in Europe.

### Detention Methods

If migrant children safely reach the EU or US border, they often face obstacles preventing them from being treated appropriately given their age and circumstances. Migrants who are minors may be falsely categorized as adults in order to be processed as such. In Greece, some children have

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<sup>20</sup> Ibid.

<sup>21</sup> [“Global Strategy- Beyond Detention 2014-2019,”](#) United Nations High Commissioner for Refugees, 2015.

<sup>22</sup> Ibid.

<sup>23</sup> Amanda Levinson, [“Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions,”](#) Migration Policy Institute, January 24, 2011.

<sup>24</sup> Ibid.

<sup>25</sup> [“Step-by-Step Guide on Apprehension and Detention of Juveniles in the United States,”](#) Women’s Refugee Commission, July 3, 2014.

<sup>26</sup> [“Factsheet- “Dublin” cases,”](#) European Court of Human Rights, January 2015.

<sup>27</sup> [“Best interests of the child and the Dublin System \(C-648/11\),”](#) European Law Blog, August 5, 2013. For the CJEU ruling in its entirety, please see [MA & Others vs. UK](#).

<sup>28</sup> [“Caught in a Net: Unaccompanied Migrant Children in Europe.”](#) Human Rights Watch, 2012.

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been registered as adults even when they have documentation stating their age under 18.<sup>29</sup> Other EU member states have lowered the threshold of adulthood from 18 to 16 years old.<sup>30</sup> In Malta- the most extreme example- any refugee who is not “visibly” a child, or around the age of twelve, may be processed as an adult.<sup>31</sup> Child migrants in the United States who do not have documentation are assessed through a physiological and psychological exam, which risks misclassifying minors as adults.<sup>32</sup> Minors illegally entering the US who turn 18 years old shortly after being processed may have their applications delayed so that they can be processed as adults instead of children once they turn of age.<sup>33</sup> This misclassification denies these children their identity and rights as a child under the UN Convention on the Rights of the Child.<sup>34</sup>

Even if a migrant is properly identified as a child, he or she may face extended detention and isolation. The average stay in a shelter for a child in the US is 45 days, after being detained for the 72 hour initial processing period (or longer).<sup>35</sup> In some cases, children have reportedly been detained longer than the legally mandated 72 hour rule, sometimes for weeks, due to delays in processing, transportation, or overcrowding in long-term detention facilities.<sup>36</sup> In extreme cases, child migrants in the US may be separated from their family for months or even years.<sup>37</sup> The American Civil Liberties Union has also received complaints within the US of children being denied medical care, lacking diapers, children being strip-searched, and US border personnel shackling or restraining children.<sup>38</sup>

Detention of minors similarly occurs throughout the European Union. While the Council of Europe has recognized that many Member States are working to end detention of child migrants, the practice has been reported to continue in many parts of the EU.<sup>39</sup> In Greece, pregnant mothers, minors,

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29 Greek Council for Refugees, “[Grounds for Detention: Greece](#),” Asylum Information Database, 2014.

30 Levinson, “[Unaccompanied Immigrant Children](#),” Migration Policy Institute.

31 [Caught in a Net](#)” Human Rights Watch.

32 Levinson.

33 Greek Council for Refugees, “[Detention Conditions: Greece](#),” Asylum Information Database, 2014.

34 “[What is the Convention on the Rights of the Child?](#)” UNICEF.

35 Alicia A. Caldwell, “[Border Patrol resources stretched thin as children illegally enter U.S. alone](#),” PBS Newshour, June 5, 2014.

36 “[Step-by-Step Guide on Apprehension and Detention of Juveniles in the United States](#),” Women’s Refugee Commission.

37 “[Family Unity](#),” Lutheran Immigration and Refugee Service, Last updated July 2015.

38 “[Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention](#),” American Civil Liberties Union, June 11, 2014.

39 “[The alternatives to immigration detention of children](#),” Council of Europe, Sept. 15, 2014.

The Council of Europe specifically praised eight Member States in its report: Belgium, Denmark, France, Hungary, Ireland, Italy, the Netherlands and the United Kingdom.

and infants have been kept for five days in immediate detention before their referral to reception centers.<sup>40</sup> In the Czech Republic, minors over the age of 15 may legally be detained.<sup>41</sup> Even in France and in French Overseas Departments and Territories, children and families are detained in administrative holding centers despite condemnation by the European Court of Human Rights.<sup>42</sup>

Arguably, detention in and of itself is a traumatic experience for families and especially for unaccompanied minors.<sup>43</sup> Prolonged detention can especially be traumatic for children and can be a means to discourage children from applying for asylum or seeking legal protection.<sup>44</sup> Detention also limits the legal resources available for children and families, especially in the case of remote detention centers, such as in southern Texas.<sup>45</sup>

### Legal Counsel, Guardianship, and Family Unification

Child migrants have the right to both a guardian and legal counsel under the Convention on the Rights of the Child.<sup>46</sup> While the EU requires all child migrants to be formally assigned a guardian, many children report having absent guardians.<sup>47</sup> In France, for example, around 30 percent of children in 2008 reportedly never met with their appointed guardian, in part because they were deported before said guardian met with them and challenged their deportation or detention.<sup>48</sup> In Greece, Public Prosecutors are appointed temporary guardians of unaccompanied migrants but a lack of resources and social workers often leads to minors in Greece being unrepresented.<sup>49</sup>

In the US, children often lack legal representation and are dependent on nonprofit organizations or pro-bono services to represent them during their immigration process.<sup>50</sup> <sup>51</sup> This results in the majority receiving no legal counsel at all.<sup>52</sup> More than two thirds of child migrants with pending

**Prolonged detention can especially be traumatic for children and can be a means to discourage children from applying for asylum or seeking legal protection.**

40 Greek Council for Refugees, "[Grounds for Detention: Greece](#)."

41 "[The Hidden Face of Immigration Detention Camps in Europe](#)," Open Access Now, October 2014.

42 Ibid. For the case brought to the ECHR, see [Popov V. France](#).

43 "[Locking Up Family Values, Again](#)," Women's Refugee Commission.

44 "[Children on the Run](#)," United Nations High Commissioner for Refugees.

45 "[Stop Detaining Families](#)," National Immigrant Justice Center, 2015.

46 United Nations, "[Treatment of Unaccompanied and Separated Children Outside Their Country of Origin](#)," Convention on the Rights of the Child September 1, 2005.

47 "[Caught in a Net](#)" Human Rights Watch.

48 Ibid.

49 Andriani Fili, "[Unaccompanied Minors in Greece: Passing on the Responsibility](#)," Border Criminologies Blog, (University of Oxford: December 3, 2014).

50 Levinson, "[Unaccompanied Immigrant Children](#)," Migration Policy Institute.

51 Jayashri Srikantiah and Lisa Weissman-Ward, "[The Immigration "Rocket Docket": Understanding the Due Process Implications](#)," Stanford Lawyer, August 15, 2014.

52 Levinson, "[Unaccompanied Immigrant Children](#)," Migration Policy Institute.



Lack of legal representation and guardians to help unaccompanied minors navigate the immigration process keeps these children in “legal limbo.”

cases lack legal representation.<sup>53</sup> While a child with legal representation is allowed to remain in the United States around 50 percent of the time, unaccompanied minors without an attorney are deported over 75 percent of the time.<sup>54</sup> This lack of legal representation and guardians to help these unaccompanied minors navigate the immigration process keeps these children in “legal limbo.”<sup>55</sup>

In the United States, child migrants have also been processed in an accelerated manner which does not guarantee a fair assessment of asylum or refugee applications. In order to process the influx of child migrants during the summer of 2014, the Obama Administration relied upon the use of “surge dockets,” in which dozens of children are processed in court together.<sup>56</sup> This expedited and mass processing of refugees and migrants often results in rushed decisions that do not reflect the individual needs and circumstances for child migrants.<sup>57</sup>

The United States and the EU differ on whether to make family reunification of unaccompanied minors a priority. A recent US federal court decision has held that children should, whenever possible, be released to a parent instead of a court-appointed guardian or community sponsor.<sup>58</sup> In the EU, the ultimate priority has been reunifying child migrants with their family—even if they travelled unaccompanied and are applying for asylum separately from their parents.<sup>59</sup> This priority on family reunification, however, can lead to unaccompanied minors with no recognized family in the EU being sent back to their country of origin.<sup>60</sup> Family reunification may be prioritized even when immigration officials are unable to determine that the child will be returning to a safe environment or secure family life.<sup>61</sup>

### A Silver Lining

Over the past years, the United States and the EU have both worked to improve the conditions in which families and unaccompanied minors are detained. A large family-only facility was built in 2014 in Dilley, Texas in order to process mothers and children separate from male

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53 Diego Quezada, “[Children Fleeing Central American Violence Need Access to Lawyers](#),” Center for American Progress, August 7, 2014.

54 Srikantiah and Weissman-Ward, “[The Immigration “Rocket Docket”](#)” Stanford Lawyer.

55 “[Caught in a Net](#)” Human Rights Watch.

56 Kirk Semple, “[In Court, Immigrant Children Are Moved to Head of Line](#),” The New York Times, August 14, 2014.

57 David M. Hernández “[Unaccompanied Child Migrants in “Crisis”: New Surge or Case of Arrested Development?](#)” Harvard Journal of Hispanic Policy 27 (2015).

58 “[US: Release Detained Migrant Children, Mothers](#),” Human Rights Watch, July 27, 2015.

59 “[Dublin Regulation](#),” European Council on Refugees and Exiles.

60 [Caught in a Net](#)” Human Rights Watch.

61 Ibid.

adult migrants.<sup>62</sup> However, while the Obama Administration has lauded this effort to house immigrant children and families, human rights and religious organizations and policy makers have criticized the move, arguing any confinement contributes to the abuse of women and child migrants.<sup>63</sup> In response, the Department of Homeland Security has made it easier for women and children to be released.<sup>64</sup> On July 24, 2015, a US federal court strengthened this policy by ruling that children and families should not be held in prison-like facilities and should be released if they do not pose a security risk.<sup>65</sup> This resulted in the immediate release of nine women and their children, without bond or ankle monitors.<sup>66</sup> A US district court has also ruled this year that deterrence of future migrants cannot be a factor when considering whether to detain families seeking asylum.<sup>67</sup> The Department of Homeland Security has since changed its policy to disallow deterrence as a factor for setting bonds.<sup>68</sup>

**As a guiding principle, policy makers, politicians, and immigration officials in the US and the EU should treat child migrants as minors first, refugees second.**

In Italy, unaccompanied minors are now separated from adults in shelters, thereby following the recommendation of human rights groups lobbying for the provision of special services and facilities suitable for children.<sup>69</sup> However, these shelters only provide basic shelter, clothing, and meals and lack specialized resources for migrant children.<sup>70</sup> Further, NGOs in Greece are now helping to run 12 different reception facilities for minors.<sup>71</sup> MPs in the European Parliament have also called for the Dublin Regulation to be reworked to clearly guarantee children can process their asylum applications in the Member State they are residing in.<sup>72</sup> Whether these policies result in a fairer, more humane, and more accommodating immigration process for unaccompanied minors is yet to be seen.

As a guiding principle, policy makers, politicians, and immigration officials in the US and the EU should treat child migrants as minors first, refugees second. This means that clear standards for classifying migrants as minors should be adhered to- including all refugees, asylum-seekers, and

62 "[Locking Up Family Values, Again](#)," Women's Refugee Commission

63 Julia Preston, "[Hope and Despair as Families Languish in Texas Immigration](#)," The New York Times, June 14, 2015.

64 Preston, "[Hope and Despair](#)," The New York Times

65 "[US: Release Detained Migrant Children, Mothers](#)," Human Rights Watch

66 Elise Foley, "Family Immigrant Detention Ruling Already Having A 'Groundbreaking' Effect For Women And Children," The Huffington Post, July 27, 2015.

67 "Practice Advisory," American Civil Liberties Union, February 23, 2015.

68 Preston, "[Hope and Despair](#)," The New York Times

69 Steve Scherer, "[Insight - Migrant children test Europe as Mediterranean crisis worsens](#)," Reuters, April 16, 2015.

70 Ibid.

71 Fili, "[Unaccompanied Minors in Greece: Passing on the Responsibility](#)," Border Criminologies Blog

72 "[Unaccompanied minors' asylum applications: process where the kids are, say MEPs](#)," European Parliament, Press Release on June 6, 2015.

migrants under the age of 18 years old. Child migrants should not be processed in the same manner as adults, given that children have very different medical, psychological, and safety needs than adults. Every child migrant has a right, under international law, to legal counsel and safe reception conditions that cater to the unique needs of minors. Only in this way can the US and European governments ensure that unaccompanied minors, regardless of their reasons for migrating, are treated with the rights they deserve.

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