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El Salvador, Guatemala, Honduras, and Mexico: Laws Governing Travel of Unaccompanied Minors

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Norma C. Gutiérrez
Senior Foreign Law Specialist

Gustavo Guerra
Senior Foreign Law Specialist

I. Introduction

This report examines the laws of Mexico and three Central American countries—El Salvador, Guatemala, and Honduras—governing travel outside the country of unaccompanied minors. As discussed below, each of the four countries have laws in place to ensure that minors have the requisite parental or equivalent authority before commencing such travel, although the details of the laws differ. Enforcement of these laws is conducted at official border crossing points. Exiting these countries without following the prescribed procedures constitutes an offense. The fact of a minor’s illegal travel abroad does not appear to be a complicating factor for his/her readmission to the home country.

II. Country Surveys

El Salvador

Requirements for the authorization of “children and adolescents” to leave El Salvador are found in articles 43 and 44 of the Law on Comprehensive Protection of Childhood and Adolescents.¹ Article 3 of the Law states that “[a] child is a person from the very moment of conception up to age twelve and an adolescent is a [person] between twelve and eighteen years of age.”² Article 1 states that both children and adolescents enjoy all the rights and protections granted by the same Law.³

Under article 44, children and adolescents traveling alone or with third parties are required to have authorization from their parents or legal guardians issued before a notary public, or a document authorized by the State’s Attorney (Procurador General de la República) or his delegates for this purpose. Children and adolescents can travel outside the country accompanied by both parents or by one of them, but in the latter case the authorization of the parent who is not traveling must be obtained and such authorization must be issued before a notary public or in a document authorized by the State’s Attorney. When the father or the mother unreasonably

¹ Ley de Protección Integral de la Niñez y Adolescencia, DIARIO OFICIAL, Apr. 16, 2009, *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia> (click on “Descargar” for PDF version).

² *Id.* art. 3. (translation by the author, N.G.).

³ *Id.* art. 1.

refuses to give the corresponding authorization, it may be granted by the court through a summary process. In any case, the authorization must contain the following information:

- The relevant information pertaining to the birth certificate and the passport of the child or adolescent;
- The name, family name, age, profession or trade, domicile, and ID document of the person who will travel with the child or adolescent; and
- An indication of the place where the child or adolescent will travel and the time that her or she will spend overseas.⁴

Article 43 prohibits the illegal moving out and retention of minors even with parental or equivalent authority.⁵

The website of the General Directorate of Migration and Aliens Issues (Dirección General de Migración y Extranjería) states that the parents' or legal guardian's authorization issued before a notary public must be reviewed by the Central Office of Migration and Aliens Issues in San Salvador, and must be presented along with the passport and birth certificate of the minor and an official ID (Documento Único de Identidad) or passport of the minor's parents or of the person who will travel with the minor.⁶

Guatemala

Requirements for the authorization of minors to leave Guatemala are found in the country's Migration Law, which prohibits travel outside of the country by any Guatemalan regardless of age without a properly obtained, government issued passport.⁷ The Guatemalan Civil Code defines "adults" as those who have reached the age of eighteen; minors are thus below that age.⁸

To issue a passport to a minor child born of a marriage or de facto union, the written consent of the father and mother or the child's legal representative is required, and such consent must be granted before the appropriate authority. When one of the parents is not present, the parent that is present must prove that the consent of the absent parent was granted in either an unofficial writing (*document privado*) with the authenticated signature of the parent, or in a notarized document (*escritura pública* or *acta notarial*). The authorization of a parent who is out of the country can be granted before the local Guatemalan Consulate or before a Guatemalan notary

⁴ *Id.* art. 44.

⁵ *Id.* art. 43.

⁶ *Requisitos para que los Niños, Niñas y Adolescentes Puedan Salir del País*, DIRECCIÓN GENERAL DE MIGRACIÓN Y EXTRANJERÍA, http://www.migracion.gob.sv/index.php?option=com_content&view=article&id=69:aviso-del-ciudadano-1&catid=25:avisos-ciudadano&Itemid=76 (last visited July 16, 2014).

⁷ Ley de Migración, Decreto 95-98 of Nov. 26, 1998, art. 50, DIARIO DE CENTRO AMÉRICA (Dec. 23, 1998), <http://old.congreso.gob.gt/archivos/decretos/1998/gtdcx95-1998.pdf>.

⁸ Código Civil, Decreto Ley No. 106, art. 8 (IUS Ediciones, Guatemala, 2012).

public, as established in the Act of the Judicial Branch.⁹ If one of the parents refuses to give his/her authorization, the court decides the issue based on the justification presented.¹⁰

The Regulation of the Migration Law¹¹ provides a long list of required information and documents that must be presented to the General Directorate of Migration when requesting a passport for a minor, such as documentation containing the name, sex, place and date of birth, physical characteristics, and fingerprints of the child; the child's birth certificate; and the names, ID card number and passport number of his/her parents.¹² In the case of absence or death of one or both parents, or when parental authority is exercised by another person, the child's passport application must be signed by the person attesting to the exercise of parental authority or guardianship.¹³

Under the Migration Law, a public servant who permits any person to leave the country without the required documentation is subject to the sanctions prescribed in the Penal Code concerning public servants who do not comply with their duties.¹⁴

Honduras

The information presented below with regard to the laws of Honduras represents the only information available at the present time. It is possible that more recent laws or regulations not available through normal channels have been issued.

Requirements for the authorization of minors to leave Honduras are found in the country's Code of Childhood and Adolescence.¹⁵ Minors are defined as persons up to the age of eighteen.¹⁶

The Code of Childhood and Adolescence mandates that minor children can only leave the country if accompanied by their father, mother, or legal representative, or by the person who has the appropriate written authorization showing that one of these individuals has provided authorization. If parental authority (*patria potestad*) is exercised over the child by both parents and only one of the parents accompanies the child during the trip, the other parent's written authorization is required.¹⁷

⁹ Ley del Organismo Judicial, Decreto No. 2-89 of January 10, 1989.

¹⁰ Ley de Migración, Decreto 95-98 of Nov. 26, 1998, art. 53.

¹¹ Reglamento de la Ley de Migración, DIARIO DE CENTRO AMÉRICA, July 29, 1999, <http://old.congreso.gob.gt/archivos/acuerdos/1999/gtagx5291999.pdf>.

¹² *Id.* art. 49.

¹³ *Id.* art. 50.

¹⁴ Ley de Migración, Decreto 95-98 of Nov. 26, 1998, art. 94.

¹⁵ Código de la Niñez y la Adolescencia, Decreto No. 73-96, LA GACETA, Sept. 5, 1997, available at http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf, as amended by Decree 35-2013, LA GACETA, Sept. 6, 2013, available at <http://www.rnp.hn/wp-content/uploads/2014/01/Decreto-352013-Reformas-Codigo-de-la-Ninez-y-Adolescencia.pdf>.

¹⁶ *Id.* art. 1.

¹⁷ *Id.* art. 101.

Requirements for the authorization of minors to leave the country are also found in the Law on Migration and Aliens Issues,¹⁸ which states that to leave the territory of the Republic, Hondurans must obtain a passport or in special cases another travel document issued by the appropriate authority (*por autoridad competente*).¹⁹ Under article 85 of this Law, any person leaving the country must do so at a port of exit that the country has officially established, carrying the necessary documentation and submitting him/herself to immigration control. Minors who intend to leave the country must travel accompanied by the persons who exercise parental authority (*patria potestad*) or guardianship over them, or by a person who has legally demonstrated that the minor has been authorized to leave the country by the persons who have parental authority or guardianship.²⁰

The Regulation of the Migration Law states that to request a passport for a minor, both parents or the parent who exercises parental authority, or persons exercising guardianship or legal representation must provide the required documentation listed in the regulation, such as the personal ID card of the minor, the requester's authorization for issuance of a passport to the child, any previous passport issued to the minor, and a receipt indicating payment for the passport in an authorized bank.²¹

The Law on Migration and Aliens Issues imposes a fine on a person who enters or leaves the country through an official port of exit without submitting him/herself to immigration control, or who leaves the country through a port that has not been established as an official port of exit.²²

Mexico

Article 49-II of Mexico's Law of Migration provides that "children and adolescents" who exit Mexico traveling alone must show their passport and documentation proving that they have received authorization from those who hold parental authority or custody. This documentation must consist of either a notarized document or a permit issued by Mexico's immigration authorities at the parent or custodian's request.²³ While the specific age group encompassed by the phrase "children and adolescents" is not defined by the above-referenced article of the Law of Migration, Mexico's Federal Civil Code provides that the age of majority is eighteen.²⁴

¹⁸ Ley de Migración y Extranjería, Decree No. 208-2003, LA GACETA, Mar. 3, 2004.

¹⁹ *Id.* art. 67.

²⁰ *Id.* art. 85.

²¹ Reglamento de la Ley de Migración y Extranjería art. 97, LA GACETA, May 3, 2004.

²² Ley de Migración y Extranjería, Decree No. 208-2003, arts. 101(5) & 104(1).

²³ Ley de Migración [Law of Migration], *as amended through* June 2013, art. 49-II, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], May 25, 2011, available on the website of Mexico's House of Representatives, at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf>; *see also Preguntas Frecuentes salida menores (SAM) [Frequently Asked Questions on the Exit of Minors]*, INSTITUTO NACIONAL DE MIGRACIÓN [NATIONAL INSTITUTE OF MIGRATION], <http://www.inm.gob.mx/index.php/page/FAQ-salida-de-menores> (last updated Apr. 16, 2014).

²⁴ CÓDIGO CIVIL FEDERAL [FEDERAL CIVIL CODE] *as amended through* 2013, art. 646, D.O., May 26, July 14, Aug. 3 & 31, 1928, http://www.diputados.gob.mx/LeyesBiblio/pdf/2_241213.pdf.

The application for the permit provided by immigration authorities, without which the minor cannot depart Mexico, must be filled out online by the parents or custodians of the child and printed in triplicate—one copy for immigration authorities, another for the company that will transport the minor, and another to be kept by the applicant.²⁵ The printed application must be presented to immigration authorities by the parents or custodians, along with the following documentation:

- the passports of the child and custodian(s),
- the child’s birth certificate (in order to prove his/her family ties with the person who has authorized exit from Mexico),
- the government-issued identification cards of the parents or custodians, and
- three copies of all these documents.²⁶

Immigration authorities then conduct a review to ensure that the copies are identical to their originals. If all of the documents are in order, they keep a copy of them and stamp the exit permit on the copies of the application. One of the stamped copies of the application is provided to the company that will transport the minor, while another is kept by the applicant and must be presented at the time of his/her return to Mexico.²⁷ Unaccompanied Mexican minors who are deported to Mexico from another country are not required on their return to Mexico to present an exit permit or documentation proving that they received authorization to travel alone from those who hold parental authority or custody.²⁸ Transportation companies that allow unaccompanied minors to depart Mexico without proper documentation are subject to a fine.²⁹

²⁵ INSTITUTO NACIONAL DE MIGRACIÓN, *supra* note 23.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Reglamento de la Ley de Migración [Regulation of the Law of Migration], *as amended through* May 2014, art. 42(II), D.O., Sep. 28, 2012, available on the website of Mexico’s House of Representatives, at http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LMigra.pdf.

²⁹ *Id.* art. 247.