

Legal Requirements for Travel by Unaccompanied Minors

El Salvador • Guatemala • Honduras • Mexico

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Comparative Summary

This report provides a review of the domestic laws and procedures regulating the travel of children abroad in El Salvador, Guatemala, Honduras, and Mexico—countries of origin for the majority of unaccompanied children caught crossing the United States border in 2012–2014. The report concludes that the migration legislation of all of the countries surveyed requires parental authorization for all minors traveling outside of the country. The laws of Mexico and Guatemala make possession of a passport a mandatory requirement for travel, and Honduran law prohibits the travel of unaccompanied minors. Procedures for the issuance of parental authorizations and submission of passport applications are discussed in the individual country surveys.

El Salvador

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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.

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 Attorney³ 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 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
- An indication of the place where the child or adolescent will travel and the time that her or she will spend overseas⁴

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 Issues⁶ states that the parents’ or legal guardian’s authorization issued before a notary public must be reviewed by the Central

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 Translation by the author, N.G.

³ Procurador General de la República.

⁴ *Id.* art. 44.

⁵ *Id.* art. 43.

⁶ Dirección General de Migración y Extranjería.

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 ID⁷ or passport of the minor's parents or of the person who will travel with the minor.⁸

⁷ Documento Único de Identidad.

⁸ *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).

Guatemala

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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.¹ The Guatemalan Civil Code defines "adults" as those who have reached the age of eighteen; minors are thus below that age.²

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 public, as established in the Act of the Judicial Branch.³ If one of the parents refuses to give his/her authorization, the court decides the issue based on the justification presented.⁴

The Regulation of the Migration Law 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.⁵

¹ 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>.

² Código Civil, Decreto Ley No. 106, IUS Ediciones, Guatemala, 2012.

³ Ley del Organismo Judicial, Decreto No. 2-89 of January 10, 1989.

⁴ Ley de Migración art. 53.

⁵ Reglamento de la Ley de Migración arts. 49–51, DIARIO DE CENTRO AMÉRICA, July 29, 1999, <http://old.congreso.gob.gt/archivos/acuerdos/1999/gtagx5291999.pdf>.

Honduras

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The information presented below with regard to the laws of Honduras represent 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.¹ Minors are defined as persons up to age eighteen.²

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.³

Requirements for the authorization of minors to leave the country are also found in the Law on Migration and Aliens Issues,⁴ 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*).⁵ 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.

The Regulation of the Migration Law states that to request a passport for a minor, the parents who exercise parental authority, or persons exercising guardianship or legal representation must provide the required documentation listed in the regulation.⁶

¹ 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>.

² *Id.* art. 1.

³ *Id.* art. 101.

⁴ Ley de Migración y Extranjería, Decree No. 208-2003, LA GACETA, Mar. 3, 2004.

⁵ *Id.* art. 67.

⁶ Reglamento de la Ley de Migración y Extranjería art. 97, LA GACETA, May 3, 2004.

Mexico

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Mexico's Law of Migration provides that "children and adolescents" who exit Mexico traveling alone must show their passport and documentation proving that authorization is granted by those who hold parental authority or custody, either in a permit issued by Mexico's immigration authorities at the parent or custodian's request or in a notarized document.¹ 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.²

The application for the permit³ must be filled out online 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.⁴

The printed application must be presented to immigration authorities along with the passport of the child and custodian(s), his/her birth certificate (in order to prove his/her family ties with the person who has authorized exit from Mexico), and the government-issued identification cards of the parents or custodians, as well as copies of all these documents.⁵ Immigration authorities then conduct a review to ensure that the copies are identical to their originals, and if so, they keep a copy of all the documentation and stamp the permit on another copy of the application that is kept by the applicant and that must be presented at the time of return to Mexico.⁶

¹ Ley de Migración [Law of Migration], *as amended through June 2013*, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], May 25, 2011, art. 49-II, available on the website of Mexico's House of Representatives, <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf>; see also *Preguntas Frecuentes salida menores (SAM)* [Frequently Asked Questions on 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).

² Código Civil Federal, *as amended*, art. 646, D.O., May 26, 1928, http://www.diputados.gob.mx/LeyesBiblio/pdf/2_241213.pdf.

³ The application is available on the website of Mexico's National Institute of Migration, at http://www.inm.gob.mx/index.php/page/autorizacion_menores (last visited July 16, 2014).

⁴ INSTITUTO NACIONAL DE MIGRACIÓN, *supra* note 1.

⁵ *Id.*

⁶ *Id.*