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# Protecting Children? Assessing the Treatment of Unaccompanied Minors in the U.S.

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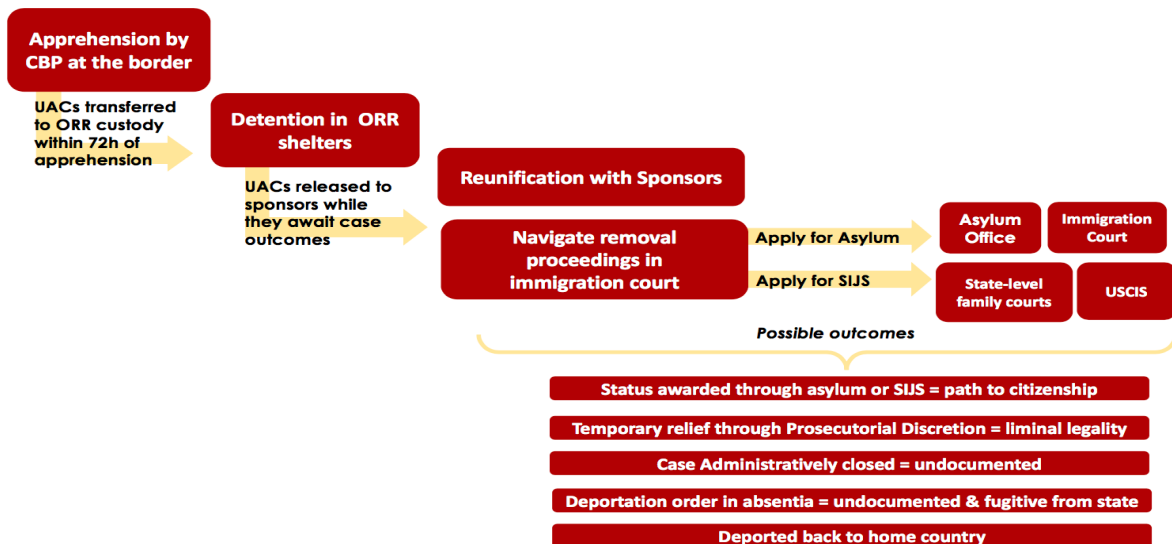
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## PROTECTING CHILDREN? ASSESSING THE TREATMENT OF UNACCOMPANIED MINORS IN THE US

The US is the only country that never ratified the Convention on the Rights of the Child (CRC)<sup>1</sup>. Nonetheless, “best interest of the child” standards exist in US immigration law, including protections for the specific sub-category of immigrant children who are the subject of this report, those who meet the legal definition of **“Unaccompanied Alien Child” (UAC)**:

*an individual with no lawful immigration status, under age eighteen, for whom no parents or legal guardians are available in the US to provide care and physical custody (6 U.S.S 279(g)(2).*

To be classified as UACs, youths must be unaccompanied by parents or legal guardians *at the moment of apprehension*, which usually occurs at the US-Mexico border. This legal classification is consequential as it facilitates access to legal status and structures the experiences of UACs who, compared to other undocumented immigrants, interact more intensively with the different branches of the US immigration bureaucracy since they first enter the country. The figure below summarizes the different stages of the process UACs navigate, the bureaucracies they interact with, and the possible outcomes of their humanitarian petitions to avoid deportation.



## DATA & METHODS

Between January and August 2017, I carried out n=21 semi-structured interviews with Central American minors who migrated to the US from 2012 to 2017 without parents or legal guardians. All were apprehended at the US-Mexico border, classified as UACs, placed in the custody of the Office of Refugee Resettlement (ORR). Upon release to family members, they applied for relief from deportation in Los Angeles county (LA) through one or more of the following policies: asylum (n=19); special immigrant juvenile status (SIJS) (n=3); or the T-Visa for victims of trafficking (n=1). Youths were interviewed at different stages of the legal process: some had been awarded status; others were awaiting decisions on their petitions; some had been denied and were appealing their cases. Interviews focused on: migration decision-making; youths' perceptions of interactions with US institutions and the legal process; post-release experiences of school and/or work and family life; coming of age goals and future aspirations. Participants were recruited through legal and social service providers working with this population in LA.

**Table 1. Sample description**

<u>Country of origin</u>	<u>Gender</u>		<u>Age at interview</u>		<u>Age at entry</u>		<u>ORR sponsor</u>		<u>Occupation</u>		
El Salvador	7	Male	13	18 +	13		Parent/s	11	Studying	13	
Honduras	5	Female	8	15-17	9	15-17	17		Working	5	
Guatemala	8					12-14	4	Other	10	Both	3
Mexico	1							family			

This interview data builds on analysis of legal and policy documents and extensive ethnographic fieldwork carried out from January 2015 to April 2017 at a legal aid organization in LA, during which I observed attorneys meet with youths to determine eligibility for humanitarian reliefs and participated in case preparation, spending several hours with dozens more UACs and their families, and following certain cases through multiple stages of the legal process.

## US POLICIES PROTECTING UNACCOMPANIED MINORS

**1990 Public Law No. 101-649** introduced the “best interest of the child” principle in immigration law for the first time, creating SIJS. This legislation emerged as a “cleanup measure” when child welfare advocates in Santa Clara County, California confronted obstacles when applying for amnesty under the Immigration Reform and Control Act on behalf of the minors dependent on the County, due to lack of parental permission<sup>ii</sup>. SIJS provided a path to legal status for undocumented children dependent on a juvenile court and eligible for long-term foster care due to abandonment, abuse or neglect of *both* parents, in cases when return to the country of origin was not in the child’s best interest. Due to the relative obscurity of the new law, restrictiveness of eligibility criteria, and conflicts in interpretation of competencies between state and federal agencies, few applications were filed during the first several years of this measure’s existence. Today, however, it has evolved into a significant protection for undocumented child-migrants otherwise ineligible for legal status.

**1997 Flores Settlement.** Central American unaccompanied minors first migrated to the US fleeing violence and civil war in the 1980s and 1990s. During this period, the border patrol apprehended from 2,000 to 5,000 unaccompanied minors annually and an estimated twice as many entered the US undetected<sup>iii</sup>. In 1984, the Immigration and Naturalization Services (INS) began to detain unaccompanied children instead of releasing them to family members to await the outcomes of immigration proceedings as it had previously done<sup>iv</sup>. Civil society challenged this punitive policy in a legal battle that would culminate in the 1997 Flores Settlement, a victory for child protection that established “best interests” principles for detaining minors, mandating the federal government to hold them in “the least restrictive setting” and promptly release them to family members. This ruling applies to all migrant children, both accompanied and

unaccompanied. However, yet it has been implemented inadequately in the former case, and litigation is currently in course to challenge current family detention practices<sup>v</sup>.

**2002 Homeland Security Act** established the UAC legal category and eliminated the INS, substituting it with the Department of Homeland Security (DHS). Competency for the detention of children shifted from the INS to ORR, resolving prior problems resulting from the conflicting mandates of the INS, which both detained immigrant children and decided whether to grant them protection from deportation through SIJS, thus limiting access to this relief in practice<sup>vi</sup>.

**2008 Trafficking Victims Protection Act** (TVPRA) expanded SIJS eligibility by eliminating the language on foster care and extending relief to children abandoned, abused or neglected by *only one parent*. Further, it granted UACs from non-contiguous countries access to US territory, exempting them from credible fear screenings and expedited removal at the border. However, Mexican youths, who historically constituted the biggest group of independent child migrants to the US, are excluded from these protections, reflecting the restrictive nature of child protection regimes in US immigration law. CBP screens Mexican minors to determine whether they are victims of trafficking or have a credible fear of persecution. If so, they should be transferred to ORR, yet reports have shown that the screening of Mexican children at border is inadequate and most are sent back through so-called “voluntary return”<sup>vii</sup> even though their lives may be in danger. This officially encoded discrimination based on nationality in the protections offered to different categories of child-migrants in the US constitutes a violation of article 2 of the CRC, which prohibits discriminatory treatment of children based on country of birth and other grounds. Finally, TVPRA established that UACs can apply for asylum at the asylum office through non-adversarial interviews, unlike other apprehended immigrants who apply through an adversarial

adjudication process in immigration court. These due process protections result in higher odds of winning asylum cases for youths<sup>viii</sup>.

**May 28<sup>th</sup> 2013 USCIS memorandum** established that the asylum office must accept the initial determination of UAC status without making ulterior factual inquiries into the applicants' age or unaccompanied status. This was an important change because ORR releases most UACs to family members while they await the outcomes of their petitions, in accordance to the 1997 Flores Settlement. The asylum office may no longer revoke these minors' preferential access to the affirmative asylum application, even when they reunite with parents or turn 18.

### **THE 2014 "HUMANITARIAN CRISIS"**

In the Summer of 2014, the Obama administration declared that a "humanitarian crisis" was underway as unprecedented numbers of Central American unaccompanied minors and family units were apprehended at the US-Mexico border. In 2014, UACs from the Northern Triangle (Guatemala, El Salvador, Honduras) first surpassed Mexicans and have since constituted the vast majority of the inflow. While the surge in UAC arrivals, which can be traced back to 2012, surpassed the inflows of the 1980s/90s and effectively placed a stress in available resources at ORR and the immigration bureaucracies that adjudicate children's claims, it is worth noting that the administration's crisis framing is, at least in part, also the result of a "moral panic."<sup>ix</sup> Indeed, these arrivals constitute little more than a ripple in overall numbers of immigrants apprehended at the border (486,651) and those admitted legally during that same year (e.g. 1,016,518 immigrants obtained green cards - 535,126 adjustment of status and 481,392 new arrivals - and 69,975 refugees were admitted through the resettlement process).

**Table 2. Apprehensions of "Unaccompanied Alien Children" (UAC) FY 2009-2017**

	2009	2010	2011	2012	2013	2014	2015	2016	2017*
El Salvador	1,221	1,910	1,394	3,314	5,990	16,404	9,389	17,512	9,143
Guatemala	1,115	1,517	1,565	3,835	8,068	17,057	13,589	18,913	14,827
Honduras	968	1,017	974	2,997	6,747	18,244	5,409	10,468	7,784
<i>Mexico</i>	<i>16,114</i>	<i>13,724</i>	<i>11,768</i>	<i>13,974</i>	<i>17,240</i>	<i>15,634</i>	<i>11,012</i>	<i>11,926</i>	<i>8,877</i>
<b>Tot. N. Triangle</b>	<b>3,304</b>	<b>4,444</b>	<b>3,933</b>	<b>10,146</b>	<b>20,805</b>	<b>51,705</b>	<b>28,387</b>	<b>46,893</b>	<b>31,754</b>
<i>Tot. UAC</i>	<i>19,418</i>	<i>18,168</i>	<i>15,701</i>	<i>24,120</i>	<i>38,045</i>	<i>67,339</i>	<i>39,399</i>	<i>58,819</i>	<i>40,631</i>
<b>N. Triangle as % of Total</b>	<b>17%</b>	<b>24%</b>	<b>25%</b>	<b>42%</b>	<b>55%</b>	<b>77%</b>	<b>72%</b>	<b>80%</b>	<b>78%</b>

Source: CBP Southwest Border Apprehensions Data ([www.cbp.gov/newsroom/stats](http://www.cbp.gov/newsroom/stats))

\* October 1, 2016 to September 30, 2017

The following measures were introduced to deal with the 2014 “crisis”:

- UACs and family units were assigned to so-called “rocket-dockets” in immigration court, making these cases a processing priority. My fieldwork revealed the significant challenges this caused attorneys who had limited time to prepare complex applications for asylum or SIJS, frequently placing them in the condition of having to negotiate additional time for each case with immigration judges, who have discretion to deny these requests.
- Funding for border enforcement in Mexico and Guatemala was increased to stem the inflow. Indeed, in 2015, Mexico was already deporting more Central Americans than the US<sup>x</sup>. Highly visible raids were also conducted in January and the summer of 2016, targeting UACs who had exhausted the legal process or turned 18 while in ORR custody.
- Mostly restrictive bills were introduced in the aftermath of the “crisis,”<sup>xi</sup> including provisions such as: removing the exemption from credible fear screenings for UACs from non-contiguous to instead place them in an expedited removal process in immigration court



within 7 days of apprehension (H.R. 5230); modifying the UAC definition of to exclude children with parents or extended family in the US; allowing CBP to detain UACs in custody for up to 30 days instead of the maximum of 72 hours mandated under TVPRA; rewriting eligibility to remove one-parent SIJS; and removing due process protections for UACs in the asylum process (H.R. 1149, H.R. 1153, S. 129). At the time of writing, none of these restrictive provisions have been passed, although restrictive bills are still being introduced under the Trump administration.

## CAUSES OF MIGRATION

Both pull and push factors account for rising inflows from the Northern Triangle. Pull factors are an effect of the decrease in circular migration produced by increased border control,<sup>xii</sup> because undocumented parents are unable to visit children left behind in the home country, the only way to pursue family reunification is for children to migrate to the US outside of legal channels<sup>xiii</sup>. Push factors in the Central American case include: the sharp increase in crime in this region, which has homicide rates among the highest in the world (103 per 100,000 in El Salvador, 56.7 per 100,000 in Honduras, and 29.5 per 100,000 in Guatemala)<sup>xiv</sup>; state and police corruption and resulting failure to protect its citizens<sup>xv</sup>; and, crucially for the population at hand, victimization by transnational gangs, MS-13 and 18<sup>th</sup> street, and *narcotraficantes*,<sup>xvi</sup> which scholars have found to be directly link with out-migration.<sup>xvii</sup>

*“Members of 18<sup>th</sup> Street wanted to kill me for not joining them. They started to force us join, but we didn’t want to, and they hit us ... They killed my best friends who I grew up with since we were little ... before they could kill me, I left to come here, without my family knowing.”* (Hector, Guatemala, 16 years old<sup>xviii</sup>)

Most interview respondents and ethnographic research participants reported that forcible gang recruitment was the reason they left their home country. Recruitment tactics included:

attempting to convince youths to join by glorifying gang life; stealing youths' money or asking them for a quota; surveilling youths and their families; physical assault; death threats directed at youths and their families. Youths and their families were also victims of extortion, for instance if they owned a small business or because gangs were aware that a US-based migrant was sending the family remittances. Youths and adults residing in territories contested between MS-13 and 18<sup>th</sup> street were accused of membership in the rival gang, and threatened or beaten. Numerous youths had friends or family members who had been killed or kidnaped and disappeared by the gangs. Females were targeted by gang members who attempted to force them to be their girlfriends. Gang presence in, or immediately outside, schools made attendance difficult or impossible for many respondents, causing some to drop out. Besides gang activity, other push factors included discrimination or persecution due to indigenous background, particularly for Mayan youths in Guatemala, and suffering abuse and/or labor exploitation from family members.

*“[the smugglers] put six of us in the back of the truck, covered us with blankets and wooden boards ... it was such a long trip, one whole night and the following day bearing the weight of those boards ... it started raining and the water was accumulating in the back ... one person passed out and we had to try to lift the boards a bit to give him some relief ... then the Mexican police found us, and we had to give them money to let us go”* (Julio, El Salvador, 17)

Youths continue to suffer traumatic experiences during their journeys to the US. My respondents commonly experienced being hungry and scared, being transported in dangerous conditions in overcrowded trucks or riding on top of the freight train known as *La Bestia*, being subject to extortion from police in Mexico, having their money stolen by criminals. One teenage girl was raped by a Coyote. Two boys were kidnapped and held for ransom by criminals. Another was detained by the Mexican migration police and deported back to Guatemala.

## UAC EXPERIENCES IN THE US

### *Apprehension by CBP and custody at the border*

Almost all interviewees reported a lack of adequate care while in CBP custody, such as: verbal abuse from CBP officers; being subjected to a variety of intimidation tactics; being wet and not given dry clothing; food and sleep deprivation; and bad hygiene in cells. CBP's dehumanizing treatment of children is a **violation Flores Settlement**, which established that immigration officials should treat immigrant children with "dignity, respect and special concern for their particular vulnerability."

Others reported that CBP officers attempted to deny them entry in **violation of TVPRA**, through intimidation tactics and by accusing them of being adults trying to pass as children. After almost drowning during a traumatic experience crossing the Rio Bravo, one youth was faced with a hostile encounter with CBP:

*"[the agent] was terrifying me, telling me to throw myself in the river, that I should go back to Mexico, asking me, 'what are you doing here?'"*(Jesus, Honduras, 16)

Despite having an original birth certificate from Guatemala when apprehended, 17-year-old Manuel was accused of lying about his age and punished. Inexplicably, the CBP officer eventually decided to believe Manuel's age, and he was sent to ORR.

*"One of the agents said I was lying. They put me in this small room, by myself, which was like a punishment so that I would tell the truth. It was cold, they didn't give me water or anything to eat, and I felt hungry when they took me out to ask me the same thing again. I always told them I was 17."* (Manuel, Guatemala, 17)

Alicia, an asylum-seeker from El Salvador, was also accused of being an adult. Further, CBP officers attempted to deny her the protections afforded by minor status by threatening her and attempting to illegally force her to sign a deportation order:

*"The officer thought I was, like, 21. [...] He asked me for my fingerprints and told me, 'you are going to sign and you are going to leave. Do you know that if you're*

*lying, we can put you for in prison for so-many years?’ [...] I said, ‘I’m not going to sign because I have rights to stay here.’” (Alicia, El Salvador, 16)*

Six respondents reported being kept in CBP custody for over 72 hours (**in violation of TVPRA**) in inhumane conditions (**in violation of the Flores Settlement**) in cells immigrants refer to as “*hieleras*” (ice-boxes) due to their extremely low air conditioning temperature, which itself appears to be a punishment of sorts.

*“I didn’t know if it was day or night [...] There was one bathroom for 20 children in the same room. There were children as small as 2 years-old with us. They weren’t even our family and we had to take care of them. We took off our shirts and give them to the children so they could stand the cold, because they cried so much [...] I met children who stayed there 1, 2, 3 days, a lot had been there 8. One kid was there 14 days. He was pale, tired, you could see he hadn’t been eating well. He cried so much when he got out.” (Danny, Honduras, 14)*

Danny was one of the 67,339 unaccompanied minors from Honduras, El Salvador, Guatemala and Mexico apprehended at the US-Mexico border during the surge of 2014, when violations of the 72-hour time limit might have been due to high numbers of arrivals and limited bed capacity in ORR custody. However, other respondents who arrived in years when numbers were lower also reported being held for more than 72 hours. Despite the small sample size, my findings reflect a broader trend of CBP abuse of power and illegal practices. Indeed, in July 2014, a coalition of advocacy organizations sued CBP on behalf of 116 UACs who reported different forms of abuse: roughly 70% of them denounced that they were held for over 72 hours, and others noted CBP attempted to coerce them into signing deportation orders<sup>xix</sup>.

### ***Custody in ORR shelters for unaccompanied minors***

To comply with TVPRA provisions, CBP *should* notify and transfer their custody to ORR within 72 hours of apprehension. ORR holds UACs in different types of detention facilities for unaccompanied minors, with those considered flight risks and/or a danger to themselves and

others placed in secure facilities and most others placed in licensed non-secure placement facilities<sup>xx</sup>. In 2015, the average stay in ORR was 34 days.

**Table 3. Characteristics of UACs in ORR custody FY 2014-2016**

		2014	2015	2016
Gender	Male	66%	68%	67%
	Female	34%	32%	33%
Age	0-12	21%	17%	18%
	13-14	16%	12%	12%
	15-16	36%	38%	37%
	17	27%	30%	31%
Country of Origin	Honduras	34%	17%	21%
	Guatemala	32%	45%	40%
	El Salvador	29%	29%	34%

Source: ORR data ([www.acf.hhs.gov/orr/about/ucs/facts-and-data](http://www.acf.hhs.gov/orr/about/ucs/facts-and-data))

Respondents' reports about stays in ORR were mixed. Some respondents experienced ORR as a safe haven after long and harrowing journeys to reach the US and squalid detention conditions at the border. Some received access to crucial services in ORR, such as medical care and psychological counsel. Others had mixed feelings about ORR, remarking both on positive things, like the kindness of staff while also expressing feelings of unease and exasperation while detained. Other youths had purely negative accounts of ORR, noting that the discipline in shelters was strict and the rules arbitrary, staff was hostile, care was inadequate and they felt like "orphans" or "prisoners". Conditions in the numerous ORR shelters throughout the country likely vary considerably, reflecting youths accounts. A major source of anxiety for many youths was a lack of understanding about why they were being sent to ORR shelters and the uncertainty regarding the amount of time they would be detained there, which reflects similarities between detention of unaccompanied children and adults in the US.

## POST-RELEASE EXPERIENCES

In compliance with the Flores Settlement, ORR designates a sponsor to care for and take custody of the minor. In 2014, 60% of sponsors were youths' parent/s and 31% were other family members.<sup>xxi</sup> Notably, many sponsors are themselves undocumented. Youths for whom a sponsor is not available are placed in long-term federal foster care. To take minors out of ORR custody, family members sign a "sponsor care agreement" committing to: financially supporting the minor; signing her up for school; ensuring her physical and mental health; ensuring she show up for appointments with the immigration bureaucracy and that she comply with a removal order if she were to lose her case.<sup>xxii</sup> ORR conducted home studies to assess the conditions of sponsor placements in less than 2,000 cases among tens of thousands of sponsor referrals during 2015, and only 10% of youths released from ORR custody (those deemed at risk of experiencing psychological distress, trafficking or abuse), receive post-release services to monitor their wellbeing, which are implemented by non-profit organizations and are thus dependent on the availability of such services in the location of the minor's placement<sup>xxiii</sup>.

To remain in the US, UACs must successfully navigate removal proceedings in immigration court, and most petition for two reliefs: asylum or SIJS.<sup>xxiv</sup> Others may apply for the T-visa for trafficking victims or the U-Visa for crime victims, if eligible.

### **Asylum (with procedural protections for UACs)**

*Eligibility: individuals unable or unwilling to return to or avail themselves of the protection of their home country because of persecution or a well-founded fear of persecution on account of their race, religion, nationality, political opinion or membership in a particular social group.*

#### Application process:

- (1) UACs file applications at the asylum office, an independent branch of US Citizenship and Immigration Services (USCIS). Their petitions are evaluated during non-adversarial one-on-one interviews with a specialized bureaucrat (asylum officer), who can either grant status or deny it and refer the applicant to immigration court.
- (2) If denied, their cases are heard *de novo* during adversarial hearings in immigration court, with a government attorney arguing for the immigrant's deportation.
- (3) Cases denied in immigration court may be appealed at the Board of Immigration Appeals, Circuit Court and Supreme Court levels.

If awarded asylum, UACs can transition to legal permanent resident (LPR) status after one year.

**Special Immigrant Juvenile Status (SIJS).**

Eligibility: *unmarried undocumented immigrant children under age 21 who cannot be reunited with their parent/s because they have been abandoned, abused or neglected by one or both parents.*

The SIJS application is a two-step process involving different bureaucracies:

(1) Youths must obtain the “SIJS order” from State-level family courts, which places them under custody of a state agency or an individual. In California, the “SIJS order” must be obtained before age 18 or age 21 for individuals abandoned, abused or neglected by one or both parents respectively.

(2) Once the state court grants the “SIJS order,” youths apply to adjust their status to LPR through USCIS when a visa number becomes available.

Individuals awarded SIJS permanently forfeit the possibility of reunifying their parents.

While, on the books, UACs have privileged access to legalization as compared to adults, by far less youths than are apprehended annually actually apply for relief, and even less are actually granted status, as can be appreciated in the table below.

**Table 4. UAC Apprehensions versus Applications for Legal Relief**

	2014	2015	2016	2017	Total
N. Triangle UAC Apprehensions	51,705	28,387	46,893	31,754	<b>158,739</b>
Tot. UAC Asylum applications filed	3,448	15,032	15,755	20,297	54,532
Tot. UAC Asylum applications granted	712	5,075	3,970	5,693	<b>15,450</b>
Tot. SIJS applications filed at USCIS	5,776	11,500	19,475	20,914	57,665
Tot. SIJS applications granted at USCIS	4,606	8,739	15,101	11,335	<b>39,781</b>

Sources: USCIS Quarterly Stakeholder Meetings Minor Principal Applicant Reports FY 2014-17<sup>xxv</sup>  
& USCIS Special Immigrant Juvenile Progress Reports FY2014-17<sup>xxvi</sup>

It is difficult to estimate the percentage of apprehended Central American UACs who apply for and are granted each legal status, due to data limitations. First, USCIS does not disaggregate data on UAC asylum or SIJS applications by nationality, so the data reported above for applications filed and granted includes applicants from all countries. Second, accurate grant rates are difficult to determine because youths may enter during one fiscal year (FY), apply for legal status during another year and be granted during yet another year, due to severe backlogs in immigration court or limited visa numbers available for reliefs like SIJS. We do know that, in

FY2014, 13,204 minors were ordered removed, while only 1,863 were effectively deported because 65% of all UAC removal orders are issued in absentia (i.e. the minor was not present in court)<sup>xxvii</sup>. One study found that 78% of UACs who showed up for their hearings in immigration court receive some form of relief, either formal or “informal”. The former refers to a grant of immigration status through asylum, SIJS or other reliefs like the T-Visa. The latter refers to cases that have been administratively closed, meaning that the child is no longer in removal proceedings in immigration court but has no formal grant of immigration status, which leaves children undocumented. This category also includes UACs granted prosecutorial discretion by the immigration judge, a temporary relief from deportation associated with a renewable bi-yearly work and residence permit, which, however, has no longer been offered after Trump took office.

The two main factors that influence youth’s case outcomes are: (1) access to legal representation (93% of minors not represented by counsel failed to appear in court, and the odds of being granted permission to remain in the US increased from 15% to 73% when minors had an attorney)<sup>xxviii</sup>; (2) the specific immigration court or asylum office that adjudicates their case. In FY2017, the grant rate for UAC cases at the asylum office for Southern California, located in Anaheim, was 64% as compared to 39.5% nationwide.<sup>xxix</sup>

Indeed, Los Angeles (LA) is a favorable context of reception for UACs compared to the rest of the country. Due, among other things, to availability of funding (e.g. the State of California allocated \$3million for legal representation of this population in 2015<sup>xxx</sup>), this area is well served by legal aid organizations that provide free or low cost legal representation. Despite recent litigation, UACs have no right to free legal counsel in the US, and they must thus either pay for legal representation or rely on obtaining it pro-bono. Nationwide, legal representation of



UACs in immigration court remains quite low at an average rate of 56%, while in the LA immigration court, 64% were represented by an attorney.<sup>xxx1</sup>

Despite the favorable context where this research took place, my findings highlighted numerous difficulties in youths' access to both legal representation and legal status. Despite relatively greater resources for legal representation than other destinations, during the course of my fieldwork, pro-bono legal service providers had extensive wait lists due to high levels of demand. Paying for an attorney (and navigating the legal process alone) was particularly challenging for respondents who had a falling out with their ORR sponsors and had to work to provide for themselves. Findings from my legal ethnography revealed the following obstacles:

- Youth's asylum cases are difficult to win because they are based on persecution from non-state actors (e.g. gangs), which conflicts with the "state-centric" refugee definition formalized after World War II when refugees were seen mainly as individuals fleeing from despotic states<sup>xxxii</sup>. Despite some advances in case law, the US continues to interpret the refugee definition quite restrictively.
- Family reunification pull factors interact with forced migration push factors to motivate independent child migration. However, family reunification is not considered a basis for asylum even when children have nobody to care for them back home and are in more danger (e.g. more exposed to gang recruitment) as a result of this.
- Accessing documentary proof to support asylum claims, such as police reports denouncing forcible gang recruitment, is complex for youths who frequently reported that they feared approaching police officers or were not given reports even when they denounced crimes.
- Age cut-offs that define eligibility for procedural protections in the asylum process and SIJS can play out in problematic ways, and youths living practically identical experiences

can age out or fall outside eligibility in arbitrary ways (e.g. relying on hearings in family court to be scheduled before their 18<sup>th</sup> birthday).

- For SIJS, unaccompanied minors from the Northern Triangle approved by family court can wait up to 2 or 3 years for a grant of LPR from USCIS, due to limited availability of visas for these high demand countries, leaving children in lengthy legal limbo.

### **CHILD PROTECTION UNDER THE TRUMP PRESIDENCY**

*“So I said to myself, Donald Trump is here, and I started feeling bad because I’ve seen things about him, like his racism towards Latinos. A lot of things we don’t even want to think about are going to happen. I was thinking, he is going to send me back, I’m not going to be able to win my [asylum] case.” (Melvin, Honduras, 17)*

Under the Trump administration, the already difficult situation for unaccompanied minors in the US is getting worse. Attorneys have recently denounced cases in which ICE has accessed information entrusted to ORR to arrest the family members of minors who used smugglers to bring their children to the US.<sup>xxxiii</sup> Central American youths are increasingly criminalized through a rhetoric linking them to gang-members, the very criminals they fled to escape. High visibility enforcement operations, such as *Operation Raging Bull*, which targets alleged gang MS-13 members for deportation, has been criticized by advocates for relying on unsubstantial evidence. The ACLU recently sued immigration enforcement agencies after three Salvadoran teenagers in Long Island were detained after being accused, with insufficient evidence, of MS-13 gang membership.<sup>xxxiv</sup> This hostile climate affected my respondents emotionally: they worried about the effect of the presidency on their petitions to remain in the US; they feared for the fates of their undocumented families, with whom many had just reunited after years of separation; undocumented parents were scared to accompany their children to immigration court hearings.

## ENDNOTES

- <sup>i</sup> [www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens](http://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens)
- <sup>ii</sup> Heidbrink, Lauren. 2015. "Unintended Consequences: Reverberations of Special Immigrant Juvenile Status." *Journal of Applied Research on Children: Informing Policy for Children at Risk* 5(2):9.
- <sup>iii</sup> Rodriguez, Nestor, Ximena Urrutia-Rojas, and Luis Raul Gonzalez. 2017. "Unaccompanied Minors from the Northern Central American Countries in the Migrant Stream: Social Differentials and Institutional Contexts." *Journal of Ethnic and Migration Studies*:1–17.
- <sup>iv</sup> Terrio, Susan J. 2015. *Whose Child Am I?: Unaccompanied, Undocumented Children in US Immigration Custody*. University of California Press.
- <sup>v</sup> <https://drive.google.com/file/d/1ENPqu58JlqzU4bYtwOQhE-4Rj2xze2OR/view>
- <sup>vi</sup> Somers, M. Aryah, Pedro Herrera, and Lucia Rodriguez. 2010. "Constructions of Childhood and Unaccompanied Children in the Immigration System in the United States." *UC Davis Journal of Juvenile Law & Policy* 14:311–82.
- <sup>vii</sup> Carlson, Elizabeth and Anna Marie Gallagher. 2015. "Humanitarian Protection for Children Fleeing Gang-Based Violence in the Americas." *Journal on Migration and Human Security* 3(2):129–58.
- <sup>viii</sup> Galli, Chiara. 2017. "A Rite of Reverse Passage: The Construction of Youth Migration in the US Asylum Process." *Ethnic and Racial Studies* 1–21.
- <sup>ix</sup> Lindley, Anna. 2014. *Crisis and migration: critical perspectives*. Routledge.
- <sup>x</sup> Byrne, Olga and Elise Miller. 2012. *The Flow of Unaccompanied Children Through the Immigration System*. Center on Immigration and Justice.
- <sup>xi</sup> Carlson, Elizabeth and Anna Marie Gallagher. 2015. "Humanitarian Protection for Children Fleeing Gang-Based Violence in the Americas." *Journal on Migration and Human Security* 3(2):129–58.
- <sup>xii</sup> (Massey, Douglas S., Jorge Durand, and Karen A. Pren. 2016. "Why Border Enforcement Backfired." *American Journal of Sociology* 121(5):1557–1600.
- <sup>xiii</sup> Chavez, Lilian and Cecilia Menjivar. 2010. "Children Without Borders: A Mapping of the Literature on Unaccompanied Migrant Children to the United States." *Migraciones Internacionales* 5(3).
- <sup>xiv</sup> [www.insightcrime.org/news-analysis/insight-crime-2014-homicide-round-up](http://www.insightcrime.org/news-analysis/insight-crime-2014-homicide-round-up) & UNDOC (United Nations Office on Drugs and Crime) (2014) "Global Study on Homicide." Vienna: UNDOC.
- <sup>xv</sup> Cruz, José Miguel. 2011. "Government Responses and the Dark Side of Gang Suppression in Central America." in *Maras: Gang Violence and Security in Central America*. Austin: University of Texas Press.
- <sup>xvi</sup> Kennedy, Elizabeth. 2014. *No Childhood Here: Why Central American Children Are Fleeing Their Homes*. Washington, D.C.: The American Immigration Council. [www.immigrationpolicy.org/perspectives/no-childhood-here-why-central-american-children-are-fleeing-their-homes](http://www.immigrationpolicy.org/perspectives/no-childhood-here-why-central-american-children-are-fleeing-their-homes)
- <sup>xvii</sup> Hiskey, Jonathan, Jorge Daniel Montalvo, and Diana Orcés. 2014. "Democracy, Governance, and Emigration Intentions in Latin America and the Caribbean." *Studies in Comparative International Development* 49(1):89–111.
- <sup>xviii</sup> I use pseudonyms to protect the confidentiality of research participants. All ages of respondents cited in this report refer to the age of respondents at the time of apprehension at the US-Mexico border
- <sup>xix</sup> [www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf](http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf)
- <sup>xx</sup> Terrio, Susan J. 2015. *Whose Child Am I?: Unaccompanied, Undocumented Children in US Immigration Custody*. University of California Press.
- <sup>xxi</sup> [www.acf.hhs.gov/sites/default/files/orr/orr\\_annual\\_report\\_to\\_congress\\_fy\\_2014\\_signed.pdf](http://www.acf.hhs.gov/sites/default/files/orr/orr_annual_report_to_congress_fy_2014_signed.pdf)
- <sup>xxii</sup> [www.acf.hhs.gov/orr/about/ucs/facts-and-data](http://www.acf.hhs.gov/orr/about/ucs/facts-and-data).
- <sup>xxiii</sup> Berger Cardoso, Jodi et al. 2017. "Integration of Unaccompanied Migrant Youth in the United States: A Call for Research." *Journal of Ethnic and Migration Studies* 0(0):1–20.
- <sup>xxiv</sup> Levinson, Amanda. 2011. "Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions." [www.migrationpolicy.org](http://www.migrationpolicy.org)
- <sup>xxv</sup> [www.uscis.gov/outreach/notes-previous-engagements](http://www.uscis.gov/outreach/notes-previous-engagements)
- <sup>xxvi</sup> [www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-360-petition-special-immigrant-juveniles](http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-360-petition-special-immigrant-juveniles)
- <sup>xxvii</sup> Pierce, Sara. 2015. *Unaccompanied Child Migrants in U.S. Communities, Immigration Court, and Schools*. Washington DC: Migration Policy Institute.
- <sup>xxviii</sup> <http://trac.syr.edu/immigration/reports/371/>
- <sup>xxix</sup> [www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED\\_MPAandPRLreportFY17.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_MPAandPRLreportFY17.pdf)
- <sup>xxx</sup> Pierce, Sara. 2015. *Unaccompanied Child Migrants in U.S. Communities, Immigration Court, and Schools*. Washington DC: Migration Policy Institute.
- <sup>xxxi</sup> <http://trac.syr.edu/immigration/reports/482/>
- <sup>xxxii</sup> Gibney, Matthew. 2004. *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge: Cambridge University Press.
- <sup>xxxiii</sup> [www.mcclatchydc.com/news/nation-world/national/article158952939.html](http://www.mcclatchydc.com/news/nation-world/national/article158952939.html)
- <sup>xxxiv</sup> [www.nytimes.com/2017/08/11/nyregion/aclu-lawsuit-ms-13-teenager-arrests-html](http://www.nytimes.com/2017/08/11/nyregion/aclu-lawsuit-ms-13-teenager-arrests-html).