

**SCARED, BUT NO LONGER ALONE: USING
LOUISIANA TO BUILD A NATIONWIDE
SYSTEM OF REPRESENTATION FOR
UNACCOMPANIED CHILDREN**

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I. INTRODUCTION

*My grandmother is the one who told me to leave.
 She said: "If you don't join, the gang will shoot you.
 If you do, the rival gang or the cops will shoot you.
 But if you leave, no one will shoot you."
 – Kevin, Honduras, 17¹*

In recent years, tens of thousands of unaccompanied children from Honduras, Guatemala, and El Salvador have fled to the United States.² Most have experienced “horrendous trauma” as a result of swelling gang activity, drug trafficking, and corruption.³ Many were physically or sexually abused.⁴ One Honduran child

1. UNITED NATIONS HIGH COMM’R FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION 10 (2014), <http://www.unhcr.org/56fc266f4.html>.

2. *See id.* at 4 (citations omitted) (“In the United States, the number of adults claiming fear of return to their countries of origin . . . upon arriving at a port of entry or apprehension at the southern border increased sharply from 5,369 in . . . [FY] 2009 to 36,174 in FY 2013.”); *see also* Brian Hansford, *UNHCR Calls on the Americas to Keep Children on the Run Safe from Violence*, UNHCR: REFUGEE AGENCY (Mar. 12, 2014), <http://www.unhcr.org/en-us/news/latest/2014/3/53206a3d9/unhcr-calls-americas-keep-children-run-safe-violence.html> (“[I]n a report released on Wednesday, [UNHCR] said it was concerned at the increasing numbers of children in the Americas forced from their homes and families, propelled by violence, insecurity and abuse in their communities and at home The report analyze[d] the humanitarian impact this insecurity has had on children, forcing them across international borders to seek safety on their own The number of children making the perilous journey alone . . . has doubled each year since 2010. The US government estimated, and is on track to reach, 60,000 children reaching United States territory this year in search of safe haven.”); Tom K. Wong, *Statistical Analysis Shows that Violence, Not Deferred Action, Is Behind the Surge of Unaccompanied Children Crossing the Border*, CTR. FOR AM. PROGRESS: IMMIGR. (July 8, 2014, 9:04 AM), <https://www.americanprogress.org/issues/immigration/news/2014/07/08/93370/statistical-analysis-shows-that-violence-not-deferred-action-is-behind-the-surge-of-unaccompanied-children-crossing-the-border/> (“A humanitarian refugee situation at the U.S. southern border has been unfolding over the past few years and dramatically intensifying over the past several months, as tens of thousands of unaccompanied children are fleeing their homes in Honduras, Guatemala, and El Salvador.”).

3. Pam Fessler, *Trauma Plagues Many Immigrant Kids in the U.S. Illegally*, NPR: AROUND NATION (Aug. 8, 2014, 3:31 AM), <http://www.npr.org/2014/08/08/338606412/trauma-plagues-many-immigrant-kids-in-u-s-illegally> (“Jose, 16, says he feared throughout his two-month trip from Central America that he would be killed or kidnapped by gangs. His Aunt Marta . . . says it was worth the risk, though, to get him away from the gangs back home. She says the family has been terrorized for years.”).

4. *Id.* (“Maria Gomez says stories like [Jose’s] are not uncommon [and] many of the children have been physically or sexually abused, at home or on the way to the U.S.”). Mary’s Center is a Federally Qualified Health Center, founded in 1988

was prompted to leave after seeing a girl his age, eleven, resist a robbery of \$5 across the street from his home.⁵ “[S]he was clubbed over the head and dragged by two men who cut a hole in her throat, stuffed her panties in it, and left her body in a ravine.”⁶ But the danger does not end once they leave their home country. Another eleven-year-old girl was raped and impregnated by the men her family paid to bring her to the United States.⁷ She is now “[o]ne of the many [children] who can’t even talk anymore, can’t even talk.”⁸ Yet, somehow, we expect these traumatized children to advocate for themselves in immigration court.

Immigrants, regardless of age, are not entitled to appointed legal counsel.⁹ This leaves unaccompanied child immigrants to

to provide “health care, family literacy and social services to individuals whose needs too often go unmet by the public and private systems.” For more information, see *About Us*, MARY’S CTR., <http://www.maryscenter.org/about-us> (last visited Mar. 10, 2017).

5. Sonia Nazario, *The Children of the Drug Wars: A Refugee Crisis, Not an Immigration Crisis*, N.Y. TIMES (July 11, 2014), https://www.nytimes.com/2014/07/13/opinion/sunday/a-refugee-crisis-not-an-immigration-crisis.html?_r=1 (describing the desperate plight of eleven-year-old Cristian Reyes, specifically writing that “Cristian [told] me he has to get out of Honduras soon—‘no matter what.’ In March [2014], his father was robbed and murdered by gangs while working as a security guard protecting a pastry truck. His mother used the life insurance payout to hire a smuggler to take her to Florida. She promised to send for him quickly, but she has not. Three people he knows were murdered this year. Four others were gunned down on a nearby corner in the span of two weeks at the beginning of this year ‘I’m going this year,’ he [told] me”), *quoted in* Kari Dequine Harden, *Undocumented: Kari Dequine Harden on the Uncertain Future Honduran Immigrant Children Face in New Orleans*, GAMBIT WKLY.: NEW ORLEANS NEWS & ENT. (Dec. 1, 2014), <http://www.bestofneworleans.com/gambit/undocumented/Content?oid=2540435>.

6. *Id.*

7. Fessler, *supra* note 3 (quoting Maria Gomez, President and CEO of Mary’s Center), <http://www.npr.org/2014/08/08/338606412/trauma-plagues-many-immigrant-kids-in-u-s-illegally> (“Gomez says one 11-year-old girl they’re seeing was raped by the men her family paid to bring her to the United States. She’s now pregnant.”).

8. *Id.*

9. Julia Preston, *Young, Alone, Facing Court and Deportation*, N.Y. TIMES (Aug. 25, 2012), <http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-deportation.html> (“Unlike in criminal or family courts, in immigration court there is no right to a lawyer paid by the government for people who cannot afford one.”); AM. IMMIGRATION COUNCIL, A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES AND RESPONSES 8 & n.46 (2015) (quoting 8 U.S.C. § 1362 (2005)), https://www.americanimmigrationcouncil.org/sites/default/files/research/a_guide_to_children_arriving_at_the_border_and_the_laws_and_policies_governing_our_response.pdf (“In general, children facing deportation—just like adults facing deportation—are not provided government-appointed counsel to represent them in immigration court. Under the immigration laws, all persons have the ‘privilege’ of being

represent themselves in a foreign country, court system, and language.¹⁰ Their task is daunting. First, they must identify their options for legal relief. Next, they must prepare and timely present evidence, witnesses, submissions, and pleadings to further complex legal arguments.¹¹ To make matters worse, the proceeding is adversarial. A child's case is refuted by a trained government lawyer who acts as a prosecutor, advocating for the child's removal back to their home country.¹²

The results are devastating; as one reporter wrote, "It is almost impossible for children to receive relief in immigration court on their own."¹³ "The reality is they cannot comprehend the

represented 'at no expense to the Government.' This means that only those individuals who can afford a private lawyer or those who are able to find pro bono counsel . . . are represented in immigration court.").

10. See AM. IMMIGRATION COUNCIL, *supra* note 9, at 1 & n.1 (2015) (quoting 6 U.S.C. § 279(g)(2) (2007)) ("Unaccompanied alien child' . . . is a technical term defined by law as a child who '(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."); Sonia Nazario, *Child Migrants, Alone in Court*, N.Y. TIMES (Apr. 10, 2013), <http://www.nytimes.com/2013/04/11/opinion/give-lawyers-to-immigrant-children.html> ("Although some children are represented by pro bono lawyers or, for the few whose families can afford it, private lawyers, it's estimated that more than half of them go to court alone. These children—some as young as 2 years old—have no one to help them make the case that they should not be deported.").

11. See Preston, *supra* note 9 ("I had to speak by myself,' Lilita [6 years old] recounted in her small voice. Even with an interpreter, Lilita had a hard time following the hearing . . . The judge set a new hearing date and urged Lilita to get a lawyer. But the volunteer lawyers her parents consulted in South Texas have been reluctant to take her case, which is weak since both parents are here illegally. Yet under the administration's prosecutorial discretion policy, deportations of very young children can sometimes be suspended, even if they entered recently. To make the complex argument for discretion, however, Lilita needs a lawyer."); see also Nazario, *supra* note 10 ("[Unaccompanied children] must testify under oath, file supporting documents and navigate the complexities of immigration law . . .").

12. See Preston, *supra* note 9 ("Juan David Gonzalez was 6 years old. He was in the court, which would decide whether to expel him from the country . . . And immigration law contains few protections specifically for minors. So even a child as young as Juan has to go before an immigration judge—confronting a prosecutor and trying to fight deportation—without the help of a lawyer, if one is not privately provided."); see also Nazario, *supra* note 10 ("In court, these children are up against trained government lawyers."). Removal proceedings are initiated to determine whether a foreign alien is either "inadmissible" or "deportable." See 8 U.S.C. § 1226(a), (c)(1) (2005).

13. Nazario, *supra* note 10 (citations omitted) ("A recent study . . . showed that 40 percent of unaccompanied children potentially qualify for statuses that exempt them from deportation . . . [Nevertheless], while more recent legislation has improved the odds, only around 7 percent of those who were placed in federal custody between

system and what is being asked of them.”¹⁴ Children may not know they have “crossed an international boundary, or that [they are] now in the United States, or what the United States is exactly.”¹⁵ They may also not understand whether they have done anything wrong, much less how to obtain legal relief.¹⁶ Whether these children have legal representation can mean the difference between staying in the U.S., or being deported back to places where they are likely to be injured or killed.¹⁷

We cannot continue to risk children’s safety by requiring them to act as their own lawyer because it is unjust, legally questionable, and poor policy. Forcing traumatized children to battle the court system alone is an injustice in the purest sense of the word. Children cannot represent themselves in the same way an adult lawyer can, so they do not get a fair shot at presenting their case. They are sent back to dangerous situations just because they do not have the legal skills to refute their removal against a federal lawyer.

However, justice is not the only reason children deserve an opportunity to present their case. There are legal concerns as well. Immigrants have a statutory right to a reasonable

2007 and 2009, and who had received a ruling by mid-2010, were winning their cases. Not surprisingly, those with legal representation were nearly nine times more likely to win.”); Preston, *supra* note 9 (quoting Meredith Linsky, Director of the South Texas Pro Bono Asylum Representation Project, known as ProBAR). ProBAR is a “nonprofit organization that defends young migrants in the region.” *Id.* For more on ProBAR, see *South Texas Pro Bono Asylum Project (ProBAR)*, A.B.A. COMMISSION ON IMMIGR.—PROJECTS AND INITIATIVES, http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/south_texas_pro_bono_asylum_representati_on_project_probar.html (last visited Mar. 10, 2017).

14. Preston, *supra* note 9 (quoting Meredith Linsky, Director of ProBAR).

15. *Id.*

16. *See id.*; *see also* Kirk Semple, *Youths Facing Deportation to Be Given Legal Counsel*, N.Y. TIMES (June 6, 2014) (quoting Jonathan Ryan, Executive Director of the Refugee and Immigrant Center for Education and Legal Services (RAICES)), https://www.nytimes.com/2014/06/07/us/us-to-provide-lawyers-for-children-facing-deportation.html?_r=0 (“A hundred lawyers nationwide is not going to satisfy our commitment to protecting these children If we have to give lawyers to murderers, then perhaps we should give them to refugee orphans Some of these children don’t even know where they are, or where they’re going”) (internal quotations omitted). For more on RAICES, see *Who We Are*, RAICES, <https://www.raicestexas.org/pages/about> (“RAICES . . . was founded and incorporated in 1986 . . . [to help immigrants that] flooded into Texas after fleeing the civil wars and social upheavals of El Salvador, Honduras, Guatemala and Nicaragua.”) (last visited Mar. 10, 2017).

17. Nazario, *supra* note 10 (“Not surprisingly, those with legal representation were nearly nine times more likely to win.”).

opportunity to present their case, and a constitutional right to due process. Unaccompanied children cannot effectively exercise their rights without representation. But the problem does not stop there. When unaccompanied children are unrepresented, the system loses too. Children without representation place a huge burden on the immigration-court system, causing massive delays and costing taxpayer money.

It is not enough to simply recognize the need to provide representation to unaccompanied children. Action must be taken, and a system to provide counsel must be implemented. An effective program would satisfy every reason for providing representation, namely justice, legal rights, and policy concerns. While no perfect program yet exists, Catholic Charities of New Orleans (CCANO) is beginning a promising program with instructive value for implementation elsewhere.

Before discussing the CCANO program, this Comment gets to the core of the need to provide counsel to unaccompanied children. Section II gives a factual background on unaccompanied children and their experience in the court system. Section III discusses their legal entitlement to counsel as it stands today. Next, Section IV provides details on the CCANO program, and Section V discusses how it can be used as a tool to develop successful programs nationally.

II. FACTUAL BACKGROUND: WHY UNACCOMPANIED CHILDREN ARE COMING TO THE U.S. AND WHAT HAPPENS WHEN THEY ARRIVE?

Children in court are, frankly, children. As one reporter wrote, “When children go to court alone . . . the scene is comically tragic, with preschoolers propped in leather-cushioned chairs facing off against federal lawyers.”¹⁸ Children carry teddy bears for comfort, and one child “wet his pants when he faced the judge.”¹⁹ A judge once tried to comfort a child by playfully asking for a bite of the boy’s lunch.²⁰ Confused, the boy burst into tears, assuming he was supposed to bring lunch for the judge.²¹

18. Nazario, *supra* note 10 (“Children in the courtroom often seem confused and frightened.”); Semple, *supra* note 16 (quoting Jonathan Ryan, executive director of the Refugee and Immigrant Center for Education and Legal Services).

19. Nazario, *supra* note 10 (citations omitted).

20. Preston, *supra* note 9.

21. *Id.*

This section will describe the current plight of unaccompanied children in court by detailing (A) the sudden influx of unaccompanied children, (B) the court process, (C) the impact of counsel on obtaining relief, and (D) national efforts to remedy the representation gap.

A. SUDDEN INFLUX OF CENTRAL AMERICAN CHILDREN: POTENTIAL DANGER VS. CERTAIN DEATH

In order to fully grasp the representation crisis, it is necessary to contextualize the drastic increase of unaccompanied children migrants journeying to the United States. The U.S. has long received some unaccompanied children, but recent violence in Central America has created an unprecedented surge in the numbers of children crossing the U.S.–Mexico border.²² In fiscal year 2009, a total of 19,418 unaccompanied children were apprehended at the border.²³ Since 2009, this number has more than doubled: 39,399 children were apprehended in 2015 alone.²⁴ Although the overall increase is drastic, the demographic shift is even more striking. In 2009, only 17% of the children were from Honduras, Guatemala, or El Salvador.²⁵ By 2015, children from these three countries made up 72% of all unaccompanied minors.²⁶ In 2016, 59,692 children from Honduras, Guatemala, or El Salvador were apprehended at the border.²⁷ There is no

22. Tom K. Wong, *Statistical Analysis Shows that Violence, Not Deferred Action, Is Behind the Surge of Unaccompanied Children Crossing the Border*, CTR. FOR AM. PROGRESS: IMMIGR. (July 8, 2014, 9:04 AM), <https://www.americanprogress.org/issues/immigration/news/2014/07/08/93370/statistical-analysis-shows-that-violence-not-deferred-action-is-behind-the-surge-of-unaccompanied-children-crossing-the-border/> (“[A] close statistical evaluation of the available data suggests . . . [that i]t is not U.S. policy but rather violence and the desire to find safety that is the impetus for these children’s journeys . . . Violence is among of [sic] the main drivers causing the increase. Whereas Central American countries that are experiencing high levels of violence have seen thousands of children flee, others with lower levels of violence are not facing the same outflow.”); see Sen. Dianne Feinstein, Opinion, *Here’s How to Deal with the Desperate Children at the Border*, L.A. TIMES (June 23, 2014, 5:09 PM), <http://www.latimes.com/nation/la-oe-feinstein-child-immigrants-20140624-story.html> (“Many of the children being apprehended at the border are fleeing unspeakable violence in their home countries.”).

23. *Southwest Border Unaccompanied Alien Children Statistics FY 2016*, U.S. DEPT’ HOMELAND SECURITY, <https://www.cbp.gov/site-page/southwest-border-unaccompanied-alien-children-statistics-fy-2016> (last updated Jan. 20, 2017).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

indication that the influx will slow anytime soon.²⁸

The sharp spike in unaccompanied minors from Central America is a direct result of overwhelming violence in those countries.²⁹ The violence is so bad that children are willing to spend months travelling across multiple countries risking injury or death.³⁰ They travel in perilous conditions, even under or on

28. See *Southwest Border Unaccompanied Alien Children Statistics FY 2016*, *supra* note 23 (“Out of an abundance of caution, the Office of Refugee Resettlement at HHS has begun a process to expand its temporary capacity to house unaccompanied children As we have highlighted over the last few months, the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) have noted an increase in the number of unaccompanied children (UAC) and family units apprehended along the southwest border. The entire administration has been closely monitoring these current trends and coordinating across the whole of government to ensure an effective response to any changes in migration flows DHS and HHS are working together to accommodate these children The Office of Refugee Resettlement at HHS increased the capacity of current providers from 7,900 to 8,400 beds in November and is preparing for temporary bed space in the event that additional beds may be needed.”) (internal quotations omitted).

29. Wong, *supra* note 22 (“[T]he U.N. Office on Drugs and Crime[s] . . . data on homicides and homicide rates by country . . . [show that, n]ot only do countries with the highest rates of homicide have the largest numbers of unaccompanied children fleeing, but . . . also . . . that countries in Latin America with lower rates of homicide are not sending large numbers of unaccompanied children. In 2012, the countries of El Salvador, Guatemala, Honduras, and Mexico accounted for 41,828 homicides, at a rate of 28 per 100,000 people. Exclude Mexico and the murder rate jumps to 54 per 100,000 people. The president of Honduras has gone as far as calling the children refugees from ‘war’ in his country. By contrast, other countries in the region, such as Belize, Costa Rica, Nicaragua, and Panama had a total of just 1,881 murders, at a rate of only 13 per 100,000 . . . and yet, . . . it has not seen an uptick in unaccompanied children leaving.”).

30. See Sonia Nazario, *The Refugees at Our Door: We Are Paying Mexico to Keep People from Reaching Our Border, People Who Are Fleeing Central American Violence*, N.Y. TIMES (Oct. 10, 2015), <https://www.nytimes.com/2015/10/11/opinion/sunday/the-refugees-at-our-door.html> (“In a migrant shelter in Ixtepec, Mexico, I met July Elizabeth Pérez, 32, who was clutching her 3-year-old daughter . . . tight in her arms, and keeping a careful eye on her two other children For eight years, July’s family has been struggling with the gang and narco-cartel violence that has overtaken many areas of her country. [In] 2007, her brother . . . was kidnapped and then found dead two days later in a sewage ditch Not long after her oldest son . . . turned 14, he told July that 18th Street gangsters ordered him to be their lookout. ‘No,’ he told them [Then, o]n Dec. 4, 2014, . . . she sent the 14-year-old and his friend on an errand just steps from home. When he didn’t return immediately, July called, then texted. Her son did not respond [July and the police later] found her son’s bike at a house . . . although no trace of the gangsters They found the boys’ bodies nearby moments later [July’s son’s] body had been stuffed into a garbage bag. Another bag over his head had suffocated him July quickly buried her son . . . abandoned her house, and [moved] three hours away. [Nevertheless, s]even months later . . . the gang had found her. She left in less than 24 hours [But, i]n her haste to leave . . . she left behind her passport

top of trains.³¹ One boy remembers seeing another child's legs cut off by a train.³² The children, particularly girls, risk being trafficked by those bringing them to the U.S.³³ They also risk starvation and dehydration because many of the miles they travel are on foot across desert terrain.³⁴ When children are asked why they risked making the journey, most cite aggressive gang recruitment perpetrated through violence and threats to themselves and family members.³⁵ Put simply, children are

and photos of herself. She decided her only safe alternative was to go to the United States illegally, but she [had barely] made it . . . in[to] Mexico before she and her children were caught and detained The detention center was packed. Her children slept on filthy mattresses. Her 6-year-old son's arms were covered in a rash and bleeding. July's asthma left her barely able to breathe. She begged for medicine. Twelve days after being caught, she was deported to San Pedro Sula, where both her son and brother had been murdered. She immediately headed north again, fearing that if she didn't leave, the 18th Street gang would find her.”).

31. See Nazario, *supra* note 30 (“I went to Mexico last month to see the effects of the crackdown against migrants, who are being hunted down on a scale never seen before and sent back to countries where gangs and drug traffickers have taken control of whole sections of territory. More than a decade ago, I rode on top of seven freight trains up the length of Mexico with child migrants to chronicle hellish experiences at the hands of gangs, bandits and corrupt cops who preyed on youngsters as they journeyed north. Compared with today, that trip was child's play Beginning in July 2014, Mexico redirected 300 to 600 immigration agents to its southernmost states, and conducted over 20,000 raids . . . on the freight trains migrants ride on top of, and the bus stations, hotels and highways where migrants travel.”).

32. Nazario, *supra* note 5 (quoting Carlos Baquedano Sánchez) (“[Carlos] wants to go to the United States, even though he knows how dangerous the journey can be; a man in his neighborhood lost both legs after falling off the top of a Mexican freight train, and a family friend drowned in the Rio Grande. ‘I want to avoid drugs and death. The government can't pull up its pants and help people,’ he sa[id] angrily. ‘My country has lost its way.’”).

33. See Fessler, *supra* note 3 (quoting Maria Gomez, President and CEO of Mary's Center) (telling the horrifying tale of an 11-year-old-girl who was raped and impregnated by the men her family trusted to get her to the U.S. safely, and further writing that the girl “has no idea what it all means, but she now is carrying this baby. And the tragedy of it all is that the parents are so overwhelmed, because they left her back home when she was an infant, and now they don't know how to handle it, and so she's being blamed for getting pregnant”) (internal quotations omitted); see also Nazario, *supra* note 5 (quoting Luis López, an educator with Asociación Compartir, a nonprofit in Nueva Suyapa, Honduras) (“Girls face particular dangers—one reason around 40 percent of children who arrived in the United States this year were girls, compared with 27 percent in the past. Recently three girls were raped and killed in Nueva Suyapa, one only 8 years old. Two 15-year-olds were abducted and raped. The kidnappers told them that if they didn't get in the car they would kill their entire families. Some parents no longer let their girls go to school for fear of their being kidnapped, says Luis [For example,] Milagro Noemi Martínez, a petite 19-year-old with clear green eyes, has been told repeatedly by narcos that she would be theirs—or end up dead.”).

34. Nazario, *supra* note 10.

35. Nazario, *supra* note 5 (quoting Milagro Noemi Martínez) (“Last summer,

willing to risk the potentially fatal journey to the U.S. because “the other option is certain death—anything is better than that.”³⁶

In many parts of Central America, children cannot leave their houses, or even to go to school, without being targeted by violent gangs, who recruit boys as members and girls as girlfriends.³⁷ “They are also targeted by police, who assume out of

[Milagro] made her first attempt to reach the United States But she was stopped and deported from Mexico. Now . . . she stays locked inside her mother’s house. ‘I hope God protects me. I am afraid to step outside’ Asking for help from the police or the government is not an option Narcos have bought off police officers, politicians and judges. In recent years, four out of five homicides were never investigated. No one is immune to the carnage. Several Honduran mayors have been killed. The sons of both the former head of the police department and the head of the national university were murdered, the latter . . . by the police.”); Preston, *supra* note 9 (citations omitted) (“Young migrants say they are fleeing sharply escalating criminal violence in their home countries They are willing to risk the uncertain dangers of the trip north to escape certain dangers they face at home For the parents of Liliana Muñoz, . . . shootouts and kidnappings by drug traffickers close to her home . . . prompted them to send for their daughter. Both illegal immigrants, they had been living near Atlanta since 2007.”) (internal quotations omitted).

36. Kari Dequine Harden, *Undocumented: Kari Dequine Harden on the Uncertain Future Honduran Immigrant Children Face in New Orleans*, GAMBIT WKLY.: NEW ORLEANS NEWS & ENT. (Dec. 1, 2014) (citations omitted), <http://www.bestofneworleans.com/gambit/undocumented/Content?oid=2540435>.

37. See WOMEN’S REFUGEE COMM’N, FORCED FROM HOME: THE LOST BOYS AND GIRLS OF CENTRAL AMERICA 9 & n.25, 10 & n.37, 11 & nn. 46 & 51 (2012) (citing Karen Musalo et al., *Crimes Without Punishment: Violence Against Women in Guatemala*, 21 HASTINGS WOMEN’S L.J. 161, 213 (2010); Geoffrey Ramsey, *Honduras: Home to the Most Violent City in the Hemisphere?*, CHRISTIAN SCI. MONITOR (Jan. 18, 2012), <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2012/0118/Honduras-home-to-the-most-violent-city-in-the-hemisphere>; Edgardo Ayala, *Schoolchildren and Teachers Under Fire in El Salvador*, INTER PRESS SERVICE (Mar. 13, 2012), <http://www.ipsnews.net/2012/03/schoolchildren-and-teachers-under-fire-in-el-salvador/>, <https://www.womensrefugeecommission.org/component/zdocs/document/download/844> (“[After] a coup in 2009 . . . , Mexican drug cartels took advantage of the security vacuum [in Honduras] by stepping up their illegal operations, including the[] recruitment of . . . children . . . to carry out kidnappings, extortion and murder [T]he violence in El Salvador is largely the result of the rising influence of criminal gangs, which recruit children and teenagers Gangs have increasingly begun targeting children at their schools, resulting in . . . one of the lowest school attendance rates in Latin America In 2011, the deputy head of the Salvadoran police force told the press that, while gangs more frequently target men for violent attacks, the *level* of violence that gang members use against women and girls in ‘sexualized killings’ is higher than that typically used against men. . . . [I]n Guatemala, especially those in urban centers, are particularly vulnerable to targeting and recruitment by youth gangs Violence against women has become so widespread that it has [been] called . . . an ‘epidemic,’ and a number of U.N. committees have expressed serious concern over the spiraling rates of rape, torture and murder of women. Since 2000, over 5,000 women and girls

hand that all children are gang affiliated. Girls also face gender-based violence, as rape becomes increasingly a tool of control.”³⁸ One girl, Estefany, age ten, fled El Salvador after her uncle came into her house, tied her hands behind her back, and raped her.³⁹ This type of brutal abuse continued until she escaped to the U.S. at age twelve.⁴⁰ Another Honduran girl was raped in seventh grade, then targeted with death threats to the point that “she was afraid to leave the house.”⁴¹ She fled to New Orleans, but was forced to leave behind “her 7-month-old baby [because she] did not think [he] would survive the journey.”⁴² The trauma children have experienced in their home countries contextualizes both the desperation that motivates so many children to flee, and the vulnerability that makes it so hard for them to represent themselves.

B. THE COURT PROCESS

“A child’s age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and

have been murdered in Guatemala.”) (emphasis added); *see also* Nazario, *supra* note 5 (quoting Carlos Baquedano Sánchez, “a slender 14-year-old” resident of Nueva Suyapa, Honduras, specifically a neighborhood “called El Infiernito—Little Hell”) (“Carlos . . . explained how hard it was to stay away from the cartels. He lives in a shack made of corrugated tin . . . and usually doesn’t have anything to eat one out of every three days But all of this was nothing, he says, compared to the relentless pressure to join narco gangs and the constant danger they have brought to his life. When he was 9, he barely escaped from two narcos who were trying to rape him, while terrified neighbors looked on He has known eight people who were murdered and seen three killed right in front of him. He saw a man shot three years ago and still remembers the plums the man was holding rolling down the street, coated in blood. Recently he witnessed two teenage hit men shooting a pair of brothers for refusing to hand over the keys and title to their motorcycle. Carlos hit the dirt and prayed. The killers calmly walked down the street. Carlos shrugs. ‘Now seeing someone dead is nothing.’”); Nazario, *supra* note 30 (“[U]naccompanied minors feel they have no choice but to flee. [Brian Molina, 16,] says there is nothing left for him to go back to—the local narco cartel . . . killed his brother and father. He tried to go home once, to . . . Nicaragua, and the narcos nearly bludgeoned him to death, too.”).

38. WOMEN’S REFUGEE COMM’N, *supra* note 37, at 1.

39. Nazario, *supra* note 10 (quoting Estefany Aracely Climaco Acosta, who left El Salvador “to join her mother in Los Angeles”) (“When Estefany was 10, an uncle arrived one morning at the mud hut the girl shared with her grandmother and other relatives. The uncle knew that only Estefany was home at that hour. He tied her hands behind her back and raped her. She screamed, but the hut was in an isolated spot. ‘No one could hear me,’ . . .”).

40. *Id.*

41. Harden, *supra* note 36.

42. *Id.*

perception.”⁴³ The Supreme Court has long recognized that children require significant legal guidance because of their inherent vulnerabilities.⁴⁴ Immigration court should be no exception. “The notion that a 10 year old boy from El Salvador who can barely speak English can advance the constitutional arguments that trained lawyers who have gone to law school would make in federal court is absurd.”⁴⁵

But this absurdity is a reality. The immigration-court system is deceptively complicated. A child does not simply state why they came to the U.S. and what they intend to do here. Rather, each phase of the case “requires substantial factual investigation and legal research.”⁴⁶ Before children can even attempt to affirmatively demonstrate they qualify for a specific legal relief, they must establish they are not otherwise inadmissible for a wide range of reasons like health and national safety concerns, criminal history, and immigration fraud.⁴⁷

43. Amended Complaint—Class Action at 11, *J.E.F.M. v. Holder*, 107 F. Supp. 3d 1119 (W.D. Wash. 2015) (No. C14-1026 TSZ) (quoting *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011)) (internal quotations omitted), *aff’d in part, rev’d in part sub nom. J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016).

44. *In re Gault*, 387 U.S. 1, 36, 41 (1967) (internal quotations omitted) (citing *Kent v. United States*, 383 U.S. 541, 561–62 (1966)) (“[W]hether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him [S]o we hold . . . that [assistance of counsel] is . . . essential for [juveniles facing a] determination of delinquency, carrying with it the awesome prospect of incarceration in a state institution until the . . . age of 21.”).

45. Ivette Feliciano, *With Few Lawyers, Child Migrants Fight Alone in Court to Stay in the U.S.*, PBS NEWS HOUR (Nov. 8, 2014, 2:14 PM), <http://www.pbs.org/newshour/bb/lawyers-child-migrants-fight-alone-court-stay-u-s/> (“Ahilan Arulanantham . . . began representing [several unaccompanied minors] last year . . . in a class-action lawsuit brought by the ACLU and other groups against ORR, Immigration and Customs Enforcement, and the Departments of Justice and Homeland Security.”).

46. See Amended Complaint—Class Action, *supra* note 43, at 9.

47. Wendy Shea, *Almost There: Unaccompanied Alien Children, Immigration Reform, and a Meaningful Opportunity to Participate in the Immigration Process*, 18 U.C. DAVIS J. JUV. L. & POL’Y 148, 159–60 (2014) (citing Immigration and Nationality Act, Pub. L. No. 414, §§ 212(a), 237(a), 66 Stat. 163, 182–87, 201–02 (1952) (codified as amended at 8 U.S.C. §§ 1182, 1227(a) (2005 & Supp. 2016))) (“In [removal] proceedings, a judge will determine if the child is inadmissible under section 212(a) for reasons ranging from health to national security concerns[, or] deport[able] under section 237(a), which considers, among other things, criminal history and immigration fraud. Children must establish that they are not inadmissible under either section . . .”).

Even if children can prove they are not *disqualified* from relief, it is unlikely they will be able to affirmatively prove their case. Children are largely unaware what type of relief exists, much less able to obtain it.⁴⁸ Each type of substantive relief has its own procedural and substantive rules, and requires particular legal and evidentiary support.⁴⁹ Procedural defenses are similarly available, but they require an even greater ability to master the facts surrounding their arrest, interactions between state and federal law and agencies, and complex constitutional tests.⁵⁰ Either way, children must collect factual findings, grasp intricacies of immigration law, and file supporting documents to different agencies of government, assisted only by a translator.⁵¹ Children must attempt to present legal pleadings and filings against specialized government lawyers who act like prosecutors, poking holes in the child's case.⁵² The judge hears each side's

48. Press Release, Hakeem Jeffries, U.S. Congressman for the Eighth Dist. of N.Y., Rep. Hakeem Jeffries and House Members Introduce Legislation to Provide Legal Representation of Unaccompanied Minors, (2014), <http://jeffries.house.gov/media-center/press-releases/rep-hakeem-jeffries-and-house-members-introduce-legislation-to-provide> (“Most undocumented children are not aware of the claims they can make in immigration court. The claims are technically available without counsel, but it is highly unlikely these children can vindicate their rights absent legal representation.”).

49. See Amended Complaint—Class Action, *supra* note 43, at 9–10 (citations omitted) (“Establishing [asylum] eligibility requires the child to present significant amounts of evidence and sophisticated legal arguments. As with asylum, children bear the burden of demonstrating eligibility for other forms of relief from deportation [However, m]eeting the eligibility requirements for all . . . forms of relief requires the child to carefully marshal both facts and law.”); Shea, *supra* note 47, at 160 (“[If the child cannot rebut a finding of inadmissibility, she must show] that [she] qualif[ies] for a substantive ground for relief from removal [, but e]ach . . . substantive ground[] for relief requires specific evidence and specific legal arguments.”).

50. See Amended Complaint—Class Action, *supra* note 43, at 9–10 (citations omitted) (“Some children have procedural defenses against removal, including arguments that the immigration proceedings must be terminated because of constitutional or regulatory violations However, moving an Immigration Judge to terminate the proceedings on such grounds is no small feat.”).

51. See *id.* at 9–11 (“The child must not only demonstrate substantive eligibility for relief, but also be able to follow procedures for submitting the appropriate applications to different agencies, along with the required supporting evidence.”); Nazario, *supra* note 10 (“[Unaccompanied children must proceed in court] with no knowledge of the country’s language or customs, and often with only the help of a translator.”).

52. See ELEANOR ACER ET AL., HUMAN RIGHTS FIRST & LOYOLA UNIV. NEW ORLEANS: STUART H. SMITH LAW CLINIC & CTR. FOR SOC. JUSTICE, LOUISIANA AND THE GROWING CRISIS IN IMMIGRANT REPRESENTATION 4, 12 (2014), <http://www.humanrightsfirst.org/sites/default/files/left-out-conference-paper.pdf> (“Immigration

arguments, but is limited to the “evidence the unaccompanied and unrepresented child is capable of producing.”⁵³

The inability of the child to present their case is at the core of why denying counsel is unjust and legally questionable. The judge may never hear facts that would be material to the case, so the child may be denied relief they could have qualified for if they had a trained advocate. This process also slows the court system to a crawl. Judges, as administrators of justice, often recognize they do not have a real opportunity to make a fair decision so they generally dislike having children appear alone in their courtroom.⁵⁴ As a result, they are likely to grant stays to allow children to try and obtain counsel.⁵⁵ With legal resources being so slim, this can push court dates back months and months.⁵⁶ These delays usually do not result in representation, and they put pressure on an already buckling system. The federal immigration-court system has experienced a 146% workload increase in the last ten years, with judges handling 1,400 cases per year, nearly double that of judges in other courts.⁵⁷ When child cases are delayed it uses up the judge’s time, delaying the cases of detained-adult immigrants. Each day an immigrant is delayed in detention costs taxpayers \$164.⁵⁸ Failing to provide counsel to children is not only unjust and legally problematic—it is costly.

court proceedings are adversarial proceedings, and the government is represented by an Immigration and Customs Enforcement (ICE) ‘trial attorney’ who act[] in many ways as . . . experienced prosecutors, [and] pursue removal of the immigrant respondent aggressively . . .”).

53. Shea, *supra* note 47, at 162 (citations omitted).

54. *Id.* at 168–69 (citations omitted) (“When an unaccompanied child appears pro se at his removal proceeding, the immigration judge often finds herself forced to help the child develop her case while at the same time acting as a fact-finder and adjudicator. When a judge wears too many hats, the fairness of the process is put in jeopardy. In fact, judges have indicated that the lack of representation for these children is frustrating and that the process slows down because of it When judges cannot adequately communicate with the children or when judges have to find the relevant evidence themselves, the[y] are not getting the information they need to make a legally sound decision for the children.”).

55. *See id.* at 167–68.

56. *See id.* at 168 (citations omitted).

57. Editorial, *The Immigration Backlog*, L.A. TIMES, Aug. 26, 2015, at A18.

58. HUMAN RIGHTS FIRST, IMMIGRATION DETENTION: HOW CAN THE GOVERNMENT CUT COSTS? 1 (2014), <http://www.humanrightsfirst.org/uploads/pdfs/immigration-detention-fact-sheet-jan-2013.pdf>.

C. IMPACT OF REPRESENTATION: THE DIFFERENCE BETWEEN OBTAINING RELIEF AND FACING REMOVAL

Age is not the only factor working against unaccompanied children. Just as indigent criminal defendants face difficulties due to a lack of resources, immigrants overwhelmingly face crushing poverty. Limited resources make it difficult to hire experts, compile evidence, and form a case. Economic struggles are compounded for immigrants of any age by cultural and linguistic barriers that make understanding legal process and liability difficult.⁵⁹ Immigrants often fear government corruption and deportation by petitioning or appearing in court, so they are less likely to fervently pursue their case, even if they have the capacity.⁶⁰ This fear is greater for children who are already more susceptible to being misled, and are unable to distinguish between those advocating for their interests and those who are adversarial.

Suffice to say, it would be difficult for an adult immigrant, with cultural and economic barriers, or a child, with cognitive barriers, to fully present and understand the issues of their case. It is harder yet for the particular demographic of unaccompanied-alien children in courts today who are “unusually vulnerable.”⁶¹ Often, they are too scared to speak about their trauma without a trusted advocate. Unfortunately, their trauma is usually the basis for their substantive relief, and when they cannot communicate their experiences, they cannot convey their eligibility for such relief.⁶²

However, if children had counsel to adequately present their case, it is likely that many children would qualify for some form of relief.⁶³ A total of 58% of children surveyed at the U.S.–Mexico

59. Elisabeth M.W. Trefonas, *Access to Justice for Immigrants in Wyoming*, WYO. LAW., Oct. 2011, at 24, 24.

60. *Id.*

61. Julie Myers Wood & Wendy Young, *Children Alone and Lawyerless in a Strange Land*, WALL ST. J. (Sept. 22, 2013, 6:53 PM), <http://www.wsj.com/articles/SB10001424127887324492604579083400349940432> (“[T]he fundamental unfairness of the U.S. immigration system toward children—particularly the thousands of undocumented, unaccompanied minors who enter the country each year—is a uniting issue.”).

62. See Shea, *supra* note 47, at 167–68.

63. See AM. IMMIGRATION COUNCIL, *supra* note 9, at 4 (“To meet its protection obligations, the [U.S.] should ensure that children . . . have adequate representation when they tell their stories to a judge Given their age, the complexity of their claims, and the trauma that generally accompanies their journey, determining

border fled conditions that “indicated a potential or actual need for international protection.”⁶⁴ Studies indicate even higher rates of international-protection eligibility for children from Central America: 72% of children from El Salvador, 57% from Honduras, and 38% from Guatemala.⁶⁵ Even more unaccompanied children could qualify for U.S.-specific forms of relief that serve to protect victims of trafficking, crime, abuse, or abandonment by a parent.

Given the overwhelming burden of navigating the court system alone, and high rates of eligibility for relief, it is unsurprising that studies have universally shown the drastic impact of counsel on the outcome of children’s cases. Counsel is considered the single-most-important factor in successfully obtaining relief for unaccompanied children.⁶⁶ One estimate showed 7% of children were successful in obtaining relief without

whether these children qualify for some form of protection can be a time-consuming process.”).

64. See AM. IMMIGRATION COUNCIL, *supra* note 9, at 4 (citations & internal quotations omitted).

65. *Id.* (“A 2010 survey . . . indicated that 40 percent of children screened while in government custody could be eligible for relief from removal under U.S. laws.”). For example, such forms of protection include: (1) asylum, which is a “form of international protection” for those facing persecution in their home country; (2) Special Immigrant Juvenile Status (SIJS), which is a “form of relief available to noncitizen minors who were abused, neglected, or abandoned by one or both parents”; (3) U Visas, which are “available to victims of certain crimes” in the United States; and (4) T Visas, which are for “individuals who have been victims of a severe form of trafficking.” *Id.*

66. See ACER ET AL., *supra* note 52, at 3 n.4, 12 & n.41, 15 n.62 (citing PETER L. MARKOWITZ ET AL., STEERING COMM. OF THE N.Y. IMMIGRANT REPRESENTATION STUDY REPORT, ACCESSING JUSTICE: THE AVAILABILITY AND ADEQUACY OF COUNSEL IN IMMIGRATION PROCEEDINGS 19 (2011) (“Finally, and most importantly, we sought data measuring the impact of representation on the outcome of a removal case. [W]e examined rates of representation and outcomes for completed cases and found a high correlation between representation and successful outcomes—i.e., obtaining either relief from removal or termination[, which] shows that representation is a highly significant factor determining the outcome of immigration cases. The success rate further improves when the respondent is not detained and has not been transferred.”), <http://www.humanrightsfirst.org/sites/default/files/left-out-conference-paper.pdf> (“The [study] found that the two most important variables affecting the ability to secure a successful outcome in a case are having representation and being free from detention.”); see also MARKOWITZ ET AL., *supra*, at 19 & fig.7 (“74% of [unaccompanied minors] who were represented and not detained at the time their cases were completed . . . obtained successful outcomes. By contrast nondetained individuals who were unrepresented succeeded only 13% of the time. The success rate dropped to 18% for those who were represented but detained at the time of case completion. The combination of not having representation and being detained at the time of case completion drove the success rate down to just 3%.”).

counsel, while 69% succeeded with counsel.⁶⁷ Other studies have found roughly the same: 15% of children succeed without counsel, and 73% succeed with counsel.⁶⁸

Ana Suruy personally experienced the difference counsel can make.⁶⁹ Her family was targeted in Guatemala for extortion by the cartel.⁷⁰ After the cartel threatened to kidnap the whole family, her mother agreed to pay.⁷¹ The payment did not satisfy them, and the cartel poisoned their pet cat and dog.⁷² Next, a note was left singling out thirteen-year-old Ana.⁷³ Seeing no other options, she fled the country.⁷⁴ During her journey to the U.S. she was robbed at gunpoint and saw fellow migrants left for dead in the desert.⁷⁵ She spent two days walking without food or water, and was eventually caught by border patrol.⁷⁶ Even in the U.S., the gang persecution continued.⁷⁷ The cartel found her American phone number and left her voicemails making sexually suggestive sounds.⁷⁸ Afraid for her life, Ana faced court alone because her family in the U.S. were minimum wage workers who could not afford an attorney to represent her.⁷⁹

Fortunately for Ana, a coordinator for a nonprofit organization approached her while she was waiting outside immigration court.⁸⁰ It took five lawyers and four years, but she was granted asylum.⁸¹ It seems implausible that young Ana could have compiled the police reports, found and interviewed the

67. *Statement by City Bar President Debra L. Raskin Urging Adoption of the Vulnerable Immigrant Voice Act*, N.Y. CITY B. (Apr. 30, 2015), <http://www.nycbar.org/media-listing/media/detail/statement-by-city-bar-president-debra-l-raskin-urging-adoption-of-the-vulnerable-immigrant-voice-act>.

68. Feliciano, *supra* note 45.

69. *See* Nazario, *supra* note 10 (quoting Ana Suruy) (“Ana . . . wants every child to have the help she believes saved her life.”).

70. *Id.*

71. *Id.*

72. *Id.* (“[A]nd twisted the necks of their flock of ducks.”).

73. *Id.*

74. Nazario, *supra* note 10 (quoting Ana Suruy) (“Ana made six attempts to cross into the United States.”).

75. *Id.*

76. *Id.*

77. *Id.* (“After three months, she was released to a cousin on Long Island.”).

78. *Id.*

79. Nazario, *supra* note 10 (quoting Ana Suruy) (“People had warned Ana that without a lawyer she didn’t stand a chance, but her relatives . . . had no money to spare.”).

80. *Id.*

81. *Id.*

experts, drafted the documents, and made the legal arguments that made her success possible.⁸² Yet, without her lawyers, Ana would have returned to the violent grasp of the cartel.⁸³

D. NATIONAL EFFORTS TO PROVIDE REPRESENTATION

Recognizing the particular vulnerability of unaccompanied-alien children, the federal government has made modest efforts to provide legal services.⁸⁴ One such attempt is legal-orientation presentations, which occur in detention facilities and are meant to educate immigrant detainees about their legal rights and potential relief.⁸⁵ Particularly in Louisiana, many detainees never see the presentations.⁸⁶ Even if they do, the presentations are brief and fall far short of providing all of the materials necessary for pro se representation.⁸⁷ Detainees privileged with receiving a presentation are “left with little or no understanding

82. Nazario, *supra* note 10

83. *Id.* (“Without a lawyer, she would most likely have been deported, like so many others.”).

84. Matt Adams, *Advancing the “Right” to Counsel in Removal Proceedings*, 9 SEATTLE J. SOC. JUST. 169, 175–76 (2010) (citations omitted) (“[Although t]he law states [that, i]n any removal proceedings . . . the person concerned shall have the privilege of being represented . . . , there remains a notable absence of case law exploring the right to assigned counsel based on the Constitution . . . [and] it would be remarkable if Congress were to affirmatively act to create the right to assigned counsel for indigent persons in removal proceedings where case law had not already clarified that counsel is required . . . to safeguard constitutional rights.”).

85. See ELEANOR ACER ET AL., *supra* note 52, at 7, 10 (citations omitted) (“The Catholic Charities in Baton Rouge has three attorneys . . . operating the Legal Orientation Program [LOP] that is offered weekly at a detention center located in Jena, LA . . . [LOPs] can provide detainees with a range of basic legal information, including the reasons for their detention, the forms of relief that may be available in general, [and] how to request release on bond . . . [LOPs] have [also] been demonstrated to improve efficiency and be cost-effective.”).

86. See *id.* at 10 (citations omitted) (“Many immigrant detainees in Louisiana also do not have access even to [LOPs] . . . Currently, LaSalle Parish Detention Center in Jena is the only facility in Louisiana that receives weekly visits from a non-profit legal service provider through the federally funded LOP program . . .”).

87. Adams *supra* note 84, at 179 (citations omitted) (“[T]he LOP provides valuable assistance to many unrepresented detained respondents. Nonetheless, it can in no way be credited as providing a viable alternative to legal representation . . . Even those respondents who understand the substance of the basic charges against them or those who are advised that they may qualify for an application for relief, . . . can[not] . . . generally learn the particulars of the legal process, which are required to successfully contest charges and present applications for relief. To the extent that the LOP is viewed as a remedy for ensuring fundamentally fair hearings to respondents, its implementation is counterproductive.”).

of the intricacies of the substantive provisions of the law.”⁸⁸ The inadequacy of legal-orientation presentations for adults pales in comparison to their failure to prepare children for court. Not only are children less likely to be detained, and therefore exposed to the presentations—their inability to understand the complex substantive and procedural law with which they are presented is an insurmountable hindrance to any sort of benefit they might receive.

Another indirect legal resource provided by the government is a list of pro bono counsel available to contact.⁸⁹ However, the lists bear an empty promise of counsel.⁹⁰ Given that each child has been presented with a list of potential providers, and the vast majority of children still appear in court without counsel, the massive gap in available representation speaks for itself. It is also echoed in the stories of girls like Jessica. She left El Salvador after her uncle (a police officer) refused to give over guns and uniforms to gang members.⁹¹ After her uncle’s refusal, Jessica was followed and threatened by gang members.⁹² The threats forced her to flee her town, which had twenty-nine gang homicides in one week.⁹³ After arriving in the United States and being put in removal proceedings, she was given a list of lawyers.⁹⁴ For eight months, “all the lawyers she contacted said they were too busy to help If I were deported, I’d be terrified to go back. All of my dreams, my plans, would crumble. I don’t know what the gangs would do to me.”⁹⁵

Despite the federal government’s unwillingness to directly

88. Adams *supra* note 84, at 179.

89. See ACER ET AL., *supra* note 52, at 10–11 (“[LOPs are] currently being presented at 25 different detention centers across the United States[,] . . . offer[ing] four levels of service: group orientations, individual orientations, self-help workshops and referrals to pro bono attorneys.”).

90. See *id.* at 1, 10 (“[I]n Louisiana, . . . the immigrant population has grown markedly . . . since Hurricane Katrina[, and] is also home to several large immigration detention facilities, located far from urban centers where non-profit legal organizations or pro bono attorneys might potentially be recruited [However, LOPs sometimes provide] potential referrals to pro bono counsel (if and when there is actually potential counsel to actually take on cases.)”; Harden, *supra* note 36 (“In Louisiana, there is a severe shortage for pro bono legal services . . . especially pro bono immigration legal services.”).

91. Feliciano, *supra* note 45 (citations omitted).

92. *Id.* (citations omitted) (“[T]he gang began following her to school and home and threatened to kidnap her and other family members who lived with her.”).

93. *Id.*

94. *Id.*

95. *Id.*

provide a universal right to appointed counsel for unaccompanied children, it has shown concern for the issue by funding some limited programs and providing grants to create public-private partnerships.⁹⁶ This provision of funding is the most promising effort to reform the system, because it indicates a willingness to provide the most difficult part of the equation: money. Unaccompanied-immigrant children continue to be a hot-button political issue, both arousing sympathy for their plight and frustration with their burden on the system.⁹⁷ The government's willingness to provide money for representation shows that it takes seriously a growing pressure to provide for these children. In fact, one such grant funded the CCANO program discussed in this Comment.⁹⁸

III. LEGAL BACKGROUND: IS THERE A RIGHT TO APPOINTED COUNSEL?

Today, unaccompanied-child migrants have no right to appointed counsel, either on statutory or constitutional grounds, but recent litigation has demonstrated that such a right might be recognized in the near future.⁹⁹ Failing to develop a program to provide counsel now risks a huge burden on the government and community if the court recognizes this right. But, regardless of current official recognition, counsel should be provided to children

96. LISA FRYDMAN ET AL., CTR. FOR GENDER AND REFUGEE STUDIES & KIDS IN NEED OF DEF., A TREACHEROUS JOURNEY: CHILD MIGRANTS NAVIGATING THE U.S. IMMIGRATION SYSTEM, at iii, 75 & n.386 (2014), http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf (“[T]he . . . Trafficking Victims Protection Reauthorization Act (TVPRA) . . . included groundbreaking provisions that have helped increase the protection of children in the U.S. immigration system . . . [and] support an innovative public-private partnership model in which pro bono attorneys from law firms, corporations, and law schools represent unaccompanied children in immigration proceedings. The model has been increasingly effective, establishing hundreds of partnerships that have resulted in the representation of well more than 2,300 children in their removal proceedings, and creating a nationwide pool of thousands of attorneys trained to represent unaccompanied children . . . law firms still provide significant amounts of pro bono representation in death penalty cases, other compelling criminal defense cases and poverty law cases, despite the provision of government funding for counsel.”).

97. See Shea, *supra* note 47, at 148, 167–68.

98. See Email from Homero Lopez, Managing Attorney, Immigration Legal Servs., Catholic Charities: Archdiocese of New Orleans, to author (Apr. 11, 2016) (on file with author & Loyola Law Review).

99. See generally *J.E.F.M. v. Holder*, 107 F. Supp. 3d 1119 (W.D. Wash. 2015), *aff'd in part, rev'd in part sub nom. J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016); see also *Dearinger ex rel. Volkova v. Reno*, 232 F.3d 1042, 1045 (9th Cir. 2000) (citing *Castro-Nuno v. Immigration & Naturalization Serv.*, 577 F.2d 577, 578 (9th Cir. 1978)) (“There is no constitutional right to counsel in deportation proceedings.”).

because it would both allow them to exercise their enumerated statutory rights, and comport with the principles underlying due process.

This section outlines the current jurisprudence on unaccompanied-child immigrants' statutory and constitutional right to appointed counsel. The analysis centers on the most recent cases to address this issue: *Franco-Gonzalez v. Holder* and *J.E.F.M. v. Holder*.

A. STATUTORY RIGHT TO APPOINTED COUNSEL

Ironically, the statutory hurdle to appointed counsel has historically been the “Right to Counsel” provision of the United States Code. It provides that “in any removal proceedings before an immigration judge and in any appeal . . . from any such removal proceedings, the person concerned shall have the privilege of being represented (*at no expense to the government*) by such counsel . . . as he shall choose.”¹⁰⁰ The phrase “at no expense to the government” was previously interpreted to preclude a right to government-appointed counsel in any circumstance, but things are changing.¹⁰¹ Three years ago, the court in *Franco-Gonzalez* held that appointed counsel is required in some circumstances, even if the counsel is appointed *at government expense*.¹⁰² In *Franco-Gonzalez*, the Central District of California found a right to appointed counsel for disabled immigrants, specifically holding that § 504 of the Rehabilitation Act required the appointment of

100. 8 U.S.C. § 1362 (2005) (emphasis added).

101. See Adams, *supra* note 84, at 175–76 (citation omitted) (“With those six words . . . the statute has managed to thwart efforts by advocates to develop case law providing for the right to assigned counsel before they even begin. Instead, case law examining the right to counsel in removal proceedings has focused on whether the respondents have been advised of their right to pursue legal representation at their own expense, whether the immigration judge has provided them with sufficient time to look for their own counsel, and whether they received ineffective assistance of counsel.”); see also *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG, 2013 WL 3674492, at *6 (C.D. Cal. Apr. 23, 2013) (citations omitted) (“[N]othing in [the statutory framework] prohibits the use of discretionary federal funding for representation of aliens in immigration proceedings.”).

102. See *Franco-Gonzalez*, 2013 WL 3674492, at *5–6 (quoting *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1417 (9th Cir. 1994)) (“[W]hile a reasonable accommodation should not impose ‘undue financial . . . burdens,’ the rule does not preclude ‘some financial burden resulting from accommodation’ Defendants are not required, however, to provide bar-certified attorneys, as long as the representatives they provide meet the requirements for a Qualified Representative. For example, the regulations allow for representation by law students and law graduates not admitted to the bar Defendants fail to address why the provision of these types of Qualified Representatives would not be feasible.”).

qualified representatives for mentally-incapacitated persons.¹⁰³ The court looked to a statement from General Counsel for the Department of Homeland Security, which opined that “the plain language of Section 1362 does not . . . *prohibit* [] the provision of counsel at government expense.”¹⁰⁴

Regardless of the “Right to Counsel” provision, immigrants have an affirmative statutory right to “have a reasonable opportunity to examine the evidence against [them], to present evidence on [their] own behalf, and to cross-examine witnesses presented by the Government.”¹⁰⁵ Advocates argue that this provision could provide a statutory basis for recognizing a right to appointed counsel for unaccompanied-child migrants because children cannot have a “reasonable opportunity” without counsel.¹⁰⁶ The plaintiffs in *J.E.F.M.* argued that representation, like translation, is a protected (albeit unenumerated) procedural right because it is necessary for enumerated rights to be exercised.¹⁰⁷ Just as non-English speakers have an unenumerated procedural right to a translator because it enables them to exercise their enumerated right to present evidence, children might have an unenumerated right to representation in order to exercise their enumerated right to participate meaningfully in the proceedings.¹⁰⁸

The court in *J.E.F.M.* never addressed the merits of this

103. *Franco-Gonzalez*, 2013 WL 3674492, at *3.

104. *Id.* at *6.

105. 8 U.S.C. § 1229a(b)(4)(B) (2005 & Supp. 2016).

106. Reply in Support of Plaintiffs’ Motion for Preliminary Injunction at 11–12, *J.E.F.M. v. Holder*, 107 F. Supp. 3d 1119 (W.D. Wash. 2015) (No. C14-1026 TSZ) (citations omitted) (“[C]hildren cannot exercise the[ir] specifically-enumerated rights without counsel. Defendants make no attempt to explain how their position—that ten-year-old J.E.F.M. will have to present and cross-examine witnesses and argue his asylum case against a trained prosecutor—satisfies the requirement that he receive a ‘reasonable opportunity’ to exercise the rights guaranteed by § 1229a(b)(4)(B).”), *aff’d in part, rev’d in part sub nom. J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016).

107. *Id.* at 11 (“Plaintiffs’ central argument [is that] the statute provides certain unenumerated procedural rights (like translation) where necessary to ensure that the enumerated ones can be exercised . . .”).

108. *See id.* at 12 (citations omitted) (“[Defendants] also do not explain why the statute has to specifically mention counsel for children when it does not mention translation and certain discovery obligations, even though it protects those rights.”); *see also* HON. JOHN F. GOSSART, JR. ET AL., U.S. DEP’T OF JUSTICE: EXEC. OFFICE FOR IMMIGRATION REVIEW, IMMIGRATION COURT PRACTICE MANUAL 66 (2016), https://www.justice.gov/sites/default/files/pages/attachments/2016/12/02/practice_manual.pdf#page=68 (“In general, the Immigration Court endeavors to accommodate the language needs of all respondents and witnesses.”).

argument because it dismissed the statutory claim for lack of jurisdiction, but the argument itself has not been rejected.¹⁰⁹ The court in *Franco-Gonzalez* similarly failed to address this claim because its finding rested on § 504 of the Rehabilitation Act, but it did provide dicta explicitly supporting such an argument.¹¹⁰ The court reasoned that “competent representation able to navigate the proceedings is the only means by which [disabled immigrant persons] may invoke those [statutory] rights.”¹¹¹ The idea that appointed counsel is required when limited-cognitive ability inhibits meaningful exercise of statutory rights is easily extrapolated to children whose cognitive skills are not fully developed. Children “need legal assistance to exercise their rights,” especially considering “immigration law has recognized the vulnerability of minors and that minority status can be its own form of legal disability.”¹¹²

109. See *J.E.F.M.*, 107 F. Supp. 3d at 1134 (“Because continuances, changes of venue, and the like might enable at least some alien minors to gather the relevant materials and prepare to adequately confront the government’s evidence, including any witnesses, the Court concludes that § 1252(b)(9) requires plaintiffs to exhaust these possible avenues of relief [T]hus, . . . the court GRANTS in part the defendants’ Rule 12(b)(1) motion and DISMISSES for lack of jurisdiction plaintiffs’ first claim for violation of INA § 240.”); see also *J.E.F.M.*, 837 F.3d at 1038–39 (citations omitted) (affirming the district court’s dismissal of the juveniles’ statutory claim, and writing that “[i]n sum, the minors’ claim that they are entitled to court-appointed counsel ‘arises from’ their removal proceedings and §§ 1252(a)(5) and 1252(b)(9) provide petitions for review of a removal order as the exclusive avenue for judicial review. The district court lacks jurisdiction over the minors’ claims.”).

110. See *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG, 2013 WL 3674492, at *3, *8 (C.D. Cal. Apr. 23, 2013) (citations omitted) (“Aspiring to a system that allows the mentally incompetent to similarly participate in the removal proceedings against them is not tantamount to ‘creating an entirely new system of benefits in immigration.’ Defendants can hardly argue that it is audacious to require a Qualified Representative for mentally incompetent individuals in immigration proceedings when . . . some form of procedural safeguards are [already] required for [such individuals] By the same token, the appointment of a Qualified Representative for . . . [unaccompanied minors] is just as reasonable as and no more burdensome than [the Executive Office for Immigration Review] EOIR’s requirement that interpreters be provided for those who cannot understand English.”); see also *id.* at *8 n.10 (quoting GOSSART, JR. ET AL., *supra* note 109, at 66) (“Of particular note is the treatment of the interpreter issue by EOIR’s Immigration Court Practice Manual, which states, in pertinent part: ‘Interpreters are provided at government expense to individuals whose command of the English language is inadequate to fully understand and participate in removal proceedings.’”).

111. *Id.* at *5.

112. Shea, *supra* note 47, at 167 (citations omitted).

B. CONSTITUTIONAL RIGHT TO APPOINTED COUNSEL

Even if courts do not find a statutory right to appointed counsel for unaccompanied-child migrants, constitutional considerations may require it. The Sixth Amendment right to appointed counsel applies only to criminal proceedings, so it does not apply to immigration proceedings because they “are civil in nature.”¹¹³ However, the Due Process Clause of the Fifth Amendment can provide an independent basis for the right to appointed counsel regardless of the civil nature of the proceedings.¹¹⁴

Courts have specifically noted the Fifth-Amendment implications in immigration court: “[A]n alien has a right to counsel if the absence of counsel would violate due process under the Fifth Amendment.”¹¹⁵ A due-process violation has not been found yet, but those cases are distinguishable from the present instance. Previous cases have responded to *retrospective* allegations that lack of counsel violated due process made by *individual adults*.¹¹⁶ Because those cases required looking

113. See *United States v. Campos-Asencio*, 822 F.2d 506, 509 (5th Cir. 1987) (citations omitted) (“Because deportation is a civil proceeding, potential deportees have no sixth amendment right to counsel.”); *J.E.F.M. v. Holder*, 107 F. Supp. 3d 1119, 1123 n.2 (W.D. Wash. 2015) (citations omitted) (“The parties agree that no Sixth Amendment right to counsel exists in removal proceedings . . .”), *aff’d in part, rev’d in part sub nom. J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016).

114. *Adams*, *supra* note 84, at 177 & n.26 (citing *Campos-Asencio*, 822 F.2d at 509) (“[W]hile there is no statutory right to assigned counsel, an individual may successfully argue that deprivation of assigned counsel in deportation proceedings violated his right to due process under the law . . .”).

115. *Campos-Asencio*, 822 F.2d at 509 (citations omitted).

116. See, e.g., *id.* at 509–10 (citing *United States v. Mendoza-Lopez*, 107 S. Ct. 2148, 2151–52, 2155 n.17 (1987) (“The District Court ruled that respondents could collaterally attack their previous deportation orders . . . [because they] had not made knowing and intelligent waivers of their rights to apply for suspension of deportation or . . . to appeal, finding it ‘inconceivable that they would so lightly waive their rights to appeal, and thus to the relief they now claim entitlement, if they had been fully apprised of the ramifications of such a choice’ . . . We decline at this stage to enumerate which procedural errors are so fundamental that they may functionally deprive the alien of judicial review . . . We have previously recognized, however, in the context of criminal proceedings, that ‘some errors necessarily render a trial fundamentally unfair.’”); *Partible v. Immigration & Naturalization Serv.*, 600 F.2d 1094, 1096 (5th Cir. 1979)) (“In *Mendoza-Lopez*, the Supreme Court accepted the district court’s finding that the defendants were not adequately informed of their rights to appeal and to request suspension of deportation . . . [but it] did not specify what other errors would support a collateral attack . . . This Court has reversed a deportation order in a case where the alien, although informed of her right to counsel, ‘waived her rights without being provided with any understanding by the immigration judge of the complexity of her dilemma and without any awareness of

backwards to the particular circumstances of the case, they have traditionally been analyzed under a two-prong test: (i) “whether the proceedings were ‘fundamentally unfair,’” and (ii) whether the alien was prejudiced by the lack of counsel.¹¹⁷

The Ninth Circuit is the only jurisdiction that has examined the *prospective* right to appointed counsel of unaccompanied *children* as a *class*. The court in *J.E.F.M.* found the two-prong test above inappropriate when considering the right to appointed counsel for unaccompanied-child migrants because, unlike *retrospective* and *case-specific* claims, that claim focuses on *future* proceedings for a large *class* of persons.¹¹⁸ The court looked instead to the test established in *Matthews v. Eldridge*, which focuses on three key factors: (1) “the nature of the plaintiff’s interest”; (2) “the risk of erroneous deprivation”; and (3) “the fiscal or administrative burdens on the government associated with additional or substitute safeguards.”¹¹⁹

The district court in *J.E.F.M.* was considering a motion to dismiss for failure to state a claim, so it did not engage in the full *Matthews* analysis, but did find that the plaintiffs had a plausible basis for relief under the due-process claim.¹²⁰ In briefly analyzing the first factor (nature of the plaintiffs’ interest), the court noted that deportation is a “drastic measure and at times

the cogent legal arguments which could have been made on her behalf [A]t this stage of the case, an oral argument panel could do no more than reaffirm two now indisputable abstract propositions: that *Mendoza-Lopez* allows *some* collateral attacks on prior deportation orders, and that, under *Partible*, *some* deprivations of counsel justify reversal of deportation orders.” (emphasis in original).

117. *J.E.F.M.*, 107 F. Supp. 3d at 1137–38 (citing *Lin v. Ashcroft*, 377 F.3d 1014, 1023–24 (9th Cir. 2004); *Dearinger ex rel. Volkova v. Reno*, 232 F.3d 1042, 1045 (9th Cir. 2000)); *Campos-Asencio*, 822 F.2d at 510 (“[T]he difficult question is whether the deprivation of counsel, if any, amounted to denial of due process and whether these deprivations, if established, prejudiced [the plaintiff] by rendering the deportation hearing fundamentally unfair or denying [him] judicial review”).

118. See *J.E.F.M.*, 107 F. Supp. 3d at 1138 (citations omitted) (“The procedural postures of previous right-to-counsel cases, however, differ from [this] one Those cases all involved either direct review of a removal . . . or collateral attack of a removal order being used as evidence in a prosecution for illegal reentry.”).

119. *Id.* (citing *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)) (“The Court is satisfied that plaintiffs’ due process right-to-counsel claim requires a weighing of the three factors articulated in *Matthews*”).

120. See *id.* at 1137, 1139–43 (“Defendants’ Rule 12(b)(6) motion . . . ignores [plaintiffs’] allegations . . . , relies on facts outside the pleadings, and invites the Court to engage in the type of analysis more appropriately reserved for summary judgment or trial. The Court declines to prematurely evaluate the merits of plaintiffs’ constitutional claim and . . . DENIES defendants’ . . . motion.”).

the equivalent of banishment or exile.”¹²¹ Additionally, the court rejected the defendants’ argument that it should focus only on the administrative act of deportation itself, and ignore the “potential effect of removal, which might be the same or worse than incarceration for some minor aliens.”¹²²

Then, in briefly considering the second factor (risk of erroneous deprivation), the court again found for the plaintiffs.¹²³ Specifically, the court cast aside the defendants’ allegation that the risk of erroneous deprivation was minimal because plaintiffs could always appeal their cases, noting the circularity of such an argument.¹²⁴ The court reasoned that, if lack of counsel caused erroneous deprivation in the original proceeding, appeal is a hollow safeguard because appellate “review is generally limited to the administrative record” and the “absence of counsel in the underlying proceeding is likely to affect the shape and scope of such record.”¹²⁵ It also noted that one plaintiff had already been improperly ordered to be removed, which was sufficient to indicate a high risk of error.¹²⁶

The court was unable to fully address the third factor (fiscal and administrative burdens) because of the limited evidentiary record.¹²⁷ It did, however, scoff at the defendants’ broad slippery-slope concerns of “wheels . . . grinding to a halt,” and fears that “even more youngsters [would] journey illegally to the United

121. *J.E.F.M.*, 107 F. Supp. 3d at 1140 (citations & internal quotations omitted).

122. *Id.*

123. *See id.* at 1140–42.

124. *See id.* at 1140–41 (“Defendants [argue that] . . . the availability of appellate and judicial review is a sufficient substitute for the assistance of counsel in removal proceedings . . . [This] contention runs counter to common sense. Under this theory, counsel would be unnecessary even in a criminal proceeding because the accused, if convicted, could always appeal.”).

125. *Id.* at 1141.

126. *See J.E.F.M.*, 107 F. Supp. 3d at 1141–42 (citations omitted) (“[D]espite the safeguards touted by defendants, at least one named plaintiff . . . was improperly removed in absentia[, which] . . . supports a ‘plausible’ claim that the current procedures available to juveniles are not an adequate substitute for the appointment of counsel at government expense.”).

127. *Id.* at 1142–43 (“Although plaintiffs’ . . . claim poses significant questions about feasibility and cost, the Court cannot resolve those issues in the context of defendants’ Rule 12(b)(6) motion . . . [While] financial constraints and border-policing concerns . . . must play a role in any analysis concerning plaintiffs’ assertion of a right to appointed counsel under the Due Process Clause of the Fifth Amendment, at this juncture, they are not sufficiently quantified or developed to allow the Court to engage in the balancing required by *Matthews*.”).

States,” indicating that such concerns were unsupported.¹²⁸ In total, the Ninth Circuit’s *Matthews* analysis demonstrates that due process comports with, if not outright requires, the appointment of counsel for unaccompanied-child migrants.

Analogous jurisprudence determining a right to counsel in civil contexts further supports a favorable finding for unaccompanied children. In *Turner v. Rogers*, the Supreme Court suggested that due process is more likely to require the appointment of counsel when the proceeding is adversarial, the defendant is facing the government, and the legal issues are complex in nature.¹²⁹ As the court in *J.E.F.M.* noted, all relevant *Turner* factors were present there.¹³⁰ The court further stated that immigration proceedings “pit juveniles against the full force of the federal government” (adversarial nature, and against the government), and “courts have repeatedly recognized . . . that the immigration laws are ‘second only to the Internal Revenue Code in complexity’” (complex legal nature).¹³¹

128. *J.E.F.M.*, 107 F. Supp. 3d at 1142–43 (citations omitted) (“Rather than attempting to quantify the financial and administrative burdens associated with plaintiffs’ requested relief or possible alternatives, defendants speak broadly in ‘slippery slope’ terms They also seem to fear that the Court will inadvertently create a loophole through which parents, guardians, or other adult aliens might receive the services of an appointed attorney.”).

129. 564 U.S. 431, 446–49 (2011) (citations omitted) (“[W]e find three related considerations that, when taken together, argue strongly against the Due Process Clause requiring the State to provide indigents with counsel in every [civil-contempt] proceeding First, the critical question likely at issue in these cases concerns . . . the defendant’s ability to pay. That question is often closely related to the question of the defendant’s indigence . . . [which] can be a question that in many—but not all—cases is sufficiently straightforward to warrant determination prior to providing a defendant with counsel, even in a criminal case Second, sometimes . . . the person opposing the defendant at the hearing is not the government represented by counsel but the custodial parent *un*represented by counsel Third, . . . there is available a set of ‘substitute procedural safeguards,’ . . . [that] can significantly reduce the risk of an erroneous deprivation of liberty [However, we] do not address civil contempt proceedings where the underlying child support payment is owed to the State Those proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative Neither do we address what due process requires in an unusually complex case where a defendant ‘can fairly be represented only by a trained advocate.’”).

130. See *J.E.F.M.*, 107 F. Supp. 3d at 1139 (citations omitted).

131. *Id.* (quoting *Baltazar-Alcazar v. Immigration & Naturalization Serv.*, 386 F.3d 940, 948 (9th Cir. 2004) (“A lawyer is often the only person who [can] thread the [immigration-law] labyrinth.”)) (“[T]he government initiates the proceedings, it is represented in them, and its discretion in executing removal orders is insulated from judicial review.”).

Not only are the Supreme Court's red flags present here, they are exponentially more suspect in the juvenile context. If immigration proceedings are complicated to adults who are familiar with immigration law, they are simply out of reach for children who often have limited education and a severe language barrier. In 1967, the Supreme Court recognized the vulnerability of children, notwithstanding the civil nature of the proceedings, finding that juveniles in civil-delinquency proceedings have a right to legal representation to ensure fundamentally fair proceedings.¹³² The Court reasoned that:

The juvenile needs assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of proceedings, and to ascertain whether he has a defense, and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him.¹³³

Unaccompanied-alien children are no less vulnerable than children facing delinquency proceedings. In fact, they face additional language and cultural barriers, compounded by the devastating effects of poverty and trauma. Nor is the outcome of the proceeding less severe, as unaccompanied-child migrants often face violence, if not death, upon returning to their home countries.

Although courts have yet to find a constitutional or statutory entitlement to appointed counsel for unaccompanied-child migrants, there are strong arguments that the right could be recognized in the near future. Regardless, it is evident that

132. See *In re Gault*, 387 U.S. 1, 35, 41-42 (1967) (citations omitted) ("The [Arizona Supreme C]ourt . . . rejected the proposition that 'due process requires that an infant have a right to counsel.' It said that juvenile courts have the discretion, but not the duty, to allow such representation We do not agree Due Process . . . requires that in . . . [juvenile-delinquency] proceedings . . . , the child and his parents must be notified of the child's right to be represented by counsel retained by them, or . . . , that counsel will be appointed to represent the child Mrs. Gault testified that she knew that she could have appeared with counsel at the juvenile hearing. This knowledge is not a waiver of the right to counsel which she and her juvenile son had They had a right expressly to be advised that they might retain counsel and to be confronted with the need for specific consideration of whether they did or did not choose to waive the right. If they were unable to afford to employ counsel, they were entitled in view of the seriousness of the charge and the potential commitment, to appointed counsel, unless they chose waiver. Mrs. Gault's knowledge that she could employ counsel was not an 'intentional relinquishment or abandonment' of a fully known right.")

133. *Id.* at 36 (citations omitted).

providing counsel to unaccompanied-child migrants, at a minimum, comports with the fundamental principle of fairness which underlie due process and would help children effectively exercise both statutory and constitutional rights.

IV. THE CATHOLIC CHARITIES OF NEW ORLEANS PROGRAM: AN OPPORTUNITY

The influx of unaccompanied-child migrants is a national issue, but the response has been mostly localized. Although some organizations (like CCANO) have federal funding, there is no centralized program or national model and the gap in representation persists. To effectively respond to the problem, programs need to be replicated and implemented on a larger scale. To determine what program would best serve as a rough blueprint to begin developing a more comprehensive response, I looked to which programs best met the justifications for providing counsel to unaccompanied children, namely human decency, legal rights, and policy concerns. The unaccompanied-alien-children program at CCANO is not a perfect solution to meeting each of these goals. It is, however, a good program to watch because it is a unique model with the potential for national replication. Learning from the successes and shortcomings of the CCANO program may help to create a nationwide system of representation.

A. BASELINE: LOUISIANA'S PARTICULAR PROBLEM

The representation crisis in Louisiana is actually one of the advantages of watching CCANO's program. If the program can be implemented successfully where the demand is unusually high and existing resources shockingly low, it can be implemented elsewhere because most cities face high demand *or* low resources, not both.

The dire situation faced by unaccompanied-child migrants in Louisiana has garnered national attention from media outlets like TIME, NPR, and the American Bar Association.¹³⁴ Areas

134. See AM. BAR ASS'N: COMM'N ON IMMIGRATION, A HUMANITARIAN CALL TO ACTION: UNACCOMPANIED CHILDREN IN REMOVAL PROCEEDINGS PRESENT A CRITICAL NEED FOR LEGAL REPRESENTATION 1 (2015), <http://www.americanbar.org/content/dam/aba/administrative/immigration/uacstatement.authcheckdam.pdf> (“The [ABA] is gravely concerned about the lack of legal representation on behalf of unaccompanied children in removal proceedings. The ‘humanitarian crisis’ at the border . . . has developed into a nationwide due process crisis in our country’s immigration court system, [which] is already significantly overburdened and under-resourced.”); Alex

with historically-large immigrant populations, like New York, California, and Texas, have developed somewhat of an infrastructure to support them. Even if the existing resources are insufficient, there is a minimum network of support that can be expanded. Louisiana, however, has seen an influx of unaccompanied-child migrants that is unprecedented for the region, due in part to Hurricane Katrina. Post-Katrina, immigrant “workers contributed to making 87% of the households habitable in six parishes” around New Orleans.¹³⁵ Many of the workers were Honduran, and New Orleans soon developed one of the largest Honduran communities in America.¹³⁶ This community has become a haven for unaccompanied-child

Altman, *Influx of Child Immigrants Strains Courts in Louisiana*, TIME (New Orleans) (Aug. 11, 2014), <http://time.com/3093029/child-migrants-immigration-reform-new-orleans/> (“For the 1,071 unaccompanied minors who have crossed the . . . border . . . and ended up in Louisiana, the path to a future in the U.S. runs through a courtroom on the 24th floor of an office tower in the heart of New Orleans. Here, past the heavy doors and security guards, a rotating detail of judges determines the fate of the immigrant children streaming . . . into the state. As they arrive in record numbers, the New Orleans Immigration Court is buckling under the strain. During the first six months of 2014, the court [took] on 450 juvenile immigration cases . . . [which] puts the court on pace to shatter [2013]’s total of 540 cases. Three years ago, it had 71.”); Claudio Sanchez, *A New Orleans High School Adapts to Unaccompanied Minors*, NPR: MORNING EDITION (Apr. 7, 2015, 3:23 AM), <http://www.npr.org/sections/ed/2015/04/07/396195610/a-new-orleans-high-school-adapts-to-unaccompanied-minors> (“For the past year now, many Americans have been hearing and reading about the 68,000 unaccompanied minors who have crossed illegally into the U.S. . . . A number of these children and teenagers are in deportation proceedings, but while they wait, they have been allowed to attend public schools. In Louisiana, schools have enrolled nearly 2,000 of them.”).

135. ACER ET AL., *supra* note 52, at 3 & n.8 (citing AM. IMMIGRATION COUNCIL, *NEW AMERICANS IN LOUISIANA: THE POLITICAL AND ECONOMIC POWER OF IMMIGRANTS, LATINOS, AND ASIANS IN THE PELICAN STATE* 3 (2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/new_americans_in_louisiana_2015.pdf), <http://www.humanrightsfirst.org/sites/default/files/left-out-conference-paper.pdf>.

136. *See id.* at 3 (“Southern Louisiana’s immigrant population existed long before Hurricane Katrina and was estimated to mostly be made up of Latinos (primarily Hondurans) and Vietnamese.”); Harden, *supra* note 36 (“Originating in ties to the birth of banana corporations in the early 20th century, a relatively large and deeply rooted Honduran and Honduran-American community has long called New Orleans home.”); *see also* *Latino History in New Orleans, Multicultural History*, NEW ORLEANS OFFICIAL GUIDE, <http://www.neworleansonline.com/neworleans/multicultural/multiculturalhistory/latino.html> (last visited Mar. 10, 2017) (“In spite of the city sharing a body of water, geographical proximity, and a similar tropical spirit with much of Latin America, the Hispanic population of New Orleans didn’t become a significant presence until the mid 1900s. One twentieth century influx came as many Cubans fled Castro’s ascent to power in 1959. However, the largest Latino population can trace its roots directly back to Honduras, giving New Orleans a larger Honduran population than most cities in [Honduras].”).

migrants with nowhere else to turn.¹³⁷ A recent settlement with immigration officials mandated detention alternatives for unaccompanied children whenever possible, so children apprehended at the border are often sent to the large pool of Honduran sponsors available in Louisiana.¹³⁸ Between October 2013 and November 2016, 3,510 unaccompanied children were released to sponsors in Louisiana.¹³⁹

137. See Harden, *supra* note 36 (“The greater New Orleans area has seen an influx of about 1,000 children, with close to 2,000 . . . statewide, and more arriving all the time While children are coming from other countries, more are arriving from Honduras than any other country—and many Hondurans gravitate toward the port city of New Orleans, where they know people.”).

138. See Stipulated Settlement Agreement at 7, 9–10, *Flores v. Reno*, No. CV 85-4544-RJK (C.D. Cal. Filed Jan. 17, 1997), https://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf (“The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor’s age and special needs Where the INS determines that the detention of a minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor’s safety or that of others, the INS shall release a minor from its custody without unnecessary delay. . . .”); see also *Reno v. Flores*, 507 U.S. 292, 298 (1993) (citations omitted) (“[U]nder the terms of the consent decree resolving respondents’ conditions-of-detention claims, the INS must within 72 hours . . . place [the] juvenile[] in a facility that meets or exceeds the standards established by the Alien Minors Care Program of the Community Relations Service [T]hese [facilities] are not correctional institutions [and] must provide . . . an extensive list of services, including physical care and maintenance, individual and group counseling, education, recreation and leisure-time activities, family reunification services, and access to religious services, visitors, and legal assistance”) (internal quotations omitted); 8 C.F.R. § 242.24(b)(1), (3)–(4) (2014) (providing that a juvenile either (1) shall be released, in order of preference to, “[a] parent . . . legal guardian . . . or [an] adult relative (brother, sister, aunt, uncle, grandparent) who [is] ‘not presently in INS detention,’ or (2) may be released: (a) in ‘cases where the parent or legal guardian is in INS detention or outside the [U.S.], . . . to [a] person . . . designated by the parent or legal guardian [provided s]uch person execute[s] a [juvenile care] agreement”; or (b) in “unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, . . . to an adult, other than those [previously] identified . . . , [provided] such person executes a [juvenile care] agreement”); Harden, *supra* note 36 (quoting Rosales-Fajardo, “a lead organizer at VAYLA New Orleans”) (“Many of Rosales-Fajardo’s newest ‘kids’ are from Honduras—young people who have fled that country’s violence and terror This year alone, [she] has worked with about 150 Honduran youth. According to the Office of Refugee Resettlement (ORR), . . . Jefferson Parish has seen the highest number of arrivals since the beginning of [2014], with 585 minors released to ‘sponsors’ as of Sept. 30. The ORR cites 267 minors released in Orleans Parish during that same time period. Those counted are only the minors who were detained at the border, taken to detention centers and then released to family members or other sponsors.”). VAYLA New Orleans is “a youth-centered organization . . . commit[ted] to positive social change, community empowerment and cultural awareness.” *Id.*

139. See *Unaccompanied Children Released to Sponsors by State*, U.S. DEP’T

The influx of unaccompanied children would be overwhelming enough, but the repercussions of Hurricane Katrina exacerbated the problem because they created a need for a wide variety of civil legal services.¹⁴⁰ With other needs taking the forefront, “immigration legal needs have largely gone unnoticed and underserved.”¹⁴¹ The result was a “severe shortage [of] legal services” and a representation gap, due to the “significant need for more Spanish-speaking lawyers and interpreters.”¹⁴² The clinics at Loyola New Orleans College of Law and Louisiana State University Law Center have long been a source of representation, but the number of cases they can take is limited.¹⁴³ The increase in placement coupled with the limited pro bono legal services available left 81% of the unaccompanied minors in New Orleans without an attorney.¹⁴⁴

The gap in representation raised humanitarian and legal concerns because children cannot adequately present their own case, but it also took a huge toll on court efficiency.¹⁴⁵ Judges were “constantly overworked with a crushing caseload and

HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors> (last updated Mar. 1, 2017).

140. ACER ET AL., *supra* note 52, at 1 (“[T]he Gulf Coast region has dealt with several calamities over the last decade, starting with Hurricane Katrina in 2005, and then followed by Hurricanes Rita, Gustav and Ike, and then finally, the devastating BP oil spill of 2010. These destructive events have strained local resources and created a demand for indigent legal representation on a variety of social welfare issues including reconstruction fraud, family law matters, oil spill claims, and homelessness.”).

141. *Id.*

142. Harden, *supra* note 36 (citations omitted).

143. *See* ACER ET AL., *supra* note 52, at 5 (citations omitted) (“In Baton Rouge, a small number of . . . cases are taken on by the LSU Law School Clinic . . . , but attorneys there report that additional capacity is needed to meet the need. . .”).

144. Claudio Sanchez, *Child Migrants Settle Uneasily in the Big Easy*, NPR: MORNING EDITION (Sept. 11, 2014, 3:23 AM) (quoting Rosales-Fajardo), <http://www.npr.org/2014/09/11/347392083/child-migrants-settle-uneasily-in-the-big-easy> (“Fajardo . . . says the 124 families she’s helping right now don’t need food, clothing, or shelter—they need legal representation . . . cit[ing] local news reports that say . . . 81 percent of the unaccompanied minors who’ve arrived in New Orleans don’t have an attorney . . .”).

145. ACER ET AL., *supra* note 52, at 4 & n.10 (citing HUMAN RIGHTS FIRST, KEY TAKEAWAYS FROM THE NEW ORLEANS DIALOGUE ON DETENTION 2 (2013), http://www.humanrightsfirst.org/wp-content/uploads/pdf/nola_dod_fact_sheet.pdf (“Immigration Judge Wayne Stogner, who hears cases at the New Orleans Immigration Court, detailed the reasons that an unrepresented case can move much more slowly through the system. The protracted proceedings are difficult for an immigrant awaiting an outcome on his or her case, and also use up limited court resources.”)).

severely limited resources.”¹⁴⁶ Over 90% of unaccompanied children are seen in the New Orleans immigration court because it is the only court that will see immigrants who are not detained.¹⁴⁷ In August 2014, the New Orleans immigration court had 6,200 pending cases and one judge. The sudden spike in the number of unaccompanied-child migrants has made them a top priority for removal, so the number of children in removal proceedings has continued to increase.¹⁴⁸

But children do not just burden the system by adding significantly to the total docket volume. An unrepresented child going through removal proceedings takes significantly longer than an adult or a child with counsel. Judges, frustrated by the difficulty of getting information from an unrepresented child, waste valuable court time with continuances to seek counsel.¹⁴⁹ Since 2005, there have been 1,602 unaccompanied-child-migrant cases in Louisiana and, as of June 2014, 1,216 of those cases were still pending.¹⁵⁰ Those delays are felt by everyone in the system, and the result is a year-and-a-half average wait just to get a court date.¹⁵¹

B. RESPONSE: BUILDING A COLLABORATIVE FRAMEWORK

The Louisiana legal community recognized the injustice perpetrated against its immigrant community, particularly

146. ACER ET AL., *supra* note 52, at 12 (citations omitted).

147. See Charles Maldonado, *New Orleans Immigration Court Handling More than 1,200 Cases of Unaccompanied Minors Fleeing Central America*, *Government & Politics*, LENS (Aug. 4, 2014, 2:33 PM), <http://thelensnola.org/2014/08/04/new-orleans-immigration-court-handling-more-than-1200-cases-of-unaccompanied-minors-fleeing-central-america/> (“[M]ore than 1,000 unaccompanied minors . . . are now in Louisiana . . . Odds are, they’re in and around New Orleans . . . [and t]hey’re all in New Orleans Immigration Court, which already had a massive backlog. Why New Orleans? The immigration court [t]here . . . is the only one in the state that deals with people who aren’t in the custody of U.S. Immigration and Customs Enforcement . . . All but 20 [of the 1,602 cases, or 98.8%] have gone to New Orleans.”).

148. See Email from Homero Lopez, *supra* note 99 (“The number of UACs in removal . . . continue[s] to increase as the children . . . continue to be considered priorities and therefore a focus for removal.”).

149. See Shea, *supra* note 47, at 167–68 (citations omitted).

150. Maldonado, *supra* note 147.

151. Sabrina Wilson, *Immigrant Children Needing Lawyers Could Strain Local Resources*, FOX8—WVUE NEW ORLEANS (Aug. 2014) (quoting Hiroko Kusuda, an Assistant Clinic Professor in the Immigration Law Section of Loyola’s Stuart H. Smith Law Clinic & Center for Social Justice), <http://www.fox8live.com/story/26253646/number-of-immigrant-children-needing-legal-representation-could-strain-resources>.

unaccompanied children, and took steps to begin to address it. The collaborative action of the Louisiana legal community did not just improve the immediate crisis in representation, it also created foundational resources that facilitate the success of the new CCANO program. The initial collaboration formed continuing connections between nonprofit organizations, private pro bono attorneys, judges, and government agencies. The pathways of communication and resources will be integral to maximizing the impact and cost efficiency of the CCANO program.

At the core of the collaboration is the Louisiana Working Group to Improve Immigration Representation, which has an unaccompanied child subgroup.¹⁵² The group brings together a wide variety of players in the field of immigration.¹⁵³ It is attended by direct-service providers, advocacy groups, nonprofits, private firms, judges, and U.S. immigration officials.¹⁵⁴ By bringing together different resources, the group utilizes partnerships to maximize representation, raise awareness, and generate funding.¹⁵⁵

Where resources are slim, like they are in Louisiana, the collaborative method is essential. Different actors provide different services. For example, law firms are eager to provide pro bono help, so the Louisiana Bar Association, New Orleans Bar Association, and CCANO worked together to generate continuing legal education trainings and mentorships, including ones specifically geared towards unaccompanied children.¹⁵⁶

Collaborations are efficient because they allow a convergence of interests. Everyone is working toward the same goal, because everyone is benefited in some way. Federal officials have an interest in training pro bono lawyers because it is less costly, private attorneys get pro bono hours, nonprofits lessen their caseload, and judges are not delayed by unrepresented immigrants.¹⁵⁷ Without the group as a means of communication, and thus collaboration, it is unlikely that gains would be as significant because no group individually possesses sufficient

152. See Author's notes of March 2016 Louisiana Immigrant Representation Working Group Meeting (on file with author).

153. See *id.*

154. See *id.*

155. See *id.*

156. See *id.*

157. See Author's notes, *supra* note 152.

resources.

Pro bono partnerships have been particularly important for closing the representation gap for unaccompanied children. One participating organization is Pro Bono and Juveniles (PB&J), one of the first programs in Louisiana to specifically target the representation crisis facing unaccompanied children.¹⁵⁸ It provided lawyers interested in pro bono work with the tools and education necessary to advocate for the unique needs of unaccompanied children.¹⁵⁹ The program was a huge success, and its founder, Kathleen Gasparian, was “floored by the response to the first PB&J meeting she held calling for volunteers”¹⁶⁰ She “had hoped 10 lawyers would show up,” but the turnout “was closer to 100.”¹⁶¹ The program has grown so much that it is now being taken over by the Pro Bono Project and it continues to be a resource for the Louisiana Immigration Working Group and the new CCANO program.¹⁶²

158. See Harden, *supra* note 36.

159. See *id.* (“[I]mmigration attorney Kathleen Gasparian devotes her free time to the newly created ‘Pro Bono and Juveniles’ [which] she started . . . as a way to provide legal services to immigrant children [by] connect[ing] lawyers and other volunteers to kids who cannot afford legal representation.”); see also *PB&J: Pro Bono and Juveniles*, GASPARIAN IMMIGR., <http://gasparianimmigration.com/pb-jpro-bono-and-juveniles> (last visited Mar. 12, 2017) (“In 2014, Kathleen Gasparian founded PB&J . . . to recruit, train, and mentor attorneys to represent immigrant children seeking refuge in the [U.S.]. The first CLE, focused on Special Immigrant Juvenile Status, was held in September of 2014. The program was astounding, and trained more than a hundred attorneys in family and immigration law, and placed more than sixty children with representation.”).

160. Harden, *supra* note 36 (quoting Kathleen Gasparian).

161. *Id.*

162. See *id.* (quoting Martin Gutierrez, Vice President of Community Services Ministry, Catholic Charities: Archdiocese of New Orleans) (“Mental health care for the children fleeing traumatic circumstances . . . is another major concern, says Gutierrez. He has teamed up with PB&J, and with Catholic Charities Works to connect the kids to social services as well as legal At the[ir] downtown . . . offices, Gutierrez excitedly shares the news they soon will be hiring two full-time immigration attorneys to help with the caseload. Aiding immigrants and refugees has long been part of the group’s mission, and undocumented children fleeing danger in Central America is nothing new. In an average year, Catholic Charities might see 15 cases, Gutierrez says. So far this year they’ve seen close to 300. To respond to the increase, [they] ha[ve] been holding group orientations, after which they screen every child individually Word of mouth brought 150 people to the first orientation session Gutierrez also is starting a mental health program modeled after the one at PB&J, enlisting pro bono counselors and psychiatrists, pointing out undocumented children don’t qualify for most social services other than education and major emergency medical care.”); see also *PB&J: Pro Bono and Juveniles*, *supra* note 159 (“With the continued growth of PB & J over these past months, the New Orleans Pro Bono Project, with its ability to recruit from its large volunteer panel

While partnerships to facilitate direct representation have the most immediate impact, collaboration is also beneficial for bigger-picture problem solving and advocacy projects.¹⁶³ Where one group might not have the resources to garner enough attention to advocate for change, it can partner with groups who have access to different audiences.¹⁶⁴ For example, the group has facilitated national contributions from Human Rights First and Participant Media.¹⁶⁵ Human Rights First provided the consulting services of one of its employees, Jennifer Rizzo, and Participant Media donated \$15,000.¹⁶⁶

The effectiveness of the group's collaboration is best demonstrated by the improvements in the conditions for Louisiana immigrants. There is now a full-time immigration-court judge in New Orleans, and another will likely be selected soon.¹⁶⁷ There are new docket practices that increase court efficiency for unaccompanied migrants' cases.¹⁶⁸ There are two to three dozen immigration fellowships for recent law graduates to provide pro bono immigration services in Louisiana.¹⁶⁹ Most significantly, the representation rate for unaccompanied children has increased from around 17% to 40%.¹⁷⁰

C. OVERVIEW OF THE NEW PROGRAM

The CCANO program started in March 2016, so it is still developing and statistical results are not yet available, but its chances for success look promising.¹⁷¹ The program is comprised of sixteen full-time attorneys and four accredited representatives.¹⁷² They provide free services to unaccompanied-

and to manage a program of this size, has formally taken over the administration. Ms. Gasparian continues to actively participate in the program recruiting and training attorneys and interpreters, and promoting the program.”).

163. See Author's notes, *supra* note 152.

164. See *id.*

165. See *id.*

166. See *id.*

167. See *id.*

168. See Author's notes, *supra* note 152.

169. See *id.*

170. See *id.*

171. See *id.*

172. See Email from Homero Lopez, *supra* note 99. Accredited representatives are trained nonlawyers working at immigration organizations who receive accreditation from immigration officials to advocate on behalf of immigrants in court. See Press Release, U.S. Dep't of Justice: Executive Office for Immigration Review, Executive Office for Immigration Review Announces Final Rule on the Recognition of

child migrants and immigrant victims of crime who are 200% below the federal poverty level.¹⁷³ Its clients are referred by the Office of Refugee Resettlement¹⁷⁴ and other government agencies, as well as non-profits, law-school clinics, and private firms.¹⁷⁵ It is federally funded, but the amount of the grant is not disclosed.¹⁷⁶ The duration of the grant varies for different parts of the program; some people are hired year-to-year, but other grants are for a certain number of years.¹⁷⁷ CCANO expects the funding to continue as long as the need persists, and it does not look like the need is stopping any time soon.¹⁷⁸

The director, Homero Lopez, cited community engagement as one of the most important factors in the program's success.¹⁷⁹ In order to stretch resources to provide the best quality and largest amount of representation, the program utilizes regular collaboration, CCANO actively participates in the Louisiana Working Group to Increase Immigrant Representation and Latino

Organizations and Accreditation of Non-Attorney Representatives (Dec. 20, 2016), <https://www.justice.gov/eoir/pr/executive-office-immigration-review-announces-final-rule-recognition-organizations-and> (“The [EOIR] today announced a final rule titled, Recognition of Organizations and Accreditation of Non-Attorney Representatives The purpose of the rule is to promote the effective and efficient administration of justice before EOIR and DHS by increasing the availability of competent, non-lawyer representation for low-income and indigent persons.”); *see also* 8 C.F.R. § 1292.1(a)(4) (2014) (defining an accredited representative as an “individual whom EOIR has authorized to represent immigration clients on behalf of a recognized organization, and whose period of accreditation is current and has not expired”).

173. Email from Homero Lopez, *supra* note 99.

174. The Office of Refugee Resettlement is a government agency that deals specifically with unaccompanied children. *See Unaccompanied Children's Services*, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/orr/programs/ucs> (last visited Mar. 12, 2017) (“On March 1, 2003, the Homeland Security Act of 2002, . . . transferred responsibilities for the care and placement of unaccompanied children from the Commissioner of the Immigration and Naturalization Service to the Director of the Office of Refugee Resettlement (ORR). Since then, ORR has cared for more than 175,000 children . . .”).

175. Email from Homero Lopez, *supra* note 99 (“We receive referrals from all over the place. Through our national network, we get online referrals from the shelters when the kids are released to our service area. We also receive referrals from other agencies in the area, particularly, the law schools and other non-profits that know that we have funding to cover these kids, even some private attorneys refer the kids to us, but mostly when the child cannot pay.”).

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.* (“The community coming together and unifying behind this issue has been tremendous and has helped a lot.”).

Forum, and has regular meetings with other nonprofits.¹⁸⁰ The collaboration helps each provider to maximize coverage.¹⁸¹ The CCANO program takes the unaccompanied-children cases from other nonprofits, so those organizations can focus on children who came with a parent or other currently-detained immigrants.¹⁸² CCANO uses pro bono resources to maximize their coverage by providing training and mentorship for pro bono attorneys who take cases from them.¹⁸³ They also work with government and court personnel to increase efficiency and conditions for their clients.¹⁸⁴

Though the framework of collaboration is essential, the program still faces significant obstacles. Their goal is to reach all eligible unaccompanied children, but they currently have a waitlist.¹⁸⁵ CCANO is optimistic the list will decrease as the program gets moving, but it will be difficult.¹⁸⁶ Unaccompanied-child migrants have been declared a priority for removal because of political initiatives to send a message to stop the influx, so there are more and more children with removal orders.¹⁸⁷ While CCANO hopes to eventually use a universal-representation model, current federal funding does not permit this, so it is limited to accepting only certain cases.¹⁸⁸ The result is that some children will fall between providers. If, for example, a child is at 150% of the poverty level, she will be unable to seek help at CCANO, but will likely be unable to hire her own attorney. Furthermore, without universal representation as a delineated goal, a waitlist is permissible. But a waitlist not only jeopardizes the ability of children to have a fair opportunity to present their case; it also means that the children still unrepresented will continue to backlog the court system, costing court time and taxpayer money.

180. Email from Homero Lopez, *supra* note 99.

181. *See id.* (“We have meetings with a lot of different organizations to discuss our resources and the resources in the community and try to leverage those resources as much as possible to make sure we’re getting maximum coverage.”).

182. *See* Author’s notes, *supra* note 152.

183. Email from Homero Lopez, *supra* note 99.

184. *Id.*

185. *Id.* (“[U]nfortunately, [the waitlist] is increasing.”).

186. *See id.*

187. *Id.*

188. *See* Email from Homero Lopez, *supra* note 99 (“[W]e restrict our resources to those who are under 200% of the poverty guidelines unless our grants allow for service on a universal representation model.”).

V. PROPOSAL: USING THE CATHOLIC CHARITIES OF NEW ORLEANS' PROGRAM AS A TOOL

Until we guarantee unaccompanied children an opportunity to present their case through a trained representative, we will continue to have a system that is unjust, legally problematic, and poor policy. Children often face severe danger if they are removed to their home countries, and without counsel they do not have a fair opportunity to present their case. Children who have viable claims for relief should not be removed because they cannot pay for a lawyer. The number of children coming in is not decreasing, and the court backlog continues to build.

The nation is recognizing this injustice, and action must be taken to remedy it. Watching CCANO's program will provide an opportunity to learn how best to create a just, legally sound, and practical program on a national scale. Louisiana's difficult problem, its collaborative use of resources, and its vulnerabilities make it a uniquely valuable program to watch and replicate. This section notes (A) the program's positive attributes that should be replicated for success elsewhere, (B) the limitations of the program, and (C) what to watch for as the program develops.

A. WHAT TO REPLICATE

The CCANO program, while not perfect, has important takeaways to facilitate success in replication. First, it shows that counsel can be provided even in disadvantaged locations. Louisiana has a comparatively huge number of unaccompanied child migrants, but none of the existing resources of bigger cities that are accustomed to high immigrant influx. It also had the unique disadvantage of Hurricane Katrina's impact on available pro bono legal services for immigrants. If this program can be successful in Louisiana, it could be replicated in other locations that do not face similar obstacles.

The most important takeaway from Louisiana's CCANO program is its collaborative framework. This system rectifies social justice and legal-rights issues with practical concerns about the burden children place on the immigration system and the cost of providing representation. It provides the largest impact of representation for the least amount of money. When nonprofits, government agencies, immigration officials, and private law firms combine resources the results are clear: federal funds are stretched further, more children get a fair opportunity to exercise their right to present their case, and less people are stuck in

costly detention. The collaborative method uses existing resources to develop new resources by facilitating communication between groups at each phase of the immigration-court process and creating shared goals from mutual interests. Instead of judges granting stays because of their frustration with the lack of representation, they can work with others to raise community awareness and resources to provide that representation. Nonprofits get the benefits of the attention that comes with judicial support, which in turn increases their resources and the number of cases they can take. When nonprofits can represent more people, the judge has a lighter caseload.

Financial and networking opportunities are not the only resources to be shared. Nonprofits who regularly provide representation or conduct research have a wealth of knowledge and can advise others new to the field or confronting a problem like one they have faced. This prevents replication of work, and streamlines the process. Private attorneys interested in the issue, or looking for pro bono hours, have an opportunity to benefit from the knowledge of current providers, and the providers benefit from the manpower of the private attorneys. Collaboration is particularly effective when programs like CCANO specialize in representing unaccompanied children. Unaccompanied children have specific types of relief available, and specialization not only gives the attorneys legal experience to become skilled advocates for those types of relief, but it also increases their sensitivity to the needs of the particular population. The violent pasts of many unaccompanied children mean that presenting a legal argument is not the only challenge. They also need social services, and an advocate they can trust and build a rapport with. Focusing on unaccompanied children's cases allows the regular providers to better prepare other attorneys for the cultural and legal knowledge necessary to represent a client adequately. Attorneys who are experienced with the particular challenges of this group make the best instructors to those who are unfamiliar.

Altogether, collaboration lessens the burden and the waitlist for children *and* offsets the cost of representation to the federal government and taxpayer. Monetary concerns do not have to be at odds with humanitarian interests. Whether children appear in court with a lawyer or not, they will still cost money. The reality is that unaccompanied children are not going away. Fiscal year 2016 showed an uptick in the number of children coming in, and

there were already around 40,000 cases pending.¹⁸⁹ Children who appear without a lawyer are often granted stays, are slow to present a cohesive case, and are less likely to agree to a voluntary departure.¹⁹⁰ The process is inefficient, and court backlogs pile up. As the number of pending cases grows, judges become overburdened, and more judges need to be hired. Meanwhile, immigrants sit in detention at a high cost to both citizen taxpayers and the immigrants. As an illustration, take Louisiana's year-and-a-half wait for a court date. If one detained immigrant waits for a court date at a daily rate of \$164, the total cost for that *one* immigrant is \$90,337.¹⁹¹ Now multiply that by the massive national backlog and the huge number of immigrants detained, and it is no surprise that the Immigration and Customs Enforcement's yearly detention budget is around \$2 *billion*.¹⁹²

When children have representation, they can present their case more quickly and effectively or take voluntary departures when they have no viable form of relief. Either way, they move through the system more quickly and effectively. At the end of the day we pay for representation or we pay for inefficiency. At \$5 million a day to detain immigrants, inefficiency is costly.¹⁹³ If we pay for representation, we pay for justice. And if we choose to pay for representation, we can do it effectively and efficiently. Utilizing collaboration means a fairer system for children at a lower price for society.

B. WHAT TO IMPROVE UPON

Although the CCANO program has strengths, an important part of extrapolating the program is to learn from its limitations and weaknesses. The greatest limitation is that the program is not a universal-representation model. The program currently does not guarantee representation to all children because it is

189. See *Southwest Border Unaccompanied Alien Children Statistics FY 2016*, *supra* note 23 (showing that, between October 1, 2015, and January 31, 2016, the total number of unaccompanied minors apprehended at the southwest border increased by 102%—from 10,105 in FY 2015 to 20,455 in FY 2016); see also *New Data on Unaccompanied Children in Immigration Court*, TRAC IMMIGR. (July 15, 2014), <http://trac.syr.edu/immigration/reports/359/> (showing, in table 1, that there were 41,641 juvenile cases pending as of June 2014).

190. See *Representation for Unaccompanied Children in Immigration Court*, TRAC IMMIGR. (Nov. 25, 2014), <http://trac.syr.edu/immigration/reports/371/>.

191. HUMAN RIGHTS FIRST, *supra* note 58, at 1.

192. *Id.*

193. *Id.*

based on discretionary and undisclosed federal funds.¹⁹⁴

Ideally, federal funding could provide a guarantee of representation that is supplemented and maximized by pro bono work and community funding and support. The universal-representation model better satisfies justice, legal standards, and policy concerns simply because it reaches all children. When some children still appear in court unrepresented, the injustice remains. One child without a lawyer is one child who is about 60% more likely to be removed, just because they lack counsel.¹⁹⁵ The same is true of satisfying legal rights: each child deserves an opportunity to present their case. One child without a representative is one child whose case is limited by her inability to advance complex legal arguments and present evidence. Unless each child is represented, we cannot say that justice has been served or legal rights have been satisfied. We do not measure our indigent-criminal-defense system by whether *some* people who deserve representation received it, and we should not be satisfied by an immigration system that only serves *some* children.

Universal representation is not just fairer, it is also more efficient because it encourages voluntary departure and prevents the waste of court, attorney, and client time. When less time is wasted in court, less money is spent paying for judges and detention centers. Children who have more viable cases are likely to be chosen for pro bono representation, whereas those whose cases might result in voluntary departure are left pending, at a cost to the system. Universal representation effectively weeds out viable and nonviable cases without denying an opportunity to be heard. If we leave many unaccompanied children unrepresented nationwide, the delays in our system will

194. See Email from Homero Lopez, *supra* note 99 (“Different parts of the program are funded for different time periods . . . but funding can shift yearly . . .”).

195. See *Statement by City Bar President Debra L. Raskin Urging Adoption of the Vulnerable Immigrant Voice Act*, *supra* note 67 (“[O]nly seven percent of unaccompanied children who are unrepresented win their cases or have them administratively closed, as compared with 69 percent of children with counsel.”); see also *Representation for Unaccompanied Children in Immigration Court*, *supra* note 190 (“In almost three out of four (73%) of the cases in which the child was represented, the court allowed the child to remain in the United States. The child was ordered removed in slightly more than one in ten (12%) of these cases. And in the remaining 15 percent the judge entered a “voluntary departure” (VD) order. [However, w]here the child appeared alone without representation, only 15 percent were allowed to remain in the country. All the rest were ordered deported—80 percent through the entry of a removal order, and 5 percent with a VD order.”).

continue to mount, and so will the costs.

The benefit of implementing a CCANO-style program as it stands is that it creates a framework that would simply require reallocating resources if a legal right is recognized or universal representation is implemented as a policy decision, rather than starting from the ground up. Without such a framework, or group of attorneys already trained and working on the subject, it would be a rough transition.

One way to increase the reach of the program and bring it closer to a universal-representation model would be to increase the pro bono trainings. The program currently provides mentorship for attorneys who take cases directly from the program, but it does not provide large-scale pro bono trainings.¹⁹⁶ Larger-scale trainings could significantly broaden the impact of the program, particularly given the eagerness of the Louisiana legal community to aid unaccompanied children, and the resources for networking and seminars that could be available from the Louisiana and New Orleans Bar Associations. One or more attorneys who serve as a liaison to the private pro bono sector could make a huge impact on the total number of cases taken, and lessen the financial burden of the program.

C. WHAT TO WATCH FOR

As the struggles of unaccompanied-child migrants and detained-adult immigrants come to the forefront of political debate, we have an opportunity to get ahead of the curve and learn what works best in providing services to the immigrant community, both unaccompanied children and beyond. To effectively monitor the CCANO program, it is helpful to contextualize its success by how it meets the three justifications for providing counsel to unaccompanied minors: justice, legal rights, and policy.

For justice concerns, we should watch the waitlist. It would be tempting to watch how many children succeed in their claims for relief, but the reality is that the child might not have a viable case. The primary concern is how many children are appearing in Louisiana courts with an attorney at their side, because it is unfair to risk the lives of children simply because they cannot pay for an attorney. The greater the number of unaccompanied children who have counsel, the more just the system is.

196. Email from Homero Lopez, *supra* note 99.

Unfortunately, we already know only those children who fall 200% below the poverty line are eligible for the program. But, within that group, there will hopefully be a significant increase in the amount that appear with counsel. If the program only reaches a small number of children, we need to reconsider whether there are simply not enough attorneys in the program, or whether the system of representation itself is flawed.

The second factor, legal rights, also requires considering how many children are being served. Again, the number of children who actually get counsel to present their case determines whether legal rights are being satisfied. The idea is that unaccompanied children as a *class* deserve representation. Because children should be guaranteed representation solely by virtue of the membership in their class, it is important that we adopt a nationwide program that has a large proportionate impact on that class.

For legal rights issues, success in obtaining relief is important—not just the number of children who succeed in their claims while represented by the program, but that number compared to the success rates of children without counsel. But we must examine the numbers carefully because these statistics are potentially deceiving. It is becoming more difficult for children arriving after 2014 to obtain relief because of attempts to send a message to control the influx of unaccompanied children.¹⁹⁷ So, while it is important to note the discrepancy in success between represented and unrepresented children, the number of children without counsel alone is not in itself decisive and should be considered in light of the new difficulty of obtaining relief.

Finally, to judge the effectiveness of the program as it relates to policy concerns, we should monitor public reaction/recognition of the project, and court efficiency. A positive public reaction reflects the growing societal realization that it is inappropriate to make children appear by themselves in court. But, public opinion is notoriously fickle and should not be decisive alone. Public recognition is worth considering because it indicates a foundation of support that could create funding and opportunities for implementation elsewhere, not because public opinion should outright dictate whether children deserve counsel. While there is a growing movement to provide counsel, particularly among those

197. See Email from Homero Lopez, *supra* note 99.

involved in the immigration field, there is also rampant misinformation. Public support opens opportunities, but instinctive nationalism and blatant racism should not dictate justice for children.

Court efficiency is likely to improve under the program and might make it more attractive to groups who traditionally oppose immigrant-rights reform. Neither those who advocate for immigrant rights nor those who oppose the immigrant influx want an inefficient immigration-court system. While those who oppose expanding immigrant rights might be reluctant to affirmatively pay for representation, they might not realize they are already paying for the lack of it. As the program develops, we should watch Louisiana's immigration court dockets, the waiting periods for court dates, and the number of voluntary departures. With the collaborative model in place, some organizations that might have taken unaccompanied-children cases can take the cases of detained adult immigrants, increasing cost and court efficiency by increasing the total number of represented immigrants. Increases in court efficiency are a bipartisan selling point, and they demonstrate the cost effectiveness of adopting a CCANO-style program.

VI. CONCLUSION

Providing counsel to unaccompanied children is a sound legal and policy decision, but it is also the right thing to do. Traumatized children should not face the court system alone. They should not be expected to act as lawyers. They should not be sent back to violence and abuse simply because they cannot afford representation. Action must be taken to remedy this injustice, but we need not act blindly. We have an opportunity to learn from a promising program. Replicating CCANO's strengths and improving on its weaknesses can help us build a national system of representation that addresses the crisis as effectively as possible. As former Attorney General Eric Holder put it, "How we treat those in need, particularly young people who must appear in immigration proceedings—many of whom are fleeing violence, persecution, abuse or trafficking—goes to the core of who we are as a nation."¹⁹⁸

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198. Semple, *supra* note 16.