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No Country for Immigrant Children: From Obama's "Humanitarian Crisis" to Trump's Criminalization of Central American Unaccompanied Minors

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During the summer of 2014, tens of thousands of children migrating alone and with their families from the Central American Northern Triangle (El Salvador, Guatemala and Honduras) to seek refuge in the US attracted extensive media attention when the Obama administration declared that a "humanitarian crisis" was underway. Obama-era responses to this inflow were thus placed under the scrutiny of the public, and, most importantly, of a well-consolidated network of legal advocates for children's rights. In this milieu, policy-making yielded mixed results. On the one hand, enforcement against this vulnerable population was stepped-up through targeted raids and increased funding to externalize border control to Mexico. On the other hand, the federal government increased funding for unaccompanied children's legal representation¹ and upheld existing humanitarian protections in US immigration law. Because of the latter, unaccompanied children able to reach the US and secure an attorney had a shot at winning their humanitarian petitions to avoid deportation to countries where their lives were in danger. Local context shaped these outcomes as well. Children released to sponsors based in immigrant-friendly states like California benefited from facilitated access to free legal representation through an additional allocation of \$3 million in state funds.²

This delicate balance of repression and protection received a veritable shock in November 2016 when Donald Trump was elected President, abruptly altering the nature of the immigration debate in the US. Anxiety spread quickly in already frightened immigrant communities. Already overworked immigration attorneys struggled first, to anticipate what would happen and, then, to make sense of changes as they unfolded under the Trump administration. Media

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coverage shifted mostly to the precarious fates of Deferred Action for Childhood Arrival (DACA) recipients and the Executive Order(s) banning the entry of immigrants and refugees from certain Muslim-majority countries. Unaccompanied children fleeing violence in Central America thus moved out of the crisis-era spotlight to fall largely into the shadows. Yet, instead of ensuring the safety of this populations' access to legal protections, the obscurity of the post-crisis era has rendered the war that is being waged against this vulnerable population invisible to all but the advocates working tirelessly to defend children's rights. Through a combination of ethnographic fieldwork at a legal aid organization in Los Angeles, interviews with attorneys, migrant-children and their family members, and a review of legal resources, conducted from January 2015 to February 2018, this brief tracks policy developments affecting unaccompanied minors during the Obama and Trump eras, shining light on government attempts to reduce existing protections and advocates' work to counteract these efforts.

Far from constituting “loopholes,”³ as the current Republican narrative suggests, the system of protections for migrant-children in US immigration law, established through years of advocacy and litigation, is instead lacking compared to international standards for the protection of children’s rights. To dispel this negative rhetoric, putting the US in global context is worthwhile. While scholars have traced the origins of the “best interest of the child” principle to the “child savers” movement in the US (1820-1920),⁴ the US remains the *only* country that never ratified the 1989 Convention on the Rights of the Child (CRC), the instrument of international law that enshrines this principle. Comparatively speaking, other countries offer much greater protections to migrant-children. For example, Spain, Italy, Bulgaria and Hungary all grant unaccompanied minors residence permits valid until they reach majority of age.⁵ Further, Italy recently codified an age-based *non-refoulement* so that no immigrant minor may be involuntarily expelled from its territory.⁶ In contrast to this children’s rights-based approach,

the US government considers this population as immigrants *before* they are children. US immigration policies selectively protect certain sub-categories of migrant-children,⁷ mainly those classified as *Unaccompanied Alien Children* (UACs)⁸ who are the subject of this report.

CENTRAL AMERICAN CHILD-MIGRATION & PROTECTIONS FOR UNACCOMPANIED MINORS IN THE US

The vast majority of Central American children turn themselves in or are apprehended by Customs and Border Protection (CBP) at the US-Mexico border. If they are *not* accompanied by a parent or legal guardian at that time, they are classified as UACs and awarded significant protections compared to children who migrate with their parents and asylum-seeking adults. Because of the 2008 Trafficking Victims Protection Act (TVPRA), UACs from non-contiguous countries are exempted from credible fear screenings and automatically placed in the custody of the Office of Refugee Resettlement (ORR) within 72 hours.

Notably, Mexican minors, the most numerous group of unaccompanied minors until the 2014 “crisis,” are excluded from this policy. Unless found to be victims of trafficking or to have a credible fear of persecution, they are denied admission and sent back through an expedited process called “voluntary return.”⁹ Despite the fact that the US failed to ratify the CRC, it is worth noting that excluding Mexicans from TVPRA protections constitutes a violation of CRC article 2, which prohibits discriminatory treatment based on children’s country of birth.

In 2015, the average length of detention for UACs in ORR facilities called “shelters” was 35 days. ORR subsequently releases nearly all children (90%) to sponsors residing in the US, who in 60% of cases are parents and in 30% are other family members.¹⁰ ORR’s emphasis on family reunification is in compliance with the 1997 *Flores Settlement*, which introduced “best interest” standards for children’s detention. Whether released or in prolonged ORR custody, all unaccompanied minors are placed

in formal removal proceedings in immigration court. In order to avoid deportation, they must successfully apply for humanitarian reliefs, most commonly through asylum and Special Immigrant Juvenile Status (SIJS).

Two policies protect the due process rights of Central American unaccompanied minors, the majority of whom have legitimate asylum claims according to UNHCR,¹¹ enabling them to have a better chance at securing asylum. TVPRA established that children classified as UACs can apply for asylum through the non-adversarial affirmative process at the asylum office, unlike other apprehended immigrants who apply through an adversarial process in immigration court. Procedural guidelines issued in 2013 further improved children's access to asylum by determining that the asylum office must accept the initial determination of UAC status without making ulterior factual inquiries into the applicants' age or unaccompanied status. This protects children from aging out of eligibility when they turn 18, which can happen due to bureaucratic lags, and when they are reunited with their parents.

1990 Public Law No. 101-649 first introduced the “best interest of the child” principle in US immigration law, creating SIJS to provide a path to legal permanent residency for undocumented children abused, abandoned or neglected by *both* parents, when return to the country of origin is not in the child’s best interest. Initially, due to the relative obscurity of the law, restrictiveness of eligibility criteria, and conflicts in interpretation of competencies between state and federal agencies, few SIJS applications were filed.¹² Today, however, it has evolved into a significant protection, particularly since TVPRA expanded eligibility to include children abandoned, abused or neglected by *only one* parent, which attorneys refer to as “*single-parent SIJS*.” Because SIJS is granted through a combination of state-level family law and federal-level immigration law, each state defines the eligibility-age somewhat differently. In California, children abandoned, abuse or neglected by one *or* both parents must conclude their applications in

state-level courts by ages 18 and 21 respectively.

THE OBAMA ADMINISTRATION RESPONSE TO THE 2014 “HUMANITARIAN CRISIS”

During the 2014 surge, 51,705 newly arrived unaccompanied minors from the Northern Triangle placed an effective stress on ORR and the immigration bureaucracies tasked with adjudicating children’s claims.¹³ The Obama administration declared that a “humanitarian crisis” was underway, prompting policy responses from the executive and legislative branches, which reflected a combination of protective and repressive measures. The former included increasing federal funding for pro-bono legal representation of unaccompanied children.¹⁴ Further, an in-country processing program was created to allow a small group of children to apply for asylum in Central America and migrate legally to the US.¹⁵

The government simultaneously introduced repressive policies. In an attempt to stem arrivals, funding for border enforcement in Mexico and Guatemala was increased. Indeed, by 2015, Mexico was already deporting more Central Americans than the US.¹⁶ Additionally, unaccompanied minors and family units already in the US were assigned to so-called “rocket-dockets” in immigration court, making their formal removal proceedings a processing priority, a measure meant to deter future inflows.¹⁷ This caused significant challenges to attorneys working with children and families who had to negotiate additional time to prepare complex asylum claims on a case-by-case basis with each immigration judge, as one attorney noted:

“Some judges will give me 90 days, but others may only give 30 days. That’s not enough time. So I say, ‘your honor, could I have more time please? I’m from a non-profit, we’re short-staffed, we need preparation, documents.’ Some judges will say, ‘no, this is an expedited removal case so it means we’re processing quickly.’ It all depends on how well you get along with the judge and whether the judge is for children or not for children.”

Interior enforcement was also increased through highly visible raids in January 2016 and the summer of 2016, which targeted children and families who failed to win their cases. These raids prompted outrage from advocates and spread panic among recently arrived asylum-seekers, many of whom were unable to successfully navigate the legal process. Indeed, not all unaccompanied minors who enter the US apply for relief,¹⁸ due, among other factors, to lack of access to legal representation. Despite recent litigation, immigrant children currently do not have the right to guaranteed legal representation at the expense of the government.¹⁹ Further, despite existing legal protections for unaccompanied minors, those who apply for relief still face numerous obstacles, and may be denied. For asylum, challenges include difficulties satisfying the formal refugee definition and inability to obtain sufficiently detailed information and documentary proof to back claims.²⁰ For SIJS, a significant obstacle is the length of the application process, which leaves applicants in dangerous legal limbo, which can last up to two or three years for children from El Salvador, Honduras and Guatemala because these high-demand countries exceed visa allocations, capped at 696 per-country, per year.²¹

Multiple restrictive Republican-sponsored bills were also introduced in the aftermath of the “crisis,” reflecting a reversal in the long history of bipartisan support for TVPRA protections.²² H.R. 5230 proposed to remove the exemption from credible fear screenings for UACs from non-contiguous countries to instead place them in a 7-day expedited process in immigration court. This would have restricted minor’s access to asylum even more than adults’ by requiring them to successfully prepare for removal hearings within a time frame that would make it all but impossible to secure indispensable legal representation. Other measures included: modifying the UAC definition to exclude children with a parent or extended family member residing in the US; increasingly maximum detention times for UACs in border holding facilities from 72 hours to 30 days; rewriting eligibility to eliminate “single-parent SIJS;” removing due process protections for UACs in the asylum process (H.R. 1149, H.R. 1153,

S. 129). While none of these provisions became law, similarly restrictive bills are being introduced under Trump.

THE TRUMP ADMINISTRATION’S CRIMINALIZATION OF CENTRAL AMERICANS

The Obama administration’s hybrid approach of protection and repression has been substituted by solely criminalizing policies under Trump. The current administration seems increasingly intent on disregarding the push factors (e.g. societal violence unchecked by corrupt and weak states, homicide rates amongst the highest in the world)²³ fueling Central American migration, to promote the false notion that arrivals are prompted by families’ exploitation of so-called “loopholes” in immigration law. The wide-spread use of this expression is especially damaging. It fuels panic and disguises legitimate legal protections for immigrant children, backed by international and domestic law, as illegitimate forms of favoritism. Indeed, a recent DHS press release stated, *“to secure our borders and make America safer, Congress must act to close these legal loopholes that have created incentives for illegal immigrants and are being exploited by dangerous transnational criminal organizations like MS-13.”²⁴*

The Trump administration is exploiting this criminalizing rhetoric linking Central Americans with MS-13 to attack existing legal protections for migrant-children. Far from being *“gang members who come to this country as wolves in sheep clothing,”*²⁵ as U.S. Attorney General Jeff Sessions’ remarks suggest, my young respondents vehemently condemned the gangs they migrated to flee. They had lost loved ones at their hands and personally paid great prices for, usually unwittingly, crossing paths with these criminal actors who victimized them through extortion, verbal and physical abuse, death threats, and rape.

Beyond pure rhetoric, the Trump administration’s criminalization of Central Americans has been translated into new enforcement efforts. ICE *Operation Raging Bull* was supposedly launched to target gang members for deportation but it has been criticized by advocates for relying on dubious

allegations to indiscriminately sweep up immigrant teenagers.²⁶ Indeed, the ACLU recently sued immigration enforcement agencies in Long Island for detaining three Salvadoran teenagers accused of MS-13 gang membership based on insufficient evidence.²⁷

Parents and family members are also being targeted. Many of these adults are vulnerable because they are either undocumented or living in states of “liminal legality.”²⁸ In a reversal of Obama-era policy, since Trump assumed office, ICE has been using information entrusted to ORR shelters by youths and their families to arrest and prosecute family members who used smugglers to bring their children to the US, in both criminal and civil (immigration) proceedings.²⁹ Advocates have condemned the strategy of using “*children as bait*” as “*an intentional misapplication of protection laws to damage children and families.*”³⁰

Already during the Obama administration, some undocumented family members recounted that they were fearful of declaring their presence to ORR. In these cases, ORR social workers reassured them, and parents ultimately claimed custody of their children. The Trump administration’s current policies constitute a betrayal of migrant trust placed in the state under the previous administration and reflect the tenuous nature of humanitarian protections for unaccompanied migrant-children in the US. Indeed, attorneys have noticed a decrease of family member’s willingness to come forward to ORR to seek custody of their children, because word has spread in the immigrant community that this can be dangerous and even lead to deportation. Attorneys now recommend that undocumented immigrants rely on relatives and friends with legal status to take their children out of ORR.³¹ My respondents reported that certain immigrants already adopted this strategy under Obama. Ironically, what seemed like mistrust of the state yesterday, seems like foresight in today’s political context.

Policies that criminalize family members ignore the principles underlying the very institution of asylum

and international law that forbids receiving states from penalizing individuals for entering without authorization to seek asylum. Further, it obscures the impossible decisions that families are forced to make to bring their children to safety in light of the non-existent means for safe and legal travel to the US from Central America. Indeed, in 2017, the Trump administration terminated the only legal option available, Obama’s in-country asylum processing program for Central American minors.³²

The case of Carmen, the mother of a 16-year-old targeted by gangs in her home country of Honduras, illustrates why parents must rely on smugglers. Carmen is undocumented and has lived in the US for several years. Having suffered domestic violence at the hands of an abusive partner, who she denounced to the authorities, she is eligible for the U-Visa for victims of crime. However, due to the extremely lengthy adjudication process,³³ she cannot benefit from any legal means to reunify her child in the foreseeable future. Evidently, children whose lives are at risk in the home country do not have the luxury of waiting in line for the sluggish bureaucratic process to run its course. Carmen thus explained her decision to help her son migrate:

“When my mom and my sister called me crying, saying that they were going to kill my son, that same day, I made the decision to send for him because his only salvation was this country. I brought him and, after a month, my niece asked me for help too but I told her, ‘I can’t hija, I spent so much money to bring my son, I have to save to bring someone else.’ Then she disappeared. We don’t know anything about her anymore, if they killed her, if she’s alive or what they did with her. Nothing.”

Far from being a calculating “human smuggling facilitator,”³⁴ Carmen’s swift decision reflects the love of a worried mother trying to save her son’s life. The importance of her decision is made all the more salient by her niece’s disappearance, which plagued her with guilt, as she was unable to finance her journey to safety. The criminalizing

policies of the Trump administration disregard the reasons that compel parents to help their children make the dangerous journey to the US and ignore the well-established link between border control and migrants' increased need for reliance on smugglers.³⁵

Already under Obama, anticipating the harm that could potentially come to families based in the US, legal intermediaries counseled children not to disclose details about how their trips were financed in their asylum applications.³⁶ Under Trump, attorneys are becoming increasingly cautious when deciding whether to involve undocumented family members in children's applications for relief, and, when possible, try to limit their exposure to courts and the asylum office, where they might get arrested.³⁷ This poses significant challenges because adults provide crucial support for children's cases. Indeed, because children frequently lack access to all the information necessary for their asylum claims, legal intermediaries rely on family members to help reconstruct accounts of persecution, as well as to provide testimony.³⁸ In fact, asylum officers can request to interview parents, in particular for younger children's cases.

This hostile climate has affected my young respondents and their family members. Children with pending asylum or SIJS cases fret over the potential impacts of the current climate on the outcomes of their petitions for relief. Undocumented parents are afraid of showing up in immigration court on behalf of their minor children, yet they must continue to do so because, otherwise, their children risk receiving deportation orders in-absentia.³⁹ Even children whose asylum and SIJS cases have been awarded live with the anxiety common to mixed-status families, as their long-desired reunification with undocumented parents after lengthy separations seems all too fragile in the current context, as one young Honduran refugee recounted:

"My mom, dad, and all the people who surround us, don't have their papers. When [Trump] took office I thought, my God,

what will happen to them? We heard about the deportations of people who aren't from here, and I thought, God help us! The Pastor told us that everything would be ok if we had faith, and we prayed. But yes, I was scared, but thank God we're still here, fighting, day by day."

Beyond stepped-up enforcement measures, a more invisible war is being waged against Central American children and their families, as restrictive bills continue to be introduced in an attempt to dismantle existing legal protections, such as TPVRA. New Republican-backed bills have again proposed reforms similar to those introduced while Obama was President, such as removing credible fear exemptions to place unaccompanied children in expedited removal proceedings in court (in this case, lasting 14 days) and increasing maximum detention at the border to 30 days (H.R. 495). More novel draconian proposals include: requiring ORR to gather information on the legal status, address and use of public benefits of sponsors before releasing minors to them (H.R. 495, H.R. 2146); reducing international development aid to Mexico and Northern Triangle countries in an amount directly proportional to the number of minors from these countries apprehended at the US-Mexico border (H.R. 120); and conducting a "threat assessment" of the so-called "*exploitation by transnational criminal organizations of the unaccompanied alien children services program*" to reduce existing protections (H.R. 2495).

The Trump administration is also introducing procedural changes through various memorandums, which are highly technical and have garnered little media attention. On paper, these changes significantly curtail unaccompanied children's chances in the legal process but their patchwork implementation is creating much anxiety and uncertainty for legal brokers, making their task of defending migrant-children ever more challenging. The chaotic context is also instilling attorneys with a sense of urgency, and they try to hastily file children's cases before existing protections unravel. For example, a recent memorandum would allow

immigration judges to reassess UAC designations. Therefore, if youths turned 18 while awaiting the resolution of their cases, which happens frequently due to backlogs in both immigration court and the asylum office, or if a parent were located to provide care, which happens in most cases, as previously noted, this memo seems to empower immigration judges to exclude children from TVPRA protections.⁴⁰ Similarly, the 2017 Executive Order on “Border Security and Immigration Enforcement Improvement Policies” also contains worrying language on establishing a “*standardized procedure aimed at reassessing and confirming that migrant-children continue to meet the UAC designation*” when they apply for relief, which seems to undermine access to the affirmative asylum process. It remains unclear to what extent these provisions will be implemented in court by immigration judges, and whether asylum offices nationwide have begun to re-designate UACs who age out or reunify with parents to deny them protection. While, at the time of writing, this has not yet occurred in the Los Angeles asylum office, anecdotally, it seems that it might already be happening in other offices.

Another memo updated the Obama-era immigration court processing priorities, eliminating “*rocket-dockets*” for recently arrived Central American unaccompanied children and families. This provision has had mixed effects, on the one hand, as one attorney remarked, “*for the families and kids, it’s good because now we will have more time to prepare a case, because you know we weren’t doing them as well as we should because we didn’t have enough time*”. On the other hand, however, the new priorities target the most vulnerable among unaccompanied minors, those who remain in ORR custody because they have no family or any other potential sponsors in the US to claim their custody. Critics have denounced that the new policy will make it harder for these children to access relief, effectively turning ORR shelters into “*detention mills*.⁴¹ Recent guidelines have also changed the processing priorities at the asylum office so that cases submitted within 21 days are adjudicated first. This measure is nominally meant to deter asylum-seekers from filing “fake” applications to take advantage

of the backlog, yet it pushes legitimate claimants to the back of the line, further lengthening their legal limbo.⁴²

Yet another memo updated the guidelines for the treatment of children in immigration court, eliminating pre-existent ‘child-friendly’ practices, such as relaxing requirements for minors to be present in court and requiring judges to take into account age and developmental capacity when assessing testimony.⁴³ Further, new guidelines state that judges should give precedence to immigration regulations over considering the “best interest of the child” when adjudicating cases, further consolidating the treatment of this population as immigrants *before* children.⁴⁴

Litigation on behalf of immigrant children remains the key means of resistance in the face of hostile government actions, allowing for some hope in an otherwise dire scenario. Indeed, legal advocates have recently obtained important victories. On July 5th 2017, the 9th Circuit Court of Appeals upheld a ruling that guarantees unaccompanied minors in ORR custody the right to a bond hearing. This is important because, in some case, minors were being detained for prolonged periods without judicial review.⁴⁵ Further, when the Trump-appointed head of ORR, anti-abortion activist Scott Lloyd, established a new policy barring unaccompanied minors in federal custody from having abortions, the ACLU took on, and won, the cases of two pregnant young women, enabling them to decide to terminate their pregnancies.⁴⁶ Finally, the Center for Human Rights and Constitutional Law, the LA-based advocacy organization that championed migrant-children’s rights through the landmark *Flores Settlement*, continues to monitor children’s detention conditions. After recent site visits at the border and in family detention facilities, the organization has taken action to denounce non-compliance with the terms of the settlement.⁴⁷ Indeed, according to my unaccompanied minor respondents, detention conditions in border holding facilities were already abysmal during the Obama presidency and reflected violations, not only of the *Flores Settlement*, but also of the TVPRA provisions

mandating that youths be kept in detention for a maximum of 72 hours, as one young Honduran asylum-seeker reported:

"I didn't know if it was day or night [...] There was one bathroom for 20 children in the same room. There were children as small as 2 years old with us. They weren't even our family and we had to take care of them. We took off our shirts and gave them to the children so they could stand the cold, because they cried so much [...] I met children who stayed there 1, 2, 3 days. A lot had been there 8 days. One kid was there 14 days. He was pale, tired, you could see he hadn't been eating well. He cried so much when he got out [...] It's really tough to see these things. We thought the US wasn't going to be like this, but then we thought that maybe all countries are the same"

through criminalizing discourse and enforcement operations. Teenage asylum-seekers are conflated with MS-13 gang members, the very actors they migrated to escape, and targeted for deportation. Family members are treated like criminals simply because they financed their children's journeys to safety in the US. The rights of migrant-children are also being attacked in less visible ways. Lawmakers continue to propose bills to curtail statutory protections that garner little media attention. Obscure yet foreboding changes to procedural guidelines are continuously being introduced and could be potentially devastating for children's access to relief.

CONCLUDING REMARKS

Humanitarian protections for unaccompanied migrant-children in the US are subject to shifting political tides and undermined when inflows are perceived as excessive or, even worse, framed in the language of criminal threat. The clearly tenuous implementation of these protections seems to be based on a delicate and discretionary exercise of compassion rather than on well-established children's rights, enshrined by law.

While scholars and advocates already condemned the draconian enforcement measures of the Obama administration in the aftermath of the 2014 "crisis," humanitarian concern and favorable public interest remained forces powerful enough to maintain existing protections and introduce some small improvements, such as increased federal funding for legal representation and an in-country asylum adjudication program for Central American minors.

Under Trump, the sign of reforms is exclusively draconian. Under the guise of ensuring national security, new policies aim to undermine existing protections for unaccompanied migrant-children, established through years of advocacy, litigation and policy-making. Central American children and their families are being overtly attacked

ENDNOTES

1 In 2014, Obama launched a \$2 million program to fund community based organizations providing legal services to unaccompanied minors (Muzzafar and Hipsman 2014). The Department of Health and Human Services (HHS), which ORR falls under, provided an additional \$9 million to fund legal representation in 2014 and 2015 (AIC 2015).

2 Dobuzinskis 2014.

3 DHS 2018.

4 Heidbrink 2015 .

5 Petry et. al. 2014

6 Zampa Law n. 47 of April 7, 2017.

7 The main exception to the US approach of protecting only certain sub-categories of migrant-children is *Plyler v. Doe*, which guarantees access to free public K-12 schooling to all children independently of their migratory status.

8 The legal category UAC is defined as: “an individual with no lawful immigration status, under age eighteen, for whom no parents or legal guardians are available in the US to provide care and physical custody” (6 U.S.S 279(g)(2)).

9 Screening practices at the border to determine trafficking and persecution risks for Mexican unaccompanied minors have been denounced by scholars and advocates as inadequate. Indeed, most Mexican children are summarily removed and few end up in ORR custody (Carlson and Gallagher 2015).

10 ORR 2014.

11 UNHCR 2014.

12 Heidbrink 2015.

13 CBP 2015.

14 Muzzafar and Hipsman 2014; AIC 2015.

15 The CAM program allowed parents to reunify their children who are under age 21 and find themselves in a situation of risk in three countries of origin: Honduras, El Salvador and Guatemala. To be eligible parents had to have legal status in the US, either legal permanent residency or temporary permits, like DACA or TPS. The application process took place both in the US (parent component) and in the home country (child component). Children applied through IOM offices and were then also then interviewed by DHS officials in the home country. Children could be approved to come to the US with two levels of protection, at the discretion of the officer: (1) as refugees, with access to all formal resettlement support; (2) as parolees, without access to resettlement benefits and with a two-year permit, which was meant to be renewable (see note xxxii below). Launched in December 2014, very few applications were approved during the first year of the program’s implementation. In March 2017, out of 11,500 applications filed nationwide, 2,600 beneficiaries had been approved and had arrived in the US, out of which 1,130 arrived with refugee status (Taylor 2017).

16 Rosenblum and Ball 2016.

17 Musalo and Eunice 2017.

18 It is impossible to know exactly how many unaccompanied minors actually apply for and are granted legal status. However, if we compare CBP and USCIS data, numbers of apprehensions by far exceed numbers of asylum and SIJS applications.

19 Dolan 2018.

20 In separate work (Galli 2017), I write in detail about youth-specific challenges in applying for asylum for Central American children and adolescents. I also discuss how US case law that narrowly interprets the refugee definition makes it difficult to win claims based on the persecution of non-state actors such as gangs for all Central Americans.

21 SIJS allows children to adjust status to LPR (INA Section 245). However, to do so, a “visa number” must be available under the Employment Based Categories, 4th preference, capped at 9,940 visas (Section 203(b) INA). In turn, for each country of origin, only 696 visas are available per year to adjust status through SIJS. Applications of Central American children reached statutory limits in 2016, and there has since been a significant backlog.

22 Carlson and Gallagher 2015.

23 Gagne, 2014; Hiskey et. al. 2014; UNDOC 2014.

24 DHS 2018.

25 Rosenberg 2017.

26 ICE has a website entirely dedicated to Operation Raging Bull at: www.ice.gov/features/raging-bull. Hing 2017; Martin 2017.

27 ACLU 2017a.

28 Menjivar 2006.

29 Ordoñez 2017.

30 NIJC 2017.

31 Center for Human Rights and Constitutional Law “Defense of Immigrant Children” Webinar on 02/21/2018.

32 Trump ended the CAM program (see note xv) in two stages. First, on August 2017, he ended the parole option, suspending new in-country applications, and revoking the possibility for parolees already in the US to renew their temporary status (Nakamura 2017). Second, on November 2017, he eliminated the program entirely, suspending the possibility of applying for refugee status in Central America (Reuters 2017).

33 Lakhani 2013, 2014.

- 34 Geneva Convention, article 31.
- 35 Gammeltoft-Hansen and Sorensen 2013.
- 36 Galli 2017.
- 37 Public Counsel and CLINIC 2017.
- 38 Galli 2017.
- 39 Public Council and CLINIC 2017.
- 40 Scholz n.d.
- 41 Shepherd 2017.
- 42 USCIS 2018.
- 43 DOJ Operating Policies and Procedures Memorandum 17-03, December 20, 2017.
- 44 Bronstein et. al n.d.
- 45 Jordan 2017
- 46 ACLU 2017b
- 47 Center for Human Rights and Constitutional Law “Defense of Immigrant Children” Webinar on 02/21/2018.

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