

A FAIR CHANCE FOR DUE PROCESS

CHALLENGES IN LEGAL PROTECTION FOR CENTRAL AMERICAN ASYLUM SEEKERS AND OTHER VULNERABLE MIGRANTS



Jesuit Refugee Service/USA
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A Fair Chance for Due Process:

Challenges in Legal Protection for Central American
Asylum Seekers and Other Vulnerable Migrants

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EXECUTIVE SUMMARY

In recent years, an increasing number of Central Americans have migrated north to the United States, reaching peak numbers in the summer of 2014. Of particular concern has been the increase in the number of unaccompanied and separated migrant children from the Northern Triangle of Central America – Honduras, El Salvador and Guatemala.

Jesuit Refugee Service/USA (JRS/USA) and U.S.-based Jesuit law schools have engaged in efforts to respond to the number of children and families from Central America seeking protection, and are jointly committed to collaboratively expanding efforts to address this critical issue. In particular, Jesuit law schools are active through research, training, outreach and education, and direct legal representation.

In April 2015, JRS/USA surveyed 13 U.S.-based Jesuit law schools regarding their work in this area. As a result, Jesuit law schools identified a series of challenges in representing asylum seekers and other vulnerable migrants, including:

Procedural challenges in managing a mandated expedited docket for these migrants.

Legal challenges posed by limitations in the acceptance of gang-related violence claims.

Logistical challenges related to consistent and reliable access to clients and courts.

Challenges accessing *counseling and support services* for clients.

To address these challenges, JRS/USA and Jesuit Law Schools recommend the following policy changes:

Guarantee Legal Representation for Minors — We urge Congress to introduce and pass legislation that guarantees legal representation and access to a child advocate for every unaccompanied minor.

Increase Resources for Legal Representation — We urge the White House and Congress to support a substantial increase in resources in the FY16 Federal Budget for programs that provide greater access to legal representation for unaccompanied minors and asylum applicants.

Stop Expedited Processing for Children & Families — We urge the White House, the Department of Justice, and the Department of Homeland Security to reverse their policy on expedited processing for unaccompanied minors and families from Central America.

Recognize Gang-Based Asylum Claims — We urge the USCIS Asylum Offices and the Board of Immigration Appeals to recognize asylum claims involving gang violence.

Track Jurisprudence on Gang-Based Asylum Cases — We urge legal service providers, including law schools and non-governmental organizations, to begin to compile a database of, and track decisions on, gang-based claims.

Minimize Transfer of Clients and Increase Access to Transportation Services — We urge the Department of Homeland Security and the Department of Justice to focus on the best interest of the child when considering their placement upon arrival in the U.S. and to minimize the transfer of clients in order to avoid interruption of access to legal services. We also call on State and Local organizations to consider ways to increase access to transportation services for those navigating the legal process.

Recognize Signs of Trauma & Provide Access to Counseling Services — We urge the courts to offer training to judges in recognizing and understanding trauma, and to consider trauma when making their determinations. We also encourage the Department of Health and Human Services, State officials, and Local officials to increase access to counseling services for this vulnerable population.

Reform the U.S. Detention System — We urge the White House and Congress to consider alternative measures to detention, including supervised release, case management, and community support programs, that will serve to ensure court appearances and due process.

Provide Additional Avenues of Relief — We urge the White House, the Department of Justice and the Department of Homeland Security to expand the available avenues of relief for asylum seekers and other vulnerable migrants. This includes taking all possible measures to begin admissions under the Central American Minors (CAM) Refugee/Parole Program; considering new Temporary Protected Status for the Northern Triangle countries of Central America; and pursuing efforts for comprehensive immigration reform that prioritizes the best interest of the child.

Addressing the needs of migrants seeking protection and refuge in the U.S. is a complex and multi-layered issue. While these challenges, and related recommendations, do not address all of the issues related to this topic, we share them in an effort to provide testimony to what these migrants are currently facing as they navigate the legal system upon their arrival in the U.S. This also serves as a call to action to Jesuit law schools and the larger community to continue, as well as increase, investments in serving this vulnerable population.

INTRODUCTION

In recent years, an increasing number of Central Americans have migrated north to the United States. Of particular concern is the increase in the number of unaccompanied and separated migrant children from the Northern Triangle of Central America — Honduras, El Salvador and Guatemala.

While this migration is part of a mixed flow, including economic migrants as well as refugees, many are fleeing targeted persecution by gangs, organized criminal groups, drug cartels, and state actors. Organized criminal groups have increasingly dominated communities in the Northern Triangle, where weak and often corrupt state institutions have proven unable or unwilling to tackle violence and lawlessness.

Beginning in October 2011, the U.S. Government recorded a dramatic rise in the number of unaccompanied and separated children arriving in the United States from Central America. The total number of apprehensions of such children by U.S. Customs and Border Protection (CBP) rose from 3,933 in FY 2011 to 51,705 in FY 2014.^[1] At the same time, there has also been a significant increase in the number of families, almost exclusively mothers with young children, arriving at the U.S. southern border. Correspondingly, the number of people in family units apprehended by CBP rose from 14,855 individuals in FY 2013 to 68,445 in FY 2014.^[2]

According to a March 2014 report by the United Nations High Commissioner for Refugees (UNHCR) entitled *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, more than half of children cite violence as the pivotal factor that led to their flight from home. Sixty-six percent of Salvadorans named violence by organized armed criminals as a primary motivation to leave. Similarly, 44% of Hondurans were either threatened with or were victims of violence by organized criminal networks.^[3]

Impoverished youth are especially vulnerable to involuntary gang recruitment and to brutal reprisals against themselves and family members when they resist. Governments in the Northern Triangle have been proven ineffective in controlling gang activity and at times are

reported to be complicit with organized criminal groups.^[4] A climate of fear has been propagated through gang-controlled regions, propelling children and families to risk the uncertain perils of the dangerous journey northward so as to escape certain dangers at home.

Gender-based violence has also increased dramatically in the Northern Triangle and constitutes both one of the most compelling motivations to leave and one of the most frequent dangers encountered en route to the United States. El Salvador and Honduras claim the two highest rates of female homicides in the world with 14.4 per 100,000 women in El Salvador and 10.9 per 100,000 women in Honduras. In addition, a reported 90% of female homicides in Honduras go unresolved.^[5] These disturbing statistics help paint a picture of the violence and lack of protection that many women and girls, in particular, are fleeing.

U.S. JESUIT RESPONSE

Rooted in the Catholic tradition of welcoming the stranger, Jesuit institutions in the U.S. have become increasingly engaged in response to the plight of asylum seekers and other vulnerable migrants from Central America.

The National Advocacy Office of the U.S. Jesuit Conference has been working with the Jesuits in Central America to monitor and document the root causes of this migration and to advocate for a more informed and responsive U.S. policy toward the region, with a focus on addressing the systemic human rights challenges that are endemic to the Northern Triangle.

Jesuit Refugee Service/USA (JRS/USA) serves as the major refugee outreach arm of U.S. Jesuits and their institutional ministries, mobilizing their response to refugee situations in the U.S. and abroad. Through advocacy and fundraising efforts, JRS/USA provides support for the work of JRS throughout the world and advocates on behalf of minors and their families escaping violence in Central America.

In January 2015, JRS/USA and 13 U.S.-based Jesuit law schools began a partnership to examine the situation of Central American child migrants and families in the U.S. and to advocate for their protection. As a first step, in April 2015, JRS/USA organized a survey documenting each law school's work in this area. This paper provides a summary of their responses and offers policy recommendations in an effort to address some of the persistent challenges in serving this population.

1. U.S. Customs & Border Protection - <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

*Complete figures are – FY 2011: 3,933; FY 2012: 10,146; FY 2013: 20,805; FY 2014: 51,705.

2. U.S. Customs & Border Protection - http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20FY13%20-%20FY14_0.pdf.

3. UNHCR (2014). "Children on the Run: Unaccompanied Children Leaving Central America and the Need for International Protection" - http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

4. Jesuit Conference on the United States (March 2014). "Considerations for Hondurans in the American Asylum Process." - http://jesuits.org/Assets/Publications/File/Hondurans_asylum_report_FINAL.pdf.

5. Geneva Declaration on Armed Violence and Development (2015). "Global Burden of Armed Violence" - http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch3_pp87-120.pdf.

SERVICE TO CENTRAL AMERICAN MIGRANTS

U.S.-based Jesuit law schools serve asylum seekers and other vulnerable migrants from Central America in various ways, including through research, training, outreach and education, and direct representation. Most offer direct legal representation through *pro bono* services provided by trained professors or by law students working under faculty supervision. Referrals of clients are received through agencies including Kids in Need of Defense (KIND), the American Immigration Lawyers Association, and local branches of Catholic Charities. The Catholic Legal Immigrant Network (CLINIC) serves as an important partner to many Jesuit law schools, offering training for lawyers as well as referrals of clients.

The law schools also partner with local and regional experts to share information and confer on cases. Seattle University School of Law noted that they benefit from the guidance of the Northwest Immigrant Rights Project, a leading non-profit law firm working on these issues in their region. The University of Detroit Mercy reported the same type of collaboration with the Michigan Immigrant Rights Center. Schools like the University of Detroit Mercy also provide guidance and referrals to *pro bono* attorneys.

Several of the law schools house their own immigration clinics which serve asylum seekers and migrants.

Since 1979, the Immigration Law Section of the Stuart H. Smith Law Clinic at Loyola New Orleans College of Law has represented non-citizens in a variety of issues. In addition to direct client representation, they also conduct a monthly “*Know Your Rights*” immigration legal orientation program for unrepresented detainees at remote detention centers.

The Loyola Immigrant Justice Clinic (LIJC) at Loyola Law School, Los Angeles provides free immigration legal services to largely Latino – including Central American – migrants on the Eastside of Los Angeles. They partner with Dolores Mission Parish and Homeboy Industries to host weekly community intake sessions, offering consistent access to free immigration legal services to this community. Both partners provide a wide range of invaluable social services to this community.

In addition to immigration clinics, which engage in direct legal representation of individual clients, other types of student groups have responded to the need to help Central American migrants. The Boston College Immigration Law Group, for example, seeks out *pro bono*

opportunities for law students who wish to help with a variety of immigration cases. Several Boston College law students have volunteered with KIND to conduct intake interviews with Central American migrants and asylum-seekers.

Several schools also engage in efforts to improve state and local policies impacting asylum seekers and other vulnerable migrants and to raise awareness about this issue. In July 2014, the Center for the Human Rights of Children, in collaboration with Loyola University Chicago School of Law, sent a letter to President Obama calling for specific policy recommendations that take into account the well-being and dignity of child migrants fleeing to the U.S., and to use research-informed practices and policies to process undocumented children and families.⁶ They also hosted an educational forum in Chicago in November 2014 to provide students and the larger community with an opportunity to learn more about this critical children’s rights issue.

In 2012, Fordham University School of Law’s Feerick Center for Social Justice launched the New York Unaccompanied Immigrant Children Project to address policies and practice affecting unaccompanied migrant children residing in the New York region. Law students actively participate in this Project by conducting legal and policy research, preparing and conducting surveys, and helping to plan stakeholder meetings. Fordham University Law students also serve asylum seekers and other vulnerable migrants by processing client intake information and organizing individual case files for the Legal Aid Society, as well as playing and coaching soccer with young migrants in partnership with Catholic Charities and South Bronx United.

Through their immigration law programs, Jesuit law schools serve individuals and families seeking various forms of protection from many countries. A breakdown of the numbers served from the Northern Triangle of Central America appears on page seven.

Some Jesuit law schools anticipate a drop in the number of clients they expect to serve in 2015, due to a decrease in new arrivals, related to the increased interdiction of those fleeing Central America before they reached the United States.⁷ Other survey respondents have been able to secure funding to take on additional, yet un-served, clients who arrived in the U.S. in 2014 and expect to increase the number they will serve in 2015.

6. Center for the Human Rights of Children (July 23, 2014) - <http://www.luc.edu/media/lucedu/chrc/pdfs/LoyolaCenterforHumanRightsofChildrenonChildrenatBorder%20President%20Obama.pdf>

7. As of March 2015, CBP reports a decrease in the number of unaccompanied children (45%) and families (30%) arriving at the U.S. southern border, compared to FY14 levels - <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

Number of Central American Asylum Seekers & Migrants Served by Jesuit Law Schools

School	2014	2015 (projected)	Total
Boston College Law School	20	5	25
Creighton University School of Law	1	1	2
University of Detroit Mercy	26	20	46
Fordham University School of Law	1	1	2
Loyola Law School, Los Angeles	21	42	63
Loyola New Orleans College of Law	32	56	88
University of San Francisco School of Law	20	70	90
Santa Clara University School of Law	23	17	40
Seattle University School of Law	3	5	8
Saint Louis University School of Law (Catholic Legal Assistance Ministry)	144	69	213
Total	291	286	577

These figures represent individuals who receive direct legal representation from Jesuit law schools.

In April 2015, a group of students from the Georgetown Law Human Rights Institute (HRI) released a comprehensive report documenting the results of an investigation regarding Mexico's compliance with international legal norms in the enforcement of its immigration laws in its southern border region. While the result has been fewer migrants arriving at the U.S. southern border, after a trip to the Mexican southern border, Georgetown Law students found that the rights of children are repeatedly overlooked. They found that children are typically placed in detention for indefinite periods of time, are not screened for international protection needs, and are often not informed of their right to apply for asylum.^[8]

WHY PEOPLE FLEE THE NORTHERN TRIANGLE

Jesuit law schools reported that their clients represent a wide array of individuals, including single women and men, families with children, unaccompanied or separated children, and parents already in the U.S. whose children have now come to be reunited with them.

The individual bases of their clients' claims vary and are often a combination of several factors, but there are

8. Georgetown Law Human Rights Institute (2015). "The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children's Access to International Protection." - <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/The-Cost-of-Stemming-the-Tide.cfm>.

commonalities driving departure from their home country and the need for protection upon arrival in the U.S. These factors cluster around violence suffered at the hands of gangs and other armed criminal actors and violence suffered in the home. This is confirmed by findings of UNHCR, which notes that Central American children escaping northward were often fleeing significant violence and have serious international protection concerns.^[9]

For law schools seeking asylum for their clients, many cited gang violence, persecution, extortion and/or recruitment in their clients' respective home countries. UNHCR found that 48% of the displaced children they interviewed had been personally affected by criminal violence in the region (cartel, gang

and/or State related).^[10] In addition, the UN Office on Drugs and Crime reported that, in 2013, 30% of homicides in Latin America were linked to gang-related crime.^[11]

Juan^[12]

Juan is a 19 year old from El Salvador who was approached by the MS gang on his way to school as they tried to recruit him to transport drugs on their behalf. He refused the gang's request, but they targeted him on a number of occasions, each time with escalating violence. Eventually, they began to beat him and tried to shoot him. Juan attempted to make a police report, but the police said they did not have time to take a report and did not ask him any questions. Juan feared for his life and fled to the U.S. in hopes of joining family members in Los Angeles.

Beatrice

Beatrice is a Guatemalan woman now in her 20s who lost her mother when she was seven and went to live with her grandmother. As a young girl, the gang MS-

9. UNHCR (2014). "Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection." - <http://www.unhcrwashington.org/children/reports>.

10. UNHCR (2014). "Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection." - <http://www.unhcrwashington.org/children/reports>.

11. UN Office on Drugs and Crime (2013). Global Study on Homicides - http://www.unodc.org/documents/gsh/pdfs/GLOBAL_HOMICIDE_Report_ExSum.pdf.

12. Names of all clients have been changed to protect their anonymity.

Nationalities of Asylum Seekers & Migrants Served by Jesuit Law Schools (2014)

School	Nationalities Served			Total Served
	Honduras	El Salvador	Guatemala	
Boston College Law School	6	5	9	20
Creighton University School of Law	0	0	1	1
University of Detroit Mercy	18	2	6	26
Fordham University School of Law	0	0	1	1
Loyola Law School, Los Angeles	5	11	5	21
Loyola New Orleans College of Law	26	3	3	32
University of San Francisco School of Law	8	10	2	20
Santa Clara University School of Law	19	4	0	23
Seattle University School of Law	0	2	1	3
Saint Louis University School of Law (Catholic Legal Assistance Ministry)	86	36	22	144
Total	168	73	50	291

For the purposes of this paper, we are interested in the information on Honduras, El Salvador and Guatemala. However, many of the law schools also advocate for and/or represent clients from other countries.

13 tattooed her on her back and tried to coerce her to join the gang and sell drugs for them. They bullied and threatened her. She married at 14 and had a son, and the gangs stopped threatening her. But after three years of marriage, her husband left her and the gang began to harass her and her son again. She fled to the U.S. with her son who is now 14; they are living with an uncle as she awaits a verdict on her asylum claim.

Many clients also shared horrific stories of abuse at the hands of parents or other family members, including frequent physical and emotional abuse, abandonment, and neglect. This corroborates UNHCR's findings that 21% of the displaced children they interviewed had been abused in their homes by caretakers. This abuse included emotional abuse, physical abuse, sexual abuse, sibling violence, partner violence, and abandonment.^[13]

Arturo

Arturo is a 19 year old from Honduras whose mother fled to the U.S. to escape violence at the hands of his father. His father abandoned the family when his mother left, and Arturo was sent to live with his uncles. Arturo endured extreme physical abuse at the hands of his uncles — they beat him regularly and would chain him to the inside of their truck during the day so that he couldn't escape. Arturo fled to the U.S. and has been reunited with his mother and sister.

13. UNHCR (2014). "Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection." - <http://www.unhcrwashington.org/children/reports>.

Manuel

Manuel is a 17 year old who fled his home country of Honduras after experiencing abuse at home and being threatened by local armed groups. His family, although poor, owned a parcel of land which they used to grow food. Manuel was forced to drop out of school in sixth grade to work the land full time, his father sometimes beating him with a leather belt. He witnessed the murders of his cousin and brother at the hands of armed groups who wanted his family's land and he was also threatened. Manuel didn't receive any protection from his family or local authorities, so he decided to seek safety in the U.S. He is now living with a foster family and doing well in school.

When Jesuit law schools asked their clients why they chose to come to the United States, as opposed to seeking refuge elsewhere, the reasons funneled down to the following:

Family: Most clients came to reunify with family and/or friends already in the U.S.

Safety: Many do not feel that they can live safely in other parts of Central America or Mexico and that their only option was to travel further north to the U.S.

Opportunity: Although not a primary driver, clients look to pursue expanded prospects for education and employment in the U.S.

A PERILOUS JOURNEY

Central Americans fleeing to the U.S. embark on a potentially dangerous journey, with particularly high stakes for women and young children who face violence and harsh conditions. Loyola University New Orleans College of Law notes, *“Most of our clients encounter horrific experiences during their journey.”* Women and girls, in particular, face unique challenges with the constant threat of sexual assault at the hands of coyotes (human smugglers), gang members, or even corrupt migration authorities or police officers.

An October 2013 report by JRS/USA, *Persistent Insecurity: Abuses Against Central Americans in Mexico*, documented the various abuses suffered by individuals traveling through Mexico, including kidnapping, extortion, robbery, and assault.^[14] A November 2013 report by the Documentation Network of Migrant Defense Organizations, in collaboration with the Jesuit Migration Service, also analyzed testimonies of migrants gathered by several shelters in Mexico. Of those surveyed, 52% reported being robbed during their journey and 33% reported being extorted, primarily by criminal groups.^[15]

Clients being assisted by Jesuit law schools experienced similar challenges, including being held hostage by armed groups and often raped. Those who traveled with the assistance of coyotes reported mixed experiences, including some who did not have any problems and others who shared stories of abuse and dangerous conditions at the hands of coyotes who took advantage of them and their families.

LEGAL REPRESENTATION

In the U.S. immigration system, children and adults have no right to government-funded legal counsel. Yet, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) states that the Department of Health and Human Services must “ensure, to the greatest extent practicable” that all unaccompanied children, with exception to Mexicans and Canadians, be provided access to counsel

Reasons for Flight	Percent of Jesuit Law School Clients
Reunification with Family in the U.S.	60%
Gang and Drug Violence	40%
Limited Economic and Educational Opportunities	40%
Domestic Violence	30%
Neglect or Abandonment by Family Members	30%
Child Labor	30%
Witness to Criminal Activities	20%
Extortion and Threats by Gangs	20%
Land Disputes	10%
Fear of Being Kidnapped	10%
Persecution Based on Sexual Orientation	10%
Political Persecution	10%

and the appointment of a child advocate. This ensures that children receive proper care and that their requests for asylum and other forms of relief are processed fairly and in a way that is consistent with their age and development.^[16]

After crossing the border and in the U.S. Government’s custody, migrants in search of protection find themselves in a bewildering process of navigating the legal system. Finding legal representation is a critical need. As Seattle University School of Law noted, *“Without financial resources, English language skills, or much knowledge of the American justice system, these individuals have great difficulty finding representation.”*

According to data compiled by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, 46% of the unaccompanied children going before Immigration Court are currently represented by an attorney and over 81,000 juveniles are still without legal representation.^[17]

Loyola Law School Los Angeles adds that *“lack of access is heightened for those in immigration detention.”* Indeed, in a paper released by the U.S. Conference of Catholic Bishops and the Center for Migration Studies, the case is made for significant reform of the U.S. detention system, citing a host of challenges. Among them, the fact that “detention makes it far less likely that indigent and low-income immigrants will be able to secure legal counsel and, thus, to present their claims for relief and

14. Jesuit Refugee Service/USA (October 2013). “Persistent Insecurity: Abuses Against Central Americans in Mexico” - https://www.jrsusa.org/Assets/Publications/File/Persistent_Insecurity.pdf.

15. Washington Office on Latin America (2014). “Mexico’s Other Border: Security, Migration, and the Humanitarian Crisis at the Line with Central America” - <http://www.wola.org/sites/default/files/Mexico%27s%20Other%20Border%20PDF.pdf>.

16. Center for Gender & Refugee Studies UC Hastings & Kids in Need of Defense (KIND) (February 2014). “A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System.” - http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf.

17. Transactional Records Access Clearinghouse (through April 2015) - <http://trac.syr.edu/phptools/immigration/juvenile/>.

protection.”^[18]

To fill this gap, a number of organizations, including Jesuit law schools, offer *pro bono* legal services. All of the individuals discussed in this paper were fortunate enough to find legal representation. They are, however, a lucky minority. Unsurprisingly, representation makes a critical difference in the outcomes of asylum and immigration cases. In a July 2014 report, TRAC noted that, historically, in cases where children do have representation, almost half (47%) were allowed to remain in the United States. Conversely, in cases where children appeared in court alone without representation, nearly all (90%) were ordered deported.^[19]

The consensus among survey respondents is that there are not enough resources to handle the thousands of cases of legal merit that are in need of assistance. The shocking implication of this is that thousands are in peril of deportation back into a situation of severe danger due to the lack of proper counsel.

The Catholic Legal Assistance Ministry at Saint Louis University noted that the increase in numbers of removal cases has “made us have to stop intake a few times in the last year and also limit the other types of cases we take.” Similarly, Boston College Law School noted “the overload in the court’s juvenile docket has also caused one of our child client’s hearing to be postponed for three months, which contributed to the client’s anxiety surrounding his legal status.”

Survey respondents cited ways in which partners and local government entities are working to secure additional funding to increase their capacity to take on more cases. The University of San Francisco School of Law, for example, was able to hire a full-time lawyer beginning in January 2015 after securing funding from the city of San Francisco. San Francisco passed a city ordinance in September 2014 devoting more than \$2.1 million over the next two years to legal services for unaccompanied minors and families without representation who face deportation to Central America.^[20] On the state level, in September 2014, California passed legislation that appropriated \$3 million to qualified nonprofits to provide legal services for unaccompanied minors.^[21]

18. U.S. Conference of Catholic Bishops & the Center for Migration Studies (2015). “Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System.” <http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf>.

19. Transactional Records Access Clearinghouse (through March 2015) - <http://trac.syr.edu/immigration/reports/359/>

20. CBS San Francisco (September 16, 2014) – “San Francisco Allocates \$2.1M to Legal Aid for Unaccompanied Minors, Families Facing Deportation” - <http://sanfrancisco.cbslocal.com/2014/09/16/san-francisco-allocates-2-1m-to-legal-aid-for-unaccompanied-minors-families-facing-deportation-david-campos-central-america-el-salvador-guatemala-honduras-mexico-undocumented/>

21. Office of Governor Edmund G. Brown, Jr. (September 27, 2014) - <http://>

In June 2014, the Department of Justice and the Corporation for National and Community Service, which administers AmeriCorps, announced the launch of “justice AmeriCorps,” a grant program that aims to enroll 100 lawyers and paralegals as AmeriCorps members to provide legal services to unaccompanied minors from Central America.^[22] And in September 2014, the Department of Health and Human Services announced a \$9 million grant to the U.S. Conference of Catholic Bishops and the U.S. Committee for Refugees and Immigrants to deliver similar services, over the course of two years.^[23]

While these are notable examples of efforts to expand access to legal representation, they have not addressed the fact that the majority of asylum seekers and other vulnerable migrants are still not able to secure legal representation. Based on data released by TRAC in February 2015, less than 30% of Central American families with children have been able to find legal representation. Without representation, these families almost never prevail.^[24]

Jesuit law schools have identified a series of challenges in representing their clients. These are:

- *Procedural* challenges in managing a mandated expedited docket for these migrants.
- *Legal* challenges posed by limitations in the acceptance of gang-related violence claims.
- *Logistical* challenges related to consistent and reliable access to clients and courts.
- Challenges accessing *counseling and support services*.

PROCEDURAL

In mid-2014, the Obama Administration responded to the increase in the number of individuals fleeing Central America by taking a series of actions. These included directing greater law enforcement resources to the border, working with Mexico and Central American countries to discourage or prevent migration before individuals can reach the U.S. border, expanding detention facilities for family units, and establishing dedicated child and family Immigration Court dockets.

gov.ca.gov/news.php?id=18734.

22. U.S. Department of Justice (June 6, 2014). “Justice Department and CNCS Announce New Partnership to Enhance Immigrations Courts and Provide Critical Legal Assistance to Unaccompanied Minors” - <http://www.justice.gov/opa/pr/justice-department-and-cnacs-announce-new-partnership-enhance-immigration-courts-and-provide>.

23. Jordan, Miriam. The Wall Street Journal (September 30, 2014). “U.S. Government to Provide \$9 million for Legal Aid to Child Migrants” - <http://www.wsj.com/articles/u-s-government-to-provide-9-million-for-legal-aid-to-child-migrants-1412106221>.

24. Transactional Records Access Clearinghouse - <http://trac.syr.edu/immigration/reports/377/>.

A primary area of concern cited by Jesuit law schools is the harmful consequence of establishing an expedited adjudication process for children and families upon their arrival to the United States. The increase in arrivals from Central America put new pressures on an already complex and overloaded judicial system. Since these cases have been given top priority by the Immigration Courts, Jesuit law schools report that legal services are *“inundated and constantly running at capacity,”* resulting in a poor standard of case processing (University of San Francisco School of Law).

Santa Clara University School of Law notes that it is crucial to take these cases off an expedited track, to allow legal counsel to prepare each case thoroughly, to obtain the supporting documents as needed and to prepare their clients for hearings. As law students are playing a critical role in providing legal representation, they also note that, *“Since the cases are expedited, it is hard to train law students fast enough to prepare, file and represent clients in court in a matter of weeks, especially if the students are new to the field.”*

An expedited process poses a number of legal and logistical challenges. As the University of San Francisco School of Law points out, *“Prior to this crisis, the situation was handled better. Families were able to find places to live and relocate to and were given hearing notices for months later, giving them time to find the needed resources.”*

LEGAL

U.S. immigration law provides various forms of legal relief designed to assist asylum seekers and other vulnerable migrants.^[25] In order to be granted asylum, children and adults must meet the U.S. definition for a refugee, which follows the 1951 UN Convention relating to the Status of Refugees:

Any person who is outside any country of such person’s nationality, or in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of past persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

As noted earlier, the most common asylum claims presented by their clients involve escaping physical or sexual abuse by parents and other family members or violence at the hands of gangs or organized crime. Asylum claims can be adjudicated either by U.S. Citizenship and

25. Jesuit Law Schools are also assisting some clients to secure T visas (for victims of severe forms of human trafficking) and U visas (for victims of crime).

Immigration Services (USCIS) Asylum Offices, overseen by the Department of Homeland Security; or by the Executive Office for Immigration Review (EOIR), overseen by the Department of Justice.

Children under the age of 21 who have been abused, abandoned, or neglected by a parent may also be eligible for Special Immigrant Juvenile Status (SIJS) visas, which provides successful applicants with permanent residence. Successful SIJ applicants must first be certified by a State Court as a dependent of the court, and the court must also certify that it is not in the child’s best interest to be returned to his or her home country and that the child cannot safely be reunited with a parent.^[26] Jesuit law schools identified a series of challenges related to efforts to process both asylum claims and seeking SIJS.

Many of the law schools’ clients are fleeing violence, but their circumstances may not fit exactly within current precedent established for asylum. Although respondents noted that many of their clients’ claims are based on gang-related violence, Boston College Law School highlights the *“near impossibility to prevail on a gang-based asylum claim”* given current precedent on gang-related claims. To date, the Board of Immigration Appeals (BIA) has not included those who are fleeing persecution from gangs, or those who have a well-founded fear of persecution as a result of gang activity, in its designation of a “particular social group,” per the refugee definition mentioned earlier. Existing guidance to Immigration Courts discourages judges from recognizing those fleeing criminal or gang violence as a protected class.^[27] Yet, it should be noted that certain circuit courts have begun to recognize gang recruitment as a basis for asylum claims.^[28]

However, UNHCR’s *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* concludes that, “Young people, in particular, who live in communities with a pervasive and powerful gang presence but who seek to resist gangs may constitute a particular social group for the purposes of the 1951 UN Convention.” UNHCR goes on to assert that this designation may also impact individuals fleeing gang-related violence, especially in the absence of effective State protection.^[29]

26. U.S. Citizenship & Immigration Services – “Eligibility Status for SIJ” - <http://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij>.

27. Rosenblum, March R. Migration Policy Institute (April 2015). “Unaccompanied Child Migration to the United States: The Tension Between Protection and Prevention.” - <http://migrationpolicy.org/research/unaccompanied-child-migration-united-states-tension-between-protection-and-prevention>.

28. For example, *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Circuit 2009). - http://www.uscristrefugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_1%20Asylum%20Research/5_4_1_2_Gang_Related_Asylum_Resources/5_4_1_2_1_Court_of_Appeals/Benitez_Ramos_v_%20Holder.pdf.

29. UNHCR (March 2010) – “*Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*” - <http://www.refworld.org/docid/4bb21fa02.html>.

As the University of San Francisco School of Law notes, one positive development they have experienced in their work is that asylum officers and some immigration judges have recognized gang recruitment as a form of persecution as well as an element of a particular social group. Overall, Jesuit law schools encourage greater recognition of gang violence as the basis for asylum claims and emphasize the importance of creating a growing body of precedent on this topic.

When seeking SIJS for their clients, some Jesuit law schools raised concerns related to the current age limit for State Juvenile and Family Courts, which is usually age 18. Boston College Law School noted *“there is a race to court before the child’s 18th birthday,”* as a result of efforts to process paperwork before a State Court loses jurisdiction over a child at the age of 18. Some law schools support efforts to raise the age limit for State Juvenile and Family Courts to 21^[30], to ensure that vulnerable minors are afforded an opportunity to present their claims.

In addition to these two existing opportunities to offer protection for asylum seekers and other vulnerable migrants, Jesuit law schools maintain that additional avenues for relief are needed. Many children are seeking to reunite with family members who are already residing in the United States. As Fordham University School of Law asserts, *“if these families had a way to sponsor their children legally, many lives would be saved by avoiding the perilous journey across the border, often through dangerous criminal smuggling networks.”*

In an effort to address this issue, the Obama Administration launched the Central American Minors (CAM) Refugee/Parole Program in late 2014, which provides certain qualified minors in El Salvador, Guatemala, and Honduras with a legal option to seek protection in the U.S. As of April 2014, no children have successfully made their way to the U.S. through the CAM program.

LOGISTICAL

Jesuit law schools raised a number of logistical issues related to working with their clients and seeking to process their claims in a fair and just manner. These challenges included difficulty maintaining consistent contact with clients due to distance or communication barriers as well as the movement of clients by U.S. authorities across state lines.

Access to timely and reliable transportation services was consistently raised as a challenge. In Missouri, the Catholic Legal Assistance Ministry at Saint Louis University reports that the Immigration Court is in Kansas City, four hours from St. Louis, which makes it difficult for

clients to reach.

Some survey respondents also noted difficulty in maintaining contact with clients as they are transferred out of state, move from home to home because of unstable living conditions, or must travel long distances from rural areas. Seattle University School of Law reported that they were not able to serve at least two clients who were initially brought to their attention because they were transferred out of state by U.S. authorities, thereby removing them from the jurisdiction of Washington State Courts.

COUNSELING AND SUPPORT SERVICES

Without access to a child advocate or other support systems, oftentimes a client’s legal counsel serves as the liaison to other much-needed services. One survey respondent from Boston College Law School noted the role professors and law students played in navigating the process of enrolling a client in the appropriate school when he had limited English skills. While services are available, the Jesuit law schools pointed out that there is often a gap in the ability of their clients to access those services if they do not have a referral or some form of help to facilitate their navigation of the system.

Survey respondents also noted that counseling is needed in many cases, but institutions offering legal services do not have the resources to extend to counseling services. USF School of Law highlighted that most legal counsel secure an initial mental health assessment for their clients as part of their asylum claim, yet it is clear that further long-term counseling is needed.

The Catholic Legal Assistance Ministry at Saint Louis University explained that *“counseling is also needed in many instances, but [we] do not have many resources in the way of free bilingual therapy for undocumented persons.”* Particularly when working with children who have experienced trauma, Jesuit law schools highlighted the importance of providing access to psychosocial support and counseling services to this vulnerable population.

Finally, the University of San Francisco School of Law raised concerns regarding the need for additional support services for indigenous children from the Northern Triangle of Central America. It has been challenging to find interpreters who speak indigenous languages and are able to offer their services for the duration of the legal process. It has also been difficult to assist these children in finding the non-legal support that they need, including access to schools and a larger network of services.

30. U.S. Code defines a child as an “unmarried person under 21 years of age.” 8 U.S.C. 1101(b)(1).

RECOMMENDATIONS

To address these challenges, JRS/USA and Jesuit Law Schools recommend the following policy changes:

Guarantee Legal Representation for Minors

The only way to ensure fair and timely adjudication of protection claims for minors arriving in the U.S. is to guarantee full access to legal representation. We urge Congress to introduce and pass legislation that guarantees legal representation and access to a child advocate for every unaccompanied minor.

Increase Resources for Legal Representation

We urge the White House and Congress to support a substantial increase in resources in the FY16 Federal Budget for programs that provide greater access to legal representation for unaccompanied minors and asylum applicants.

Stop Expedited Processing for Children & Families

If asylum seekers and other vulnerable migrants are provided adequate time to find legal representation, they are more likely to have access to a fair process to articulate their claims for protection. In turn, legal counsel would then have the requisite time to prepare cases and gather resources. We urge the White House, the Department of Justice, and the Department of Homeland Security to reverse their policy on expedited processing for unaccompanied minors and families from Central America.

Recognize Gang-Based Asylum Claims

More and more asylum seekers are victims of violence at the hands of gangs and are unable to secure protection from their home countries. We urge the USCIS Asylum Offices and the Board of Immigration Appeals to recognize asylum claims involving gang violence.

Track Jurisprudence on Gang-Based Asylum Cases

We urge legal service providers, including law schools and non-governmental organizations, to begin to compile a database of, and track decisions on, gang-based claims. Tracking the most successful legal arguments can help legal service providers better understand and advance this evolving area of law.

Minimize Transfer of Clients and Increase Access to Transportation Services

We urge the Department of Homeland Security and the Department of Justice to focus on the best interest of the child when considering their placement upon arrival in the U.S. and to minimize transfer of those being held in detention to avoid interruption of access to legal services. We also call on State and Local organizations to consider ways to increase access to transportation services for those navigating the legal process.

Recognize Signs of Trauma & Provide Access to Counseling Services

The trauma endured by those seeking protection in the U.S. poses a serious problem and may preclude them from being able to fully articulate their claim for protection. We urge the courts to offer training to judges in recognizing and understanding trauma, and to consider trauma when making their determinations. We also encourage the Department of Health and Human Services, State officials, and Local officials to increase access to counseling services for this vulnerable population.

Reform the U.S. Detention System

The current U.S. immigrant detention system is in need of significant reform. We urge the White House, Congress and the Department of Homeland Security to consider alternative measures to detention including supervised release, case management, and community support programs, that will serve to ensure court appearances and due process.

Provide Additional Avenues of Relief

Due to the large number of individuals seeking protection, and the fact that many children are seeking to reunite with family members already residing in the U.S., we urge the White House, the Department of Justice and the Department of Homeland Security to expand the available avenues of relief for asylum seekers and other vulnerable migrants. This includes taking all possible measures to begin admissions under the Central American Minors (CAM) Refugee/Parole Program; considering new Temporary Protected Status for the Northern Triangle countries of Central America; and pursuing efforts for comprehensive immigration reform that prioritizes the best interest of the child.

CONCLUSION

Addressing the needs of migrants seeking protection and refuge in the U.S. is a complex and multi-layered issue. This paper sets forth the particular challenges identified by legal practitioners at Jesuit law schools in the U.S. who are working to assist asylum seekers and other vulnerable migrants from Central America. While these challenges, and related recommendations, do not address all of the issues related to this topic, we share them in an effort to provide testimony to what these migrants are currently facing as they navigate the legal system upon their arrival in the U.S.

Jesuit Refugee Service/USA and U.S.-based Jesuit law schools are committed to collaboratively expanding efforts to address this critical issue. This paper serves as a call to action for both Jesuit law schools and the larger community to continue, as well as increase, investments in serving this vulnerable population. We urge policymakers to consider these recommendations in an effort to ensure that anyone who comes to our borders seeking safety is provided a fair and equitable process to articulate their claims for protection and that their dignity and well-being is respected throughout the entire legal process.

Jesuit Refugee Service/USA with
Boston College School of Law
Creighton University School of Law
Fordham University School of Law
Georgetown University School of Law
Gonzaga University School of Law
Loyola University Chicago School of Law &
Center for the Human Rights of Children
Loyola Law School, Los Angeles
Loyola University New Orleans School of Law
Saint Louis University School of Law &
Catholic Legal Assistance Ministry
Santa Clara University School of Law
Seattle University School of Law
University of Detroit Mercy School of Law
University of San Francisco School of Law



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