

IMMIGRANT YOUTH IN CRISIS

Struggles of Unaccompanied Youth
from Central America in Washington State





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*All names have been changed to protect the youth's confidentiality. No images of the youth interviewed appear in this report.

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Carlitos was born in Guatemala. From an early age he was a victim of emotional, physical, and verbal abuse. His father is an abusive alcoholic who spent most of his earnings on alcohol, forcing Carlitos to drop out of third grade to look for work to help pay for food.

Desperate at age 14, he decided to pay a family acquaintance to bring him to the United States. His month-long trip was difficult and scary. He barely had anything to eat and hardly slept. He was assaulted a couple of times, but, having little, he lost little.

Carlitos was caught by border patrol while wandering in the Arizona desert. Immigration released him to the family acquaintance who had loaned him the money to come to the

United States, who was then living in Washington State.

Carlitos worked hard to pay back the loan, sometimes foregoing food. After a few months, the family acquaintance returned to Guatemala. Carlitos felt even more alone and was now homeless.

Carlitos was connected with legal services organizations that worked on getting him services and helped him obtain Special Immigrant Juvenile Status findings. He is now on the path to graduate from high school and is planning to either study engineering in college or to enlist in for the U.S. Marine Corps.

INTRODUCTION

When unaccompanied youth—minors without lawful immigration status who entered the United States without a parent or legal guardian—cross the United States border, those who are caught are held in immigration detention facilities operated by the Office of Refugee and Resettlement (ORR), which has locations around the United States. Youth stay in these facilities unless a suitable sponsor is available to release the youth to. These youth are placed in removal (deportation) proceedings, meaning that they will be removed from the United States unless they obtain immigration relief.

For many of these youth, Special Immigrant Juvenile Status (SIJS) is the only form of relief. SIJS is a unique form of protection for immigrant children without legal status who cannot be reunited with one or both of their parents and whose best interest is not to return to their country.¹ It confers a visa status that can lead to permanent residency.²

These youth cross the United States border for many compelling reasons: they have been beaten, threatened to be killed if they do not join a gang, subjected to domestic violence, abandoned, exploited, or sexually trafficked.³ When unaccompanied youth cross the United States

border, they are vulnerable, and many are homeless.

Over 1,400 youth in the custody of ORR have been released to sponsors in Washington State.⁴ While awaiting their immigration court hearing, these youth face additional struggles, such as becoming

displaced and homeless, and being unable to access health care or obtain an identification card. Furthermore, they struggle to find legal counsel to help them defend their immigration cases. Many unaccompanied youth qualify for SIJS relief, but they need legal assistance to obtain it, as applying for SIJS relief requires navigating complex federal and state processes and systems.

Alexander was born in El Salvador. He fled at the age of 16, leaving his family behind, after the gang Mara Salvatrucha threatened to kill him twice for refusing to sell drugs. Alexander's parents were scared that their son would be killed because they could not protect him from gang violence, or provide him with a safe place to live or go to school.

This report discusses the issues that unaccompanied youth struggle with while in Washington State, and provides recommendations on what state and national advocates can do to break down the barriers. The issues were identified based on interviews of youth from Central America, the youths' sponsors, service providers (i.e. shelters and drop-in centers), attorneys representing sponsors in state court in order to obtain SIJS findings, and attorneys representing youth on filing SIJS petitions. A literature review was also conducted.

¹8 U.S.C. § 1101(a)(27)(J).

²8 C.F.R. § 204.11; Center for Gender and Refugee Studies & Kids in Need of Defense, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, at 37, Feb. 2014, available at <http://cgrs.uchastings.edu/our-work/treacherous-journey-child-migrants-navigating-us-immigration-system>.

³Center for Gender and Refugee Studies & Kids in Need of Defense, *supra* note 2, at ii.

⁴Office of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, March 1, 2017, available at <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors> (last visited March 1, 2017).

BACKGROUND

In 2014, there was a wave of unaccompanied youth from Central America who journeyed to the United States. President Obama characterized this situation as a “humanitarian crisis.”⁵ Over 68,000 unaccompanied youth, mainly from Honduras, El Salvador, and Guatemala, which make up the “Northern Triangle” region, made the journey.⁶ At the time, “Honduras ...[was] the murder capital of the world” and “El Salvador and Guatemala rank[ed] fourth and fifth...in terms of the highest worldwide murder rates.”⁷ These countries are so violent that these youth believe it is better to risk their lives in making the trip to the United States than to remain in their home country. Family members have also sent youth under eight years old to make the trip to the United States because their country is not safe for them.

Kimberly was born in El Salvador. She fled her home country at age 16 to get away from the violence and threats. Her uncle is a member of the Mara Salvatrucha gang and she was constantly being harassed and threatened to join the gang. He would tell Kimberly that he was going to hurt her if she didn't join. She felt unsafe and scared.

Reports and unaccompanied youth have stated that “increasing violence in their home communities and a lack of protection against the violence” is what primarily caused them to seek

refuge to the United States.⁸ Other reasons that unaccompanied youth flee to the United States are domestic violence, abandonment, exploitation, and trafficking.⁹

In 2016 the number of unaccompanied youth detained at the United States border increased, almost approaching the number of youth apprehended in 2014.¹⁰ For fiscal year 2016, 59,692 unaccompanied youth were apprehended, compared to 68,547 in fiscal year 2014.¹¹

Under federal law, unaccompanied youth from Honduras, El Salvador, and Guatemala who are apprehended by the Department of Homeland Security (DHS) cannot be immediately returned to their home countries.¹² These youth “must be transferred to [the care and custody of] ORR within 72 hours after determining that they are unaccompanied.”¹³ Though

⁵Devin Dwyer, *Obama Warns Central Americans: ‘Do Not Send Your Children to the Borders’*, ABC NEWS, June 26, 2014, available at <http://abcnews.go.com/Politics/obama-warns-central-americans-send-children-borders/story?id=24320063>.

⁶Lutheran Immigration and Refugee Service, *At the Crossroads for Unaccompanied Migrant Children: Policy, Practice, & Protection*, at 7, July 2015, available at http://lirs.org/wp-content/uploads/2015/07/LIRS_RoundtableReport_WEB.pdf.

⁷Philip E. Wolgin & Angela Maria Kelley, *5 Things You Need to Know About Unaccompanied Minor*, CENTER FOR AMERICAN PROGRESS, June 18, 2014, available at <https://www.americanprogress.org/issues/immigration/news/2014/06/18/92056/5-things-you-need-to-know-about-the-unaccompanied-minors-crisis/>.

⁸Center for Gender and Refugee Studies & Kids in Need of Defense, *supra* note 2, at ii.

⁹Center for Gender and Refugee Studies & Kids in Need of Defense, *supra* note 2, at ii. *See also* Jonathan T. Hiskey et al, *Understanding the Central American Refugee Crisis: Why They are Fleeing and How U.S. Policies are Failing to Deter Them*, AMERICAN IMMIGRATION COUNCIL, at 3, Feb. 2016, available at <https://www.americanimmigrationcouncil.org/research/understanding-central-american-refugee-crisis>.

¹⁰U.S. Customs and Border Protection, *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016*, available at <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

¹¹U.S. Customs and Border Protection, *supra* note 10.

¹²Office of Refugee Resettlement, *About Unaccompanied Children's Services*, September 10, 2015, available at <http://www.acf.hhs.gov/programs/orr/programs/ucs/about>.

¹³United States Government Accountability Office, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180, February 5, 2016, pg. 5, available at <http://gao.gov/assets/680/675001.pdf>; William

unaccompanied youth are in ORR care, they “are in the physical custody of ORR residential care providers” known as grantees.¹⁴

The grantees are licensed to provide residential, group, or foster care for dependent children and must provide proper physical care and shelter.¹⁵ ORR grantees must also assess the suitability of potential sponsors, who can be a parent, family member, or non-relative, who resides in the United States.¹⁶ In completing an assessment, a background check is done and in certain situations a home study is conducted.”¹⁷

Once a suitable sponsor has been found, the custody of the youth is transferred to the sponsor.¹⁸ The sponsor must “provide for the physical and mental well-being of the [youth]; ensure that the [youth] appears for all removal proceedings in immigration court; ensure that the [youth] reports to ICE [U.S. Immigration and Customs Enforcement] in the event that they are ordered removed; [and] notify DHS of address changes.”¹⁹ Sponsors who are not the parents or legal guardians of the youth are responsible for attempting “to establish legal guardianship through the local court system.”²⁰ However, pursuant to the DHS memoranda issued on February 20, 2017, if the sponsor of the unaccompanied youth is their parent, the youth is no longer considered unaccompanied and the youth’s removal from the United States can be expedited.²¹ Furthermore, if it

is determined that a parent or family member, without lawful status and living in the United States, paid to bring the unaccompanied youth into the United States, the parent or family member can be placed in removal proceedings or referred for criminal prosecution.²² ORR has released 1,438 unaccompanied youth to sponsors in Washington State from October 2013 to January 2017.²³

While in removal proceedings, an unaccompanied youth might qualify for several forms of immigration relief. The focus of this report is SIJS; an immigration visa status available to certain immigrant youth who obtain an SIJS order from a state court finding that reunification with one or both of the youth’s parents is not viable due to abuse, abandonment, or neglect.²⁴ Once a youth obtains SIJS, he or she becomes eligible to apply for lawful permanent residence.²⁵ For many unaccompanied youth, SIJS is the only path available to obtain immigration status and without it, they will most likely be ordered removed from the United States and returned to the dangerous situation they were fleeing from.

As of the date of this report, receiving Apple Health for Kids or public housing assistance is not considered in the determination of whether a person is likely to become a public charge. However, in the future please check in with legal services providers to determine if this has changed.

Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232(b)(3).

¹⁴United States Government Accountability Office, *supra* note 13, at 5-6.

¹⁵United States Government Accountability Office, *supra* note 13, at 6, 8.

¹⁶United States Government Accountability Office, *supra* note 13, at 10, 29.

¹⁷United States Government Accountability Office, *supra* note 13, at 10.

¹⁸United States Government Accountability Office, *supra* note 13, at 30.

¹⁹United States Government Accountability Office, *supra* note 13, at 30.

²⁰United States Government Accountability Office, *supra* note 13, at 30.

²¹U.S. Department of Homeland Security, *Implementing the President’s Border Security and Immigration Enforcement*

Improvements Policies, at 10, February 20, 2017, available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

²²U.S. Department of Homeland Security, *supra* note 21, at 11.

²³Office of Refugee Resettlement, *supra* note 4.

²⁴Immigration and Nationality Act (INA) § 203(b)(4); INA § 101(a)(27)(J); Trafficking Victims Protection Reauthorization Act of 2008, P.L. 110-457 § 235.

²⁵Columbia Legal Services, *Quick Guide: SIJS & Washington State Proceedings*, available at http://columbialegal.org/sites/default/files/15%200721%20SIJS%20%20Wa%20St%20Proceedings%20Quick%20Guide%20FINAL_0.pdf. See also Center for Gender and Refugee Studies & Kids in Need of Defense, *supra* note 2, at 37.

DISCUSSION

Following is a list of barriers that unaccompanied youth have struggled with while residing in Washington State and recommendations to address the barriers. These barriers were primarily identified in the interviews.

A. Education

The Washington Constitution confers a paramount duty to “make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”²⁶ Unaccompanied youth without legal status have the same right to a public education as U.S. citizens and permanent residents.²⁷

Barriers:

- Enrollment of unaccompanied youth in school has been delayed due to lack of documentation, such as proof of age, birth certificate, immunizations, and school records.
- Schools push unaccompanied youth who are older (ages 16 or 17) into alternative educational programs, such as GED programs, adult education, or English as a Second Language classes, instead of enrolling them in the mainstream public school system.
- Unaccompanied youth are enrolled in elective classes instead of the core classes that the youth need in order to graduate.
- Unaccompanied youth are funneled through the system without regard to their actual educational level. Many of the youth are placed in the grade that corresponds to their

age instead of their actual educational level, and many are lost in the system.

- Unaccompanied youth have difficulty understanding the material and participating in their education because of their limited English, poor education, disabilities, and their lack of understanding of United States schools’ norms and expectations.
- Unaccompanied youth may have to choose between studying and working.

Recommendations:

- Educate school districts that all youth, regardless of immigration status, have a right to a public education.
- Educate schools about the culture, dynamics, and trauma of unaccompanied youth from Central America so that they can help newly arriving students adapt and learn in school.
- Ensure that unaccompanied youth who are learning English can participate meaningfully and equally in education programs.²⁸
- Educate sponsors on the importance of supporting unaccompanied youth in obtaining an education.
- Educate schools about McKinney-Vento Act protections and services for homeless unaccompanied youth.

²⁶WA CONST. Art. 9, § 1.

²⁷*Plyer v. Doe*, 457 U.S. 202 (1982); See also U.S. Department of Justice & U.S. Department of Education, *Dear Colleague Letter*, (May 8, 2014), <http://www.k12.wa.us/MigrantBilingual/pubdocs/May8th2014ColleagueLetter.pdf>.

²⁸National Immigrant Justice Center, *Justice for Unaccompanied Immigrant Children: An Advocacy Best Practices Manual for Legal Service Providers*, April 2016, at 36, available at http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_uac_doc_uic_best_practices_4_27_16.authcheckdam.pdf. See also U.S. Department of Justice & U.S. Department of Education, *Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs*, available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>.

B. Public Housing

To reside in public housing, at least one member of the household must have eligible immigration status.²⁹ The household receives prorated assistance depending on the number of household members with lawful immigration status.³⁰

Barrier:

- The public housing authority has denied sponsors' requests for unaccompanied youth to stay in public housing because the youth do not have social security numbers.

Recommendation:

- Educate Public Housing Authorities that youth without legal status can be added to their sponsor's household with proration of assistance so long as they meet other requirements.

C. Employment

In order to be able to legally work in the United States, unaccompanied youth need to have work authorization.³¹

Barriers:

- Unaccompanied youth who become homeless because they are displaced from their sponsors must work to pay for their basic needs. However, without work authorization, these youth cannot legally work.
- Unaccompanied youth are often forced to support themselves once they are united with their sponsors. This can lead to labor exploitation (i.e. they are paid less than minimum wage, or are not paid all hours worked) since the youth do not have authorization to work in the United States.

²⁹Seattle Housing Authority, *Immigration Status*, available at <http://www.seattlehousing.org/housing/immigration/>.

³⁰Seattle Housing Authority, *supra* note 29.

³¹U.S. Citizenship and Immigration Services, Form I-9, available at <https://www.uscis.gov/sites/default/files/files/form/i-9.pdf>.

Recommendations:

- Educate public agencies charged with ensuring the safety and fair treatment of workers, especially the state Bureau of Labor & Industries and Washington-based offices of the federal Occupational Safety and Health Administration, about the employment-related barriers faced by unaccompanied youth and their legal rights to safety and fair treatment at work.
- Encourage public funding for non-profit organizations such as worker centers (e.g., Casa Latina) that monitor and advocate for workplace safety and fairness for migrant workers of all ages and without regard to legal status.



Stock Photo

D. Health Care

In Washington, unaccompanied youth are eligible for Apple Health for Kids. This program is free and available to low-income youth regardless of immigration status.³² However, when a youth goes to the doctor or dentist, a parent or guardian is required to sign a consent form before the youth can receive routine medical services. For unaccompanied youth who are homeless or do not have a legal guardian, this means that they do not

³²Washington healthplanfinder, *Are You Eligible for Health Insurance? A Guide for Immigrants and Refugees*, at 5, available at http://www.wahbexchange.org/wp-content/uploads/2015/08/721423095688_OP_Immigration_Guide_020415.pdf.

have access to routine check-ups and basic health care. The Homeless Student Stability and Opportunity Gap Act helps to reduce this gap by allowing a school nurse, school counselor, or homeless student liaison to provide informed consent for health care for a homeless unaccompanied youth for non-emergency primary care services and routine follow-up care.³³

Barrier:

- Unaccompanied youth who have Apple Health for Kids but are not in school and do not have a legal guardian cannot obtain basic health care.

Recommendations:

- Shelters and others who work with homeless youth should seek ways to obtain informed consent for routine health care so that homeless unaccompanied youth who are not enrolled in school can still obtain routine health care.
- Encourage state law and policy reform to promote the establishment and financial stability of School-Based Health Centers (SBHs), which often serve low-income youth who are not regularly attending school and have difficulty acquiring parental consent for health services.³⁴

E. Mental Health

Limited access to routine health care also leads to limited or no access to mental health care.³⁵ Many unaccompanied youth need mental health care because they experienced traumatic events in their

³³H.B. 1682, 64th Leg (Wa. 2016), available at <http://lawfilesexext.leg.wa.gov/biennium/2015-16/Pdf/Bills/House%20Passed%20Legislature/1682-S3.PL.pdf>.

³⁴Claire Johnson et al., *Sustaining the Future: School-Based Health Center Reform in Washington State*, WHITMAN COLLEGE, March 14, 2014, available at <http://www.walatinos.org/wp/wp-content/uploads/2014/05/ACTUALSOTSFINAL.pdf>.

³⁵Matthew M. Davis et al., *Health, Nutrition and Healthcare Availability*, NATIONAL VOICES PROJECT, August – September 2013, at 7, available at http://www.chear.org/sites/default/files/stories/pdfs/nvp4_report_health.pdf.

home countries and in their journeys to the United States. They also experience additional challenges, such as fear of being returned to their home countries, anxiety surrounding the immigration court process and acclimating to the United States, pressures from family because of the debt acquired for the youth’s journey to the United States, an expectation that they will work to support their families in their home countries, and living in unsafe environments once they are released to a sponsor.³⁶ Youth who witness traumatic events that involved intense fear, helplessness, or horror are at risk of developing post-traumatic stress disorder (PTSD).³⁷ The event usually involves threats to their lives or severe injury (e.g., abuse or violence).³⁸ The event can also be re-occurring trauma, like domestic violence.³⁹



Barriers:

- There are few qualified mental health providers who speak the native languages of unaccompanied youth, especially in Eastern Washington, where services are scarce.
- Unaccompanied youths’ insurance does not pay for mental health counseling and sponsors cannot afford to pay for it.

³⁶National Immigrant Justice Center, *supra* note 28, at 38.

³⁷Minnesota Association for Children’s Mental Health, *Children’s Mental Health Disorder Fact Sheet for the Classroom*, at 9, available at <http://schoolmentalhealth.org/Resources/Educ/MHClassroomFactSheet.pdf>.

³⁸Minnesota Association for Children’s Mental Health, *supra* note 37.

³⁹Minnesota Association for Children’s Mental Health, *supra* note 37.

- Unaccompanied youth who experience PTSD may exhibit challenging behaviors.⁴⁰ They “may avoid meetings with their attorney and other professionals because discussing their case is too difficult,” and may have “[d]ifficulty establishing a trusting attorney/client relationship.”⁴¹
- Unaccompanied youth may feel stigma or embarrassment in receiving mental health services and may decide not to follow-up on referrals or requests for evaluations.
- Family members are unsupportive of unaccompanied youth seeking mental health services, especially male unaccompanied youth.

Recommendations:

- Qualified mental health providers who speak the native languages of unaccompanied youth and are culturally competent must be available statewide.
- Attorneys should receive specialized training for assisting unaccompanied youth.
- Encourage state law and policy reform to promote the establishment and financial stability of SBHCs, which provide mental health care to low-income youth.⁴²

F. Identification Card

Minors can obtain identification cards if their parents or guardians sign an affidavit, provide required documents to prove their identity, and show proof that they are the minors’ parents or guardians.⁴³ A social security number is not

required to obtain an identification card.⁴⁴ If a youth is homeless, many shelters and drop-in centers in Washington help the youth obtain an identification card. A youth may use the shelter or drop-in center address to obtain the necessary documents and may receive help paying the fee for the identification card.

Barriers:

- If an unaccompanied youth does not have certain forms of identification (i.e. passport, original birth certificate, consular identification), the Department of Licensing (DOL) asks for additional documents. Those additional documents are sometimes more than the ones on the DOL’s list of required documents.
 - One main document that shelters and drop-in centers use as proof of identity to obtain an identification card is a youth’s yearbook picture or school transcript. However, unaccompanied youth may not have been enrolled in school.

Benjamin and his sponsor went to the several licensing department offices many times and each time the staff asked for different documents. Finally, the sponsor was told to go to a licensing department office located about 40 minutes from where they lived and there Benjamin was able to obtain his identification card with the documents his sponsor presented.

Recommendations:

- Educate DOL staff on what types of documents they can receive or ask of unaccompanied youth.
- Encourage DOL to allow DHS-issued documents to suffice for identification card purposes (e.g., the ORR form provided to unaccompanied youth when they are release, which has their picture).

⁴⁰National Immigrant Justice Center, *supra* note 28, at 39.

⁴¹National Immigrant Justice Center, *supra* note 28, at 39.

⁴²Johnson et al., *supra* note 34.

⁴³Washington State Department of Licensing, *Steps to getting your first driver license: Proof of identify*, <http://www.dol.wa.gov/driverslicense/idproof.html>.

⁴⁴WAC 308-104-014; Washington State Department of Licensing, *supra* note 43.

G. Teen Pregnancy

In 2015, about “one-third of the 33,000 unaccompanied [youth]...were girls.”⁴⁵ Some of these “girls [fled] their country because they were victims of sexual assault” and others were “raped on their journey to the U.S.” and found out that they were pregnant while in ORR custody.⁴⁶ Being pregnant as a teen is closely linked to poverty.⁴⁷

Barriers:

- Teen pregnancy limits the ability to get an education, as pregnant teens are more likely to drop out of school.⁴⁸
- Older unaccompanied youth from Central America do not understand or do not know that if they have sex with a younger girl, they can be charged with statutory rape.

Recommendations:

- Educate youth from Central America on statutory rape, the consequences of getting pregnant, and availability of birth control.
- Encourage young parents or youth who are pregnant to attend community-college based Alternative Education Programs (AEP), such as the AEP at the Walla Walla Community College, which can provide substantial support to these students whose needs are not being met in public schools.⁴⁹

⁴⁵Lucy Guanuna, *Unaccompanied and Pregnant, Challenges of Finding Health Services*, KCET, September 28, 2016, available at <https://www.kcet.org/shows/departures/unaccompanied-and-pregnant-challenges-of-finding-health-services>.

⁴⁶Guanuna, *supra* note 45.

⁴⁷The National Campaign to Prevent Teen and Unplanned Pregnancy, *Teen Pregnancy*, available at <http://thenationalcampaign.org/why-it-matters/teen-pregnancy>.

⁴⁸Andrea Berg et al., *Re-engaging Discouraged Learners: A Case Study of the Alternative Education Program at Walla Walla Community College*, WHITMAN COLLEGE, March 14, 2014, at 11-12, available at http://www.walatinos.org/wp/wp-content/uploads/2014/05/AEP_FINAL+REPORT.pdf.

⁴⁹Berg et al., *supra* note 48, at 41-45.

H. Special Immigrant Juvenile Status Findings

SIJS is unique in that it takes into account the youth’s best interest and it involves both civil law (i.e. family or juvenile) and immigration law.⁵⁰ Before submitting an SIJS petition to the U.S. Citizenship and Immigration Services (USCIS), SIJS findings must be obtained from a state juvenile court.⁵¹ In order to make these findings, a juvenile court must: (1) find the youth dependent on the court (or place the youth under the custody of an agency or department of a state, or an individual or entity appointed by a state or juvenile court); (2) find that the youth cannot be reunited with one or both of his or her parents due to abuse, abandonment, or neglect; and (3) find that it is not in the best interests of the youth to be returned to his or her country of nationality.⁵²

Federal regulations define “juvenile court” as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.”⁵³ In Washington, a “juvenile court” may be a superior or juvenile court that has jurisdiction over youth. Some of the state court proceedings where SIJS findings can be obtained are Dependency Proceedings (children who are dependent on the court because they have been abused, neglected, or abandoned or have no parent, guardian, or custodian capable of adequately caring for them)⁵⁴ and Nonparental Custody (the court awards custody of a child to a person other than the parent).⁵⁵ Unaccompanied youth can seek SIJS until they are 21 years old.⁵⁶ However, the majority of state court proceedings are only available until a youth turns 18, at which

⁵⁰Center for Gender and Refugee Studies & Kids in Need of Defense, *supra* note 2.

⁵¹Center for Gender and Refugee Studies & Kids in Need of Defense, *supra* note 2.

⁵²8 U.S.C. § 1101(a)(27)(J); INA § 101 (a)(27)(J); 8 C.F.R. § 204.11.

⁵³8 C.F.R. § 204.11.

⁵⁴Chapter 13.34 RCW.

⁵⁵Chapter 26.10 RCW.

⁵⁶8 C.F.R. § 204.11; Columbia Legal Services, *supra* note 25.

time the court ceases to have jurisdiction over the youth.⁵⁷

Barriers:

- State court judges are sometimes unfamiliar with SIJS findings and do not understand that they are not granting an immigration benefit.
- There are insufficient legal service providers or pro bono attorneys to meet the need of filing family law or juvenile law cases and obtaining SIJS findings, especially in Eastern Washington and more rural areas.
- Most unaccompanied youth are taken in by low-income sponsors who cannot afford to pay private attorney fees (which can be more than \$3,000) to file a family law case and obtain SIJS findings.
- Sponsors are scared to petition for custody of unaccompanied youth because they do not have lawful immigration status.
- Public Defenders and DSHS may not be aware of SIJS or may not know that they can request SIJS findings.
- State court proceedings are only available until a youth turns 18. Consequently, if unaccompanied youth are not able to start a state court proceeding before they turn 18, they are unable to obtain SIJS.

Recommendations:

- Pass a law similar to California's SB 873⁵⁸ in Washington. SB 873 clarifies the role of judges in issuing SIJS findings in family law cases. The law creates an affirmative duty to make the SIJS findings when there is evidence to support those findings.
- Continue to educate judges, especially in rural areas, about their role in ordering SIJS findings. This could be done through statewide judicial training; informing judges

about the model court form approved for SIJS findings,⁵⁹ the SIJS judicial bench book;⁶⁰ and providing judges with USCIS's overview of SIJS for juvenile court judges.⁶¹

- For pro bono attorneys, especially in Eastern Washington, more free CLEs should be provided to train attorneys who do not practice family law on how to do nonparental custody cases and request SIJS findings. The CLE should be free if the attorney takes a certain number of pro bono family law cases and obtains SIJS findings. One good model is the Nonparental Custody and SIJS Cases training that is provided by Northwest Immigrant Rights Project and the King County Bar Association.
- Increase the efforts to recruit, educate, and mentor pro bono attorneys on obtaining SIJS findings in family law cases.
- Expand the number of Washington law schools that have clinics specifically to represent the sponsor in family court and juvenile court to obtain SIJS findings and increase the school's resources.
- Additional CLEs should be provided to educate public defenders and DSHS on the need for SIJS findings and how to request the findings.
- Pass a law similar to California's Assembly Bill 900⁶² in Washington. AB 900 allows courts to

⁵⁷ Columbia Legal Services, *supra* note 25.

⁵⁸ S.B. 873 (Ca. 2014), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB873; Immigrant Legal Resource Center, *How California's New Law SB 873 Benefits Unaccompanied Minors*, available at http://www.ilrc.org/files/documents/sb_873_ilrc_final_pdf.pdf.

⁵⁹ Washington Courts, Findings and Order Regarding Eligibility for Special Immigrant Juvenile Status (FOSIJS), available at, <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=46>.

⁶⁰ Washington Leadership Institute, *Washington State Court Special Immigrant Juvenile Status (SIJS) Bench Book and Resource Guide*, October 2015, available at <https://www.law.washington.edu/career/wli/docs/201sijsbenchbookresourceguide.pdf>.

⁶¹ U.S. Citizenship and Immigration Services, *Special Immigrant Juvenile Status: Information for Juvenile Courts*, available at http://immigrantjustice.org/sites/immigrantjustice.org/files/BestPracticesManual_17.%20USCIS%20SIJS%20Information%20for%20Juvenile%20Courts.pdf.

⁶² Assemb. B. 900 (Ca. 2015), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB900; Immigrant Legal Resource Center & Bet Tzedek, *Guardianships/SIJS for 18-20 Year Olds in California*, available at

appoint legal guardians to an unmarried youth ages 18-20 and aligns state law with federal law to allow these youth to access SIJS.

- Attorneys should appeal cases in which SIJS findings have been denied, when merited.



I. U.S. Customs and Border Protection Holding Stations (*Las Hieleras*)

When unaccompanied youth are detained at the United States border and are initially processed, they are held in U.S. Customs and Border Protection holding stations, also known as *las hieleras*, which means iceboxes in Spanish.⁶³ Though many unaccompanied youth arrive at *las*

hieleras “suffering from dehydration, hunger and fever,” *las hieleras* have no medical staff.⁶⁴ Though the temperature in *las hieleras* is very cold, the jackets of unaccompanied youth are taken away.⁶⁵ There are usually “no mattresses, beds or chairs and there is a single sink and toilet in plain view of other[s].”⁶⁶ Unaccompanied youth “are not given even the most basic supplies like toothbrushes, soap, combs and sanitary napkins, and are unable to shower or change clothing.”⁶⁷ While at *las hieleras*, unaccompanied youth are not given much to eat and the overhead lights are always on.⁶⁸

Barrier:

- Unaccompanied youth detained at the border suffer inhumane and unsafe conditions while at *las hieleras*.

Recommendations:

- Immigration reform should include adequate protection for unaccompanied youth, including humane and safe conditions while in detention such that what are now *las hieleras* become decent places for traumatized unaccompanied youth to reside temporarily.⁶⁹
- Provide “adequate training for all officers who may encounter unaccompanied” youth.⁷⁰
- Child welfare experts should either “replace or complement Border Patrol screening of [unaccompanied youth] cases for trafficking and persecution.”⁷¹
- Encourage attorneys and service providers to ask unaccompanied youth about the conditions in *las hieleras* and encourage the youth to file complaints with DHS.

http://www.ilrc.org/files/documents/ab_900_fact_sheet_0.pdf.

⁶³Cheryl Little, *Children Fleeing Central American: Stories from the Front Lines in Florida*, AMERICANS FOR IMMIGRANT JUSTICE, August 2014, at 19, available at

https://d3n8a8pro7vnm.cloudfront.net/aijustice/pages/466/attachments/original/1412351033/Children_Fleeing_Central_America_Stories_from_The_Front_Lines_in_Florida.pdf?1412351033.

⁶⁴Little, *supra* note 63.

⁶⁵Little, *supra* note 63.

⁶⁶Little, *supra* note 63.

⁶⁷Little, *supra* note 63.

⁶⁸Little, *supra* note 63, at 20.

⁶⁹Little, *supra* note 63, at 36.

⁷⁰Little, *supra* note 63, at 37.

⁷¹Little, *supra* note 63, at 37.

J. Access to Legal Counsel

“[I]mmigration laws have been termed second only to the Internal Revenue Code in complexity,”⁷² yet unaccompanied youth receive no government-appointed attorney and are expected to represent themselves in removal proceedings.⁷³ They go unrepresented against a sophisticated government agency, DHS, whose counsel prosecute and argues for the youths’ deportation.⁷⁴

“[I]n over 38,000 pending cases”, unaccompanied youth have handled the immigration court process without legal representation.⁷⁵ In about 73% of cases where unaccompanied youth are represented by an attorney, the youth are allowed to stay in the United States.⁷⁶ For unaccompanied youth who are not represented by an attorney, only 15% are allowed to stay in the United States.⁷⁷

Barriers:

- Without legal representation, an unaccompanied youth’s ability to present defenses and seek relief is undermined and the likelihood of being ordered removed is great.⁷⁸
- In Washington, legal services providers are unable to meet the need.⁷⁹ Thus, many unaccompanied youth must represent themselves in removal proceedings and are

usually ordered removed back to their home country.

Recommendations:

- Federal law should be changed to ensure that all unaccompanied youth have a pro bono or government appointed attorney when appearing at any immigration hearing and provide the necessary funding. Washington law should confer the same right.
- A coordinated system should be created to ensure that unaccompanied youth are given a legal screening before being released from ORR to determine whether they are eligible for SIJS. If so, the youth should be referred to a non-profit organization in the state in which they will reunite with their sponsor.

K. Immigration Hearings

A removal hearing is scheduled by the immigration court after receiving the “Notice to Appear from DHS.”⁸⁰ The court sends hearing notices to the parties at least 10 days before the hearing.⁸¹ If the unaccompanied youth (respondent) does not appear at the hearing, the hearing can still be held. The hearing can result in the youth being ordered removed “in absentia”.⁸² Of the represented unaccompanied youth, only 6.1% of the cases received an “in absentia” removal order, as opposed to 64.2% of unrepresented unaccompanied youth.⁸³ Though there is no appeal for this type of order, a motion can be brought to reopen the case “to rescind an in absentia removal

⁷²*Baltazar-Alcazar v. I.N.S.*, 386 F.3d 940, 948 (9th Cir. 2004) (citations and quotation marks omitted).

⁷³American Immigration Council, *A Guide to Children Arriving at the Border: Laws, Policies and Responses*, June 2015, at 8, available at <https://www.americanimmigrationcouncil.org/research/guide-children-arriving-border-laws-policies-and-responses>.

⁷⁴American Immigration Council, *supra* note 73.

⁷⁵American Immigration Council, *supra* note 73.

⁷⁶TRAC Immigration, *Representation for Unaccompanied Children in Immigration Court*, November 25, 2014, available at <http://trac.syr.edu/immigration/reports/371/>.

⁷⁷TRAC Immigration, *supra* note 76.

⁷⁸TRAC Immigration, *supra* note 76.

⁷⁹Anna Goren, *Washington prepares for 600 unaccompanied minors from Central America*, THE SEATTLE GLOBALIST, July 24, 2014, available at <http://www.seattleglobalist.com/2014/07/24/washington-prepares-for-600-unaccompanied-minors/28008>.

⁸⁰U.S. Department of Justice, *EOIR at a Glance*, January 8, 2016, <https://www.justice.gov/eoir/eoir-at-a-glance>.

⁸¹Office of the Chief Immigration Judge, *Immigration Court Practice Manual*, at 69, available at https://www.justice.gov/sites/default/files/pages/attachments/2016/02/04/practice_manual_-_02-08-2016_update.pdf#page=10.

⁸²Office of the Chief Immigration Judge, *supra* note 81, at 63, 85.

⁸³American Immigration Lawyers Association, *National Sign-on Letter Regarding Children Ordered Removed in Absentia Without Notice*, AILA Doc. No. 15030961, February 9, 2015, available at http://aila.org/advo-media/aila-correspondence/2015/sign-on-letter-children-removed-in-absentia?utm_source=aila.org&utm_medium=InfoNet%20Se arch.

order.”⁸⁴ However, reopening a case is procedurally very complicated and practically impossible for an unrepresented youth to do.

Barriers:

- Unaccompanied youth representing themselves cannot fill out complicated petitions for adjustment of immigration status and have difficulty explaining why they were in danger in their country or why they fear returning to their country.
- Some unaccompanied youth are with sponsors who are constantly changing addresses and may not know how to submit a change of address for the youth. Youth miss their court hearings because they never receive the notice. This also happens to homeless unaccompanied youth.
- Homeless youth can call the Executive Office for Immigration Review (EOIR) hotline⁸⁵ to see when they have their next court hearing. Many youth do not know about this option. Even if they know, missing a week can result in missing their hearings.
- Unaccompanied youth sometimes receive hearing notices “after the hearing date due to bureaucratic errors or changes of address.”⁸⁶
- Immigration courts do not have sufficient immigration judges or funds.⁸⁷ As a result, immigration judges hear unaccompanied youths’ cases so quickly that it can be difficult to provide legal services to these youth, “especially for non-profit agencies whose resources are already stretched to their limits.”⁸⁸

- The expedited schedule for these cases leaves their attorneys with insufficient time to prepare the cases.⁸⁹

Recommendations:

- “EOIR should direct the immigration courts to grant, *sua sponte*, continuances” for unrepresented non-appearing unaccompanied youth instead of “entering in absentia orders of removal.”⁹⁰
- EOIR should require that all immigration proceedings be done in a manner that takes into account the unique “vulnerabilities and developmental needs of unaccompanied” youth.⁹¹
- EOIR should “provide regular training and education for immigration judges on...child development, specific forms of relief available to children, and appropriate questioning of children.”⁹²



⁸⁴Office of the Chief Immigration Judge, *supra* note 81, at 85.

⁸⁵U.S. Department of Justice, *Immigration Case Status Information*, September 16, 2015, available at <https://www.justice.gov/eoir/customer-service-initiatives>.

⁸⁶Kids in Need of Defense, *Improving the Protection and Fair Treatment of Unaccompanied Children*, September 2016, at 9, available at https://supportkind.org/wp-content/uploads/2016/09/KIND-Protection-and-Fair-Treatment-Report_September-2016-FINAL.pdf.

⁸⁷Little, *supra* note 63, at 10.

⁸⁸Little, *supra* note 63, at 10.

⁸⁹Kids in Need of Defense, *supra* note 86.

⁹⁰Kids in Need of Defense, *supra* note 86, at 10.

⁹¹Lutheran Immigration and Refugee Service, *supra* note 6, at 25.

⁹²Lutheran Immigration and Refugee Service, *supra* note 6, at 26.

L. Status Adjustment Filings for Special Immigrant Juvenile Status

On April 12, 2016, the U.S. Department of State announced that the SIJS visa numbers available for youth from Central America were oversubscribed for fiscal year 2016.⁹³ The SIJS visas were “oversubscribed” because the visa numbers available were exhausted.⁹⁴ Due to the SIJS visa numbers being oversubscribed, USCIS will consider the applicants in chronological order by their priority date, which is assigned when the youth files the SIJS petition and USCIS accepts the petition for processing.⁹⁵ Currently, USCIS is processing SIJS visa numbers for youth whose priority date is July 15, 2015.⁹⁶ Though USCIS will continue to process SIJS petitions, an unaccompanied youth will not be able to adjust immigration status until there is an available visa number.⁹⁷

Barriers:

- While waiting for a visa number to become available, unaccompanied youth cannot marry because they will no longer be eligible to adjust their status based on SIJS.
- Unaccompanied youth who have filed their SIJS petition and are waiting on a visa number are not protected from removal.
- Unaccompanied youth waiting on a visa number cannot apply for work authorization.

Recommendations:

- USCIS should allow unaccompanied youth who have filed their SIJS petition to be granted “deferred action” status and allow the youth to obtain work authorization.
- Congress should reevaluate the limits on the SIJS visa numbers and readjust them.
- Youth should file their SIJS petitions as soon as possible in order to establish their priority date.

⁹³U.S. Department of State, *Visa Bulletin For May 2016*, Number 92, Volume IX, April 12, 2016, available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-may-2016.html>.

⁹⁴Kids in Need of Defense, *Practice advisory on updated procedures for status adjustment filings for certain SIJS clients*, April 18, 2016, at 4, available at <https://supportkind.org/wp-content/uploads/2016/04/KIND-Practice-Advisory-Re-SIJ-Visa-Availability-04.18.16-2.pdf>.

⁹⁵Kids in Need of Defense, *supra* note 94, at 4-5.

⁹⁶U.S. Department of State, *Visa Bulletin For February 2017*, Number 2, Volume X, January 9, 2017, available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-february-2017.html>.

⁹⁷Kids in Need of Defense, *supra* note 94, at 7.

CONCLUSION

Unaccompanied youth from Central America risk their lives when they journey from their home countries to come to the United States. To these youth this risk is acceptable because many face certain death in their home countries. When these youth are caught by immigration, they suffer inhumane conditions when they are placed in *las hieleras*. Then they are placed in removal proceedings and unless they can obtain immigration relief, such as SIJS, they are likely to be subsequently sent back to their home countries and face the dire circumstances that caused them to leave their country in the first place.

Over 1,400 youth have been placed by ORR with sponsors in Washington State while awaiting their removal proceedings. While in Washington, these youth continue to struggle and some are denied rights that are available to all youth regardless of their immigration status. As long as unaccompanied youth from Central America are in Washington, legislators, service providers, schools, and advocates should protect the rights of these youth and work to break down as many barriers as possible. Washington can start by moving forward with the recommendations in this report.



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