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### Suffer the Little Children to Come: The Legal Rights of Unaccompanied Alien Children under United States Federal Court Jurisprudence

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**Suffer the Little Children to Come: Legal Rights of  
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Court Jurisprudence**

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Manuscripts

Review

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3 Suffer the Little Children to Come: Legal Rights of Unaccompanied Alien  
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6 Children under United States Federal Court Jurisprudence  
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8 Abstract  
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10  
11 This article analyzes United States ('U.S.') federal court jurisprudence to determine the legal  
12 rights of unaccompanied alien children in various stages of immigration enforcement  
13 proceedings. After briefly discussing statistics on unaccompanied alien children in the U.S., it  
14 explains the legal context of U.S. laws governing unaccompanied minors. Through examining 36  
15 cases decided by the 12 U.S. Circuit Courts of Appeals, the article specifies how the federal  
16 courts interpreted and expanded on the legal rights of unaccompanied alien children upon  
17 apprehension by immigration officials, during placement or detention decisions of the Office of  
18 Refugee Resettlement, prior to voluntary departure, during asylum proceedings, when rearrested  
19 after release, and while released pending immigration proceedings. According to the U.S. federal  
20 courts, the government must grant unaccompanied alien children procedural due process if it  
21 denies their release to the custody of an available and willing legal custodian. Case law  
22 examining the rights of UAC prior to voluntary departure emphasize the need to grant them the  
23 opportunity to consult with a responsible adult, including a lawyer from a free legal services list  
24 that should be provided to them. Federal courts have also tackled issues concerning asylum  
25 claims filed by UAC. These include the right of third parties to custody of the unaccompanied  
26 minor, the minority age at the time of the asylum application, and the right of the UAC to request  
27 consent for a state juvenile court's jurisdiction. In removal proceedings against UAC, federal  
28 courts have elaborated on the scope and meaning of the right to counsel and the right to a bond  
29 rehearing upon their rearrest because of allegations of gang membership. Finally, federal courts  
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3 have also examined issues concerning the rights of the unaccompanied alien child while detained  
4  
5 in ORR facilities and while in U.S. territory  
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## 8 1. Introduction 9

10 The recent surge of unaccompanied alien children ('UAC') over the last few years has raised  
11  
12 complex legal issues regarding how and when the UAC should be detained upon apprehension in  
13  
14 the United States ('U.S.')., who they should be released to, and what rights they should be  
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16 accorded in immigration enforcement proceedings.<sup>1</sup> These legal issues exist in the context of  
17  
18 broader political debates ongoing in the U.S. over levels of immigration and possible large-scale  
19  
20 reforms to U.S. immigration policy.<sup>2</sup> In addition to the legal questions UAC present for U.S.  
21  
22 immigration policy, they present significant ethical questions.<sup>3</sup>  
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25

26 UAC are particularly vulnerable since by definition they are children, traveling alone  
27  
28 and undocumented, into a country not their own.<sup>4</sup> Many of these children are fleeing violence  
29  
30 and extreme poverty in their home countries.<sup>5</sup> Three primary source countries of UAC to the  
31  
32 U.S.—El Salvador, Guatemala, and Honduras—have high levels of extreme poverty and  
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37 <sup>1</sup>Catalina Amuedo-Dorantes and Thitima Puttitanun, 'Undocumented Youth in Limbo: The Impact of America's  
38 Immigration Enforcement Policy on Juvenile Deportations' (2018) 31 *Journal of Population Economics* 597; Claire  
39 Nolasco, 'Models of legal representation for unaccompanied minors' (2018) 54 *Criminal Law Bulletin* 274; Wendy  
40 Shea, 'Almost there: Unaccompanied Alien Children, Immigration Reform, and a Meaningful Opportunity to  
41 Participate in the Immigration Process' (2014) 18 *UC Davis Journal of Juvenile Law & Policy* 148.

42 <sup>2</sup>Eliana Corona, 'The Reception and Processing of Minors in the United States in Comparison to that of Australia  
43 and Canada: Would Being a Party to the UN Convention on the Right of the Child Make a Difference in U.S.  
44 Courts?' (2017) 40 *Hastings International and Comparative Law Review* 205; Rebeca G. Gil, 'Running into the  
45 arms of expatriation: America's failure addressing the rights of unaccompanied migrant children from central  
46 America' (2017) 32 *Maryland Journal of International Law* 346.

47 <sup>3</sup>Lilian Chavez and Cecilia Menjivar, 'Children without Borders: A Mapping of the Literature on Unaccompanied  
48 Migrant Children to the United States' (2010) 5 *Migraciones Internacionales* 71; Shani King, 'Alone and  
49 Unrepresented: A Call to Congress to Provide Counsel for Unaccompanied Minors' (2013) 50 *Harvard Journal On  
50 Legislation* 331.

51 <sup>4</sup>Shani King, 'Alone and Unrepresented: A Call to Congress to Provide Counsel for Unaccompanied Minors' (2013)  
52 50 *Harvard Journal On Legislation* 331; McKayla M. Smith, 'Scared, But No Longer Alone: Using Louisiana to  
53 Build a Nationwide System of Representation for Unaccompanied Children' (2017) 63 *Loyola Law Review* 111.

54 <sup>5</sup>Catalina Amuedo-Dorantes and Thitima Puttitanun, 'DACA and the Surge in Unaccompanied Minors at the US-  
55 Mexico Border' (2016) 54 *International Migration* 102; Serap Keles, Oddgeir Friberg, Thormod Idsoe, Selcuk Sirin,  
56 and Brit Oppedal, 'Resilience and Acculturation Among Unaccompanied Refugee Minors' (2018) 42 *International  
57 Journal of Behavioral Development* 52.  
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3 violence,<sup>6</sup> and have a proliferation of international criminal gangs that target and victimize many  
4 UAC.<sup>7</sup> Additionally, many UAC come to the U.S. seeking reunification with family members,  
5  
6 mostly parents, who have emigrated earlier.<sup>8</sup> These factors motivating UAC to leave their home  
7  
8 country and enter the U.S. underlie the legal questions regarding how justice is given to UAC  
9  
10 when they enter into the U.S. immigration system. The complexity of immigration proceedings,  
11  
12 especially for a class of noncitizens who are vulnerable to the inherent coercive nature of the  
13  
14 proceedings, necessitate an analysis of the legal issues surrounding UAC.<sup>9</sup>  
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19 Before turning to the legal analysis however, we present some descriptive statistics on the  
20 recent number of UAC who have entered the U.S. and their source countries. Overall, the  
21 number of UAC entering the U.S. has grown. Data from the Customs and Border Patrol ('CBP')  
22 and the Office of Refugee Resettlement ('ORR') documents the increase over the last few years.  
23  
24 Figure 1. presents the number of UAC apprehended per fiscal year. In 2010 and 2011 there were  
25  
26 18,622 and 16,067 UAC apprehended respectively. There was a significant increase for the next  
27  
28 few years in 2012, 2013, and 2014 with 24,481, 38,833, and 68,631 UAC apprehended  
29  
30 respectively. The numbers decline in 2015 to 40,035 apprehended but increase to 59,757 in 2016  
31  
32 and decline again in 2017 to 41,456 UAC apprehended. Coinciding with the number of UAC  
33  
34 who have been apprehended entering the U.S., the number of UAC referred to the Office of  
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36 Refugee Resettlement has also increased. Figure 1 presents referrals to ORR which is the agency  
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46 <sup>6</sup>Julie Marzouk, 'Ethical and Effective Representation of Unaccompanied Immigrant Minors in Domestic Violence-  
47 Based Asylum Cases' 2016) 22 *Clinical Law Review* 395; Cheryl B. Sawyer and Judith Márquez, 'Senseless  
48 Violence Against Central American Unaccompanied Minors: Historical Background and Call For Help' (2017) 151  
49 *Journal of Psychology* 69.

50 <sup>7</sup>William A. Kandel, Andorra Bruno, Peter J. Meyer, Clare R. Seelke, Maureen Taft-Morales, and Ruth E. Wasem,  
51 'Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration' (2014) *Congressional*  
52 *Research Service* <<https://fas.org/sgp/crs/homsec/R43628.pdf>> accessed 20 January 2018

53 <sup>8</sup>Marcela Sotomayor-Peterson and Martha Montiel-Carbajal, 'Psychological and Family Well-Being of  
54 Unaccompanied Mexican Child Migrants Sent Back From the U.S. Border Region of Sonora-Arizona' (2014) 36  
55 *Hispanic Journal of Behavioral Sciences* 111.

56 <sup>9</sup>Danuta Villarreal, 'To Protect the Defenseless: The Need for Child-Specific Substantive Standards for  
57 Unaccompanied Minor Asylum-Seekers' (2004) 26 *Houston Journal of International Law* 743.

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2  
3 responsible for detaining and sheltering UAC while they await their immigration hearing. The  
4  
5 highpoint in referrals was 2016 when 59,170 UAC were referred and the second highest was  
6  
7 2014 when 57,496 were referred. Finally, Figure 1 presents information for three years of ORR  
8  
9 UAC sponsorship. Sponsorship will be discussed in more detail below but overall it refers to the  
10  
11 practice of ORR releasing a UAC to a family member or other qualified adult who is able to care  
12  
13 for them. In 2015 27,840 UAC were released to sponsors, in 2016 52,147 were released to  
14  
15 sponsors, and in 2017 42, 416 were released to sponsors.  
16  
17

18  
19 Figure 1 Here  
20

21  
22 Figure 2. presents information on the country of origin of UAC from FY 2012 to FY  
23  
24 2017. As the figure shows, the vast majority of UAC come from three countries in particular: El  
25  
26 Salvador, Guatemala, and Honduras. From 2012 to 2017 the number of UAC from El Salvador  
27  
28 gradually increased with 27 percent of the overall total to 34 percent of the overall total in 2016,  
29  
30 although the number did drop back to 27 percent in 2017. UAC from Guatemala also increased  
31  
32 as a percentage of the overall total. In 2012 UAC from Guatemala represented 34 percent of all  
33  
34 UAC that year and by 2017 that number had increased to 45 percent. Conversely, the number of  
35  
36 UAC from Honduras has declined as a percentage of the overall total. In 2012 UAC from  
37  
38 Honduras represented 27 percent of the overall total but by 2017 that number had dropped to 23  
39  
40 percent. This small snapshot of the total number of UAC who have entered the U.S. and where  
41  
42 they are coming from provides important background and context for the legal analysis that  
43  
44 follows.  
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48  
49 Figure 2 Here  
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## 52 53 54 **1.1 Legal context of U.S. immigration laws on unaccompanied alien children** 55 56 57

1  
2  
3 Prior to 2003, the Immigration and Naturalization Service ('INS') of the Department of Justice  
4 ('DOJ') was responsible for the care and custody of UAC arrested in the U.S. who were  
5 suspected of being deportable and who had no responsible parent or legal guardian.<sup>10</sup> The INS  
6  
7 were also tasked with prosecuting removal proceedings against UAC in immigration courts.  
8  
9 Over the past decade, an increased number of arrested UAC could not be released on bond or  
10  
11 recognizance because INS could not determine whether any person was available to provide care  
12  
13 pending deportation proceedings.<sup>11</sup>  
14  
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19 In response to the increased flow of UAC into California, the INS Western Regional  
20  
21 Office adopted a policy of limiting the release of detained minors to 'a parent or lawful  
22  
23 guardian', except in 'unusual and extraordinary cases' allowing release to 'a responsible  
24  
25 individual' who agrees to provide for the care, welfare, and wellbeing of the child.<sup>12</sup> Four UAC  
26  
27 filed a class action in the District Court for the Central District of California on behalf of all  
28  
29 aliens under the age of 18 detained by the INS Western Region because a parent or legal  
30  
31 guardian failed 'to personally appear to take custody of them'.<sup>13</sup> Pending litigation, INS adopted  
32  
33 a modified rule allowing alien juveniles to be released to a: (1) parent; (2) legal guardian; or (2)  
34  
35 adult relative (e.g., brother, sister, aunt, uncle, grandparent), unless the INS determined that  
36  
37 detention was necessary to ensure the UAC's safety or appearance in deportation proceedings.<sup>14</sup>  
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43 The district court in *Reno v. Flores* later approved a consent decree that settled all claims  
44  
45 regarding UAC's detention conditions (the '*Flores* Settlement').<sup>15</sup> The *Flores* Settlement  
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51 <sup>10</sup>*D.B. v. Cardall* 826 F.3d 721 (4th Cir. 2016).

52 <sup>11</sup>*Reno v. Flores* 507 U.S. 292 (1993).

53 <sup>12</sup>*ibid.* 296.

54 <sup>13</sup>*ibid.*

55 <sup>14</sup>*ibid.* 297.

56 <sup>15</sup>*Reno* (n11).

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2  
3 established a nationwide policy for the detention, release, and treatment of UAC.<sup>16</sup> Among  
4  
5 others, it: (1) defined a ‘minor’ as ‘any person under the age of eighteen (18) years detained in  
6  
7 the legal custody of the INS; (2) supported ‘family reunification;’ (3) listed the preferred order of  
8  
9 individuals to whom detained minors may be released; and, (4) provided for the custody and  
10  
11 right to a bond hearing of minors who cannot be immediately released.<sup>17</sup>  
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14  
15 The *Flores* Settlement is binding on all successor agencies to the INS, including the  
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17 Office of Refugee Resettlement (‘ORR’) of the Department of Health and Human Services  
18  
19 (‘HHS’).<sup>18</sup> The *Flores* Settlement provided that unless detention was necessary to ensure a  
20  
21 child’s safety or his appearance in immigration court, he must be released without unnecessary  
22  
23 delay to a parent or legal guardian.<sup>19</sup> Juveniles who are not released must, within 72 hours of  
24  
25 arrest, be placed in juvenile care facilities that ‘meet or exceed state licensing requirements for  
26  
27 the provision of services to dependent children’.<sup>20</sup> Studies indicate that the mental health of UAC  
28  
29 depend on the degree of trauma and acculturation upon migration into the country of refuge.<sup>21</sup>  
30  
31 Hence, the necessity of release and placement is essential to the wellbeing of the UAC.<sup>22</sup>  
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35  
36 Since the *Flores* Settlement, Congress enacted the 2002 Homeland Security Act (the  
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40 <sup>16</sup>*D.B.* (n10); *Flores v. Sessions* 862 F.3d 863 (9th Cir. 2017); Elizabeth Lincoln, ‘The Fragile Victory for  
41 Unaccompanied Children’s Due Process Rights After *Flores v. Sessions*’ (2017) 45 *Hastings Constitutional Law*  
42 *Quarterly* 157.

43 <sup>17</sup>*Flores* (n16) 869.

44 <sup>18</sup>*D.B.* (n10).

45 <sup>19</sup>*D.B.* (n10); Lincoln (n16).

46 <sup>20</sup>*Reno* (n11) 292.

47 <sup>21</sup>Tammy. M. Bean, Elisabeth Eurelings-Bontekoe and Philip Spinhoven, ‘Course and Predictors of Mental Health  
48 of Unaccompanied Refugee Minors in the Netherlands: One Year Follow-Up’ (2007) 64 *Social Science & Medicine*  
49 1204; Israel Bronstein and Paul Montgomery, ‘Psychological Distress in Refugee Children: A Systematic Review’  
50 (2011) 14 *Clinical Child and Family Psychology Review* 44; Tine K. Jensen, Envor M. Skårdalsmo, and Krister. W.  
51 Fjermestad, ‘Development of Mental Health Problems-A Follow-Up Study of Unaccompanied Refugee Minors’  
52 (2014) 8 *Child & Adolescent Psychiatry & Mental Health* 1; Serap Keles, Oddgeir Friborg, Thormod Idsoe, Selcuk  
53 Sirin, and Brit Oppedal, ‘Resilience and Acculturation among Unaccompanied Refugee Minors’ (2018) 42  
54 *International Journal of Behavioral Development* 52; Johanna Unterhitzberger, Rima Eberle-Sejari, Miriam  
55 Rassenhofer, Thorsten Sukale, Rita Rosner, and Lutz Goldbeck, ‘Trauma-Focused Cognitive Behavioral Therapy  
56 With Unaccompanied Refugee Minors: A Case Series’ (2015) 15 *BMC Psychiatry* 1.

57 <sup>22</sup>Keles (n21).



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3 ‘HSA’) and the 2008 Trafficking Victims Protection Reauthorization Act (the ‘TVPRA’) both of  
4 which affirmed the authority of the ORR over the care and placement of UAC.<sup>23</sup> The HSA  
5 abolished the former INS and established the Department of Homeland Security (‘DHS’). The  
6 law also transferred the care of UAC from the former INS to the ORR.<sup>24</sup> Under the HSA, a UAC  
7 is defined as an individual who: (1) has no lawful immigration status in the United States; (2) is  
8 under the age of eighteen; and, (3) must have either (a) ‘no parent or legal guardian in the United  
9 States’; or (b) ‘no parent or legal guardian in the United States ... available to provide care and  
10 physical custody’.<sup>25</sup> The HSA required the ORR to ensure that ‘the best interests of the child’ are  
11 considered in decisions and actions concerning his or her care and custody.<sup>26</sup> The HSA has a  
12 ‘savings clause’ that recognizes as effective and valid all administrative actions (e.g., orders,  
13 agreements, grants, contracts, certificates, licenses, registrations, and privileges) entered into by  
14 the INS until ‘amended, modified, superseded, terminated, set aside, or revoked’ in accordance  
15 with law.<sup>27</sup>

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33 In 2008, Congress adopted the Trafficking Victims Protection Reauthorization Act (the  
34 ‘TVPRA’) which contained provisions relating to a UAC. Under the TVPRA, the HHS Secretary  
35 is responsible for the care, custody, and detention of a UAC.<sup>28</sup> Other federal agencies holding a  
36 UAC were required to transfer custody to the ORR within 72 hours after determining that the  
37 minor is a UAC.<sup>29</sup> Upon transfer to ORR custody, the ORR is required to promptly place the  
38 UAC in the ‘least restrictive setting that is in the best interest of the child’.<sup>30</sup> The TVPRA, like  
39 the *Flores* Settlement, provides that if release is not possible, the UAC may be placed in a

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49 <sup>23</sup>*Tabbaa v. Chertoff* 509 F.3d 89 (2nd Cir. 2007).

50 <sup>24</sup>6 U.S.C. § 279 (a), 2002

51 <sup>25</sup>*D.B.* (n10) 732-733.

52 <sup>26</sup>*Flores* (n16) 870.

53 <sup>27</sup>*ibid.*

54 <sup>28</sup>*D.B.* (n10).

55 <sup>29</sup>*D.B.* (n10); *Flores* (n16).

56 <sup>30</sup>*ibid.*

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3 specialized juvenile program or facility if the ORR determines that he or she ‘poses a danger to  
4 self or others’ or committed a criminal offense.<sup>31</sup> The ORR was also required under the law to  
5  
6 conduct monthly reviews of any placement of a UAC in a secure facility.  
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10 Under current ORR policies, field specialists initially determine whether to detain or  
11 release unaccompanied minors (‘ORR Policies’).<sup>32</sup> Before placing the UAC with a potential  
12 custodian, the ORR must: (1) ascertain whether the proposed custodian can provide for the  
13 minor’s physical and mental well-being; and, (2) determine the necessity of a home study.<sup>33</sup> A  
14 home study is mandatory when the proposed custodian ‘clearly presents a risk of abuse,  
15 maltreatment, exploitation, or trafficking to the child’.<sup>34</sup> The parent or legal guardian (but not  
16 any other sponsor) has 30 days to appeal the adverse decision to the Assistant Secretary for  
17 Children and Families. Under ORR Policies, the parent or guardian does not have the right to be  
18 represented by counsel at the placement hearing.<sup>35</sup> The UAC can appeal a detention decision  
19 only if the sole reason for denial of release is that the UAC poses a danger to himself or to  
20 others.<sup>36</sup>  
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## 35 2. Method

36 The WESTLAW database contains electronic copies of all published and unpublished court  
37 decisions. A keyword search was used to gather cases on unaccompanied alien children decided  
38 by all federal courts in the United States. The advanced search parameters required that the  
39 terms ‘unaccompanied alien child’ appeared in the main body of the case ( $N=112$ ). The authors  
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49 <sup>31</sup>ibid.

50 <sup>32</sup>Office of Refugee Resettlement, ‘ORR Guide: Children Entering the United States Unaccompanied’ (January 30,  
51 2015) <<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>> accessed 1  
52 February 2018.

53 <sup>33</sup>*D.B.* (n10).

54 <sup>34</sup>ibid. 734.

55 <sup>35</sup>*Flores* (n16) 872.

56 <sup>36</sup>ibid.  
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3 then read each case individually and determined that not all cases were relevant to the article,  
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5 either because the case did not involve unaccompanied alien children or did not contain  
6  
7 sufficient facts to enable full analysis. Also, some of the cases were repeated because of the  
8  
9 appeal process through the federal courts. The authors conducted an inductive doctrinal analysis  
10  
11 to synthesize thirty-six (36) federal court decisions on the legal rights of an unaccompanied alien  
12  
13 child under current U.S. laws.<sup>37</sup>  
14  
15

### 16 17 3. Case Analysis

#### 18 19 **3.1 Issues concerning release or detention**

##### 20 21 *3.1.1 Right to be released to a private custodian*

22  
23 In *Reno v. Flores*, the U. S. Supreme Court considered whether a detained UAC who does not  
24  
25 have any available parent, close relative, or legal guardian has the right to be released to the  
26  
27 custody of any other ‘willing-and-able private custodian’ instead of being confined to a  
28  
29 ‘government-operated or government-selected child-care institution’.<sup>38</sup> The Court examined  
30  
31 whether a UAC has a fundamental constitutional right ‘not to be placed in a decent and humane  
32  
33 custodial institution’ if there is a responsible adult willing to accept ‘temporary legal custody’  
34  
35 but not willing to be the child’s legal guardian<sup>39</sup> The Court held that the INS regulations  
36  
37 permitting release of a UAC only to his or her parents, close relatives, or legal guardians did not  
38  
39 ‘facially violate substantive due process’.<sup>40</sup> As long as the government’s intent is not punitive  
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41 and custodial conditions are ‘decent and humane’, governmental custody of a juvenile who does  
42  
43 not have any available parent, close relative, or legal guardian does not violate the Constitution.<sup>41</sup>  
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52 <sup>37</sup>Claire Nolasco, Michael S. Vaughn, and Rolando del Carmen, ‘Toward a new methodology for legal research in  
53 criminal justice’ (2010) 21 *Journal of Criminal Justice Education* 1–23.

54 <sup>38</sup>*Reno* (n11) 302.

55 <sup>39</sup>*ibid.* 303.

56 <sup>40</sup>*ibid.* 302.

57 <sup>41</sup>*ibid.* 303.

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3 The custody is rationally related to the government's interest in 'preserving and promoting the  
4 welfare of the child'.<sup>42</sup>  
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7  
8 The Court acknowledged the authority of Congress to detain aliens suspected of entering  
9 the country illegally pending their deportation hearings.<sup>43</sup> The INS regulations are rationally  
10 related to a legitimate governmental purpose, namely, concern for the juvenile's welfare who  
11 cannot be released to 'just any adult' and the State's lack of expertise and resources to conduct  
12 home studies for placement of every UAC.<sup>44</sup> When the UAC's parent, close relative, or state-  
13 appointed guardian is not available, INS retains legal custody by placing the UAC in a  
14 'government-supervised and state-licensed shelter-care facility'.<sup>45</sup> The Court concluded that the  
15 INS can justify its policy of retaining custody because its regulations do not involve a  
16 deprivation of a fundamental right. The INS cannot be compelled to grant custody to strangers if  
17 that option requires substantial administrative effort and costs that it is unwilling to expend.  
18 Finally, the Court noted that INS custody of a UAC is not indefinite but is inherently limited to  
19 the duration of the deportation hearing.<sup>46</sup> There was 'no evidence' that alien juveniles are held  
20 for 'undue periods' and that '(i)t is expected that alien juveniles will remain in INS custody an  
21 average of only 30 days'.<sup>47</sup>  
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### 40 *3.1.2 Right to due process in custody and placement decisions*

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42 The Fourth Circuit considered the nature and extent of a UAC's due process rights in placement  
43 decisions in two related cases of *D.B. v. Cardall*<sup>48</sup> and *Beltran v. Cardall*.<sup>49</sup> In *D.B. v. Cardall*,  
44 the issue was whether the ORR had continued authority to detain a UAC when deportation  
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49 <sup>42</sup>*Reno* (n11) 303; *Santosky v. Kramer* 455 U.S. 745, 766 (1982).

50 <sup>43</sup>*Carlson v. Landon* 342 U.S. 524, 538 (1952).

51 <sup>44</sup>*Reno* (n11) 310.

52 <sup>45</sup>*ibid.* 311.

53 <sup>46</sup>*ibid.* 314.

54 <sup>47</sup>*ibid.*

55 <sup>48</sup>*D.B.* (n10).

56 <sup>49</sup>*Beltran v. Cardall* 222 F.Supp.3d 476 (E.D. Virginia 2016).  
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3 proceedings are terminated. The case involved a Guatemalan citizen who illegally entered the  
4 United States with her four children, including R.M.B. who was then six years old. When the  
5 mother became a lawful permanent resident under the Violence Against Women Act (the  
6 ‘VAWA’), the U.S. Citizenship and Immigration Services (the ‘USCIS’) granted deferred action  
7 to R.M.B. as a derivative beneficiary of his mother’s VAWA petition. While attempting to  
8 smuggle undocumented immigrants near the Mexican-McAllen, Texas border, R.M.B. was  
9 arrested by Border Patrol agents and transferred to ORR custody, pending removal proceedings  
10 against him. The mother submitted a family reunification request to the ORR, asking for  
11 R.M.B.’s release to her custody. The ORR denied the request based on a home study  
12 recommending against release due to R.M.B.’s criminal history and high risk of recidivism.<sup>50</sup>  
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14 The immigration judge terminated the removal proceedings against R.M.B. because he had  
15 already been granted deferred action.<sup>51</sup>  
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31 The Fourth Circuit held that R.M.B. is a UAC based on the ORR’s assessment that his  
32 mother was incapable of providing for his physical and mental well-being.<sup>52</sup> The authority of  
33 ORR to detain R.M.B. did not cease upon termination of removal proceedings against him  
34 because ORR was specifically required by law to determine whether a proposed custodian can  
35 provide for the UAC’s physical and mental well-being (the ‘suitable custodian requirement’).<sup>53</sup>  
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37 The Fourth Circuit held that the suitable custodian requirement is an exception to the general rule  
38 that an alien cannot be detained upon termination of immigration proceedings against him.<sup>54</sup>  
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47 According to the Fourth Circuit, the case involved ‘perhaps the oldest of the fundamental  
48 liberty interests’, specifically, the fundamental right of parents to provide ‘care, custody, and  
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52 <sup>50</sup>*D.B.* (n10).

53 <sup>51</sup>*ibid.*

54 <sup>52</sup>*ibid.*

55 <sup>53</sup>*ibid.*

56 <sup>54</sup>*ibid.*

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3 control of their children<sup>55</sup> and the rights of children to be ‘raised and nurtured’ by their  
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5 parents.<sup>56</sup> The Fourth Circuit remanded the case, requiring the district court to apply the U.S.  
6  
7 Supreme Court’s procedural due process standard in *Mathews v. Eldridge*<sup>57</sup> (the ‘*Mathews*  
8  
9 test’).<sup>58</sup> The *Mathews* test requires an analysis of: (1) the private interest that will be affected by  
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11 the official action; (2) the ‘risk of an erroneous deprivation of such interest’ through the  
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13 procedures used, and the ‘probable value, if any, of additional or substitute procedural  
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15 safeguards;’ and, (3) the Government’s interest and the ‘fiscal and administrative burdens’ that  
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17 ‘additional or substitute procedural requirement would entail’.<sup>59</sup>  
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22 On remand, the district court in *Beltran v. Cardall*, concluded that the ORR’s family  
23  
24 reunification procedures did not provide R.M.B and petitioner due process of law based on the  
25  
26 *Mathews* test.<sup>60</sup> The district ordered R.M.B.’s release to care and custody of his mother and held  
27  
28 that: (1) mother and child had a fundamental liberty interest in family integrity, which was  
29  
30 protected by procedural due process; (2) the risk of erroneous deprivation of petitioner’s  
31  
32 fundamental liberty interests required ORR to ensure due process in its procedures for family  
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34 reunification; and (3) the governmental interest involved was not sufficient to rule that ORR was  
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36 not required to implement additional measures to guaranty procedural due process.  
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41 The district court stated that the petitioner’s right to the care and custody of her son and  
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43 R.M.B.’s reciprocal right to his mother’s care is ‘deserving of the greatest solicitude’.<sup>61</sup> The  
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45 ‘private fundamental liberty interest’ in retaining custody of one’s children is an ‘essential, basic  
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51 <sup>55</sup>*Beltran* (n49) 481; *D.B.* (n10) 740; *Troxel v. Granville* 530 U.S. 57, 65 (2000).

52 <sup>56</sup>*Beltran* (n49) 482; *Berman v. Young* 291 F.3d 976, 983 (7th Cir. 2002); *D.B.* (n10) 740.

53 <sup>57</sup>*Mathews v. Eldridge* 424 U.S. 319 (1976).

54 <sup>58</sup>*Bauer v. Lynch* 812 F.3d 340 (4th Cir. 2016); *Ciambriello v. Cty. of Nassau* 292 F.3d 307 (2nd Cir. 2002).

55 <sup>59</sup>*Mathews* (n57).

56 <sup>60</sup>*Beltran* (n49).

57 <sup>61</sup>*Beltran* (n49) 482; *Jordan by Jordan v. Jackson* 15 F.3d 333, 345-346 (4th Cir. 1994).

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3 civil right of man...far more precious than property rights'.<sup>62</sup> Also, '[t]he forced separation of  
4 parent from child, even for a short time, represents a serious impingement on' the right to family  
5 integrity.<sup>63</sup> Here, petitioner and R.M.B. were separated for nearly three years. While in the  
6 custody of the ORR, R.M.B. was held in juvenile detention facilities, the most restrictive  
7 placement. As a result, the mother has been deprived of 'meaningful contact with her son'.<sup>64</sup>  
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11 The district court then examined the adequacy of ORR procedures for placement of UAC  
12 with suitable custodians.<sup>65</sup> Here, the ORR ordered a home study upon submission of the family  
13 reunification form by the mother. The home study recommended against releasing R.M.B. to  
14 petitioner's care because of R.M.B.'s behavioral problems instead of the mother's parental  
15 fitness.<sup>66</sup> A month after the home study, petitioner received a short letter stating that her request  
16 was denied because R.M.B. required an environment with a 'high level of supervision and  
17 structure'.<sup>67</sup> The district court concluded that the ORR process was deficient because the  
18 proceedings were unilateral and petitioner was not informed of the evidence or the facts relied  
19 upon. Under Supreme Court and Fourth Circuit precedent, the state has the 'burden to initiate  
20 proceedings to justify its action' once it withholds a child from a parent's care.<sup>68</sup> Adversarial  
21 hearings are required when 'subjective judgments' that are 'peculiarly susceptible to error' are  
22 disputed.<sup>69</sup> The determination of whether a proposed custodian can provide for a UAC's physical  
23 and mental well-being is a 'complex and subjective inquiry'.<sup>70</sup> The court concluded that ORR  
24 deprived petitioner of a meaningful opportunity to present her case because it made the  
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47 <sup>62</sup>*Stanley v. Illinois* 405 U.S. 645 (1972); *Weller v. Dep't of Soc. Servs. for City of Baltimore* 901 F.2d 387 (4th Cir.  
48 1990).

49 <sup>63</sup>*Jordan* (n61) 345.

50 <sup>64</sup>*Beltran* (n49) 482.

51 <sup>65</sup>*ibid.*

52 <sup>66</sup>*Beltran* (n49) 484.

53 <sup>67</sup>*Beltran* (n49) 485.

54 <sup>68</sup>*Beltran* (n49) 486; *Duchesne v. Sugarman* 566 F.2d 817 (2nd Cir. 1977); *Stanley* (n62); *Weller* (n62).

55 <sup>69</sup>*Beltran* (n49).

56 <sup>70</sup>*ibid.*

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3 subjective judgment without ‘any form of hearing’.<sup>71</sup> All the procedures of the ORR for  
4 placement consisted of ‘internal evaluation and unilateral investigation’.<sup>72</sup> The ORR’s deficient  
5 procedures ‘created a significant risk’ that petitioner and R.M.B. would be ‘erroneously deprived  
6 of their right to family integrity’.<sup>73</sup>  
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12 In *Santos v. Smith*, the United States District Court for the Western District of Virginia  
13 also applied the *Mathews* test in determining whether a UAC was deprived of due process when  
14 the ORR denied his mother’s request for release to her custody.<sup>74</sup> In this case, Santos fled  
15 Honduras when O.G.L.S. was five years old to escape physical abuse from her husband. When  
16 he was 14 years old, O.G.L.S. fled Honduras and entered the United States to be reunited with  
17 his mother. He was apprehended, determined to be a UAC, and transferred to ORR custody.  
18 After O.G.L.S. disclosed his participation in criminal gang activities, ORR placed him at the  
19 Shenandoah Valley Juvenile Center (‘SVJC’), a secure facility in Staunton, Virginia. The mother  
20 filed a petition with ORR asking to be reunified with her son. ORR conducted a home study  
21 which recommended reunification, specifically noting that ‘Ms. Santos [and her husband] will be  
22 positive influences on the minor, and that he should be released to their care’.<sup>75</sup> The ORR issued  
23 a decision more than 14 months after the home study was completed and denied the application  
24 for family reunification. The mother filed a petition for writ of habeas corpus alleging that ORR  
25 violated her due process rights and sought O.G.L.S.’s immediate release to her custody.  
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44 The district court held that the detention of O.G.L.S. for more than 29 months violated  
45 procedural due process and ordered his immediate release to the custody of Santos. The district  
46 court stated that due process consists of ‘notice and the opportunity to be heard’ at a  
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52 <sup>71</sup>ibid.

53 <sup>72</sup>ibid.

54 <sup>73</sup>ibid.

55 <sup>74</sup>*Santos v. Smith* 260 F.Supp.3d 598 (W. D. Virginia 2017).

56 <sup>75</sup>ibid. 602.  
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3 ‘meaningful’ time and manner.<sup>76</sup> Applying the first factor in the *Mathews* test, the court stated  
4 that the private interests impacted both the fundamental right of petitioners to family  
5 reunification and O.G.L.S.’s right to liberty.<sup>77</sup> The court opined that ‘a more fulsome process’  
6 would ‘considerably lessen the risk of an erroneous deprivation’ of the fundamental interest in  
7 family reunification.<sup>78</sup>

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15 The court identified key deficiencies in the ORR process. *First*, the ORR did not  
16 adequately explain the reasons for its decision. *Second*, the ORR process ‘improperly placed the  
17 burden of initiation and persuasion on the petitioner’.<sup>79</sup> The burden should be on ORR to show  
18 the necessity of continued custody of the UAC rather than on the parent to show the propriety of  
19 release.<sup>80</sup> *Third*, there were ‘very lengthy delays’ in the ORR’s processing of the petition for  
20 reunification.<sup>81</sup> The ‘egregious’ 17-months delay before the ORR decided on the initial  
21 application for reunification violated due process.<sup>82</sup> The court also noted that because of this  
22 delay, O.G.L.S.’s psychological condition worsened while in placement. *Fourth*, no hearing was  
23 conducted before an impartial judge.

### 3.1.3 Right to the bond hearing of the Flores settlement

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38 In *Flores v. Sessions*, the Ninth Circuit considered whether subsequent statutes revoked the  
39 *Flores* Settlement, including paragraph 24A which grants every minor in deportation  
40 proceedings the right to a bond redetermination hearing before an immigration judge ‘unless the  
41 minor indicates on the Notice of Custody Determination form that he or she refuses such a  
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50 <sup>76</sup>*Armstrong v. Manzo* 380 U.S. 545 (1965); *Santos* (n74) 611.

51 <sup>77</sup>*Santos* (n74) 611.

52 <sup>78</sup>*ibid.*

53 <sup>79</sup>*Santos* (n74) 613.

54 <sup>80</sup>*Addington v. Texas* 441 U.S. 418 (1979); *Foucha v. Louisiana* 504 U.S. 71 (1992); *Santos* (n74); *Thach v.*  
55 *Arlington Cty. Dep’t of Human Servs.* 754 S.E.2d 922 (2014); *United States v. Salerno* 481 U.S. 739 (1987).

56 <sup>81</sup>*Santos* (n74) 613.

57 <sup>82</sup>*Santos* (n74) 614.

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3 hearing'.<sup>83</sup> Plaintiffs alleged that ORR currently detains UAC 'for months, and even years'  
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5 without providing them any opportunity to challenge the basis for their detention before an  
6  
7 independent immigration judge.<sup>84</sup> The Ninth Circuit invoked the basic rules of statutory  
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9 construction, noting that the plain texts of the HSA and TVPRA did not explicitly terminate the  
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11 *Flores* Settlement's bond-hearing requirement. The bond hearing under Paragraph 24A of the  
12  
13 *Flores* Settlement is a fundamental protection for a UAC that does not automatically result in the  
14  
15 setting of bail or release of the UAC.<sup>85</sup> Even if the immigration judge decides that detention by  
16  
17 the ORR is improper, the ORR must still identify a 'safe and secure placement' for the release of  
18  
19 the minor.<sup>86</sup>

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24 Compared to ORR policies, the bond hearing requirement under the *Flores* Settlement  
25  
26 provides 'significant practical benefits to unaccompanied minors'.<sup>87</sup> ORR policies do not  
27  
28 guarantee a UAC the right to present evidence, the right to legal counsel, and does not 'identify  
29  
30 any standard of proof' including evidentiary requirements.<sup>88</sup> In contrast, bond hearings allow  
31  
32 minors to be represented by legal counsel, provide oral statements, present supporting evidence,  
33  
34 and is appealable to the Board of Immigration Appeals. The *Flores* Settlement grants minors an  
35  
36 automatic bond hearing 'unless affirmatively waived' while the ORR review process 'must be  
37  
38 affirmatively invoked'.<sup>89</sup> The Ninth Circuit pointed out that plaintiff's experiences are a 'strong  
39  
40 indication' that ORR's current policies are 'inadequate' and that bond hearings 'will provide a  
41  
42 meaningful benefit to unaccompanied minors'.<sup>90</sup> The Ninth Circuit concluded that the *Flores*  
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44 Settlement is binding on the government, 'regardless of which agency may now be charged with  
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49 <sup>83</sup>*Flores* (n16) 869.

50 <sup>84</sup>*ibid.* 872.

51 <sup>85</sup>*Flores* (n16).

52 <sup>86</sup>*Flores* (n16) 867.

53 <sup>87</sup>*Flores* (n16) 877.

54 <sup>88</sup>*Flores* (n16) 878.

55 <sup>89</sup>*Flores* (n16) 879.

56 <sup>90</sup>*ibid.*

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3 caring for unaccompanied minors.<sup>91</sup>  
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### 5 **3.2 Issues concerning voluntary departure**

#### 6 *3.2.1 Rights before signing a voluntary departure consent form*

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8 Voluntary departure is a form of relief for a qualified alien who is apprehended by immigration  
9  
10 officials.<sup>92</sup> INS policies allow an alien to consent to summary removal from the United States at  
11  
12 his or her expense upon signing a voluntary departure form (form I-274), waiving the right to a  
13  
14 deportation hearing and all other forms of relief. INS policies on voluntary departure for UAC  
15  
16 vary ‘according to the age, residence, and place of apprehension of the child’.<sup>93</sup> For UAC aged  
17  
18 fourteen to sixteen, the INS gathers information on the UAC through form I-213, notifies the  
19  
20 UAC of the remedy of voluntary departure, and asks the child to indicate whether he or she opts  
21  
22 for voluntary departure or a deportation hearing. For UAC who are permanent residents of  
23  
24 Mexico and Canada and are arrested near the Mexican or Canadian borders, the INS temporarily  
25  
26 detains the UAC until a foreign consulate official arrives. The UAC is then returned to his or her  
27  
28 home country upon requesting voluntary departure.  
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35 Plaintiff UAC aged 12 to 16 alleged that, upon apprehension, INS asked them to sign a  
36  
37 voluntary departure consent form without advising them of their rights ‘in a meaningful  
38  
39 manner’.<sup>94</sup> They filed a class action on the ground that the INS violated their due process rights  
40  
41 because they were forced to ‘unknowingly and involuntarily’ select voluntary departure and  
42  
43 waive their rights to a deportation hearing or other forms of relief.<sup>95</sup> The district court ruled in  
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45 favor of plaintiffs and granted a permanent injunction.  
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49 The District Court for the Central District of California applied the three-part test of  
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52 <sup>91</sup>ibid.

53 <sup>92</sup>*Perez-Funez v. District Director I.N.S.* 619 F.Supp. 656 (C. D. California 1985).

54 <sup>93</sup>ibid. 658.

55 <sup>94</sup>ibid. 657.

56 <sup>95</sup>ibid. 656-657.  
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3 *Mathews v. Eldridge* to resolve the procedural due process issue: (1) the private interest affected;  
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5 (2) the ‘risk of erroneous deprivations of rights’ under the INS procedures and the ‘probable  
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7 value, if any, of additional or substitute procedural safeguards;’ and, (3) the government’s  
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9 interest involved and the burdens imposed by ‘supplemental or substitute procedures.’<sup>96</sup> The court  
10  
11 asserted that a UAC possesses ‘substantial constitutional and statutory rights’ despite illegally  
12  
13 entering the country.<sup>97</sup> Under 8 U.S.C. § 1252(b), an alien has the the rights to an evidentiary  
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15 hearing, notice, counsel (at no expense to the government), present evidence, cross-examine  
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17 witnesses, and to a ‘decision based upon substantial evidence’.<sup>98</sup> A UAC has a right to a  
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19 deportation hearing, which is waived upon signing the voluntary departure form. When the UAC  
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21 waives the right to a deportation hearing, he or she ‘effectively waives the right to various forms  
22  
23 of relief from deportation’, including: (1) adjustment of status;<sup>99</sup> (2) suspension of deportation;<sup>100</sup>  
24  
25 (3) political asylum<sup>101</sup> or withholding of deportation,<sup>102</sup> and (4) deferred action status.<sup>103</sup>  
26  
27 Plaintiffs ‘do not possess rights equivalent to those of criminal defendants’ because ‘deportation  
28  
29 proceedings are civil in nature’.<sup>104</sup> In deportation proceedings, a UAC cannot invoke the  
30  
31 exclusionary rule,<sup>105</sup> Miranda warnings,<sup>106</sup> and the right to appointed counsel.<sup>107</sup>  
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38 The court asserted that ‘the risk of erroneous deprivation is great’ especially for UAC  
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40 who are ‘not arrested near the border’ or are not permanent residents of Mexico or Canada.<sup>108</sup>  
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42 The INS procedures on voluntary departure are ‘inherently coercive’ and did not result in  
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45 <sup>96</sup>*Mathews* (n57) 335; *Perez-Funez* (n92) 659.

46 <sup>97</sup>*Mathews v. Diaz* 426 U.S. 67, 77 (1976); *Perez-Funez* (n92) 659.

47 <sup>98</sup>*Perez-Funez* (n92) 660.

48 <sup>99</sup>8 U.S.C. § 1254.

49 <sup>100</sup>8 U.S.C. § 1254.

50 <sup>101</sup>8 U.S.C. § 1158.

51 <sup>102</sup>8 U.S.C. § 1253(h)(1)

52 <sup>103</sup>*Perez-Funez* (n92) 660.

53 <sup>104</sup>*INS v. Lopez-Mendoza* 468 U.S. 103 (1984); *Perez-Funez* (n92) 659.

54 <sup>105</sup>*Perez-Funez* (n92).

55 <sup>106</sup>*Trias-Hernandez v. INS* 528 F.2d 366 (9th Cir.1975).

56 <sup>107</sup>*Martin-Mendoza v. INS* 499 F.2d 918 (9th Cir. 1974).

57 <sup>108</sup>*Perez-Funez* (n92) 663.

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3 ‘effective waivers’ because the UAC did not understand their rights when they signed the  
4 voluntary departure form.<sup>109</sup> A waiver is ‘an intentional relinquishment or abandonment of a  
5 known right or privilege’.<sup>110</sup> A valid waiver of any right requires that the person ‘fully  
6 understands the right’ and ‘voluntarily intends to relinquish it’.<sup>111</sup> Here, the plaintiffs did not  
7 understand the forms and their contents. Their ages, the ‘stressful situation’, the ‘new and  
8 complex’ environment and laws, and the ‘foreign and authoritarian’ interrogators made the entire  
9 process ‘inherently coercive’.<sup>112</sup>

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12 The court then considered the ‘probable value of additional or substitute safeguards in  
13 minimizing the aforementioned risk of deprivation’.<sup>113</sup> The court surmised that ‘access to  
14 telephones prior to presentation of the voluntary departure form’ is the ‘only way to ensure a  
15 knowing waiver of rights’.<sup>114</sup> Although legal counsel is the ‘best insurance against a deprivation  
16 of rights’, case law forecloses the right of UAC to appointed counsel at government expense.<sup>115</sup>  
17 Other alternatives to legal counsel include providing the UAC with the opportunity to contact a  
18 parent, close adult relative, or adult friend.<sup>116</sup> The district court held that these additional  
19 safeguards are not ‘unduly burdensome’ on the government and issued a permanent injunction  
20 with the following conditions: (1) INS shall provide all UAC with an updated free legal services  
21 list and a simplified rights advisal approved by the court; (2) before presenting the voluntary  
22 departure form, INS shall provide all UAC apprehended near the U.S. borders and who reside  
23 permanently in Mexico or Canada ‘the opportunity to make a telephone call to a parent, close  
24 relative, or friend, or to an organization...on the free legal services list;’ (3) before presenting the

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<sup>109</sup>ibid. 663).

<sup>110</sup>*Johnson v. Zerbs* 304 U.S. 458 (1938).

<sup>111</sup>*Edwards v. Arizona* 451 U.S. 477 (1981); *Perez-Funez* (n92).

<sup>112</sup>*Perez-Funez* (n92) 662.

<sup>113</sup>*Mathews* (n57) 335.

<sup>114</sup>*Perez-Funez* (n92) 664.

<sup>115</sup>*Martin-Mendoza v. INS* (n107) 922; *Perez-Funez* (n92) 665.

<sup>116</sup>*Eddings v. Oklahoma* 455 U.S. 104, 115 (1982).

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3 voluntary departure form to all other UAC not apprehended at a U.S. border, INS shall provide  
4 and ensure that they have access to telephones and actually communicated with a ‘parent, close  
5 adult relative, friend, or with an organization found on the free legal services list;’ (4) INS shall  
6 obtain a ‘signed acknowledgment’ on a ‘separate copy of the simplified rights advisal’ showing  
7 that the INS provided the UAC with all required notices and information; and, (5) the district  
8 director shall update and maintain the free legal services list.<sup>117</sup>

### 17 **3.3 Issues concerning asylum applications**

#### 19 *3.3.1 Right of third parties to custody of the unaccompanied alien child*

21 An asylum application cannot be filed by a six-year-old unaccompanied minor or his relative  
22 who does not have legal custody, if the parent of the UAC opposes the application.<sup>118</sup> Third  
23 parties who are not related to the UAC cannot gain custody of the minor or be appointed as  
24 custodians by a state juvenile court without the consent of the Secretary of the DHS.<sup>119</sup>

#### 31 *3.3.2 Minority age at the time of the application for asylum*

33 The TVPRA exempts UAC from the one-year time limitation for filing an asylum application.<sup>120</sup>  
34 To qualify for the TVPRA’s jurisdictional provision, the applicants must qualify as UAC at the  
35 time they file an asylum application even if he or she turned eighteen years old thereafter.<sup>121</sup>  
36 Minors who do not qualify as UAC upon filing of the asylum application were ‘not statutorily  
37 exempted’ from the one-year time limit.<sup>122</sup>

#### 45 *3.3.3 Right to request consent for a state juvenile court’s jurisdiction*

47 The DHS and not the ORR has authority to grant a UAC’s request for consent to a state juvenile

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49 <sup>117</sup>*Perez-Funez* (n92) 670.

50 <sup>118</sup>*Gonzalez v. Reno* 212 F.3d 1338 (11th Cir. 2000).

51 <sup>119</sup>*United States ex rel. K.E.R.G. v. Burwell* 2014 WL 12638877 (E.D. Pennsylvania 2014).

52 <sup>120</sup>*Flores-Lobo v. Holder* 562 Fed.Appx. 262 (5th Cir. 2014).

53 <sup>121</sup>United States Customs and Immigration Services, ‘Memorandum 2’ (25 March 2009)  
54 <<http://www.ilw.com/immigrationdaily/news/2009,0327-unaccompanied.pdf>> accessed 2 February 2018; *Xin Yu He*  
55 *v. Lynch* 610 Fed.Appx. 655 (9th Cir. 2015).

56 <sup>122</sup>*Flores-Lobo* (n120) 263.

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3 court's jurisdiction.<sup>123</sup> The case of *F.L. v. Thompson* involved a seventeen-year old Tanzanian  
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5 UAC who was transferred to the custody of the INS and placed with a Michigan foster family.<sup>124</sup>  
6  
7 He planned to request a Michigan juvenile court for a declaration of dependency that would  
8  
9 allow him to apply for a special immigrant juvenile ('SIJ') visa to prevent his deportation. Since  
10  
11 he was in government custody, the law required him to first obtain the U.S. Attorney General's  
12  
13 consent to the jurisdiction of the Michigan juvenile court before filing the petition for a  
14  
15 declaration of dependency ('jurisdictional consent').<sup>125</sup> Plaintiff requested the ORR to grant  
16  
17 jurisdictional consent. ORR declined, instead transferring his request to DHS. The District Court  
18  
19 for the District of Columbia held that under the HSA, the DHS and not the ORR has authority to  
20  
21 grant or deny the UAC's request.  
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26 The district court traced the background of the SIJ immigration status to the Immigration  
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28 and Nationality Act ('INA') (1997). Under Section 1101(a)(27)(J) of the INA (1997),  
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30 acquisition of a declaration of dependency from a state court is a prerequisite to applying for an  
31  
32 SIJ visa, available to certain unmarried aliens under the age of twenty-one. The law defines SIJs  
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34 as unaccompanied minors determined by state courts to be eligible for 'long-term foster care due  
35  
36 to abuse, neglect or abandonment suffered in their home countries' when family unification is  
37  
38 not possible and return to their home country is not in their best interest.<sup>126</sup> The statute allowed a  
39  
40 state court to assume jurisdiction over a juvenile immigrant under INS custody.<sup>127</sup> In 1997,  
41  
42 Congress amended the statute to require the Attorney General to consent to the state court's  
43  
44 exercise of jurisdiction.<sup>128</sup>  
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51 <sup>123</sup>*F.L. v. Thompson*, 293 F.Supp.2d 86 (D.C. Cir. 2003).

52 <sup>124</sup>*F.L.* (n123).

53 <sup>125</sup>Immigration and Nationality Act (INA), H.R. 2580; Pub.L. 89-236, 79 Stat. 911 (1997).

54 <sup>126</sup>*F.L.* (n123) 89.

55 <sup>127</sup>*F.L.* (n123); *M.B. v. Quarantillo* 301 F.3d 109 (3d Cir. 2002).

56 <sup>128</sup>*F.L.* (n123) 90.  
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3 The HSA (2002) abolished the INS and divided the responsibilities for UAC between the  
4 DHS and ORR— specific juvenile care responsibilities were transferred to the ORR while  
5 authority to adjudicate immigration benefits (e.g., SIJ visas) were vested in the DHS.<sup>129</sup>  
6  
7 Jurisdictional consent is the ‘first step of the three-step process’ that a minor must follow to  
8 obtain an SIJ visa.<sup>130</sup> Consent and SIJ status are also in the same section of the statute providing  
9  
10 for ‘other immigration benefits’—a responsibility of the DHS.<sup>131</sup> The court then also analyzed  
11 the legislative purpose for granting the consent authority to the Attorney General. The legislative  
12 history of the 1997 INA amendment indicates that the Attorney General’s consent ‘was imposed  
13 as a precondition to juvenile court jurisdiction’ to ensure that SIJ applicants ‘have a special need  
14 to remain in the United States’ and ‘do not use the process simply to gain an immigration  
15 benefit’.<sup>132</sup> Since the DHS decides whether to grant or deny SIJ status, it is ‘logical to have DHS  
16 exercise control over the preliminary consent stage’.<sup>133</sup>  
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31 The Third Circuit reiterated that the INS (now the DHS) has broad discretion to allow or  
32 deny consent to a state court’s jurisdiction in a dependency hearing to grant SIJ status.<sup>134</sup> In  
33 *Yeboah v. U.S. Dept. of Justice*, the INS denied a 10-year old Ghanaian UAC request for consent  
34 to a state court’s jurisdiction to declare him a dependent for purposes of obtaining SIJ status.<sup>135</sup>  
35  
36 The INS ruled that the minor: (1) was not entitled to SIJ status because he was not abused,  
37 neglected, or abandoned; and, (2) was seeking SIJ status for the ‘improper purpose of obtaining  
38 permanent resident status’—he was placed on the plane by his father ‘as part of an unworkable  
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50 <sup>129</sup>Homeland Security Act Pub. L. No. 107-296, 116 Stat. 2135 (2002).

51 <sup>130</sup>*F.L.* (n123) 92.

52 <sup>131</sup>*ibid.*

53 <sup>132</sup>*ibid.* 96.

54 <sup>133</sup>*ibid.* 97.

55 <sup>134</sup>*Yeboah v. U.S. Dept. of Justice* 2003; *M.B.* (n127).

56 <sup>135</sup>*Yeboah* (n134).



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3 long-term scheme' to secure United States citizenship for him, his father, and brother.<sup>136</sup> The  
4  
5 Third Circuit affirmed the lower court's decision due to the 'long-standing practice of allowing  
6  
7 the District Director broad discretion in immigration matters'.<sup>137</sup>  
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### 10 **3.4 Issues concerning removal proceedings**

#### 11 *3.4.1 Right to counsel at government expense*

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13  
14 The Ninth Circuit Court of Appeals had the opportunity to consider whether UAC have  
15  
16 the right to counsel at government expense in removal proceedings in *J.E.F.M. v. Lynch*.<sup>138</sup> The  
17  
18 Ninth Circuit, however, only considered the jurisdictional issue and declined to decide the case  
19  
20 on the merits. Here, UAC aged 3 to 17 years old filed an action alleging that they were statutorily  
21  
22 and constitutionally entitled to have government-appointed counsel 'at government expense'  
23  
24 during removal proceedings.<sup>139</sup> The Ninth Circuit held that a district court does not have  
25  
26 jurisdiction over a claim that UAC have a right to government-appointed counsel in removal  
27  
28 proceedings. Plaintiff minors 'cannot bypass the immigration courts and proceed directly to [the]  
29  
30 district court'.<sup>140</sup> They must 'exhaust the administrative process' before accessing the federal  
31  
32 courts.<sup>141</sup> Congress expressly provided that all claims, statutory or constitutional, 'arising from'  
33  
34 immigration removal proceedings 'can only be brought through the petition for review process in  
35  
36 the federal courts of appeals'.<sup>142</sup> Right-to-counsel claims are 'routinely raised in petitions for  
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38 review filed with a federal court of appeals'.<sup>143</sup> Federal courts of appeals could review only the  
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48 <sup>136</sup>*Yeboah* (n134) 219-222.

49 <sup>137</sup>*Jay v. Boyd* 351 U.S. 345, 351-352 (1956); *Yeboah* (n134) 224.

50 <sup>138</sup>*J.E.F.M. v. Lynch* 837 F.3d 1026 (9th Cir. 2016).

51 <sup>139</sup>*ibid.* 1026.

52 <sup>140</sup>*ibid.* 1028.

53 <sup>141</sup>*ibid.*

54 <sup>142</sup>*ibid.*

55 <sup>143</sup>*Alvarado v. Holder* 759 F.3d 1121 (9th Cir. 2014); *Barron v. Ashcroft* 358 F.3d 674 (9th Cir. 2004); *J.E.F.M.*  
56 (n138); *Ram v. Mukasey* 529 F.3d 1238 (9th Cir. 2008); *Sola v. Holder* 720 F.3d 1134 (9th Cir. 2013); *Zepeda-*  
57 *Melendez v. INS* 741 F.2d 285 (9th Cir. 1984).

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3 ‘final removal order’ of an immigration judge or the Board of Immigration Appeals.<sup>144</sup>  
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5 The Ninth Circuit continued that immigration judges ‘have an obligation to ask whether a  
6 petitioner wants counsel’.<sup>145</sup> Although immigration judges are not required to ‘undertake  
7 Herculean efforts’ to grant petitioners the right to counsel, ‘at a minimum’ they must determine:  
8 (1) whether the petitioner wants counsel; (2) a reasonable period for obtaining counsel; and, (3)  
9 assess the voluntariness of any waiver.<sup>146</sup> The Ninth Circuit stated that the failure of an  
10 immigration judge to inquire whether the petitioner wanted or knowingly waived counsel ‘is  
11 grounds for reversal’.<sup>147</sup>  
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21 In *Nehimaya-Guerra v. Gonzales*, the Ninth Circuit held that the minor was denied due  
22 process during the removal proceeding: (1) when the immigration judge conducted a group  
23 hearing of fifteen individuals and did not inquire as to plaintiff’s status as a minor; and, (2) when  
24 plaintiff admitted removability because she was not represented by an adult or legal counsel.<sup>148</sup>  
25 The Department of Justice (‘DOJ’) guidelines require ‘special treatment’ of a UAC and prohibit  
26 immigration judges from accepting ‘an admission of removability’ from UAC who are not  
27 accompanied by an ‘attorney or legal representative, a near relative, legal guardian, or friend’.<sup>149</sup>  
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### 37 3.4.1 Right to a bond rehearing upon rearrest on allegations of gang membership

38 In *Saravia v. Sessions*, the District Court for the Northern District of California issued a  
39 preliminary injunction requiring the government to grant a hearing before an immigration judge  
40 to any UAC previously placed with a sponsor but rearrested on allegations of gang activity.<sup>150</sup> In  
41 this case, ICE agents implementing ‘Operation Matador’ targeted undocumented immigrants in  
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49 <sup>144</sup>*J.E.F.M.* (n138) 1034.

50 <sup>145</sup>*J.E.F.M.* (n138) 1033.

51 <sup>146</sup>*Biwot v. Gonzales* 403 F.3d 1094 (9th Cir. 2005); *J.E.F.M.* (n138); *United States v. Cisneros-Rodriguez* 813 F.3d  
52 748 (9th Cir. 2015).

53 <sup>147</sup>*J.E.F.M.* (n138) 1033.

54 <sup>148</sup>*Nehimaya-Guerra v. Gonzales* 177 Fed.Appx. 729 (9th Cir. 2006).

55 <sup>149</sup>*Nehimaya-Guerra* (n148).

56 <sup>150</sup>*Saravia v. Sessions* 2017 WL 5569838 2 (N.D. California 2017).  
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3 two New York counties (Suffolk and Nassau) allegedly connected to criminal gangs.<sup>151</sup> ICE  
4 agents rearrested plaintiffs due to allegations of gang involvement from local law enforcement.  
5  
6 Plaintiffs were previously arrested as unaccompanied minors, transferred to ORR custody, and  
7  
8 released to either parents or sponsors because of the ORR's prior determination that they were  
9  
10 not dangerous. Upon rearrest by ICE on suspicion of gang affiliation, they were placed in  
11  
12 juvenile detention facilities, the most restrictive secure facility level. The district court required  
13  
14 the government '(g)oin[ing] forward, at least while this lawsuit is pending' to provide the plaintiffs  
15  
16 with notice of the basis for rearrest and an opportunity to rebut evidence in 'a hearing within  
17  
18 seven days of arrest of any such minor'.<sup>152</sup> Venue for the hearing must be 'in the jurisdiction  
19  
20 where the minor has been arrested or where the minor lives'.<sup>153</sup>  
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26 The court noted that federal agents have been arresting noncitizens, including UAC  
27  
28 previously placed with sponsors, 'based on allegations of gang involvement'.<sup>154</sup> Adult aliens may  
29  
30 be released on bond or parole pending removal proceedings as long as the federal government  
31  
32 determines that they do not pose a danger to the community or are not a flight risk. Once  
33  
34 released on bond, the law prohibits federal agents from rearresting the alien 'merely because he  
35  
36 is subject to removal proceedings'.<sup>155</sup> The government must 'present evidence of materially  
37  
38 changed circumstances' that the alien 'is in fact dangerous or has become a flight risk, or is now  
39  
40 subject to a final order of removal'.<sup>156</sup> The alien is entitled under federal laws and current DHS  
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42 policies 'to a prompt hearing before an immigration judge' to dispute the notion that 'changed  
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44 circumstances justify his rearrest'.<sup>157</sup> The court commiserated that UAC do not receive the same  
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50 <sup>151</sup>ibid.

51 <sup>152</sup>ibid.

52 <sup>153</sup>ibid. 17.

53 <sup>154</sup>ibid. 1.

54 <sup>155</sup>ibid.

55 <sup>156</sup>ibid.

56 <sup>157</sup>ibid.

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3 protections as alien adults released on bond because they are not given a ‘prompt hearing’ to  
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5 dispute that their detention is justified ‘based on changed circumstances’.<sup>158</sup> The government  
6  
7 instead transferred the minors to high-security facilities for an indefinite period.  
8  
9

10 The court then applied the *Mathews v. Eldridge* standard to determine the due process  
11 requirements in the case.<sup>159</sup> Here, the plaintiffs have a ‘strong interest’ under the Fifth  
12 Amendment due process clause ‘in being free from unnecessary government interference with  
13 their liberty’.<sup>160</sup> Since some of the plaintiff UAC were in the custody of their parents when they  
14 were rearrested and transferred to detention facilities, the government’s actions triggered the  
15 ‘long-recognized interest’ of a parent in ‘the companionship, care, custody and management of  
16 his or her children’.<sup>161</sup> UAC previously placed by the ORR with a sponsor cannot be rearrested  
17 ‘solely on the ground that he is subject to removal proceedings’.<sup>162</sup> A lawful arrest must be based  
18 on evidence of changed circumstances, indicating that the UAC pose a danger to self or the  
19 community or present a flight risk. The UAC and their sponsors ‘have the right to participate in a  
20 prompt hearing before an immigration judge’ to contest the government’s allegation of ‘changed  
21 circumstances’.<sup>163</sup> The court stated that the government violated the due process rights of the  
22 UAC by indefinitely detaining them in high-security facilities without providing them a hearing.  
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40 Without ‘a prompt adversarial hearing’, there is a ‘serious risk’ that minors previously  
41 placed by ORR with sponsors will be rearrested based on ‘insufficiently substantial allegations  
42 of gang affiliation’ and ‘erroneously placed into ORR custody’.<sup>164</sup> The Ninth Circuit recognized  
43 that the determination of active gang membership ‘presents a considerable risk of error’ due to  
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50 <sup>158</sup> *ibid.*

51 <sup>159</sup> *Mathews* (n57) 335.

52 <sup>160</sup> *Saravia* (n150) 15.

53 <sup>161</sup> *Berman* (n56) 983; *D.B.* (n10) 740; *Lassiter v. Dep’t of Soc. Servs.* 452 U.S. 18 (1981); *Saravia* (n150) 15.

54 <sup>162</sup> *Saravia* (n150). 15.

55 <sup>163</sup> *Saravia* (n150) 1.

56 <sup>164</sup> *Saravia* (n150) 18.

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3 the ‘informal structure of gangs, the often fleeting nature of gang membership, and the lack of  
4 objective criteria in making the assessment’.<sup>165</sup> These additional protections do not ‘impose any  
5 significant burden on the federal government’ because: (1) there is already a similar process for  
6 adult noncitizens rearrested after release on bond; (2) the safeguards will enhance the  
7 government’s capacity to act in the UAC’s best interest by placing him or her ‘in the least  
8 restrictive setting;’ and, (3) these protections will reduce the risk that a UAC ‘is erroneously  
9 removed from a sponsor’s custody and placed into a taxpayer-funded juvenile detention  
10 facility’.<sup>166</sup>

### 21 **3.5 Issues concerning detention in facilities**

#### 22 *3.5.1 Legal standard for abuses experienced in facilities*

23  
24 The Supreme Court in *Farmer v. Brennan*<sup>167</sup> prescribed the legal standard of deliberate  
25 indifference to determine whether a government official’s ‘episodic act or omission’ violated  
26 plaintiffs’ Fifth Amendment due process right to protection from harm.<sup>168</sup> A government official  
27 is liable if he or she: (1) had ‘subjective knowledge of a substantial risk of harm’ to the plaintiff  
28 (‘subjective awareness’); and, (2) did not respond in an ‘objectively reasonable’ manner ‘in light  
29 of clearly established law’ (‘objectively reasonable response’).<sup>169</sup> To prove subjective awareness,  
30 defendant officials must have ‘actual notice of an existing risk’ or must have inferred the obvious  
31 risk based on facts known to him, including circumstantial evidence.<sup>170</sup> Defendant officials who  
32 had subjective awareness may be found liable only if did not respond in an ‘objectively  
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50 <sup>165</sup>*Vasquez v. Rackauckas* 734 F.3d 1025, 1046 (9th Cir. 2013).

51 <sup>166</sup>*Saravia* (n150) 19.

52 <sup>167</sup>*Farmer v. Brennan* 511 U.S. 825 (1994).

53 <sup>168</sup>*E.A.F.F. v. Gonzalez* 600 Fed.Appx. 205, 210 (5th Cir. 2015); *Hare v. City of Corinth Miss.* 74 F.3d 633, 647 (5th  
54 Cir.1996).

55 <sup>169</sup>*E.A.F.F.* (n168) 211; *Farmer* (n167) 884; *Jacobs v. W. Feliciana Sheriff’s Dep’t.* 228 F.3d 388 (5th Cir. 2000).

56 <sup>170</sup>*Farmer* (n167) 837.

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3 reasonable manner even if the harm ultimately was not averted'.<sup>171</sup> The government may raise  
4 the defense of 'qualified immunity from monetary damages' against claims of deliberate  
5 indifference.<sup>172</sup> The defense of qualified immunity requires a two-step analysis: (1) whether  
6 defendants violated a 'clearly established right' of the plaintiff; and, (2) whether defendants'  
7 conduct was 'objectively reasonable in light of clearly established law at the time of the  
8 incident'.<sup>173</sup>

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17 The Fifth Circuit applied the deliberate indifference standard in *E.A.F.F. v. Gonzalez*,  
18 involving eleven unaccompanied Central American minors arrested by Texas Border Patrol  
19 agents and placed by the ORR in a Nixon, Texas detention facility pending immigration  
20 proceedings.<sup>174</sup> They filed an action against defendant ORR officials in their individual  
21 capacities under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*<sup>175</sup>  
22 ('*Bivens* action'), claiming monetary damages for violation of their constitutional rights.<sup>176</sup> They  
23 alleged that they were physically or sexually abused while detained in the Nixon facility.  
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33 The Fifth Circuit held that the plaintiffs failed to prove that defendants were deliberately  
34 indifferent to their Fifth Amendment due process rights to be protected from harm because  
35 defendants did not have 'subjective awareness of the risk'— they did not have 'actual  
36 knowledge' or the risk was not obvious.<sup>177</sup> In *Farmer v. Brennan*, U.S. Supreme Court explained  
37 that a risk 'may be obvious' when inmate attacks were 'longstanding, pervasive, well-  
38 documented, or expressly noted by prison officials in the past'.<sup>178</sup> Here, there was no pattern of  
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49 <sup>171</sup>*Farmer* (n167) 884.

<sup>172</sup>*Doe v. Robertson* 751 F.3d 383, 387 (5th Cir. 2014); *E.A.F.F.* (n168) 209.

<sup>173</sup>*E.A.F.F.* (n168) 209; *Hernandez ex rel. Hernandez v. Tex. Dep't of Protective & Regulatory Servs.* 380 F.3d 872, 879 (5th Cir. 2004).

<sup>174</sup>*E.A.F.F.* (n168).

<sup>175</sup>*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* 403 U.S. 388 (1971).

<sup>176</sup>*Brown v. Nationsbank Corp.* 188 F.3d 579 (5th Cir.1999).

<sup>177</sup>*E.A.F.F.* (n168) 205).

<sup>178</sup>*Farmer* (n167) 842.

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3 abuse that made the risk obvious to the defendant officials because there was ‘only one  
4 confirmed case of sexual abuse and one confirmed case of physical abuse’ which led to the  
5 suspension or termination of the perpetrators.<sup>179</sup> The Fifth Circuit concluded that the government  
6 officials were entitled to qualified immunity because they responded reasonably to the perceived  
7 risk. Upon learning of the isolated incidents, defendants implemented policies to ensure more  
8 frequent monitoring of staff and preventing staff from entering bathrooms and bedrooms without  
9 an escort, reviewed staffing procedures, and scheduled additional staff training.<sup>180</sup>

### 19 **3.6 Other legal rights while in United States’ territory**

#### 21 *3.6.1 Right to terminate pregnancy*

23 A recent case involved the right of a UAC to terminate her pregnancy while in custody of the  
24 ORR. In *Garza v. Hargan*, plaintiff filed a petition for a temporary restraining order to prevent  
25 the government from interfering with her access to abortion counseling and right to abortion.<sup>181</sup>  
26 The district court granted the injunction. On appeal, the District of Columbia Circuit Court ‘en  
27 banc’ denied the government’s emergency motion for stay pending appeal and remanded to the  
28 district court for ‘further proceedings to amend the effective dates of its injunction’.<sup>182</sup> In a  
29 concurring opinion, Circuit Judge Millett noted that plaintiff, ‘like other minors in the United  
30 States who satisfy state-approved procedures’, is entitled under binding Supreme Court  
31 precedent to choose to terminate her pregnancy.<sup>183</sup> The Due Process Clause of the Fifth  
32 Amendment ‘fully protects’ plaintiffs’ right to decide whether to continue or terminate  
33 pregnancy.<sup>184</sup> Her status as an unaccompanied alien child does not reduce or eliminate her

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51 <sup>179</sup>*E.A.F.F.* (n168) 213.

52 <sup>180</sup>*ibid.* 215.

53 <sup>181</sup>*Garza v. Hargan*, 874 F.3d 735 (D.C. Cir. 2017).

54 <sup>182</sup>*ibid.* 735.

55 <sup>183</sup>*ibid.* 737.

56 <sup>184</sup>*ibid.*

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3 constitutional right to an abortion in compliance with state law requirements.<sup>185</sup>  
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5 The government argued that the plaintiff ‘has the burden of extracting herself’ from the  
6  
7 ORR’s custody if she ‘wants to exercise the right to an abortion’.<sup>186</sup> According to the  
8  
9 government, a UAC may obtain an abortion only if: (1) she finds a sponsor willing to and legally  
10  
11 qualified to obtain custody of her; or (2) she voluntarily returns to her home country. The  
12  
13 concurring opinion countered that this position is untenable because under U.S. Supreme Court  
14  
15 precedent, the government may not impose ‘substantial and unjustified obstacles’ to a woman’s  
16  
17 exercise of her right to an abortion ‘pre-viability’.<sup>187</sup>  
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#### 22 4. Conclusion

23  
24 The legal issues surrounding UAC are multiple and complex. The main legal issues addressed in  
25  
26 this article cover the entire terrain of UAC apprehension, placement with a qualified sponsor or  
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28 institution, detention, and departure. Federal court jurisprudence in the United States addressed  
29  
30 issues relating to the release and detention of UAC, including the right to be released to a private  
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32 custodian, the right to due process in custody and placement decisions, and the right to a bond  
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34 hearing under the *Flores* settlement. According to the U.S. federal courts, an unaccompanied  
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36 minor does not have a fundamental right to be released to a private individual who is not his or  
37  
38 her parent or legal custodian. On the other hand, both the parents of an unaccompanied minor  
39  
40 and the minor have the fundamental right to family reunification. The decision of the  
41  
42 government to withhold the minor from the custody of the parent should comply with due  
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44 process. The minor and his or her parents should be granted notice and hearing to present  
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53 <sup>185</sup>ibid.

54 <sup>186</sup>ibid.

55 <sup>187</sup>ibid. 737; *Planned Parenthood of Southeastern Pennsylvania v. Casey* 505 U.S. 833 (1992); *Whole Woman’s*  
56 *Health v. Hellerstedt* 136 S.Ct. 2292 (2016).  
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3 evidence on the feasibility of family reunification and release of the minor to the parent's  
4  
5 custody.  
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8 Case law examining the rights of UAC prior to voluntary departure emphasize the need to  
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10 grant them the opportunity to consult with a responsible adult, including a lawyer from a free  
11  
12 legal services list that should be provided to them. Also, the minor must be aware of and  
13  
14 understand the consequences of voluntary departure prior to signing the voluntary departure  
15  
16 form. The minor, for instance, must be aware that upon availing of voluntary departure, he or she  
17  
18 waives the right to deportation hearing. Waiver of these rights must be knowing and intentional.  
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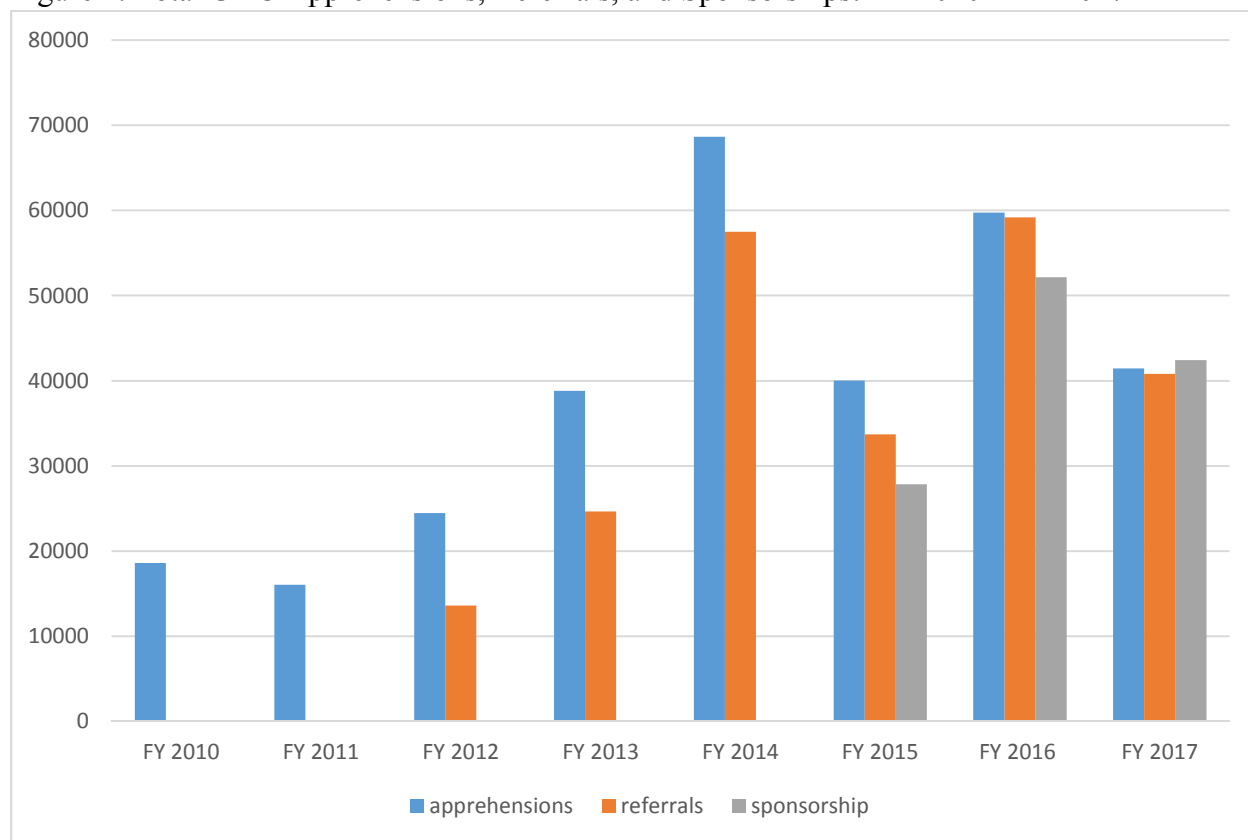
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22 Federal courts have also tackled issues concerning asylum claims filed by UAC. These  
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24 include the right of third parties to custody of the unaccompanied minor, the minority age at the  
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26 time of the asylum application, and the right of the UAC to request consent for a state juvenile  
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28 court's jurisdiction. In removal proceedings against UAC, federal courts have elaborated on the  
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30 scope and meaning of the right to counsel and the right to a bond rehearing upon their rearrest  
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32 because of allegations of gang membership. Finally, federal courts have also examined issues  
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34 concerning the detention of UAC in ORR facilities. In particular, precedent applied the *Farmer*  
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36 *v. Brennan* legal standard of deliberate indifference to determine whether or not detention  
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38 officials and the administrators who operate the facilities can be made liable for abuses  
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40 experienced by UAC. In another case, a federal court clearly granted an unaccompanied minor  
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42 who had complied with all state laws on abortion, the right to terminate her pregnancy.  
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47 Our primary methodology in this article was a case analysis of all relevant cases. The  
48  
49 article utilized inductive doctrinal analysis to identify, categorize, and analyze pertinent legal  
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51 issues decided at various stages of immigration enforcement against UAC. This approach allows  
52  
53 us to understand how federal courts have interpreted and expanded the rights of UAC but it is  
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3 limited in understanding the political and ethical questions associated with U.S. policy on UAC  
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5 and U.S. immigration policy more generally. Further research on UAC should expand our  
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7 understanding of the political and ethical dimensions of U.S. policy towards unaccompanied  
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9 alien children.  
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For Peer Review

Figure 1. Total UAC Apprehensions, Referrals, and Sponsorships: FY 2010 – FY 2017



Review

Figure 2. UAC by Country of Origin: FY 2012 to FY 2017

