

LEGAL HURDLES AND COMPREHENSIVE  
RESPONSES TO THE GLOBAL REFUGEE CRISIS:  
WOMEN REFUGEES AND UNACCOMPANIED  
CHILDREN<sup>1</sup>

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PANEL I: FLEEING VIOLENCE FROM LATIN AMERICA

Panelists:

**Olga Byrne**—*Senior Associate, Refugee Protection at Human Rights First*

**Elizabeth Carlson**—*Attorney, Maggio+Katar*

**Walter Ewing**—*Senior Researcher, American Immigration Council*

**Alice Farmer**—*Protection Officer, United Nations High Commissioner for Refugees*

**Tiffany Nelms**—*Associate Director for Unaccompanied Children's Services, U.S. Committee for Refugees and Immigrants*

**Teresa Woods**—*Associate Director, Refugee Representation Project; Professor, Benjamin N. Cardozo School of Law*

ANNA MOLINA: Good afternoon, ladies and gentlemen. My name is Anna Molina and I am the Editor-in-Chief of the Cardozo Journal of Law & Gender. On behalf of our Journal, I am pleased to welcome you to our fall symposium, *Legal Hurdles and Comprehensive Responses to the Global Refugee Crisis: Women Refugees and Unaccompanied Children*.

The Cardozo Journal of Law & Gender has been a pioneering publisher of gender-related scholarship and home to groundbreaking research for twenty-two years. We began as the Cardozo Women's Law Journal and have since become interdisciplinary in outlook. We have also expanded our coverage of topics in response to the social and legal developments in the U.S. and abroad.

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<sup>1</sup> This is an edited version of a transcript of the audio recording from the annual symposium of the Cardozo Journal of Law & Gender, which was held on November 19, 2015 at Benjamin N. Cardozo School of Law.

We publish articles and notes that provide challenging and alternative perspectives on diverse topics ranging from gender and sexuality, race, civil rights, human rights, employment law, healthcare, to family, children, and immigration. This year we will publish articles and notes about the consequences of *Crawford*<sup>2</sup> for domestic violence victims, *Hobby Lobby*<sup>3</sup> and the religious freedom, or women-owned businesses in the U.S. federal procurement.

Before we begin, I would like to thank Professor Teresa Woods, the Associate Director of the Cardozo Refugee Representation Project, and Danielle Ravich, our Symposium Editor, for their extraordinary work in preparing today's program. Now it is my pleasure to introduce Professor Teresa Woods. Thank you.

TERESA WOODS: On behalf of the Cardozo Journal of Law & Gender, the International Law Society, and the Refugee Representation Project of the Cardozo Law Institute in Holocaust and Human Rights, I would like to welcome you to this afternoon's panel, *Legal Hurdles, Comprehensive Responses to the Global Refugee Crisis*.

The Journal decided to address the issues facing refugee women and children because they were timely and important. They have since become even more relevant. Several months ago, the image of Aylan Kurdi galvanized the support of the international community around issues of refugee protection, drawing attention to the fact that more than half of the world's over sixty million displaced persons are children. Not a day goes by that we are not bombarded with stories in our news feeds about the plight of people displaced around the globe, in the Americas, in the Middle East, in Africa, and in Europe.

Last week, we saw the bombings in Sinjar Province, Beirut, and this past weekend as Paris literally exploded; the world has finally begun to respond. As we keep those who were impacted by the violence in the forefront of our minds, we will examine the legal hurdles to international protection and look at the comprehensive responses proposed by the world community. It's with great pleasure that I present you Danielle Ravich, our Symposium Editor of the Cardozo Law Journal of Law & Gender and she will introduce to you this afternoon's illustrious panelists. Thank you.

DANIELLE RAVICH: Hi everybody. Thanks for coming today. I first wanted to introduce today's moderator, Elizabeth Carlson who is an attorney at Maggio + Kattar. She focuses her practice on asylum law and other forms of humanitarian relief, wavers of inadmissibility, immigration consequences of criminal convictions, family based immigration matters and naturalization. Elizabeth has published on Deferred Action for Childhood Arrivals, the Child Status Protection Act, and complex naturalization applications. Elizabeth has been recognized by the American Immigration Lawyers Association for pro bono representation of asylum seekers, detained non-citizens, and children fleeing violence, and battered women

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<sup>2</sup> *Crawford v. Washington*, 541 U.S. 36 (2004).

<sup>3</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

and children. Elizabeth has a BA in History and Spanish from Brandeis University and a JD from NYU School of Law.

Next, we have Alice Farmer who is a Protection Officer at the UNHCR. She works on protection activities on behalf of asylum seekers, refugees, and stateless persons in the U.S., with the help of government officials, attorneys and NGOs. Ms. Farmer worked on refugee and human rights issues for Human Rights Watch, the ACLU, and the Norwegian Refugee Council, and in other offices of the UNHCR. Alice holds a JD from NYU School of Law, an MPA from Harvard Kennedy School of Government, and a BA from Harvard University.

Next, we have Olga Byrne, Senior Associate in Refugee Protection at Human Rights First. Olga focuses her work on policy advocacy, legal services, and program development on issues affecting the human rights of immigrants and refugees, particularly children, families and individuals in detention. Prior to joining Human Rights First, Olga was a U.S. Fulbright Schuman researching European policy trends toward migrant children and worked on national programs at the Vera Institute of Justice to improve access to legal services for immigrants in removal proceedings. Olga is a graduate of Cornell University and Fordham Law School.

Next, we have Tiffany Nelms who is Associate Director for Unaccompanied Children Services at the U.S. Committee for Refugees and Immigrants (“USCRI”). In this capacity, she oversees USCRI in national social service home assessment and child advocacy programs. Additionally, Ms. Nelms has presented on child protection issues, children, and migration in the U.S. and Latin America. Tiffany has worked with unaccompanied children in direct service, advocacy, and program management in social service and children care settings, and she spent a year in Venezuela serving at risk youth through mobile school and equine therapy program. She received an MSW from the University of Maryland and a BSW from Salisbury State University. She is fluent in Spanish and traveled extensively in Latin America.

Last but not least, we have Walter Ewing who is a Senior Researcher at the American Immigration Council. Walter Ewing is based in Washington, D.C. His work deals with wide range of topics pertaining to U.S. immigration policy, such as the relationship between immigration and crime, and the often negative impact of U.S. border enforcement policies on immigrants in border communities. He received a PhD in Anthropology from CUNY Graduate School.

And with that, we will finally dig into our panel, And Elizabeth, please get us started. Thank you.

ELIZABETH CARLSON: Welcome everyone. I’m very pleased to be moderating this excellent panel discussing refugee issues for those, particularly women and children who are fleeing violence in Latin America. So during the summer of 2014, you may remember a great deal of media attention was focused on the so-called surge of minors and families who were fleeing violence in Central

America. This led the administration to take what many viewed to be sort of a hard line stance towards those fleeing violence, including expanding the use of family detention, setting high bonds or no bonds for women and children who were detained and fast tracking these cases for deportation in the immigration court system.

We're very fortunate to have this panel of experts to speak with us about some of the issues surrounding this sort of increased migration, including some of the root causes of violence. And why people are fleeing and reasons that children and families leave their homes and what their experiences are like upon arrival in the United States, particularly integrating them into families and communities that are, you know, families that may already be here. As well as, what their experience is like in the legal system.

We're going to start with some numbers from Walter who has a terrific Power Point talking a little bit about the increase in border apprehensions in the past couple of years and the numbers surrounding asylum applicants from Central America and Mexico.

WALTER EWING: Thank you. Well, as was just pointed out, each year thousands of people, women and children, from Central America and Mexico, arrive at our southern border seeking protection. The population we're talking about is in fact refugees. Their primary motivation for leaving their homes is not to escape poverty or to reunify with family members. Rather, they are fleeing extreme levels of violence in the areas that have fallen into the hands of local gangs, transnational drug cartels, or both. These are areas in which central governments have effectively lost control or in which government is out of control, depending on how you look at it.

When we talk about a refugee crisis along the U.S.-Mexico border, we're talking about not only Mexico, but also three Central American nations, in particular Honduras, El Salvador, and Guatemala. These three nations are collectively known as the Northern Triangle. The Northern Triangle is where most of the refugees are coming from, but the role played by Mexico is a bit more complex. It's a transit country that the refugees from the Northern Triangle must pass through to get to the United States. However, people in some parts of Mexico are also fleeing as refugees to the United States. At the same time, Mexico is the final destination of some refugees from the Northern Triangle because it's less violent than the countries they're leaving behind.

As was just noted, the Central American refugee crisis first hit the U.S. media in 2014 with stories of unaccompanied minors arriving at the border by the tens of thousands. However, advocates and journalists first observed children fleeing violence in the Northern Triangle and parts of Mexico more than a decade ago. U.S. Border Patrol statistics show a dramatic rise in apprehension of unaccompanied children from the Northern Triangle beginning in 2011. Apprehensions of unaccompanied children from both the Northern Triangle and

Mexico peaked at around 67,000 in 2014 and fell to around 39,000 for year 2015. In 2015, Guatemala accounted for the largest share of unaccompanied minors, numbering around 14,000, followed by Mexico, El Salvador, and Honduras.

It's important to note that children from Mexico who are apprehended at the border receive very different treatment than children from the Northern Triangle. Under an agreement between the U.S. and Mexican governments, the vast majority of Mexican children are quickly deported back to Mexico. Children from the Northern Triangle are, in theory, entitled to screening under the Traveling Victim's Reauthorization Act to establish if they are eligible for asylum or some other form of relief from deportation.

It's also important to keep in mind that the Border Patrol apprehensions reflect only a fraction of how many children are making it as far as the U.S.-Mexican border. It does not account for how many children are actually leaving their homes in Central America or Mexico. At the same time, the Border Patrol is apprehending unaccompanied children from the Northern Triangle and Mexico; Mexican authorities are deporting unaccompanied children from the Northern Triangle. Deportations of the Northern Triangle children by the Mexican government have been rising steadily since at least 2010 and they continued to increase between 2014 and 2015 even as Border Patrol apprehensions fell. So one kind compensated for the other and the numbers are not as different as they first appear.

The U.S. media portrayal of the refugee crisis along the southern border is mainly as a crisis of unaccompanied children. Obviously, this is the most sympathetic case. However, families are also coming to the U.S. Mexico border, especially women with children. According to the Border Patrol, around 67,000 family units, as they are called, from the Northern Triangle and Mexico were apprehended at the U.S.-Mexico border in 2014. This dropped to around 39,000 in 2015. Unfortunately, the Border Patrol doesn't specify what a family unit is; however, accounts from people on the ground indicate that more often than not, a family unit is a mother traveling with children.

In 2015, Guatemala again accounted for the largest number of family units apprehended by the Border Patrol, roughly 13,000, followed by El Salvador, Honduras, and Mexico. However, some portion of these family units, no doubt consist of economic migrants as well. It's hard to know who is who from these statistics. Asylum statistics provide a more focused indicator of what refugee flows actually are. In 2015, more than 16,000 women from the Northern Triangle countries and Mexico were screened by U.S. Asylum Officers. Of these, 13,000 were deemed likely to be eligible for asylum. Only roughly 3,000 were judged likely to not be eligible for asylum. Asylum applications to the United States by both women and men from the Northern Triangle and Mexico have been rising steadily since 2009 and they reached around 40,000 in 2014.

It's also important to note that the U.S. is not the only place where refugees

are applying for asylum. Asylum applications from people in the Northern Triangle countries to other Central American countries, or to Mexico, have been rising steadily since 2010 and they reached nearly 2,000 in 2014.

Now after showing you all these numbers I'll say that the extent of the movement of refugees is unknown. Existing statistics can reveal trends and they can give you a rough indication of scale. But again, figures from the government can only count how many people got caught, not how many people make it across the border without being detected. I will end simply by saying that these are refugees in need of protection. They do not deserve the detention and deportation they are so often getting. Thank you.

ELIZABETH CARLSON: Thank you. Do you have a question? We're actually going to hold questions until the end, if that's all right. So thank you so much Walter, and I think we're going to jump right into Alice speaking about the sort of conditions in the Northern Triangle countries and what is leading these women and children to flee from the violence.

ALICE FARMER: Hello. My name is Alice Farmer and I work for the UN Refugee Agency. My guess is most of you in this room know what UNHCR is. But let me just back up. We were founded in 1950 as one of the organs of the UN and we have the international role of protecting refugees worldwide. When we say protecting refugees worldwide, we mean looking after their human rights. That's essentially what we try to do. We work in 123 countries and have about 9,000 people on staff.

Here, in the U.S., one of the biggest issues we've been looking at recently is people who have fled the Northern Triangle countries of Central America, as Walter outlined a little bit just now. About two weeks ago, we released a new study called, *Women on the Run*. I have some copies of it with me here. So if you'd like one, please do come and see me. This study follows a study we released last year called, *Children on the Run*. Both studies take a large number of interviews from people who are refugees from that region and try, and find out, what it was that caused them to flee. The High Commissioner for Refugees, António Guterres, came to Washington and released this report on October 28, which helped galvanize some discussions with the U.S. administration and with some of the regional governments about how to address this problem.

In the report itself, we are looking at three main things; there are three basic reasons, three basic things I want to talk to you today about; the outlines of this refugee crisis. First, I want to look at the numbers. What is it that makes us think this is a refugee problem and not just simply another migration flow? Second, I want to look at the causes of flight. What is it that makes people leave the Northern Triangle, why? And third, what can we do about it? What are our answers?

First, we don't have any great numbers. I was very interested in Walter's presentation because it helps fill in a picture. But what we do have, any of the

numbers we have are pretty much red flags to us. In light of refugee situations around the world, we have a better idea how to count people because quite honestly quite often we are running the camps. In Syria, when people have fled Syria, they're very often registering with UNHCR, so we have just, quite honestly, a better idea how many of them there are. With the Northern Triangle, with people leaving that region, we don't to be honest, have great numbers on why. But all the numbers we have are quite alarming to us. So some of the accelerating numbers in the U.S. that Walter pointed to are examples of those.

I think some other numbers that are really concerning are the accelerating rates of people applying for asylum in countries in the region that aren't the U.S. So you're seeing, since 2008 we've seen a 1,200% increase in asylum applications in non-U.S. countries. So that's Mexico, Costa Rica, Panama, Belize, and Nicaragua. That, to us, is a big indicator that the people are with real need to flee immediately and often without a particularly concrete plan for where they go.

In Costa Rica, for example, there are now more asylum applications there from people from the Northern Triangle of Central America than there are from Colombia, for the first time ever. I think that's a good indicator of the magnitude of the crisis that we're beginning to look at.

Recognition rates for people who have been through the asylum process to determine whether they have a legitimate refugee claim or not, we don't have great numbers on those either. Any of you who work on refugees in the U.S. knows that the backlog on asylum claims, both affirmative and defensive, in the U.S. is quite high at the moment. And we don't have particularly clear numbers on how many people who are coming out of the Northern Triangle and claiming asylum in the U.S. are succeeding in those claims.

But what we do know is the first level of recognition, the first level of screening certain categories of people will go through a credible fear test where they indicate to U.S. authorities that they have a credible fear of harm upon return. For women from this region, in financial year 2015, we're seeing a credible fear rate of 82%, which is quite alarming.

All these numbers put together for us, those are big red flags. We're saying, okay this is a situation where we think there's a great deal of need to pay attention and respond to this with refugee solutions, not with border enforcement solutions and not with treating this as merely an economic migration flow.

One of the things we did is we went out and we interviewed 160 women to try, and find out why they're fleeing. Combining that with a lot of desk research and a lot of studies coming from other people, we have some idea of the root causes of flight. What we're looking at here are astronomically high levels of non-state violence. We're looking at gang violence in rates that are really remarkable and rates that are essentially comparable to armed conflict in lots of places in the world. When you look at and you measure the rates of assaults, the rates of murders, in El Salvador, Honduras, and Guatemala, you're seeing places that look like war zones.

You're seeing—we use this word gang, and I think any of you who are familiar with these regions know that we're not talking about West Side Story kind of gangs. These are not simple gangs that you might think of if you were thinking of a musical. We're talking about transnational-armed groups with quite significant reach that control large parts of the territory in the countries we're speaking about.

When you look, for instance, at the murder rates of women in this area, you see that El Salvador has the highest murder rate of women in the world. We think most of that is coming from gangs. So the women that we talked to talked about extortion at high rates. We talked about threats, disappearances, and murders of family members. They talked about their children being recruited. One woman we spoke to, I'll give you an indicative quote. Her grandson was thirteen and he refused to be recruited by a gang. She said, "when we finally found his body, it was at the morgue. They had cut off his head. They cut his head off, tied his hands and his feet and cut him all over."

We found that the police were ineffective. Sixty percent of the women that we interviewed for this report went to the police and police did nothing to remedy their concerns. Forty percent didn't even go to the police at all because they understood that would not be an effective way of intervening. Sixty-nine percent of the women we interviewed for this report had previously tried to find refuge somewhere else in their country. So they had internally displaced themselves. I think that's an interesting number because I think it indicates how hard it is to find any kind of state protection. For someone to be a refugee we need to know that they're facing persecution, some form of serious violation of their human rights, and that their state can do nothing about it. That's very much what we're seeing in this situation.

So what are we looking for? What are our answers? We need a regional, comprehensive solution where the United States plays a leadership role with some of the other countries in the region in developing clear responses to the refugee situation. And that means responding to the immediate humanitarian need and building the asylum capacity in the U.S. and in other countries. Thank you.

ELIZABETH CARLSON: Thank you, Alice. Next, we're going to hear from Olga Byrne who is going to speak with us about issues surrounding the detention of children in the United States and a little bit about the legal framework that allows for children to be detained once they've fled this violence.

OLGA BYRNE: Thank you. Good afternoon everyone and thank you for joining us. As Elizabeth said, I'll start out by talking about three broad gaps in the U.S. legal framework that affect immigrant children when they arrive in the United States, particularly with respect to detention. After that, I'll talk more specifically about some ongoing litigation related to the detention of children with their families.

So first, one first kind of glaring gap in our laws is that the U.S. is the only country in the world that has not ratified the U.N. Convention on the Rights of the

Child (“CRC”). So while in many other countries when talking about migrant children or refugee children, the starting point is the U.N. Convention on the Rights of the Child, which really lays out everything. You know, the best interest of the child must be a primary consideration in every action pertaining to the child. That’s kind of one of the guiding principles among many other civil, political, economic and social rights. The U.S. hasn’t ratified the Convention on the Rights of the Child. So unfortunately we don’t have that overarching framework.

The Committee on the Rights of the Child is very clear that the detention of children for immigration purposes is never in their best interests, never—doesn’t matter what particular circumstances for immigration purposes, it’s never in a child’s best interest to put them into detention. Essentially, if a country has ratified the CRC and they’re properly implementing it, which is kind of a different issue. You can’t detain children for immigration purposes. Children simply don’t belong in detention.

In the U.S., there are sort of two different types of immigration detention that children might be subject to, depending on how they are classified by immigration authorities. If they’re classified as an unaccompanied child who is somebody that is traveling alone, or at the moment they’re apprehended might be alone, or without their legal guardian. They might be with their primary caregiver who is not their legal guardian and is still classified as an unaccompanied child. They are sent to the custody of the Office of Refugee Resettlement who holds them, some people would say detains them, for a period of time while they attempt to potentially reunify the child with somebody living in the U.S. In fact, the majority of children do have somebody here who they’d like to reunify with.

With other children who are classified as accompanied, meaning they’re traveling with a parent, as Walter mentioned in his presentation, they’re classified as family units by immigration enforcement authorities. They might be subject to family detention, which I’m going to talk about in much more detail after I go through these first three issues. Family detention is not run by the Office of Refugee Resettlement, which cares for unaccompanied children, rather it’s run by Immigration and Customs Enforcement. People are placed generally in the same types of conditions as any immigrant who is subject to immigration detention in an adult facility. So they’re much more prison-like to that extent.

The second kind of overarching broad gap in the U.S. legal framework is that there is no constitutional right to family unity. There’s no federal law that says children have a right to family unity. So in fact, we see many children who are separated from their parents in the migration process, either temporarily or much longer term. Temporarily—it happens very often when they’re first apprehended at the border and they’re in the custody of Customs and Border Protection. We hear many stories of young children, six years old, being taken away from their mothers for the kind of, typically on average three days, that they’ll spend in what most people call a “hielera,” or the “ice box,” because they are so cold, the detention

facilities that are near the border.

A colleague of mine recently interviewed a mother who was detained at a detention facility who said that her three-year-old boy who was obviously terrified upon being taken into custody was put into a cage because he misbehaved. There are kind of endless stories of family separated in that context at the border. Then also, longer term, in terms of the detention and custody decisions that are made by immigration enforcement authorities, we see further instances of family separation.

Again, the family units that Walter mentioned, and we're not totally sure what that means, but what I think it means is they'll classify a mother and a child as a family unit often. If you've got a family, let us say a family of three, mother, child and dad traveling together, often the mom and child are classified as a family unit and, therefore, placed in family detention. A dad will be placed in another adult immigration detention center, which might be in a different state, different part of the country and there's very limited communication possible between them. I'll also add to that, ORR, the Office of Refugee Resettlement, which I mentioned, cares for unaccompanied children. ORR actually does a much better job at respecting children's right to family unity, which, although isn't a recognized constitutional right in the U.S., is ingrained in the Convention on the Rights of the Child and is certainly a top concern in the domestic child welfare context to the extent that that comes into play some times. The Office of Refugee Resettlement generally, as I said, makes efforts to reunify children with family members who might be living in the United States.

A third overarching gap, hurdle, that I wanted to mention is what I think we're seeing more and more, particularly even in the past week, which is the criminalization of asylum seekers. I think it was just this morning, or yesterday, Governor Abbott of Texas tweeted he was very alarmed that two families from Syria had been apprehended at the southern border of Texas. I don't have the exact quotes from his tweet, but the message was there's an attack coming from the southern border. I'm sure everybody here knows that there are, Alice will know better, over four million Syrians outside of our country right now in refugee camps.

In any case, what happened to that family, either yesterday or just this morning, there were two families. They were both families of mom, dad, plus two kids, eight people all together. The moms and the kids were sent to a detention center, one of the family detention centers, and the two dads were sent someplace else. For sure, it's not going to be easy for these families to get out of detention in the current political climate.

Also on criminalization of asylum seekers—and I should add, there's a human right to seek asylum. In the Universal Declaration of Human Rights there is a recognized human right to seek asylum. Why is it so easy for States to criminalize asylum seekers? That's another question, I think. But certainly, in part because our laws are not strong enough and the ones that we do have are perhaps too easy for our government to break, as I'll talk about with the ongoing litigation.

With that, I'll turn to the ongoing litigation concerning the detention of families. First, I'll start with a little bit of history on the matter. So the detention of children is certainly not a new thing. Arguably, it was even worse back in the 1980s. At that time, a group of human rights and constitutional rights lawyers filed a class action lawsuit on behalf of certain children who were in the custody of, then it was the INS, Immigration and Naturalization Service, because they felt that they were unfairly being held in very poor detention conditions at that time, for very prolonged periods of time, even when these children had somebody living in the United States with whom they could have potentially been reunified with to continue their immigration proceeding outside of detention, but living a more normal life. The litigation went on for over a decade. In 1997, the parties came to a settlement agreement and it was a binding settlement agreement on the former INS, which now it extends to the Department of Homeland Security as well as the Office of Refugee Resettlement that cares for unaccompanied children. It's called the Flores Settlement Agreement.

The name of the case was Flores versus whoever the Attorney General was back then. The Flores Settlement Agreement sets out the conditions for detention. It sets out a policy strongly favoring release of children. So children should be released first to any parent that's available in the United States and it goes down the list, including family friends who are willing to take care of a child.

Actually, the Flores Settlement Agreement brings us much closer to some of the principles that are articulated in the U.N. Convention on the Rights of the Child that would certainly go against detaining children, as well as the idea of children and families having a right to family unity. The Flores Settlement was in 1997; since then, many things changed, but I'll skip up to 2014.

Before the crisis at the border erupted in the media last summer, we really had, we still have two different systems, as I mentioned, unaccompanied children go into the custody of ORR. Children traveling with their parents, that part was actually a little bit more vague as of last summer, what was happening to kids who were traveling with their parents. Actually, what was happening in general, is if they were apprehended at the border they would have to go through Customs and Border Protection custody to the *hielera* that I mentioned. But after that, they would typically be released with their parent with a Notice to Appear in Immigration Court. Then, the family would continue to wherever they were going. Often they were headed to another relative's house somewhere in the U.S.

Last July, at the height of the border crisis, Secretary of Homeland Security, Jeh Johnson, made an announcement that the agency had erected a huge detention facility in Artesia, New Mexico, for families. He said, "We are going to send a message-if you come here, we're going to send you back." Family detention was very much a part of that message. They wanted people who would potentially be fleeing persecution to supposedly get a message that if you come here, you're going to be subjected to a pretty harsh detention policy. So that started last summer

and many families were there for many, many months. The government had a no release policy. In bond hearings, the government attorneys would argue that they couldn't release the mom and the child because they presented a national security threat. They also argued that they needed to maintain a policy of deterrence to send this message and deter future migration. That's why they had to keep these mothers and kids in detention facilities.

The Flores litigators, who filed that lawsuit back in the '80s, kind of resurfaced again and they filed a motion to enforce in a California District Court saying that this is a clear violation of the Flores Settlement Agreement, this new family detention policy. The government basically came back with one main argument saying no, we actually think Flores only applies to unaccompanied children and that's all taken care of. Unaccompanied children go to the Office of Refugee Resettlement. When they're traveling with a parent, we can detain them. I should also add, the advocacy around family detention has been really incredible. I mean like 178 members of Congress wrote to the President.

Skipping ahead, where are we with the Flores litigation? In July, the judge in the California District Court issued a scathing decision saying, government you're totally wrong. This settlement agreement absolutely does apply to you. You can't hold kids in detention any more with their parents, basically. It's a little more nuanced than that. Their deadline to comply with the agreement was October 23. That deadline has passed. They continue to hold kids in detention, although they've kind of modified it and they hold them for a shorter period of time. But plaintiff's counsel most definitely thinks it's an ongoing violation and is likely to file another motion to enforce. So stay tuned on that. Thanks.

ELIZABETH CARLSON: Thank you so much, Olga. Next, we'll hear from Tiffany Nelms who will speak with us about the journey of these children to the United States and what is the process like when they arrive after they get out of detention in terms of reintegrating into families and maybe a little bit about the legal process if we have time.

TIFFANY NELMS: Sure. So I'm going to try to cram as much information as I possibly can into my five to seven minutes.

I'm a social worker. I'm not an attorney, but we do a lot of work in immigration and family court. USCRI serves children who are identified as having a severe history of trauma, disability or other special needs when they come out of the Office of Refugee Resettlement and they're reunified with a relative. We go into the homes where those children are placed and provide those services, the social services connecting them to low and pro bono representation.

About 85% of the unaccompanied kids that come into custody are reunified and 60% of those kids are reunified with a parent or legal guardian. Then, the other 25% go to an adult sibling, a grandparent, or it could just be a friend of the family that the child may have never met before.

We also do some work, we have an office in El Salvador, and we're doing

work with children who are repatriated either from Mexico or from the U.S.

I want to talk about some of the challenges that the kids face after they've just been through this journey. They've been, most of them, arrested by Border Patrol. They spent a day or two in a holding cell at the border. They've been flown to a shelter run by the Office of Refugee Resettlement. They maybe spent a week or three months there while they tried to find someone to take care of the child. Then, they're released finally and it's not a permanent situation. It's just basically the government saying, okay you don't have to stay in our custody until your case is adjudicated. You can go home with your mom, or your aunt, or uncle, or whatever.

There are lots of challenges faced by our kids. They're dealing often with complex trauma. You hear a lot about trauma and PTSD in this population and your traditional refugees as well that have experienced torture or trauma. This is a level of trauma that many practitioners, here in the U.S., clinicians are not trained to deal with. You know, we're treating the symptoms, the manifestations of trauma, depression, anxiety, self-injury, but we're not equipped to deal with that level of trauma.

Kids are reunified with family often that they haven't seen for many years, even if it's a parent. We are looking at kids who, maybe their parent has been here with Temporary Protected Status and they have no memory of that parent because they left home country when the child was an infant, or one or two years old. That desire to be together is very strong, but the effects of separation sometimes take over. We often see this honeymoon period where for a week or two everyone is really happy to be together and then that anger, resentment from the child starts to come out. That is compounded by the feelings of grief and loss over the people they left in home country, everything that's familiar, the language, the food, the communities that they're coming from. Many of our kids, they feel kind of trapped here, you can't go out. You don't have the freedom here that they feel sometimes at home.

In addition to all of those changes, there's also the stress of their immigration case. The government does not provide an attorney for these kids. So it's up to the person who has agreed to take care of them temporarily to make sure that they have representation and to sponsor the child at a federal custody, you don't have to have legal status. Many of these kids and most of the parents are undocumented. They're working very hard. They don't have the ability to hire an immigration attorney. Most of our kids we see within three or four weeks of being released, they have their first master calendar hearing and where does the family come up with that money? How do they hire an attorney that knows juvenile cases? We deal with a lot of fraud, the "notario" fraud that's very common. So there's that added pressure and then kids have to integrate into school while learning English and dealing with the threat of being deported and getting adjusted to being back with their parent or relative.

We have seen, as a result of the influx that happened last year when so many kids were backed up at the border because there were no beds in ORR's network of shelters, kids were staying on the border for weeks. They opened up military bases temporarily from June to October to accommodate all of these children. They revived a lot of their reunification procedures. Some of the measures they had in place to determine that this person that wants to take care of the child temporarily is actually someone they're related to is not a trafficker. It's not a smuggler trying to get them back so they get the rest of their money for bringing the child to the U.S. They expedited a lot of these releases and many kids were released in seven days, and it's hard to figure out what the child's story is: why they came who they want to be with in that short period of time. We're seeing lots of kids right now who were released last year under those policies who are in crisis, dealing with homelessness, involvement with child protective services because of abuse, neglect, exploitation by the person who received them from government custody.

Another challenge we're dealing with now, I think, as Walter mentioned, there were about 15,000 Guatemalan kids that came last year. That's definitely an increase. Many of these kids that we're seeing do not even speak Spanish. So you're talking about getting them enrolled in school, in ESL, finding a pro bono attorney who will take that on in addition to the cost of hiring an interpreter to be able to understand the child's story. That takes a long time even if it's a language that you speak fluently, and then working through an interpreter, understanding the culture, and how that plays a part. I think for us as social workers, we see the best outcomes when we work collaboratively with the attorney because these kids do have significant histories of trauma. Even an adult who has been traumatized, it could take years for you to tell your story, to begin to heal from that trauma. These kids are looking at proving in Immigration Court why they have a viable asylum claim, or why they qualify for Special Immigrant Juvenile Status. So working closely with mental health practitioners to really understand the story and evaluate whether they do have a claim for legal relief and can stay here long term.

Certainly, I don't want to paint a bleak picture. There are lots of challenges. It is very difficult. As social workers, we try to build on the strengths of the family, but we do see that often, the families come from where there are generations of trauma. Placing this unaccompanied child back with mom or dad, or sister, many of them are coming from the same trauma history, so that's a trigger. It interferes with that person's ability to follow through on helping the child access the services that they need, whether that be mental health or school, or even connecting to the attorney because that sometimes requires the parent to recount some of their history of abuse as well.

We have seen a lot of creative responses to unaccompanied minors and there are thousands of them here in New York. This is a really high release area for the kids. We see schools doing newcomer programs, providing really intensive support to recently reunified children to the parents. We work with a program called

“Families Reunite” and it’s basically an intensive parent/support group to help parents begin the dialogue with their child about the reasons they left; how they can help them adjust now to life in the U.S., how you have those conversations and begin to heal your relationship. I think sometimes we underestimate how much that separation impacts families. Everyone thinks that’s the happy moment when they come back together and really that’s where the challenge begins. We see kids that it takes years for them to really feel a part of their family again and get to know their parent again.

In addition to providing that direct service, we’re also involved in a lot of advocacy efforts. Some of the areas that we’re working on, as mentioned before, the Mexican children represent a very small percentage of the kids, the unaccompanied children that we see. That’s because they are screened at the border to determine whether they have a fear of persecution or whether they’ve been a victim of human trafficking. As you know, because of some of the places these kids are coming from, if they’re being interviewed by an armed Border Patrol Officer in a uniform, they’re not likely to say, yes, I fear persecution. These folks often have no training in working with children or interviewing, forensic interviewing, no clinical background. So they’re missing lots of red flags for trafficking in fear of persecution. I mean, if you ask a child, are you afraid of being persecuted in your country of origin? They don’t even know what that means, and certainly they don’t ask it that way. But they’re missing a lot of these non-verbal cues.

We had recently a girl who had been screened at the border six times. She was a victim of sex trafficking. She was fourteen years old. On her seventh crossing, there was a border patrol agent who recognized that and she was admitted in with the rest of the kids. But we feel like a lot of the kids are being returned back to situations that put them at risk.

Another thing that we’ve been advocating for is that all unaccompanied minors have access to representation because while not every child can stay legally, you don’t want a child being deported because they did not have an attorney represent them. Right? How does a six or seven year old go into court and make a case for their Special Immigrant Juvenile Status or asylum? It’s impossible.

We recently were funded to provide child advocates for kids who had been reunified and then identified by their attorney as having some kind of extenuating circumstance, where their placement had fallen through; they had become homeless or kicked out; or, perhaps, became the victim of trafficking after they were released from federal custody to a sponsor. That does happen quite often and that program was defunded. We worked for a year with the attorney providing best interest recommendations to the Immigration Judges about why the child shouldn’t return to home country. That’s an effort we would like to see continue. Even in our domestic child welfare system, children have access to CASA advocates, somebody who goes into the court and provides that independent recommendation

and these kids are even more vulnerable. We find that even more important.

The last area that we think really needs to be worked on is 85% of kids are reunified, but only 5-10% of them ever receive any follow-up of the services we provide. Only the most extreme cases are eligible for our services. You're talking about 35,000 kids this year will be released and there will be no services. No one knows what happens to them. The person who sponsored them out of federal custody filled out a three page application, had fingerprints done, and then the child disappears. They enrolled in school, nobody knows. Many of those kids will end up working instead of enrolling in school.

You never know if the sponsor follows-up with the child's legal case. We have a very high success rate of children who receive social services after reunification attending court. Our organization has a 96 or 97% court attendance rate and many of our kids do end up getting legal relief. Those numbers are much lower for kids who are reunified with no follow-up. That's a big area of concern.

I will just do a quick plug for our organization. We always are looking for volunteer attorneys. We help match children with pro bono attorneys all over the country and we're always taking interns to help us do those intakes or translate for our pro bono attorneys. If you're interested, please come see me. Thank you.

ELIZABETH CARLSON: Thank you, Tiffany. I think we'll go ahead and open up for questions now from the audience.

AUDIENCE MEMBER: [inaudible question].

ALICE FARMER: The UNHCR's perspective is that they are part of a particular social group. That group can be defined differently, depending on the cases that we're looking at. Certainly, for women who are victims of domestic violence, you will occasionally see that. You'll see families who are considered particular social groups. So where a family member may have been particularly targeted by a gang, you'll be able to bring the other family members in under that kind of particular social group. Occasionally, in cases from Northern Triangle, we're also seeing use of race for people from indigenous backgrounds that are particularly targeted. Olga, I don't know if you have a different perspective.

OLGA BYRNE: The only thing I'll add to that is that it's clearly so complicated, which is why it's so absurd that there's no right to an attorney, right? I mean, nobody could ever argue these cases without an attorney.

ALICE FARMER: Right.

ELIZABETH CARLSON: The other possible ground would be political opinion, that there's been some success at the trial level with arguing that resisting a gang could form the basis for a particular social group. The case law has been sort of in flux in recent years and there have been good and bad cases, I would say. It ends up being sort of like a case-by-case basis—craft something that works.

OLGA BYRNE: I'll just add, we serve kids nationwide and we find that gang based asylum complaints really are not successful that often. The route that our attorneys go is the Special Immigrant Juvenile Status. So if a child has been

abused, if he has been neglected by one or both parents, which many of these kids have, that's why they're fleeing. That's been an easier route for many of our kids.

ELIZABETH CARLSON: Thank you for that.

AUDIENCE MEMBER: [inaudible question].

TIFFANY NELMS: Are you asking about an unaccompanied minor that has been released from custody? That might be a case, a Special Immigrant Juvenile case. We do see what happens and we see kids getting new visas, depending on the situation. The work that we do, the child is our client, but when you work with the children you know you use a family strengthening model. A child is only going to be as successful as the members of that unit, right? We do see a lot of mixed status families and we are able to make referrals for moms, dads, other siblings in the home because oftentimes they also have relief options. I don't know if that answers your question.

AUDIENCE MEMBER: [inaudible question].

TIFFANY NELMS: That's actually a really tricky situation for us because we as social workers are mandated reporters. Any abuse, neglect, we, by law, have to report that to Child Protective Services, or DCFS, whatever you call it here. In theory, they should provide some intervention, right, additional support to the family, to the mother. With the influx—it's always been a challenge for us because depending on where you are, the anti-immigrant sentiment, people's personal feelings about immigrants, interfere with their assessment of abuse. We see kids, we make a child abuse report in Alabama and the investigator is asking, well, when is the next flight to Guatemala? And you're just saying, you know, your purpose here is not as an Immigration Officer, it's as a child welfare person. We find, even when we have to make those calls, it still requires a lot of advocacy and intervention because they're not doing the right thing. They're focusing on the child as an immigrant versus a child.

So that gets really tricky. I think probably in New York you might have, it might be a little bit easier than in some of the other places that we work. I would say, set up those supports for the child. What we try to do is establishing relationships in schools with teachers and guidance counselors, helping them identify helpers, safe people that they can talk to if things at home aren't going well because often the only contact they have outside of the home is at school. So having those conversations with them about—and even about what their rights are. A lot of our kids think that what is physical abuse is discipline, that's what they consider it. So that kind of education is also important.

ELIZABETH CARLSON: Yes?

AUDIENCE MEMBER: [inaudible question].

ALICE FARMER: Absolutely, I was rushing little at the end because I was running out of time. The U.S. has a very high asylum capacity and that means that we have here in the U.S. the capacity to hear individual cases. There's a developed system of case law to determine who is a refugee and who isn't. There is some

legal assistance with that, not enough by any means. But there is the capacity to bring your case to the authorities and have them determine whether or not you are a refugee. Then, there's the capacity to hear an appeal on that if that's not accurate.

Many of the other countries I've worked in have little to nothing of that. Mexico, at the moment, I believe, has thirty-two officials in its entire asylum division. I have no idea what the count is for people at the Department of Homeland Security and the United States Department of Justice who hear these cases. But it's, it must be a hundred fold of that. That's what we mean by asylum capacity. What we want refugees to be able to do is first be able to get into a country and have someone not close the border; get basic assistance right when they come over the border. You're saying somewhere to sleep—shelter and the basics. Then, we want them to be able to bring their case and have a legitimate claim for asylum if they need it. Then, once we're at the other end of that, if they don't have the claim for asylum, a human system for returning them to their country of origin.

AUDIENCE MEMBER: [inaudible question].

OLGA BYRNE: Sure, the Convention on the Rights of the Child is the most widely ratified U.N. Convention. Literally, every country in the world has ratified it now since this year because Somalia was the last holdout other than the U.S. Why the U.S. hasn't ratified it is a great question. I think there was some concern over parental rights, which actually was kind of a baseless concern because one of the key principles of the CRC is that the family is, the child's parent, the family is really the primary duty bearer of insuring the child's rights are fulfilled. So insuring that the family has the capacity to do that is part of the CRC.

I think it's a shame that it's not ratified. Some representative in Congress, recently, in light of that, proposed a Children's Bill of Rights, which had a lot of the same principles.

AUDIENCE MEMBER: [inaudible question].

OLGA BYRNE: It didn't go anywhere. But there are some ideas there at least. Although it might become, you know, people are saying it is kind of now customary international law so there should be more legal arguments and litigation based on the CRC.

ALICE FARMER: In some countries, in the majority of countries the head of state has the capacity to sign and bind a country to a treaty. The DOS requires ratification through the Senate. There's a perceived Senate rule as well, which I think is not actually a rule but something that a lot of people perceive exists. That is, you can only have one multilateral human rights treaty pending at a time and we've had the Women's Rights Convention pending for thirty or forty years.

ELIZABETH CARLSON: Any questions?

AUDIENCE MEMBER: [inaudible question].

ALICE FARMER: I think one of the interesting things that's happened since Paris is that the French government has increased the number of resettlement places

to Syrian refugees.

AUDIENCE MEMBER: [inaudible question].

ALICE FARMER: That's not the approach we're seeing here.

AUDIENCE MEMBER: [inaudible question].

ALICE FARMER: I can continue to talk more, but I think other people might have input. One of the concerns that I would have is that we had more of an opening to start talking about resettling more refugees; that, Obama had brought up the quota. I think it was about six weeks ago, or two months ago, Obama announced he would take the refugee resettlement quota from about 70,000 a year, which is where it's been since September 2001. September 11, 2001—it's been at 70,000. He was going to take it to 85,000 and then back up to 100,000. It was around 100,000 a year prior to September 11. I think it's going to be very, I would be surprised if we make those targets at this point.

AUDIENCE MEMBER: [inaudible question].

OLGA BYRNE: I'll just quickly add. I think you're right, too. I think you're kind of implying that could also create a more general backlash, and I think; absolutely, and unfortunately we're going to see that against asylum seekers, children.

TIFFANY NELMS: With the children specifically, we have been seeing that since the surge happened in 2014. You think a couple of years before that we were seeing between five and seven thousand kids a year. Then, suddenly 70,000 kids come into the U.S. and 85% of those kids get reunified with a parent or relative in high release areas in Virginia, in Florida, in New York. The schools were not ready to receive all these kids. We saw schools, although it's illegal, denying enrollment or encouraging kids who were old enough to bypass public high school and go to adult education, two or three hours a couple of days a week.

The same thing with the CPS response because during the surge they were expediting reunification of children, not thoroughly assessing these placements. They broke down very quickly. Kids were abused, homeless, whatever. Child Protective Services didn't know what to do with all of these kids. They don't have the funding for that. So we saw a lack of response to really serious abuse and neglect.

ALICE FARMER: So there's certainly some—I can share some resources on UNHCR's guidance towards lawyers. We have a number of sort of different levels, but some are just like two pages and then the twelve-pager and then the sixty-pager. We can go as deep as you want. But also, I know there are a number of U.S. pro bono programs that are very good, including one at Human Rights First, where Olga works. I think you guys probably have some introductory materials or something on those lines?

OLGA BYRNE: Sure, at our website [humanrightsfirst.org](http://humanrightsfirst.org), or I could perhaps send stuff around. Sure.

TERESA WOODS: Here, at Cardozo Law, we have the Refugee Representation

Project. If audience members are interested in getting involved, please contact me, or reach out through the website by finding the Human Rights and Atrocity Prevention Clinic. We represent asylum seekers in these processes, and would welcome your help.

ELIZABETH CARLSON: Any other questions from the audience?

AUDIENCE MEMBER: [inaudible question].

OLGA BYRNE: One would think it was really surprising. I think a lot of people feel that the Obama administration sold out certain groups of immigrants in order to push forward their executive action proposal, which obviously got stuck in the Fifth Circuit and now it's going nowhere. But they had to say, we're tough on the border, in order to give some kind of temporary status to people who were living here. Actually, I will just add, I don't think they were not violating it before. They were, just last year; they started to massively violate it, which brought a lot more attention.

ELIZABETH CARLSON: Is that sort of the attitude you were talking about: we're going to send a message? Do you think that—I mean, where does that come from, like this reluctance to see these as refugees, you know, folks as refugees the proximity in fear of floodgates or . . .

OLGA BYRNE: I think it's fear of floodgates but there was plenty of information from UNHCR. The Children on the Run Report was already out at that time. There was no lack of data that we were talking about a refugee crisis already. I think it's just political pressure and a lot of it that they had to put on that tough on the border face.

ALICE FARMER: I think the U.S. has a very good reputation globally on refugee rights, partly because a quarter of the budget for UNHCR comes from the United States. The United States resettles more refugees than the rest of the world put together, until this year. We need to see what's happening in Europe. The United States has developed jurisprudence on asylum, has a strong reputation that's a strong part of its history. But what's happening now is closer to home than anything has been in a while. I think that's shifted to how it's dealt with politically here.

ELIZABETH CARLSON: We have time for maybe two more questions from the audience. I have a question. You mentioned to me the Special Immigrant Juvenile process. Can anyone kind of give us a primer on what that involves, a background on what that is?

TIFFANY NELMS: As I mentioned, a lot of our kids are eligible for the Special Immigrant Juvenile status. That involves someone getting legal guardianship of them and there's a special, the judge has to validate that history of abuse or neglect. Then the child can file for that; it's a two-part process—one in family court, and the immigration piece. In New York, the kids can do that family court piece until twenty-one. In other states, it's just until they turn eighteen. We see a lot of, we have a lot of challenges with this because some counties think that the Family

Court Judge thinks it's not his jurisdiction to be making decisions on immigration matters. Even though the law says that they should be making this determination, if the child is, somebody is petitioning for legal guardianship, and the child has been abused or neglected, but that should be included in the order. We see judges refusing to do that. Then, it takes a lot of advocacy to undo that.

Kids are missing their opportunity to get Special Immigrant Juvenile status. I mean, some places we work it's easy. New York is quite easy. Virginia, it's easy. Maryland, it's easy. California, we have a difficult time with the one parent Special Immigrant Juvenile status. If the child has been abused again and neglected by both parents, those go through quickly. The Family Court—if it's one parent they're often denied. So there's a lack of uniformity in how that law is being applied. That is frustrating for our social workers, our families, and even our pro bono attorneys. They're taking on sometimes, depending on where they are, this case could be a real nightmare for them and that makes it difficult for us to match kids with volunteer attorneys.

We were at a meeting a couple of weeks ago with USCIS and Homeland Security and they were saying this fiscal year that just closed they received 8,000 petitions for Special Immigrant Juvenile status and there's a 10,000 cap on the special immigrant visas. So the attorneys were asking well, what happens, the surge in kids coming, we expect this number to continue to increase. That process will get delayed even more.

ALICE FARMER: I have a quick follow-up question. You said that it is sometimes better to go for Special Immigrant Juvenile status than for asylum. Do the kids get the same—does it confer the same level of rights in the U.S. both processes?

TIFFANY NELMS: It does. The only issues sometimes, and our attorneys struggle with this too because if a child is able to adjust through Special Immigrant Juvenile status, even if they're living with the non-offending parent. They can never help that parent adjust. That's another area of advocacy that our attorneys, struggle with. If you've been abused by dad, and mom is also a victim of domestic violence, the child can get SIJS, but then you have to explore other options for the mother.

ELIZABETH CARLSON: Final question from the audience?

AUDIENCE MEMBER: [inaudible question].

TIFFANY NELMS: That's true. One of the things we struggle with is kids that come here and this is not a huge problem, but it's something we see that happens often because the kids are reunified with family. They don't have the support they need. They are discriminated against in school. They have a history of complex trauma. They don't have access to mental health services. These things turn into behaviors and sometimes lead them into being arrested and that complicates their immigration case.

We try to prevent those things from happening. But as you know, you can't

always. Then, just providing that advocacy so that it can be seen as a trauma issue versus the child is a delinquent, and getting the family buy in about why it's so important to follow up on these services because otherwise your kid goes down this path that will bar them from being able to stay legally.

The gang recruitment issue, kids who have been recruited into gangs in home country, I know that's a little trickier when they're filling those forms and having to say whether they ever have and I'm not sure what the response to that is.

ALICE FARMER: I think there is a waiver you can apply for, a waiver of the bar to asylum that will come from being in a gang.

OLGA BYRNE: There's no *per se* bar to asylum based on gang membership that could implicate bars, like there's a bar, for example, if you committed what's called a serious non-political crime. But simply being in a gang on its own is not *per se* a bar to asylum, nor is having a criminal record. It just depends on the facts and circumstances of each particular case, I guess.

ELIZABETH CARLSON: I think we're out of time. Thank you so much to our panelists.