

# THE (MIS)TREATMENT AND (NON) EDUCATION OF UNACCOMPANIED IMMIGRANT CHILDREN IN THE UNITED STATES



Ruth M. López  
University of Houston

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**National Education Policy Center**

School of Education, University of Colorado Boulder  
Boulder, CO 80309-0249  
(802) 383-0058  
[nepc.colorado.edu](http://nepc.colorado.edu)

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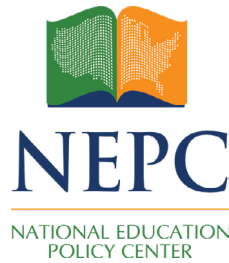


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## I. Executive Summary

The focus of this brief is on the education of unaccompanied immigrant children (UICs) who arrived from Central America (mostly El Salvador, Guatemala, and Honduras) and Mexico, fleeing violence and poverty in their countries. Beginning in 2014, increasing numbers of UICs arrived and were apprehended at the United States border with Mexico, averaging about 50,000 each year, with the largest numbers in 2019.

Upon arrival, these children encounter a complicated immigration legal system, while having to navigate a new society within an anti-immigrant sociopolitical context. In recent years, these unaccompanied children have been exposed to traumatic situations such as overcrowded detention centers and abuse. Additionally, thousands of children who arrived with their parents or another adult were separated from them, essentially becoming unaccompanied.

The educational rights of UICs are nominally protected but often violated. They cannot legally be held longer than 20 days in custody before being released to a sponsor, and while they are in custody, they are to be provided with adequate educational services. But the education provided while in custody is often minimal or nonexistent. Partnerships between districts and shelters are also complicated, as states such as Texas prohibit the use of state funds by public and charter schools to support the education of children in shelters and in detention. If UICs are placed with a sponsor, they are entitled to a public education just like any other child in the U.S., but this legal right is also not always honored by schools and districts. In some cases, schools steer UICs towards alternative programs, which may limit the long-term outcomes of these students. Additionally, given that some UICs migrate due to financial need, some seek full-time employment rather than enroll in school. More recently, due to the changes in schooling with COVID-19, additional access challenges may arise for

this group of students. The good news is that data are increasingly available in recent years for those who do enroll in school about the school-level supports being provided. But many unanswered questions call for additional research.

Considering this sociopolitical context, this brief examines what the available research tells us about UICs' educational experiences in detention, in shelters or foster care, and in public schools. It also considers the research about how schools and districts can support these children in asset-based and equity-centered ways. I apply the theoretical frameworks of Critical Race Theory and Latino Critical Race Theory to examine the terminology and framing of UICs, the legal and historical context that impacts their lived reality, and their experience in the United States from 2014 to 2020. Trump administration policies, particularly since the onset of the COVID-19 pandemic, exacerbated injustices and humanitarian concerns that predated them. This legacy leaves the new administration—and others—with much to do to alleviate the trauma suffered by UICs and to ensure that they receive necessary educational and coordinated supports.

## **Recommendations**

This analysis leads to the following recommendations for national-level policymakers, district and school leaders, and researchers:

### *Policymakers*

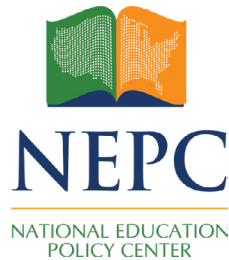
- Cease child and family detention and family separation, and discontinue the Trump-era immigration policy of expelling UICs during the COVID-19 Pandemic (Title 42).
- Prioritize the unification of children with families or sponsors. This can also lead to UICs entering the public school system with less delay.
- Develop stronger interagency processes, given that UICs engage with various agencies the minute they enter the country. This could also strengthen post-release services, including a smoother transition into public schools if education records are kept in a shared database.
- Push for more accountability from detention centers and shelters to ensure they are providing quality educational access to students. One way to address this is by allowing shelters to partner with local public schools and districts.
- Create guidance documents and fact sheets—accessible to shelters, schools, and districts—explaining the policies that protect UICs and recommendations on how to support UICs' transition into public schools.
- Provide resources and funding for schools and districts educating UICs.

### *District and School Leaders*

- Partner with social workers and other mental health professionals to bring in school-based support to address the trauma that many UICs face prior to arriving in the U.S. and during detention.
- Implement equity-centered models allowing for UICs to learn in asset-based ways that leverage the knowledge they and their families bring to schools. This might also include inclusive practices that allow for UICs to work while attending traditional school.
- Partner with legal service providers such as nonprofits and law clinics to address the well-documented lack of access to legal support for UICs and the absence of knowledge by educators regarding policies that affect these students.

### *Researchers and Universities*

- Partner with schools, districts, and other agencies or nonprofit organizations to provide guidance about the policies that protect UICs and develop research-based practices that support UICs.
- Further develop frameworks specific to the experiences of UICs.
- Examine the impact of COVID-19 on UICs' educational experiences.
- Extend previous research that documents the lives of undocumented students in schools, by considering the unique context UICs experience and the reality that many UICs come from indigenous communities. This might include more studies that engage UICs in the research process through Youth Participatory Action Research (YPAR) and supporting more research by Central American and Indigenous scholars.



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## II. Introduction

Images of Central American and Mexican Unaccompanied Immigrant Children (UIC)<sup>1</sup> arriving at the border between Mexico and the United States beginning in 2014 are widely recognizable. Media often portrayed their arrival as happening in “surges” and “waves” given the increase in numbers compared to previous years.<sup>2</sup> For some, these descriptors can also be interpreted as a national threat and thus overshadow the dangers and challenges these children face prior to, during, and after their journeys.<sup>3</sup> From 2014 to as recently as 2020, most unaccompanied children arrived from Central America (namely El Salvador, Guatemala, and Honduras) and Mexico.<sup>4</sup>

Although unaccompanied children arrived at the U.S. border in the years prior to 2014, that year saw increasing levels of unaccompanied children who arrived and were apprehended at the United States border with Mexico, averaging about 50,000 each year, with the largest numbers in 2019.<sup>5</sup> Various reasons explain an increase in children migrating, such as fleeing violence and poverty, seeking employment, and reunifying with their families.<sup>6</sup> Many of the children arriving from Central American countries and Mexico are indigenous and often speak indigenous languages,<sup>7</sup> a reality that contradicts assumptions that all these children’s first language is Spanish.

Existing policies dictate the protections to which UICs are entitled once they arrive at the U.S. border; however, under the Trump Administration and even past administrations, these policies were not followed. Pursuant to these policies, children apprehended by Customs and Border Patrol (CBP) were to be automatically transferred to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services.<sup>8</sup> Then children were to be placed in an ORR-sponsored shelter, which may be a foster home for younger children or a group home for children older than five years old. In ORR shelters, a case man-

ager processed sponsor applications to release the child to that sponsor.<sup>9</sup>

As noted, many of these procedures were not followed under the Trump administration. Moreover, during the Obama administration the detention process for unaccompanied children and families coming from Central America raised ethical and humanitarian concerns. For example, under President Obama, deportations increased and parents and children were held in family detention centers; children migrating with their fathers were often separated.<sup>10</sup> Specific to UICs, immigrant rights groups criticized that the court appointments to determine whether children were eligible for deportation relief took place a long distance from where the child was living, thus creating an unreasonable expectation.<sup>11</sup> Under the Trump administration, pre- and post-COVID-19, there was a clear violation of the policies in place to protect UICs and no doubt that the detention, separation, and sometimes expulsion of children and families happened in an egregious and traumatizing way.<sup>12</sup>

Before migration and in their interactions with various federal agencies, UICs often face traumatic experiences, including prolonged separation from their families.<sup>13</sup> After navigating a complicated immigration system, where they may not receive proper services such as education, health, or legal support, UICs have the right to attend public schools once placed with a sponsor. However, the transition to schooling is not seamless and can present other unique obstacles that affect learning conditions. At the same time, there remain many unknowns regarding the educational experiences of UICs during and after detention.<sup>14</sup> Although UICs are unique in their experiences, they share some similarities with other newcomer and immigrant youth. Thus, previous research about immigrant children can help inform practices that support this growing population of students and their families while honoring their backgrounds and lived experiences.<sup>15</sup> Given the shift to a new presidential administration, this issue of education and UICs is ongoing, and new changes to policies affecting UICs may be underway. Although at the time of writing the Biden administration has not released specific details about a proposed immigration bill, *The U.S. Citizenship Act of 2021*, we know that the bill “provides funding for school districts educating unaccompanied children.”<sup>16</sup> This is a critical piece in being able to provide adequate educational services to one of this country’s most vulnerable populations.

*This brief addresses two questions: 1) What does research tell us about unaccompanied immigrant children arriving to the U.S.? and 2) How do unaccompanied immigrant children experience education, and how can schools and districts support them?*

Considering this sociopolitical context, this brief addresses the following two questions: 1) What does research tell us about unaccompanied immigrant children arriving to the United States? 2) How do unaccompanied immigrant children experience education, and how can schools and districts support them? To explore these questions, this brief is guided by theoretical frameworks of Critical Race Theory (CRT) and Latino Critical Race Theory (LatCrit).

The theories provide a lens through which to examine the terminology and framing of UICs, and the legal and historical context that has determined the protections that exist today for children in detention. A discussion of recent developments follows, such as UICs arriving in the United States from 2014 to 2020 as well as the mistreatment of UICs in a Trump and COVID-19 era. In the discussion and analysis section, the brief examines the education of UICs in public schools once in the care of a sponsor. It closes with limitations of research,

unanswered questions, and recommendations.

## Positionality and Scholarship

All researchers approach their work with a set of values and experiences, and this positionality influences the questions asked, the methods used, and the interpretation of data. Scholars have noted the importance of discussing one's subjectivity and positionality when engaging in research.<sup>17</sup> This reflection allows researchers to have clarity not only about what they found, but to also critically examine the lens through which they engaged in the research. I am sharing my positionality to be transparent about my relationship to this topic, including the responsibility I feel to it, and to hopefully humanize undocumented immigrants who are often dehumanized in mainstream discourses.<sup>18</sup>

I am the U.S.-born daughter of a Central American mother who arrived in the United States from El Salvador in 1977 as an unaccompanied minor at the age of 17. This perspective informed the research process I undertook to produce this brief. My entire life I have been a witness to the stories of *conocidos* [family and community members] who either arrived in the U.S. as children accompanied by their parents or who also arrived here unaccompanied. Tragically, in the last 10 years, I lost four close relatives to murder in El Salvador; the violence that many flee is not just a headline for my family. I have also witnessed the heartbreaking beauty of transnational *familismo* [familial bond] my mother has maintained with her remaining family in El Salvador over 40+ years. I share all this to demonstrate that stories about unaccompanied immigrant children are not as one-sided as they are often portrayed in the media, and they are also not entirely new. I understand that these migrations occur within a global historical and sociopolitical context.

Yes, UICs have fled war, gang violence, and poverty, but their decisions are influenced by many factors, including interventions by the United States government spanning several decades.<sup>19</sup> As Chavez and Menjivar stated, "the lives of migrant children, today more than ever, are frequently shaped by forces and events taking place simultaneously in more than one national context and within the cultural reproduction of multiple communities."<sup>20</sup>

Finally, my ethical perspective, grounded in my standpoint, for taking on this research is reflected by Salvadoran immigrant scholar Abrego's words: ". . . a researcher's positionality—in my case as a racially marginalized woman with working-class sensibilities—also entails an *emotional positioning* and that emotions, rather than their denial through an expectation of 'objectivity,' produces more honest and ethical research."<sup>21</sup>

## III. Review of the Literature

### Critical Race Theory and LatCrit

In conducting the research for this brief, I drew upon the contributions of scholars who have examined how the discrimination and racist nativism faced by immigrants from Latin-American has a long history in this country and continues today.<sup>22</sup> In particular, I use the



work of CRT and LatCrit scholars, with that work serving as lenses to examine the treatment of Central American UICs in the United States.

CRT originated in the legal field decades ago and acknowledges the foundational permanence of racism in society.<sup>23</sup> Since then, it has been applied in several other fields, including education.<sup>24</sup> Complementary to CRT is LatCrit, which considers the unique ways that members of the Latinx<sup>25</sup> community have faced oppression linked to race, language spoken, accent, immigration status, culture, surname, and other features and factors.<sup>26</sup>

CRT and LatCrit scholars have identified central themes of these frameworks, such as the centrality of race and racism; intersectionality; challenging dominant ideology; a commitment to social justice and social transformation; and the importance of experiential knowledge sometimes brought to the surface in the form of counterstories.<sup>27</sup> These frameworks are helpful analytical tools when considering the experiences of UICs within the legal system, education system, and broadly in the anti-immigrant sociopolitical context present in the United States.<sup>28</sup> In the sections that follow, I bring to bear some of these tools and lenses to help build an understanding of the educational issues and policies surrounding UICs.

## **Terminology and Framing of Unaccompanied Immigrant Children**

Under the office of Department of Homeland Security, UICs are classified as unaccompanied alien children (UAC). However, “alien” is a dehumanizing way to describe any individual, and some political leaders (most recently President Biden’s administration) have pushed for eliminating this word from government use.<sup>29</sup> More recently during COVID-19, under authority granted by the Center for Disease Control, the border patrol has been classifying UICs as “single minors.” One article in the El Paso Times noted that “...they are the same kids. The new designation is more than semantics, advocates say: It allows the government to avoid triggering the anti-trafficking law that protects vulnerable people, especially children.”<sup>30</sup>

These ways that children migrating from Central America and Mexico have been described by the government and in media has many implications. Examining the terminology and framing of unaccompanied immigrant children through a LatCrit lens can bring attention to the racism present in policy discourses and in the treatment of UICs in society.

As Chavez and Menjivar discussed, the various characterizations of unaccompanied migrant minors matter for policy and legal purposes:

Each categorization reflects the policies and positions of receiving or transit countries regarding this phenomenon, and each triggers varied policy responses, including legal actions that can lead to immediate deportation, which are based on the technicalities of the definition used.<sup>31</sup>

Thus, there are tangible consequences for UICs depending on their classifications. Terminology also has implications for how UICs are framed. Berger Cardoso et al. shared the following regarding the similarities amongst various groups of undocumented children:

In some ways, the needs of youth identified as “unaccompanied” may not be so different from the needs of undocumented youth who cross as accompanied or those who evade apprehension. These juridical, and in many ways arbitrary, distinctions may marginalise some groups of youth (e.g. undocumented youth) and reinforce problematic narratives about ‘deserving’ versus ‘un-deserving’ groups of migrant children.<sup>32</sup>

Narratives about deservingness within this group of children have implications for how they are perceived by the public and policymakers.<sup>33</sup> Aligned with this idea, in her research on the construction of Central American unaccompanied children and narratives of deservingness in newsprint media, Pérez Huber identified contradictory ways that this group can be represented, such as being perceived as a threat and as economic burdens, but also as being in need of protection and facing a humanitarian crisis.<sup>34</sup> Through a LatCrit lens, one can also discern how particular frames and narratives used for UICs reinforce racist nativist ideologies and other negative stereotypes about immigrants that shape deservingness.<sup>35</sup> Pérez Huber adds that these narratives, “establish parameters of racist nativism that assign a non-native status to Latina/o immigrants, while reinforcing the perceived native and superior status of the dominant group, historically constructed as whites.”<sup>36</sup>

## Legal and Political Context

Thousands of unaccompanied children who have withstood the violence of their Central American homelands are being detained in refugee camps in the United States. Most of them are living in shameful conditions without access to basic necessities such as education, health care, or legal services.<sup>37</sup>

This was written by immigration and legal scholar Michael Olivas in 1990, but the statement could be applied even today when considering the conditions in some detention centers known as *hieleras* [freezers].<sup>38</sup> These conditions – then and now – are evidence that the treatment of UICs is about the incarceration, expulsion, and ultimately criminalization of immigrant children.<sup>39</sup> Research in law and other academic fields has, since the early 1990s and 2000s, explored and documented the treatment of UICs who arrive in the United States.<sup>40</sup> In the following section, I discuss policies that have implications for the treatment of UICs arriving in recent years.<sup>41</sup> I also discuss the education conditions UICs face while in detention.

The 1997 Flores Settlement Agreement (FSA) is the most widely cited policy that affects the treatment of unaccompanied children.<sup>42</sup> According to López, “The FSA laid out basic treatment standards and requirements” for unaccompanied children in U.S. custody.<sup>43</sup> However, she also argued that “FSA has never been fully implemented in practice” and abuse of children in detention continues.<sup>44</sup> The FSA originated from the case of Jenny Flores, an unaccompanied 15-year-old child from El Salvador who arrived in 1985 and was held in unsafe conditions in a detention center for two months.<sup>45</sup> While in detention, she was regularly subjected to strip searches, had limited educational or recreational opportunities, and minors in the same facility shared “bathrooms and sleeping quarters with unrelated adults of both sexes.”<sup>46</sup> In the original lawsuit, titled *Flores, et al. v. Reno* at the time of the settle-

ment, concerns were raised about overcrowding in detention centers, post-traumatic stress disorder (PTSD) from trauma faced in detention centers, and stigmatization from being detained. Arguments also suggested that holding children for long periods of time was used as a strategy to discourage more migration.<sup>47</sup> This violation of rights ignored the traumatic reasons that many UICs first came here and instead inflicted a new type of trauma. The parties ultimately reached the settlement 12 years later in 1997, and the parties stipulated that unaccompanied children must have access to food and water, medical assistance, toilets and sinks, ventilated spaces, and be separated from unrelated adults.<sup>48</sup> The settlement also required that children be released from detention within 20 days to an adult sponsor or be placed in the least restrictive location. Finally, it established standards for the care and treatment for children in detention, including that education should be provided to them.<sup>49</sup>

The 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) codified some of the FSA protections for Central American unaccompanied children.<sup>50</sup> TVPRA sought to protect against human trafficking, and it includes several requirements for the treatment of unaccompanied children in U.S. custody. TVPRA states that unaccompanied children should be placed in the least restrictive environment and placed under the care of the Department of Health and Human Services (DHHS).<sup>51</sup> This policy also states that the Department of Homeland Security must transfer unaccompanied children to the Office of Refugee Resettlement (ORR) under DHHS within 72 hours of taking the children into custody.<sup>52</sup> However, TVPRA does not provide the same process for children who migrate with their parents or for unaccompanied children from Mexico and Canada. Under a contiguous country provision, these children should be screened for eligibility for protections if they are victims of human trafficking or have an asylum case, but unaccompanied children from Mexico often face expedited removal without due process.<sup>53</sup>

Although these protections through the FSA and TVPRA were put in place for detained children, violations have occurred since the time they were implemented.<sup>54</sup> In 2016, lawyers filed motions asking for FSA to be enforced, and in 2017 U.S. District Judge Dolly Gee ruled as follows in *Flores v. Sessions*:

... almost all Rio Grande Valley sector facilities in which children and adults were kept had unsafe and unsanitary conditions, with inadequate food, inadequate access to clean drinking water, inadequate hygiene, cold temperatures and inadequate sleeping conditions. Further the court concluded the government has failed to: make repeated efforts to release children, ensure that children are not kept in secure, non-licensed facilities (like the facility in Dilley, Texas), and release children within the court's 20-day limit.<sup>55</sup>

The judge ordered that a Juvenile Coordinator be appointed to ensure compliance in detention centers.<sup>56</sup> Even more recently in 2019, Sarah Fabian, the senior attorney of Department of Justice's Office of Immigration Litigation, received national attention after arguing before the United States Court of Appeals that it was "safe and sanitary" for children to be held in detention without soap or toothbrush or other basic necessities.<sup>57</sup> Attorney and former federal prosecutor Ken White pointed out that "government's 'safe and sanitary' argument did not arise from a new case generated by Trump-administration policies," and noted the original *Flores* lawsuit in 1985 where the government made the same argument.<sup>58</sup> This 2019

appeal occurred under the Trump administration, but it began under the Obama administration, so White warns that “it’s wrong to think the problem can be cured with a presidential election.” These long-standing inhumane conditions are important to consider before transitioning to the discussion about the education provided to children while in detention, given that it is well-documented that even the bare human necessity of water has at times not been provided to those in detention.

## **Education in Detention and ORR Placement**

Education for unaccompanied children while in detention has been brought up as a concern as far back as the original *Flores* lawsuit in 1985. Navarro mentioned that “the INS facility in which Flores and other minors were detained provided few opportunities for recreation, [and] had no educational programs . . .”<sup>59</sup> As a result, the FSA stipulates that while they are in custody children are to be provided with adequate educational services.<sup>60</sup> Rheume summarized the educational requirements found in FSA as the following:

The settlement called for “an educational assessment and plan” for each child and provided that students should receive an education appropriate for their progress. Monday through Friday, the children were to be taught a curriculum focusing on “basic academic competencies and secondarily on English Language Training.” The settlement listed “Science, Social Studies, Math, Reading, Writing and Physical Education” as subjects that should be taught, much like HHS guidelines. Additionally, the settlement stipulated that materials in languages other than English should be available for the students.<sup>61</sup>

Rheume noted that although the aforementioned are requirements, “it is unclear whether these conditions are met, or whether they are effective in practice.”<sup>62</sup> These unknowns remain partly because officials and non-profit organizations are often not allowed inside.<sup>63</sup>

While under the care of the ORR, UICs should attend school on site while in shelters, but “the classrooms tend to be overcrowded, curricula repeat every month, and shelter programs do not always hire bilingual staff or have educational assessments completed by teachers.”<sup>64</sup> By most accounts, the education provided while in shelters does not compare to the education these children would receive in public schools. In recent years, as overcrowding and lack of funds became an issue, there was even more evidence of no educational activities being provided for children while in detention.<sup>65</sup> The lack of access to proper education services while in custody has long been noted,<sup>66</sup> with reports of children being “drugged so heavily they even fell asleep at desks.”<sup>67</sup> Such inhumane treatment appears to be endemic within immigration facilities – not just those detaining UICs. At the Hutto family detention facility in Texas, children were made to wear prison uniforms and “received little or no recreational or educational opportunities.”<sup>68</sup> In 2007, after claims of violations of FSA, a settlement was reached and, among several requirements to protect children, there was a requirement for more educational programming at Hutto.<sup>69</sup>

The education of unaccompanied children while in detention is handled completely separately from the education they have a right to once they are released to a sponsor. Once children are released to a sponsor, they can enroll in public schools given *Plyler v. Doe*

(1982), which held that undocumented children must be given access to public education tuition-free in the United States.<sup>70</sup> This ruling and the education of unaccompanied children in public schools is discussed in more detail further in the brief. Thus, the educational experiences of children who are kept in detention long-term, those placed in foster homes, and those released with family vary widely.<sup>71</sup>

Citing the 1997 FSA, Acosta shared that “. . . unaccompanied minors without a sponsor or guardian are left in the care and custody of the [ORR] and are denied the opportunity to enroll in and attend a local public school.”<sup>72</sup> Although school districts in some states have partnered with shelters to provide some educational resources, in Texas, the Texas Education Agency (TEA) does not allow public or charter schools to use state funds to “provide teachers or resources to shelters and detention centers.”<sup>73</sup> This reality could change depending on what is included in the Biden administration’s immigration bill about funds for schools educating unaccompanied children.<sup>74</sup>

Unaccompanied immigrant children and all children in detention deserve a public education in a safe environment outside of incarceration. However, the United States is one of the only countries that has not ratified the United Nations Conventions on the Right of the Child (CRC), which could offer additional protection for UICs.<sup>75</sup>

#### **IV. Recent Developments: Trump Era and COVID-19**

The majority of articles about unaccompanied migration were published from 2015 to 2020, coinciding with the rise in UICs arriving at the Mexican border starting in summer 2014.<sup>76</sup> A discussion of the overall findings from this research is included in this section and in the “Discussion and Analysis” section below. The research addresses the condition of children in detention, their health (including concerns about mental health and trauma faced in detention), legal rights, education, and other social services.

In the 2016 presidential campaign, Donald Trump ran on an anti-immigrant platform that touted plans for a wall between Mexico and the United States. As a candidate, he pushed racist narratives about immigrants, particularly those arriving at the Southern border. His discourse and political action demonstrate that racist nativism overtly affects the lives of immigrants in this country. He followed through on many of his promises, and from just spring 2017 to July 2018, over 4,000 families were separated at the border, leaving children unaccompanied.<sup>77</sup> At the end of 2020, hundreds of children were still separated from their parents, many of whom have been deported.<sup>78</sup> Advocates and health professionals are deeply concerned about the long-term effects on the mental health of these children and their parents.<sup>79</sup>

Although access to legal services for unaccompanied children has always been a challenge, under the Trump Administration, the rights to procedural protection further diminished. The COVID-19 pandemic brought on a new set of challenges for UICs, and at least 13,000 children among 200,000 immigrants who arrived at the southern U.S. border were expelled without due process between March and October 2020 under Title 42, a section of the Public Health Safety Act.<sup>80</sup> The Trump administration asserted that it invoked Title 42 to prevent the spread of COVID-19; however, the Center for Disease Control and Prevention (CDC) in-

licated at the time that there was no evidence this practice would slow the coronavirus.<sup>81</sup> In August 2020, the ACLU, along with Oxfam and the Texas Civil Rights Project, filed a class action lawsuit against the Trump administration for denying UICs procedural protections, holding them in hotels, and expelling them from the country.<sup>82</sup> They called it “the most extreme asylum ban yet.”<sup>83</sup> Texas Civil Rights Project senior attorney Karla Vargas commented that this policy sought to weaponize the pandemic and “destroy long established protections for children.”<sup>84</sup>

In November 2020, a federal district judge in this case ruled against expelling UICs without due process, but some expulsions still occurred after this date.<sup>85</sup> The issue is ongoing and in January 2021, a panel of the DC Circuit Court of Appeals suspended the lower court order, thus giving “U.S. border officials permission . . . to swiftly expel unaccompanied migrant children from American soil without a court hearing or an asylum interview.”<sup>86</sup> It is not yet known how the Biden administration will respond to this ruling and whether he will rescind the Title 42 policy allowing for these expulsions.<sup>87</sup> Importantly, this lawsuit and other grievances about the way that UICs are being treated have all occurred while the FSA and TVPRA still stand. Having these laws on the books is not enough. Moreover, these recent developments are important to discuss due to implications the current political context has for all social services that UICs are entitled to, including education.

## V. Discussion and Analysis: The Education of Unaccompanied Children in Schools

### Navigating Access to Public Schools

If unaccompanied immigrant children are reunited with a sponsor, they can enroll in public school pursuant to the U.S. Supreme Court’s decision in *Plyler v. Doe* (1982). The plaintiffs in *Plyler* were undocumented parents in Texas who were subject to a state law authorizing school districts to require such parents to pay for their children’s public schooling.<sup>88</sup> The defendants made several deficit-based arguments to bar access to public education to undocumented children that were rejected by the U.S. Supreme Court, such as proposing that excluding undocumented children would improve the quality of education in the state.<sup>89</sup>

Yet, even though *Plyler* states that UICs have a right to a K-12 public education regardless of their legal status, some schools and districts have impeded enrollment for UICs.<sup>90</sup> For example, schools might request school records from the home country or official government identification, and some schools and districts have encouraged these students to enroll in alternative programs or adult education and not in their zoned schools.<sup>91</sup> Furthermore, the McKinney-Vento Act, which was passed in 1987 and reauthorized in 2015 under the Every Student Succeeds Act, “ensures that homeless or unaccompanied K-12 students have equal access to a free and public education.”<sup>92</sup> Under this Act, public schools must accept and immediately enroll homeless students regardless of immigration status or residence.<sup>93</sup>

Scholars have noted education leaders’ lack of knowledge about *Plyler* and other policies, affecting undocumented students’ access to education.<sup>94</sup> Although some schools and districts

may engage in these restrictive practices unintentionally or without much attention, other districts are more overt and attention-seeking. For instance, in 2014, districts in North Carolina passed resolutions calling for the removal of unaccompanied children.<sup>95</sup> These types of public anti-immigrant statements serve to weaponize education and have implications for the treatment of UICs in schools.<sup>96</sup> Appearing to be a counter to lack of proper implementation of inclusive practices and laws such as *Plyler*, that same year, the Obama administration issued a “Dear Colleague” letter with guidance to state agencies clarifying that undocumented children have access to publicly funded education.<sup>97</sup>

The various challenges faced by UICs in accessing public education after detention demonstrate that although they legally have the right to attend public schools, they must still navigate many challenges that may be exacerbated by an anti-immigrant climate and deficit views of students.<sup>98</sup> For example, suggesting that a student enroll in an alternative program rather than a traditional public school could imply that the student comes to school with certain deficits.

Considering the anti-immigrant sociohistorical context, Gutiérrez et al. noted the backlash pedagogy that appeared in schools during the 1990s through anti-immigrant propositions in California, such as English-only instruction.<sup>99</sup> In their research, they used cultural-historical activity theory to counter deficit and exclusionary school practices by viewing “diversity and difference as resources for learning.” They also drew on CRT to explain how “white privilege and control are maintained through past and current formal and informal mechanisms of racial subjugation and inequality.”<sup>100</sup> These dominant social practices that serve to maintain the status quo can then influence the school experiences of immigrant children such as UICs.

## Experiences Within Public Schools

Once UICs enroll in public school, they might be in a district that integrates all students within the same school, or in a community where they have created special schools for newcomers.<sup>101</sup> “Newcomer” refers to students who are newly arrived to the U.S. and may be classified as refugees, asylum-seekers, or another immigrant status. The research is still new around newcomer schools and programs and they vary by district, but some of the concerns that have arisen from these models are the following: the possible segregation of youth, the potential for these schools to be operating from deficit-based perspectives, and the lack of English-language exposure for students. Some of the strengths of these programs are that they might be able to offer more socio-emotional support than traditional models and that students can engage with other students with shared experiences.<sup>102</sup> The remainder of this section focuses on the experiences of UICs across various public school settings. However, it is important to note that most of the research discussed below was conducted before the COVID-19 pandemic, which undoubtedly has impacted the educational experiences of unaccompanied children and other newcomers.<sup>103</sup>

Although this brief is centered on UICs, these children share similarities in educational experiences with other immigrant, newcomer, undocumented, or refugee children that are important to consider for guidance on how to address the education of UICs in asset-based ways.<sup>104</sup> For example, they may share a similar country of origin, speak the same languages,

be part of the same mixed-status families,<sup>105</sup> and live in the same communities. This similarity in experiences can help inform educators designing culturally relevant school practices that honor the cultural backgrounds of newcomer students and the knowledge they bring with them to the classroom.<sup>106</sup> This perspective is counter to the perspectives discussed in the previous section, often reflected in the programs now serving UICs, that focus only on assimilation and that treat students from a dominant monolithic perspective.<sup>107</sup> Understanding the shared experiences, one can look to asset-based education approaches that honor the lived experiences of students, leverage their first language (rather than seeing them only as English Learners), and make an effort to reflect the lives of students in the curriculum.<sup>108</sup>

Inclusive practices can support the education of UICs in public schools and can surpass traditional academic supports. For example, scholars have called for asset-based models of parental involvement that go beyond traditional models and that encourage family engagement honoring the experiences of diverse families and their community cultural wealth, including the funds of knowledge they bring to schools.<sup>109</sup> Regarding UICs, the definition of family could be expanded to include sponsors, whether that be a grandparent, aunt/uncle,

*Inclusive practices can support the education of UICs in public schools and can surpass traditional academic supports.*

sibling, or other supportive adults. Ishimaru et al. share that “such knowledge and expertise are not simply ‘assets’ to appreciate. They are vital building blocks for efforts to transform our schools and broader educational systems towards educational justice.”<sup>110</sup>

However, it is also important to recognize that the experiences of UICs are unique even while they may share certain characteristics with other groups of newcomers.<sup>111</sup> For example, the poor educational conditions while in U.S. custody discussed previously can influence how formerly detained children engage in public school environments. For this reason, some have suggested structures for UICs that go beyond language supports and call attention to, for instance, the fact that many UICs arrive to school at the secondary level, when there may be heightened pressure to perform well academically.<sup>112</sup> There are other experiences that separate UICs and other immigration children, such as those who migrate voluntarily, come from middle-class households, and have other legal protections different than UICs. UICs, as noted previously, often migrate to the U.S. fleeing inhumane conditions. Then, upon arriving in the U.S., they face trauma through the detention process, may spend long periods of time separated from their family, and then face the reality of integrating into new home and family environments, communities, and schools.<sup>113</sup>

These conditions all occur while the children may also encounter a precarious legal reality and fears of deportation. This new environment may pose mental health issues that affect learning and that educators may not be prepared to navigate.<sup>114</sup> Researchers have noted that some negative experiences that UICs face after detention may be exacerbated by a lack of post-release services.<sup>115</sup> For example, Berger Cardoso et al. noted that youth who do not receive these services “are at a heightened risk for psychological distress, academic disengagement, maltreatment, and human trafficking.”<sup>116</sup> A recognition of the unique reality UICs face can translate into targeted health (including mental health) interventions that can occur at the school level.<sup>117</sup>

The day-to-day experiences of UICs in schools are also likely affected by the country’s an-



ti-immigrant, racist nativist sociohistorical context. Educational leaders can respond by supporting their immigrant students and families who live in fear of immigration enforcement and deportation raids.<sup>118</sup> Bringing attention to leaders possibly not knowing what power they have to limit the access of Immigrations and Customs Enforcement (ICE) on their campuses, Crawford notes that “untangling legal interpretations and parsing out the intersections among laws and their application to student rights likely requires special training.”<sup>119</sup> Given this reality, there are advantages to schools and districts facilitating access to legal services for UICs and partnering with organizations that can provide such trainings. This access to legal services could benefit all students whose immigration status is in limbo. Related to education access, as Berger Cardoso et al. note, legal status can have “serious implications for young people’s academic achievement and psychosocial functioning.”<sup>120</sup>

The above-discussed opportunities and challenges should be considered by educators and education leaders when striving to meet the needs of UICs. Although there is much that can still be done to address the educational and other needs of UICs, existing equity-centered leadership models can provide tools for schools and districts to leverage when aiming to support UICs in holistic ways that honor their lived experiences. Some of these models might include ethical decision-making frameworks,<sup>121</sup> culturally responsive school leadership,<sup>122</sup> social justice leadership,<sup>123</sup> and other models that honor students’ and their families’ community cultural wealth.<sup>124</sup>

## **Limitations in Current Research**

Scholars studying the most recent migrations of unaccompanied immigrant children have noted the dearth of research regarding these UICs, citing a number of reasons. They note, for example, that very few receive post-release services that would allow access to these children.<sup>125</sup> The asylum process and interagency process that UICs go through after apprehension is also complicated.<sup>126</sup> Acosta outlined six phases of the interagency process that unaccompanied minors may experience involving the Department of Homeland Security, Health and Human Services, and the Department of Justice, noting the following:

The U.S. Department of Education (“ED”) is not explicitly involved in the interagency process. As a result of the various federal departments and agencies involved and the several phases that unaccompanied children must endure during their journey, the education of unaccompanied minors is frequently interrupted and potentially non-existent during the disjointed interagency process.<sup>127</sup>

Thus, interruptions in education for UICs can occur even while in U.S. custody. Additionally, much of the research about UICs comes from the legal field, social work, and studies of migration. These studies have focused on an overall view of children in detention, touching on education but also covering issues such as health and legal rights.

Although it is important to learn from the experiences of immigrant children with “analogous migration experiences,”<sup>128</sup> such as newcomers mentioned previously, UICs’ unique experiences and background should also be studied further. For example, as mentioned previously, indigenous children constitute a large percentage of those who migrate from Cen-

tral American countries.<sup>129</sup> Yet only some extant research has discussed this issue, beyond acknowledging the language spoken. In fact, only one publication has discussed this population and their education in the U.S. – a case study by López and Fernández that explored how unaccompanied Latinx Indigenous minors navigate U.S. schools.<sup>130</sup>

This lack of focus on UICs’ indigenous identity, and oftentimes assumption of a homogenous Latinx community, is evident in both research and practice—such as when students are assumed to speak Spanish.<sup>131</sup> Alberto reflected on the erasure of indigenous identity she experienced in school and her process of “coming out as Indian” as a child in the fourth grade, and shared the following:

In my majority Latino neighborhood of Pico-Union, I knew no US Native Americans and thus found myself at a loss, fitting in neither with Latinos nor with other Indigenous peoples. I lived in a kind of Duboisian “double consciousness,” in which I saw myself as first and foremost “Indian,” while my peers and educational institution saw me as a Mexican, immigrant, Spanish speaker, and “at risk.”<sup>132</sup>

Alberto’s words help to explain the need for a greater acknowledgment by educators and researchers of the racialized experiences of UICs who are indigenous and who may experience similar reflections about their identity as they navigate U.S. schools.

## Unanswered Questions

In terms of the reasons that UICs migrate, Chavez and Menjívar noted that more is known about adult migration.<sup>133</sup> Future studies around UICs might consider questions that help address the macrosociopolitical context that leads children to leave their home countries. This may mean going beyond a U.S. perspective. Given the mistreatment of UICs and the trauma these children have faced while in detention, which health professionals have called torture,<sup>134</sup> it is critical to document the long-term effects of their experiences. It is also important to recognize and document how immigrant children and families have responded and resisted. Examples of this include the family of Jenny Flores in the 1980s and the 13-year-old girl plaintiff and her mother in the 2020 lawsuit aiming to halt expulsions of unaccompanied children.<sup>135</sup>

Researchers have noted the existence of education guidelines for the education of UICs while in detention. But the evidence and studies about this specific experience for UICs is lacking, which as mentioned previously may be due to the barring of access to detention centers.<sup>136</sup> More research exists about children’s post-detention experiences, either while in foster care or with an adult sponsor. However, Berger Cardoso et al note that following UICs in this post-detention research is challenging, given that only about 10 percent of them receive post-release services.<sup>137</sup>

Additionally, not enough is known about the educational outcomes of UICs or about what happens to UICs who do not enroll in public schools.<sup>138</sup> One study focused on UICs who do not enroll in school and instead seek full-time employment.<sup>139</sup> Martinez interviewed 53

Mexican teenagers and discussed how these youth sought employment so they could support two households, limiting their opportunity to attend school.<sup>140</sup> More research is also needed about what happens to UICs after being placed with a sponsor—whether they enroll in school, what type of school, and/or enter the workforce. Additionally, given how the COVID-19 pandemic has disrupted and reshaped what schooling looks like, research is needed on the effect the pandemic has had on the educational experiences of unaccompanied children and other newcomers.<sup>141</sup>

Lastly, as I have discussed throughout the brief, immigrant rights litigation has played a central role in determining the basic rights and education protections of unaccompanied children and other undocumented children. Related to this, LatCrit scholar Valdes discussed the importance of challenging anti-immigrant policies:<sup>142</sup>

Because our families and affinities straddle national frontiers, the right of persons to cross borders without impediments amounting to harassment is a key Latina/o issue. The eradication of nativistic racism generally, and of anti-Latina/o discrimination specifically, within immigration policy is vital to the well-being of all Latina/o communities.

This points to the affordances of future studies using a LatCrit perspective to examine the treatment of UICs both by the U.S. government and in educational institutions. Using such a CRT and LatCrit lens, this brief analyzes the harsh mistreatment of UICs as the treatment of a racialized group. By acknowledging the racial and ethnic background of UICs, the treatment of UICs and their families can be situated within the long history of children of color traumatically separated from their parents by the U.S. government.<sup>143</sup>

## **VI. Recommendations**

### **Policymakers**

- Cease child and family detention and family separation, and discontinue the Trump-era immigration policy of expelling UICs during the COVID-19 Pandemic (Title 42).
- Prioritize the unification of children with families or sponsors. This can also lead to UICs entering the public school system with less delay.
- Develop stronger interagency processes, given that UICs engage with various agencies the minute they enter the country. This could also strengthen post-release services, including a smoother transition into public schools if education records are kept in a shared database.
- Push for more accountability from detention centers and shelters to ensure they are providing quality educational access to students. One way to address this is by allowing shelters to partner with local public schools and districts.
- Create guidance documents and fact sheets—accessible to shelters, schools, and dis-

tricts—explaining the policies that protect UICs and recommendations on how to support UICs’ transition into public schools.

- Provide resources and funding for schools and districts educating UICs.

### **District and School Leaders**

- Partner with social workers and other mental health professionals to bring in school-based support to address the trauma that many UICs face prior to arriving in the U.S. and during detention.
- Implement equity-centered models allowing for UICs to learn in asset-based ways that leverage the knowledge they and their families bring to schools. This might also include inclusive practices that allow for UICs to work while attending traditional school.
- Partner with legal service providers such as nonprofits and law clinics to address the well-documented lack of access to legal support for UICs and the absence of knowledge by educators regarding policies that affect these students.

### **Researchers and Universities**

- Partner with schools, districts, and other agencies or nonprofit organizations to provide guidance about the policies that protect UICs and develop research-based practices that support UICs.
- Further develop frameworks specific to the experiences of UICs.
- Examine the impact of COVID-19 on UICs’ educational experiences.
- Extend previous research that documents the lives of undocumented students in schools, by considering the unique context UICs experience and the reality that many UICs come from indigenous communities. This might include more studies that engage UICs in the research process through Youth Participatory Action Research (YPAR) and supporting more research by Central American and Indigenous scholars.

## Notes and References

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using a combination of the following:

- education, school\*, education, learning, classroom
- child\*, minor, unaccompanied, Central American
- detention, detention centers, immigra\*, migrant, refugee

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