

# “THE INS CANNOT SIMPLY SEND THEM OFF INTO THE NIGHT:” THE LANGUAGE OF DETENTION IN US COURT CASES ON MIGRANT CHILD DETENTION

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## ABSTRACT

In this paper, I argue that the language used by American court cases allows for the differential application of rights and treatment of children in detention. In what become known as the Central American Refugee Crisis, the US-Mexico border experienced an increase in the number of unaccompanied children and family groups between 2011 and 2014. Apprehended children and their families were placed in detention centers. From an analysis of three court cases all pertaining to the detention of migrant children, I argue that the American courts’ language allows for a differential application of rights and treatment for children in detention by considering a child as both an “alien” and a “minor,” using the ambiguous principle of “best interests,” and using a child’s familial status in decisions made about their detention.

## INTRODUCTION

The number of unaccompanied children crossing the US-Mexico border has drastically increased in recent years, rising from 15,949 to 68,551 between 2011 and 2014 (Rosenblum 2015: 3). Deemed the “Central American Refugee Crisis” by the American media, the term became widespread (Hiskey et al. 2016:1). In 2014, President Barack Obama referred to it as an “urgent humanitarian crisis” of the “influx of unaccompanied alien children across the southwest border” (Obama 2014). The government’s proposed response to the massive

increase of unattended children crossing into the US was to direct the Secretary of Homeland Security to establish an interagency Unified Coordination Group, granting federal agencies more resources by providing personnel, equipment, supplies, facilities, and other technical and managerial services (Obama 2014). The response included expanding the number of detention facilities for families and children. While the migration of children and families into the US via the southern border is not a new phenomenon, neither is the detention of children and families by the Federal Government. In this paper, I will investigate the problems of normalizing processes found in the language of court cases, specifically the court's "best interests of a child" rhetoric, first seen in *Flores v. Meese* (1991), which has allowed for the mass detention of children by the U.S. government. This research aims to understand how the language used in court cases allows for immigrant children held in detention to experience a differential distribution of rights.

## BACKGROUND

This paper questions the 'common sense-ness' of the detention of thousands of children by the US government through an anthropological lens that addresses cultural assumptions around detention, children, and the unequal relations of power found in the discourse of court cases. I chose to use court cases because as examples of discourse, they offer unique insight into two of the groups involved in debates about the detention of children: the judicial system which interprets the laws surrounding said detention, and the agencies which detain the unaccompanied children and 'family units.' My selection of cases focused on children detained when crossing into the US via the US-Mexico border. Data was collected from the opinion section of three court cases, each detailing the detention of children following their crossing of the US-Mexico border, primarily without parents. The "opinion" of a court case refers to the written statement of the court following oral argument; in this the court sets out its judgment and reasoning for the ruling decision (Supreme Court of the United States 2018: Accessed June 12, 2018). As the court's official decision on a case, the written opinion section produces and justifies certain social practices, such as the detention of children who cross along the US-Mexico border (Kronick and Rousseau 2015: 549).

It is important to make clear that the movement of migrants across the US-Mexico border is not a new phenomena and that President Obama's response was a continuation of increasing border security near urban areas that began in the mid 1990's (De León 2012: 479). This increase in security effectively shifted undocumented migration into remote areas like the Sonora Desert, where the border was more penetrable but the physical conditions of crossing were more arduous (De León 2012: 479). President Bill Clinton campaigned during this period to "regain control" of the border which led to the dramatic increase in funding for Immigration and Naturalization Services (INS) (Andreas 2001: 113). The Prevention Through Deterrence (PTD) policy, implemented in 1993-1994 by the INS, led to the US-Mexico border becoming an increasingly militarized zone (De León 2012: 479). Prior to September 11, 2001, families who crossed into the US were often released due to limited space for family housing units (Hawkes 2009: 172). Following September 11, 2001, the border region saw an increase in enforcement along the border and the Department of Homeland Security (DHS) became more stringent with their policies on family release and began to separate children from adults. The DHS argued that separating children from the adults they traveled with was necessary based on reports of alien smugglers "renting" children to travel with illegally entering adults in hopes of passing as a family and thus avoiding detention under the automatic family release policy (*Bunikyte v. Chertoff* 2007). While this policy may have removed some children from dangerous situations, it also broke up legitimate family groups and by 2006, Congress has called for the DHS to change its policy of family separation resulting in the conversion of a medium security prison to a family detention center due to lack of housing space available for families in existing DHS facilities (Hawkes 2009: 173).

As framed by the American media, the past decade has seen elevated levels of violence and widespread international gang activity in El Salvador, Honduras and Guatemala, creating what the media deemed as a "deadly crisis" (Moulton, Leach, and Ferreira 2016: 1). In 2014, the number of families arriving from Central America reached a peak of 137,000 migrants; the highest reported level of migrants arriving between 2011-2014 (Rosenblum 2015: 2).

## FRAMEWORK

This research builds upon emerging literature within anthropology on childhood and children's rights. Engaging in the "tensions and contradictions" of children and childhood, this research identifies children as an entry point into conversations about politics and compassions (Uehling 2008: 835). The complicated legal relationship between undocumented children and the US government is made increasingly complex by differing cultural constructions of childhood (Uehling 2008: 836). These children often see themselves as "mature and ready for responsibility" in their nation of origin (Uehling 2008: 836). Although children as individual actors have a role in their transnational movement, their agency is diluted by the US government due to their perceived vulnerable status, which is seen as determined by age and intellectual ability (Hess and Shandy 2008: 767). Further, undocumented migrant children to the US, especially those of color, are viewed as simultaneously as some of the most vulnerable of the population and as a security risk (Uehling 2008: 837).

Concerned with the relations of power and inequality in language, I will engage in a critical discourse analysis to look at the "transparent structural relationships of dominance, discrimination, power and control manifested in language" (Wodak 2011:53). Critical discourse analysis assumes that discourses, like court cases, are socially constructed and conditioned (Wodak 2011:53). It treats language used in speech and writing as social practice that implies a relationship between an event, a situation, an institution, and the social structures that frame it (Wodak 2011:50-1). Engaging in this discourse allows anthropologists to point out the "crucial role of symbolic meaning and language in producing and sustaining inequalities." (Hallett and Arnold 2016). When anthropologists construct migrants as "objects" of a study, they become involved in the production of the "other" and the production of the "state" that prosecutes their "illegality" (De Genova 2002: 423). The "illegality" or "others" plays a key role in the creation of identity and the perpetuation of monolithic ideas about citizenship linked to the state (Genova 2002: 425). Anthropologists like De Genova see the use of "immigration" or "immigrant" as problematic, as it contributes to the production of "essentialized, generic, and singular objects (2002:421).

An alien is defined by the Department of Homeland Security (DHS) as “any person not a citizen or national of the United States” (US Department of Homeland Security: Accessed March 22, 2017). Children who cross the US-Mexico border pose a particular challenge to law and border enforcement due to the two-sided nature of their identity as aliens and as minors. Migrant children present a challenging dichotomy: a “threatening other” that overlays a “vulnerable child” (Kronick and Rousseau 2015: 549). Their dual status hinges on the liminal legal status as an alien that is placed against their vulnerable social status as a child suggesting a contrast or difference in treatment between the two statuses. Their status is liminal due to the transitional and threshold nature of undocumented migrants in the US. Moreover, the liminality of their status is created through the state of exception in which they are detained, where the terms and conditions of their possible release or deportation are uncertain. A child has a unique position in immigration law as they hold a legal status that is not simply “alien” in comparison to the status afforded to adults.

The contention surrounding the duality of children’s status during persecution is apparent in *Flores v. Meese* (1991). Although Judge Mary Murphy Schroeder, a Ninth Circuit judge who sat on the case, argued in *Flores v. Meese* (1991) that “any person present in the United States is entitled to equal justice under the law” and that “alienage does not prevent a person from testing the legality of confinement” the entitlement to equal justice of alien minors is challenged. This case led to the Flores Settlement Agreement in 1997, which provided the first set of national guidelines in the U.S. for the detention, treatment, and release of children held by the United States Immigration and Naturalization Service (INS). Building on the work of Susan Terrio (2015) who articulates the difference in plaintiff’s rights as aliens and as minors, my analysis also reveals how the rights of a minor are placed against their alien status. In *Flores v. Meese* (1991), the court demonstrates how the two sides, the alien side and the minor side, of an undocumented child are weighted against each other:

*The plaintiffs are not only aliens; they are also minors.*  
The INS contends that this factor materially changes the nature of their liberty interest, thereby rendering the

detention policy reasonable and appropriate. We therefore turn to the *question of what effect the juvenile status of these plaintiffs may have on the analysis of their liberty interests* and the protections that must be given to those interests (*Flores v. Meese* 1991; italics added).

The opinion of the court starts from the assumption that when considering the rights of a migrant child, the Immigration and Naturalization Service (INS) cannot only look at the “alien,” but that they also must consider the “minor” that is being detained. A detained child’s identity is thus divided into two separate legal statuses to be considered by the court: that of an undocumented alien and that of a minor. This established that the rights of an alien are not the same as the rights of a minor. The INS views these two statuses as mutually exclusive; if a child is an alien, their status as a minor is disregarded. The court then questions what the minority status of a child does to change an individual’s interest in liberty. The disagreement between the INS and the court on if an alien’s age should impact their treatment demonstrates how the interpretive nature of the law allows for the differential application of rights for children in detention.

Children’s special status are attested to in *Reno v. Flores* (1993): “In the case of arrested alien juveniles, however, the INS cannot simply send them off into the night on bond or recognizance.” *Reno v. Flores* (1993) challenged the practice of the INS in regards to unaccompanied children and the dual status of detained children:

In the case of each detained alien juvenile, the INS makes those determinations that are specific to the individual and necessary to accurate application of the regulation: Is there reason to believe the *alien deportable*? Is the *alien under 18 years of age*? Does the alien have an *available adult relative or legal guardian*? Is the alien's case so exceptional as to require consideration of release to someone else? The particularization and individuation need go no further than this (*Reno v. Flores* 1993; italics added).

This short passage allows us to see how the identity of a child is broken down into an “alien” and a “minor.” Here the alienage of the child supersedes consideration of their age, with the INS first

establishing if the alien is deportable, regardless of age. The personal identity of a child is limited to the four questions from the quote above (*Reno v. Flores* 1993). When the age of the child is addressed, establishing a child as an alien minor, the child is then connected to an “available adult,” linking the concept of being a child not only to age but to the presence of an adult relative or legal guardian who can then take responsibility for the child. The quote then follows these questions by asking if the person (the child) in question is indeed a deportable alien, under the age of 18, and not having an available adult relative or legal guardian can be released to someone else. While it can be contended that the second and third questions pertain to the status of a child as a minor placing the primary status of the child in question as a minor, the initial question in the sequence looks only at deportability. Thus, initially only considering if the individual is an alien. The lack of “particularization and individuation” associated with a child in detention can be interpreted as an example of what Agamben (1998) describes as “bare life,” or the stripping of an individual down to their biological makeup. This stripping of individual agency creates a class of unnamed masses who can be acted upon (Agamben 1998). Here an individual child is reduced to just that, part of a crowd of undocumented migrants who have no individual, personal identity.

Child aliens are a risk to national security not because of their vulnerable status as a minor, but because of the threat they pose as an alien. The perceived risk that these children pose to US national security is tempered with the politics of compassion, which addresses these children as the “vulnerable of the vulnerable” (Uehling 2008: 837). This stance reinforces that American cultural assumption of childhood that address children as being different from adults based on their emotional and educational development (Uehling 2008: 836). This discourse of children as vulnerable victims however, comes after then “threatening” status as an alien posing a security risk in *Reno v. Flores* (1993).

Children provide a lens between humanitarianism and security concerns that allows for us to see an intersection between politics and compassion (Uehling 2008: 847). While the image of a child may provoke feeling of sympathy and a desire to protect such a vulnerable population, when a child is also an alien, they become imbued with risk. Specifically, the perceived risk they pose to the

security of the US (Uehling 2008: 837). This ‘risk’ and the ‘threat’ that these children pose are linked to cultural assumptions in the US that undocumented migration to the US is a “problem” (De Genova 2002: 421).

The judicial system thus serves a kind of check that separates itself from the actions of federal agencies. Interpreting the United States Constitution the individual actions of the judges in *Flores v. Meese* (1991) reject the claim by the INS that the best interest of child must lay in detention rather than in release. The use of language by the court throughout these cases in opposition to arguments of the INS or DHS reveal that within “the state” there is no unanimous decision of how a child should be treated or how their rights should be distributed.

## BEST INTERESTS OF THE CHILD

The principle of best interest reflects a standard of childcare that places the needs and wellbeing of a child as superior, but superior to what? Even with the agreed upon criteria that is supposedly considered by the courts, the opinions of the court cases offer a variety of outcomes when the principle of “best interest” is considered (Dalrymple 2006: 144; Rodriguez 2016: 156). The ambiguity of the principle arises from the assumption that it is transparent and that between users there is a shared understanding (Rodriguez 2016: 156). This principle allows for actors to make decisions about the welfare of a child under normative ideas of “good” parents and “ideal” families in which; in the case of detained children, a “good” parent or guardian is one who is not also in detention and who is legally in the US.

The problems arising from the ambiguity of the “best interests” metric are crystallized in judicial opinions and the application of child welfare policies. The symbol of a child as vulnerable and needing protection prompts this principle in which welfare of the child is protected by state actors. The child welfare system in the US emphasizes child protection and family reunification, but takes on different meanings depending on the circumstances of each child (Rodriguez 2016: 156). Yet within the six court cases analyzed in this paper, there was no clear definition of what the “best interests” of a child entailed. I will show that this lack of a clear and precise

definition enables this principle to be a place of discrimination on the basis of nationality and age.

In *Flores v. Meese* (1991), the blanket policy of the INS for the detention of unaccompanied minors was challenged as being unlawful because it did not acknowledge a child's rights to freedom under the Fourth Amendment. The principle of "best interest" is first considered by the INS as a justification for the continued detention of unaccompanied children instead of their release to qualified child welfare agency or foster care system. The INS agreed that if there was an adult relative or legal guardian available the child would be released into their custody, but remained adamant that if neither was available the child would not be released even if there was another responsible adult willing to care for the child.

One of the very reasons the INS gives for detaining the plaintiffs is that it *does not have the expertise, and Congress has not given it the resources*, to do the kind of evaluation of foster care facilities that state child welfare agencies do on a routine basis. The INS reasons that since it is unable to do such an evaluation, the *best interests of the child must lie in detention rather than in release* (*Flores v. Meese* 1991; italics added).

The INS argued that because their agency is not an "expert" in finding foster care and because Congress has not provided enough funding for the evaluation of possible foster homes that the default best interest of the child is to remain in INS custody. The "best interests" of the child are then presented as a default custody placement due to the inability of the INS to properly review foster care facilities. The vulnerability of a child is due to a perceived lack of capability to care for themselves - as the opinion later notes that "because of a lack of maturity, [minors] should have some adult custody and care." The American culturally assumed dependency of children on older and more mature individuals places the best interest of a child always in the custody of another (Uehling 2008: 836). In 2016, the court echoed this opinion in *J.E.F.M. v. Lynch* stating that children "lack the intellectual and emotional capacity of adults," and when children are "force[d] to appear unrepresented in complex, adversarial court proceedings against trained [government] attorneys" they are discriminated against due to their minority status.

The “best interests” is rooted in principles of family reunification and maintenance of parental rights (Rodriguez 2016: 155). This example shows that when parental custody is not an option for the child, the best interest of the child changes. The lack of expertise of the INS in the evaluation of potential foster families and child welfare agencies leads to the default placement of keeping a child in detention. If the INS cannot assess if a foster home or child welfare agency meets government regulation for the housing and care of a child, the INS concludes that for the welfare of the child they should remain in custody. Here, the best interest of the child becomes a default due to lack of expertise and resources. The INS, while not experts in child care can offer the children protection from danger of some harm. Rodriguez argued that “best interest” determinations are informed by a belief that the US is the best place for US-citizen children (2016). I further suggest that in the case of unaccompanied non-citizen children the “best interests” principle becomes a key argument point in keeping children in US government custody when the culturally assumed best custodian of a child, their parent, is not available. Thus, the desire to keep unaccompanied children in detention centers is inextricably linked to a child’s dual status as both a minor and as an alien.

In *Reno v. Flores* (1993), the court expanded upon the phrase to establish that while the “best interest” was a point of consideration in the custody placement of a child in some circumstance (e.g. a divorce proceeding), it was not the only aspect considered by the court. The court establishes that it is “not the legal standard” for decisions around a child.

Similarly, "the best interests of the child" is not the legal standard that governs parents' or guardians' exercise of their custody: So long as *certain minimum requirements* of child care are met, the interests of the child may be *subordinated to the interests of other children*, or indeed even to *the interests of the parents or guardians themselves* (*Reno v. Flores* 1993; italics added).

The court established that the “best interests” principle is not a legal standard that establishes a certain treatment for all children regarding custody determinations. The focus of “best interests” is in relation to

the child's parents or guardians' right to custody. The rights of a child are not addressed as being part of the standard of "best interests." Here, the best interest of the child is expressed as "certain minimum requirements" where if met, the interests of the child can be considered "subordinate to the interests of other children." A child in this example can be given different rights than that of another child ("other children"), the court is allowing for the differential distribution of rights for children if "minimum requirements" are afforded to both children. By establishing that children can be treated differently if certain minimum requirements are met, the court sets a precedent that allows for the best interests of a child to come after those of another child, a parent, or guardian. In this case, the guardian could be a state agency who has assumed custody of the child. The language used here enables government agencies such as the INS to place the "best interests" of their agency above that of a child held in detention so long as a set of minimal standards are met.

The ambiguous nature of "best interests" offers legal actors a site of translation for making decisions about a child's "best interest" under the assumption that this decision is self-evident. The "best interest" of a non-citizen, unaccompanied child held in detention thus becomes a default custody placement. The language used to describe this principle situates the needs of a child as being subservient to that of another child, parent, or guardian when "certain minimum standards" are met. Due to the nature of the US legal system where legal cases set precedent for further decisions to be made in similar circumstances, these ruling opinions establish that the "best interests" of a child in detention are negotiable depending on family status (or in the cases above, the lack of familial association).

## UNACCOMPANIED MINOR OR FAMILY UNIT: THE DIFFERENCE OF RIGHTS AND TREATMENT

My argument for the differential treatment of children due to classification as "unaccompanied" or "family unit" builds on the work of Lauren Martin (2011) who argues that children accompanied by a parent in detention are treated as "child objects" in their parent's household, while unaccompanied children present a greater challenge to law enforcement as their presence cannot be as easily explained by parental coercion. The separation of "minor" into "accompanied minor" and "unaccompanied minor" plays a guiding role in

executive and judicial decisions around the treatment of a child in detention, such as in guidelines around release.

After 2001, immigration policy in the US fundamentally changed with policies becoming more restrictive, and the automatic release of families no longer a viable option in the eyes of the DHS (*Bunikyte v. Chertoff* 2007). Instead of releasing family units, the DHS increased its housing facilities for these groups so that more could be kept in detention. However, families were not kept together “DHS argued this was necessary because alien smugglers had begun “renting” children to travel with illegally entering adults in hopes of passing the groups off as “families” and thus avoiding detention under the automatic family release policy” (*Bunikyte v. Chertoff* 2007). While above I have previously explored the treatment of children as “aliens” and “minors” I now wish to draw your attention to the objectification of children implied in “renting.”

The use of “renting” suggests that a child is an object that can be acquired for a price to be used by adults to avoid detention. The objectification of a child as a “child-object” assumes that a child is “apolitical, inert, and silent” (Martin 2011: 491). The removal of agency from children accompanied by parents or guardians also renders them subject to danger on behalf of their parent’s actions. The child is further objectified as the “DHS argues that automatic release of families *encourages parents to subject their children to the dangers* of illegal immigration” (*Bunikyte v. Chertoff* 2007; italics added).

By “subjecting” their child to the “dangers of illegal immigration” a parent places their object-child in an unnecessary risky position. The policy of family release offers parents an incentive to bring their object-children into the US. Parents who leave their children behind in their home country are often demonized in US culture (Uehling 2008: 841). But here we see that parents are also demonized and blamed for inflicting the dangers associated with illegal immigration onto a child. The parent is thus criminalized not only for illegally crossing into the US, but for risking their child safety.

When children do migrate without the accompaniment of a parent or guardian, their position in state discourse as a vulnerable victim of their parents’ migration is no longer applicable. The 1993 case, *Reno*

*v. Flores* challenged the practice of the INS regarding the rights of unaccompanied children as compared to those accompanied by their parents. It is important to note that prior to 2001, families entering the US illegally who were apprehended were often released rather than detained due to the limited amount of bed space available in detention facilities that had family housing (*Bunikyte v. Chertoff* 2007).

The parties to the present suit agree that the Service must assure itself that *someone will care for those minors* pending resolution of their deportation proceedings. That is easily done when the *juvenile's parents have also been detained and the family can be released together*; it becomes complicated when the juvenile is arrested alone, i.e., unaccompanied by a parent, guardian, or other related adult (*Reno v. Flores* 1993; italics added).

Part of the contingency of childhood is having someone who will care for you. Being a child is linked to ideas of dependency and the need for an older individual, a parent or guardian, to assume the role of caregiver. What separates a minor from an adult is that "[j]uveniles, unlike adults, are always in some form of custody, and where the custody of the parent or legal guardian fails, the government may... either exercise custody itself or appoint someone else to do so" (*Reno v. Flores* 1993). Complications arise when a child is not accompanied by a parent or guardian because the discursive construction of childhood implies that custody must be assumed by someone. This became visible with the sudden rise in the number of unaccompanied minors crossing the US-Mexico border between 2011-2014 with the "Central American Refugee Crisis" (Hiskey et al. 2016: 1). One of the outcomes of the high number of unaccompanied children entering these facilities was that children were not granted access to counsel during their immigration hearings. In this context, the complexities of the legal practice of precedent and American cultural assumptions around childhood become apparent.

Unaccompanied children face the predicament in immigration law as being viewed as neither fully child or fully adult. Their lack of parental custody means that their mobility cannot be explained by parental coercion, yet to treat them as fully adult is not an option as

discrimination by age restricts their ability to be released. In *J.E.F.M. v. Lynch* (2016), a nationwide class action suit was filed on behalf of unaccompanied children who were denied legal counsel. The argument for the children was that as children they “lack the intellectual and emotional capacity of adults,” yet are “force[d] to appear unrepresented in complex, adversarial court proceedings against trained [government] attorneys.” This argument compels us to consider the underlying cultural assumptions of childhood stated earlier in this paper. Specifically, that children accompanied by a parent are considered to be child-objects: apolitical, inert, and silent. While Martin’s (2011) research has shown that a higher degree of agency is granted to unaccompanied children as an explanation for their migration, the children in *J.E.F.M. v. Lynch* (2016) are stating that they too should be treated as minors lacking in maturity of adults. Here, children are arguing that they do *not* have the emotional and intellectual capacity for their own defense in immigration court. They are requesting that they be treated the same as their accompanied peers who are viewed as docile and passive. The unequal view of children accompanied by a parent vs. an unaccompanied child thus results in one having access to counsel in their defense hearing (via their parents), while the latter is treated differently.

## CONCLUSION

In this paper, I have attempted to make visible the ways in which the language used in court cases allows for children held in US detention facilities to be treated differently, including a difference in rights that are afforded to them. Children who migrate into the US across the US-Mexico border straddle the line between alien and minor, while the judicial system and the executive branch, in the form of the INS and DHS disagree on how these two parts of a migrant child’s identity should be weighed. The lack of particularization given to detained children who are first viewed as aliens and then as minors, reduces a child down to their biological makeup and enables for their classification as one of many in an undifferentiated mass of illegal immigrants.

The “threat” that their alienage poses is only tempered by American cultural assumptions of a child’s vulnerability. Here, the use of “alien” to describe these children is also problematic. Linked to De

Genova's (2002) argument that certain linguistic terms like "illegal" help to produce "essentialized, generic, and singular objects," the use of "alien" is an example of "bare life" in which the individual characteristics of these children are reduced to their citizenship, or their lack of citizenship. The use of terminology like this by both the federal and the judicial branches of government, while offering a standardized method for communication, also contributes to the production of the state as a monolithic and unified entity. The language used by the courts creates a representation of individuals who cross into the US without documentation. The depersonalization and dehumanization of individuals to "alien" creates a form of legal personhood that is directed by "forced invisibility, exclusion, subjugation, and repression" (De Genova 2002: 427).

The ambiguous nature of "best interests" offers legal actors a site of adaption for making decisions about a child's "best interest" under the assumption that this decision is self-evident. The language used to describe this principle situates the needs of a child as being subservient to that of another child, parent, guardian, or the state when "certain minimum standards" are met. The nature of this principle assumes that specific circumstance of each child differ and therefore no blanket standard of best interest can be sought. As I have argued above, in the case of a detained unaccompanied child, this often translates to assume the best interest of the child is to remain in US government custody.

My research supported the findings of Martin (2011) who argued that a child's familial status influenced the way in which they were perceived and treated. I found that the language used in court proceedings suggests that an unaccompanied child is viewed in the court cases as a "child-object" that has migrated not due to their own agency but due to the coercion of their parents. For children who were unaccompanied, they were positioned as neither fully child nor as an adult. Their movement across the border could not be associated with that of a parent and so these children were seen as having a level of individual agency that was not afforded to their accompanied counter parts. In *J.E.F.M. v. Lynch* (2016), the children of the suit argued that they should not be treated differently than accompanied children based on this perceived lack of agency which the court linked to emotional and intellectual capacity to defend themselves in immigration hearings.

The voices of the detained children are not heard in these cases. For their protection, their identities are often obscured and while the act of helping to bring a lawsuit to court demonstrates the child's agency, their thoughts and opinions on their detention are not being told through them. Instead their voices are filtered through legal actors. Their voices are missing from this entanglement of many voices all trying to speak for them. Their lives, futures, and family are tangled together with the language of the US government as well as dominant public discourses, which restricts and often silences them.

## COURT CASES

*Bunikyte v. Chertoff*. LEXIS 26166 (W.D. Tex. 2007).

*Flores v. Meese*. 942 F.2d 1352 (9th. Cir. 1991).

*Reno v. Flores*. 507 U.S. 292 (1993).

## REFERENCES

Agamben, Giorgio

1998. *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen. Stanford, CA: Stanford University Press.

Andreas, Peter

2001. The Transformation of Migrant Smuggling across the US-Mexican Border. In *Global Human Smuggling: Comparative Perspectives*, ed. David Kyle and Rey Koslowski. Baltimore: Johns Hopkins University Press.

Dalrymple, Joyce Koo

2006. "Seeking Asylum Alone: Using the Best Interests of the Child Principle to Protect Unaccompanied Minors." *Boston College Third World Law Journal* 26(1):131–168.

De Genova, Nicholas P.

2002. "Migrant "Illegality" and Deportability in Everyday Life." *Annual Review of Anthropology* 31(1):419-447.

De León, Jason

2012. "Better to be Hot than Caught: Excavating the Conflicting Roles of Migrant Material Culture." *American Anthropologist* 114(3):477-495.

Ferguson, James, and Akhil Gupta

2002. "Spatializing States: Toward an Ethnography of Neoliberal Governmentality." *American Ethnologist* 29(4): 981-1002.

Gupta, Akhil

1995. "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State." *American Ethnologist* 22(2):375-402.

Hallet, Miranda Cady and Lynette Arnold

2016. "Detention, Disappearance, and the Power of Language." *Anthropology News*. November 10, 2016. Accessed online March 16, 2017. <http://anthropology-news.org/index.pdp.2016/11/10/detention-disappearance-and-the-power-of-language/>

Hawkes, Danielle

2009. "Locking Up Children: Lessons from the T. Don Hutto Family Detention Center." *Journal of Law and Family Studies* 11(1):171-181.

Hess, Julia Meredith, and Dianna Shandy

2008. "Kids at the Crossroads: Global Childhood and the State." *Anthropology Quarterly* 81(4):765-776.

Hiskey, Jonathan T., Abbey Cordova, Diana Orces, and Mary Fran Malone

2016. "Understanding the Central American Refugee Crisis." *American Immigration Council*. Accessed March 21, 2017. <https://www.americanimmigrationcouncil.org/research/understanding-central-american-refugee-crisis>

Kronick, Rachel, and Cécile Rousseau

2015. "Rights, Compassion and Invisible Children: A Critical Discourse Analysis of the Parliamentary Debates on the Mandatory Detention of Migrant Children in Canada." *Journal of Refugee Studies* 28(4):544-569.

Martin, Lauren

2011. "The Geopolitics of Vulnerability: Children's Legal Subjectivity, Immigrant Family Detention and US Immigration Law and Enforcement Policy." *Gender, Place & Culture* 18(4):477-498.

Moulton, Amber, Joshua Leach, and Kevin Ferreria

2016. "Waiting for Refuge: Benefits and Challenges of the Central American Minors In-Country Refugee Processing Program (CAM)." *Unitarian Universalist Service Committee*. Accessed March 21, 2017. [http://www.uusc.org/wp-content/uploads/2016/12/Waiting-for-Refuge\\_December-2016.pdf](http://www.uusc.org/wp-content/uploads/2016/12/Waiting-for-Refuge_December-2016.pdf).

Obama, Barack

2014. "Presidential Memorandum-Response to the Influx of Unaccompanied Alien Children Across the Southwest Border."

The White House. Accessed March 22, 2017.  
<https://obamawhitehouse.archives.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>

Rodriguez, Naomi Glenn-Levin

2016. "Translating "Best Interest:" Child Welfare Decisions at the US–Mexico Border." *PoLAR: Political and Legal Anthropology Review* 39(1):154–168.

Rosenblum, Marc

2015. "Unaccompanied Child Migration to the United States: The Tension Between Protection and Prevention." Transatlantic Council on Migration. *The Migration Policy Institute: Washington, DC*.

Supreme Court of the United States

2018. "Opinions." Accessed June 12, 2018.  
<https://www.supremecourt.gov/opinions/opinions.aspx>

Terrio, Susan J.

2015. *Whose Child Am I? Unaccompanied, Undocumented Children in U.S. Immigration Custody*. Oakland, CA: University of California Press.

Uehling, Greta Lynn

2008. "The International Smuggling of Children: Coyotes, Snakeheads, and the Politics of Compassion." *Anthropological Quarterly* 81(4):833-871.

U.S. Department of Homeland Security

"Definition of Terms 'Alien.'" Accessed March 22, 2017.  
<https://www.dhs.gov/immigration-statistics/data-standards-and-definitions/definition-terms#1>

Wodak, Ruth

2001. "Critical Linguistics and Critical Discourse Analysis." In *Discursive Pragmatics*, ed. Jan Zienkowski, Jan-Ola Östman and Jef Verschueren. Amsterdam: John Benjamins Publishing Company.