

The Atlantic

Young, Illegal, and Alone

Their parents sent them to the United States to escape brutal violence. But to stay, they need to convince courts that sending them here constituted child abuse.



Guillermo sits on a couch in the living room of the home he shares with his mother in Virginia. The house is modestly decorated—and some of the only art in the living room is a self-portrait Guillermo drew. He's embarrassed by it, but his mother loves it, and she insists it hang above the couch.

Emily Jan / National Journal

J. WESTON PHIPPEN

OCT 15, 2015 | POLITICS

Guillermo's family home sat on a hill in San Salvador. The houses there stood crowded, stacked one upon another with rusted metal roofs, and some nights Guillermo could stand atop the hill and look across the valley of dark buildings to the bright incandescence of Estadio Cuscatlán, Central America's largest soccer stadium. Between

him and the stadium ran a busy street. His side of the street was controlled by the gang MS-13. On the other side, the rival gang, Barrio 18, controlled its own territory. (Guillermo's last name has been withheld throughout this story to protect his safety.)

One night last winter, Guillermo, then 15, walked outside with friends as it rained. He heard a car's tires slowing as it splashed through the puddles until it stopped beside him. A Barrio 18 gangster fired from the window. Guillermo ducked behind a parked truck; his friend leapt into a cardboard box. Guillermo and his friend were fine, but a young father who had stepped outside to make a call was shot in the stomach. The father ran across the street to a nearby hospital. He died the next day.

By that time, the gangs had already shot Guillermo's father in the chest. They'd forced his brother-in-law to his knees and shot him in the head. Both had survived—though his father had lost a lung, and for a year, his brother-in-law had carried a bullet in his skull. At night Guillermo saw the rising body count on the news. At school he heard from friends of how the gangs tried to recruit them. At the dirt field where Guillermo played soccer, he was told that gangsters had broken into a women's nearby home, raped her with a broomstick, then murdered her.

On July 1, 2014, Guillermo fled El Salvador. Almost 2,000 miles and a week later, he floated across the Rio Grande on an inflatable raft. When he arrived in the United States, he was one of 68,540 other unaccompanied minors to do so that year. It was an unprecedented spike in the number of children who made the sometimes-deadly journey north—three years earlier, in 2011, that number had been just 16,000. The influx crippled Border Patrol. President Barack Obama ordered an emergency response.

These unaccompanied minors overwhelmed an immigration system ill-equipped to handle them. They came to the United States to escape violence, but they rarely qualify as refugees: Children aren't an ethnic group, and gangs aren't granted the same recognition as invading armies.

The U.S. does not provide these children lawyers, and that means most will be deported to the countries they fled. Unless, that is, they find someone willing, and with the knowledge, to help.

* * *

In July of this year, Nick Marritz, a 33-year-old attorney, drove through Virginia's Appalachian Mountains to the Omni Homestead Resort, a southern monstrosity that looks more like a college campus with a wraparound porch than a hotel in operation since 10 years before the country's founding. Marritz has a round face and a stubbly beard. He always appears to have just mainlined his seventh coffee. Lately, he's grown even more frantic as his own caseload rises above 100, and the government deports more unaccompanied minors. "The government is trying to deport them as fast as it can," Marritz says. "They're putting them at the front of the line."

Marritz was on his way to the Virginia Bar Association's 125th summer meeting, where he'd been invited to speak about a law called Special Immigrant Juvenile Status, or SIJS. Written 25 years ago to help immigrant minors in foster care, it is often the only legal relief available to minors like Guillermo. Partly because the law was drafted for children in foster care, the path to SIJS begins in family court (though lawyers today say it's still appropriate, because juvenile court judges are most qualified to rule on issues related to minors).

The law originated in the 1980s, when Ken Borelli, who managed the bilingual unit for the department of Child Welfare in Santa Clara, California, contacted his local congressman about the kids in his care. "They didn't have parents here," Borelli said recently from his home in California. "These were kids in the juvenile court system dependent on the court." When these kids aged out of foster care, Borelli said they were jobless and deportable. With the help of congressional staffers, Borelli wrote a bill that allowed these children to qualify for a special status.

Borelli's bill became law as part of the 1990 Immigration Act.

“What happens if there’s no one here to claim them? Will they deport them back?”

Seven years later, U.S. Senator Pete Domenici of New Mexico called the law a “giant loophole.” He told Congress that “every visiting student from overseas can have a petition filed in a state court ... declaring that they’re a ward and in need of foster care.” So, although the law was little known and seldom used, an amendment passed that year that severely restricted who could qualify for SIJS. Under the new stipulations, children had to prove they were dependent upon the state because of “abuse, abandonment, or neglect.” Enough migrant children meet these criteria, though, that Marritz is still able to use the law to keep them in the country. He calls SIJS a “feature of the immigration system, not a glitch.”

The lawyers took their seats in a banquet room at rows of green-clothed tables. Before he began, Marritz placed a sign up sheet at the front. The Legal Aid Justice Center has so little money for this work that at the time of the meeting, Marritz was the group’s only unaccompanied-minor lawyer (it now has a second). And an entire third of Marritz’s salary comes from one large donation made by the musician Dave Matthews.

Marritz desperately needed help.



For the period of time when Lorena was living in Virginia and the rest of the family was in El Salvador, Guillermo and his younger brothers would write her letters and cards. She has kept all of them, and dreams of the day Guillermo's father and two brothers can join them in Virginia. (Emily Jan / National Journal)

“I can’t thank you enough for inviting me here to speak,” Marritz said as the lawyers took their seats. He clicked through a few slides on a projection screen, then asked, “So, what is special immigrant juvenile status? The short version is that it’s a federal immigration law that helps undocumented children in part by using the state juvenile court system. It provides a path to a green card and eventually U.S. citizenship.”

“What happens if there’s no one here to claim them?” a woman asked.
“Will they deport them back?”

“Probably,” Marritz said simply. “If you take no other statistic away from this presentation, take this one: Children who appear in immigration court by themselves have about a 7 percent chance of a successful outcome. If they’re represented by counsel, they have about a 70 percent chance. So it’s really a 10-fold difference that you can make in a child’s life.”

Children who appear in immigration court by themselves have about a 7 percent chance of a successful outcome.

“I’ve got a question about that,” a man asked. “How is it that the government gets away without having a guardian ad litem appointed for each of these children?”

It's wrong, Marritz agreed, for courts not to appoint an attorney to represent the best interests of the child, as they might in other child-welfare cases. "It's absurd to think an adult is going to be able to navigate the system," he said. "And it's absurd to think a lawyer who's never heard of this will be able to navigate it."

In the middle row, an older man in a blue shirt raised his hand.

"I understand this," the man said, "but it seems to me like there needs to be a political solution to this that runs concurrent. Because you've got 68,000 children, and I just wonder what the cost is. I mean, it's just that this seems to be something that continues to no end."



By the time Guillermo wakes up for school around 7 a.m., his mom has already been at work nannying for a couple hours. He tries to wake up with ample time to get dressed, pack his backpack for the day and whip up a quick breakfast before walking to school. (Emily Jan / National Journal)

The man was the only vocal detractor in the room, but politicians across the country shared his concerns. Representative Bob Goodlatte of Virginia had criticized SIJS, pointing to a news report from Queens, New York,

where a small Sikh community had supposedly coached their kids to game the system. Now Goodlatte wanted SIJS revoked. “A high murder rate, in my opinion, is not a basis for political asylum,” Goodlatte later said over the phone. “These laws are not a ticket to the dream country, where you’d like to go and join your other family. These laws are most definitely being abused.” Representative John Carter of Texas had even drafted a bill that would immediately deport Central American kids, offering no chance in immigration court.

“I see no end to it,” continued the audience member at the Virginia Bar Association meeting, reflecting on the influx of unaccompanied minors. “That’s the problem.”

Marritz had lived for eight months in a small Guatemalan village, seeing for himself the many reasons his clients left. After he’d graduated with his law degree from the University of Washington, he’d worked with migrant farmworkers. His father was a public-service attorney. His sister wanted to become one. But where he saw an opportunity to help individual children fleeing violence, the man in the audience saw an ill-advised policy that could make an untenable problem even worse.

“Well,” Marritz told the man, “let’s get a drink and talk about it afterward.” At the end of the talk, Marritz flipped through the pages of the sign up sheet, looking at the list of new new volunteers. “This is like gold,” he said.

* * *

Each morning before school in El Salvador, Guillermo rode the bus to a tennis club where he worked as a ball boy. As the bus drove one morning in 2014 through a neighborhood controlled by the gang Barrio 18, two gang members boarded. “They came directly to me and put a pistol to my head,” Guillermo said. “One of them yelled to the bus driver that he should keep driving and not stop, and everyone else should stay

seated.” The two gangsters beat Guillermo. They stole his cellphone and his bus ticket. “They told me that if they saw me on the bus going through their neighborhood again, they would kill me.”

Guillermo quit his job.



Guillermo shares a bathroom with his mother, as well as another Latino woman and her young son, who sublet a room in their house. (Emily Jan / National Journal)

The gangs that were threatening to kill Guillermo began during the Cold War. In El Salvador’s 12-year civil war, the United States backed the military dictatorship, which sniped mourners at the funeral of a Catholic archbishop and killed 800 villagers in a single massacre. Cuba and other leftists backed the Marxist guerillas. Altogether, more than 75,000 people died. Many of those who fled traveled north to Los Angeles, which at the time was embroiled in its own type of war.

Gang violence in Los Angeles reached its height around 1990. Salvadoran teens who’d settled there lived in poor neighborhoods, surrounded by well-established black and Latino gangs. Some of those Salvadorans

started their own gang called “MSS”—Mara for gang, Salvatrucha meaning Salvadoran, and Stoners because they liked to smoke pot. “Mainly, they were Latinos who got stoned, drank beer, and listened to heavy metal,” says Al Valdez, a former Anaheim gang-unit officer who now teaches at the University of California, Irvine. MSS had formed in the same territory as a much older and larger Latino gang called Barrio 18 (18th Street) that accepted mostly Latino recruits from any country. Barrio 18 saw this new Salvadoran gang as a threat to its dominance, so to defend itself and grow its ranks, MSS turned violent. They learned to extort, push drugs, and murder. They dropped the “S” that stood for stoner and added the number 13 (possibly because M is the 13th letter of the alphabet).

Tattoos covered their bodies and faces, and with them they brought concepts of territory, drug and gun smuggling, extortion and drive-by shootings.

As its rivalry with MS-13 intensified, Barrio 18 also recruited Salvadoran teens, and Los Angeles packed its prisons full of gangsters from both sides. During the Clinton presidency, the government deported thousands of them back to Central America. Many times, Valdez says, the government did so without informing the receiving country.

So, into a war-weary country about the size and population of Massachusetts, and living under a truce that allowed war criminals from both sides to serve openly in the government, the United States had dropped thousands of prison-trained, Los Angeles-hardened Barrio 18 and MS-13 gangsters. “We deported them into a place that was ripe,” Valdez said. “[Central America] was like a petri dish ready for a virus to grow. And that’s what we exported.”

El Salvador had gangs before, but they were mostly men aligned by neighborhood who got into fist-fights, said Valdez. They were so unorganized and poor that for weapons they sometimes fastened a metal

pipe to a handle and welded on a firing pin so it could shoot shotgun shells. It was called a “chimba.” When the Barrio 18 and MS-13 gangsters were deported and arrived in El Salvador, “they were treated like celebrities,” Valdez said. Tattoos covered their bodies and faces, and with them they brought concepts of territory, drug and gun smuggling, extortion and drive-by shootings.

Desperate to stop the rising crime and murders, in the early 2000s El Salvador jailed MS-13 and Barrio 18 members for any reason it could, often just for their gang tattoos. The government called the approach *mano dura*, or firm hand. The gangs retaliated by killing police. In 2012, the government and the Roman Catholic Church helped broker a truce between the two gangs. It caused a dramatic drop in murder. But the truce didn’t last. In 2014, murders climbed again, and are now on pace to make El Salvador one of the deadliest countries in the world.



One day, as Guillermo left his home for a nearby chatererra, a dirt and stone field where kids played soccer, three MS-13 gangsters shadowed his steps through the maze of alleyways. Others blocked his turns, herding him toward their gang house, where gangsters had forced out the family that once lived there so they could use it as an operational base. Barely 15

at the time, Guillermo had been a recruitment target for years. In San Salvador, gang members are so paranoid about their own survival that any post-pubescent teen represents either a threat or a potential recruit. Of the 10 close friends he'd had as a child, Guillermo said only three had managed not to join MS-13. As the gangsters pulled Guillermo inside their house, a voice from the alley called his name.

Guillermo had volunteered as an altar boy at his church, and a man who taught Sunday school happened to walk by. "What's going on here!" the man shouted. He led Guillermo away from the gangsters, but as they left, Guillermo remembered hearing one gangster say, "La mara tarda, pero no olvida": "The gang waits, but it doesn't forget."

Guillermo's mother, Lorena, had already left for the United States two years before. She'd worked at a pharmacy in El Salvador and made good money, but when the economy turned, she'd lost her job. So had Guillermo's father. Without her husband's construction work to provide for the family, Lorena had hired a human smuggler, a "coyote," who connected her to a network of smugglers that guided her on a perilous journey. When she'd arrived in Sacramento, she worked 12 hours a day for \$50 making tortillas in a factory, sending money home to pay for her kids' private schooling. (Public schools in El Salvador are largely seen as worthless.) Then she moved to Virginia, where a friend set her up with a job cleaning bathrooms at a university.

This meant Guillermo's father was alone to protect his son from the gangs, and alone to make the decision to send him to live with his grandmother who lived nearby.

"The gang waits, but it doesn't forget."

A few days after the incident at the gang house, the gangsters waited for Guillermo at a bus stop. "You have to join," Guillermo remembers them

saying. “And if you don’t, we will kill you, or we will kill your two brothers.”

Guillermo’s father sent him to live with yet another grandmother, this time in a city called Soyapango, 30 minutes away.

The former gang unit cop, Valdez, said he knows of cases where an MS-13 gang member in California and another on the East Coast of the United States have conference-called a gangster in El Salvador. Perhaps it was foolish then, to believe Guillermo could find safety in half an hour’s drive. Through a friend, Guillermo’s father learned the gang had sent word to murder his son.

On July 1, his mother’s birthday, Guillermo stared at the door of his father’s home while his twin brothers, both 8 at the time, sat in front of the TV. “I knew my little brothers were looking at me,” Guillermo said, “and I didn’t want to look back because I knew if I looked back, I might regret it, and I might not want to leave.”

“Come on Guillermo,” his father said as the coyotes arrived. “They’re here for you.” His father had taken out a \$7,500 loan against the family’s car to pay for the trip north, and now Guillermo followed the first of dozens of coyotes he’d meet, stealing the last looks at a neighborhood he might never again see. “I saw every house and every street. I saw every little place, thinking of all the memories I had of all those places—everywhere I had gone with my friends and everything I had done there. Because they weren’t just bad things that had happened.”

* * *

Guillermo says he began his journey with about 30 other people. (It was impossible to corroborate his story with the coyotes or any official source, but this is his recollection of events.) He spent the first night in a house in Santa Ana, a city near the Guatemalan border, staring through a hole in the roof at the stars. In the early morning, he

grabbed his backpack, which held a change of clothes, water bottles, his birth certificate, and his grandmother's rosary. Before the group loaded onto the trucks that would drive to the border, the coyote made certain they understood what they'd now become. "From the minute you set foot out of the door, you are now migrants," Guillermo remembered the man said. "If anyone asks, you don't know each other. You don't know us. You don't know anything."

The migrants crossed the border on foot in the darkness of early morning. Guillermo had already made friends with two sisters and two boys around his same age. As they entered Guatemala, an old man in a straw hat watched Guillermo pass by. He said, "God bless you on your journey."

In town, a moto-taxi shuttled the 30 migrants three by three to a carwash. Kids first. Then adults. New coyotes arrived in three minibuses with tinted windows. Later they transferred the group onto a decommissioned public bus and Guillermo noticed the new driver grow nervous as a police car followed behind. To shake the officer, the driver turned onto a small road that climbed a hill. The officer followed. The driver began to pick up locals and deposit them at other stops. Thirty minutes passed, and Guillermo feared that already, so close to El Salvador, they'd been caught. The bus made more stops, climbing the hill until it reached the top. There, behind another bus stop, stood a police station. The officer turned in.

The bus continued, passing the Torre Del Reformador, in Guatemala City, a formation that looked like the Eiffel Tower, except much smaller, and seemingly made of wire, or rebar. "You don't know how ugly it turned out," Guillermo said.



Guillermo's mother Lorena points out callouses on her palms, which she developed after a grueling extra cleaning shift she had picked up the week prior. In addition to full-time nannying five days out of the week, Lorena cleans bathrooms at the local university on weekends, where Guillermo helps out occasionally. (Emily Jan / National Journal)

The migrants waited at a bus terminal for one day; a coyote handed them headphones so they'd blend in like tourists. Then the migrants boarded a tour bus, mixing in with regular passengers, trying not to appear too friendly with each other. Guillermo fell asleep. When he woke, they'd already arrived in Mexico.

The migrants rode through the jungles, through hills, mountains, valleys, and more hills. They lived bus to bus, with different coyotes handing them off each time, like relay runners passing a baton to the next teammate. At night, they slept at a ranch, at a hotel, at a farm, on the floor of a large, open-air carport. During the roughest leg of the journey, they sat in cattle trucks, tarps pulled across the tops, women at the front, men toward the back, so that each time the truck braked only the men received the full brunt of the migrants' collective weight as they all shifted forward toward the front cab. "The guy next to me vomited three bags full," Guillermo said.

All the while, the sisters and two boys he'd begun with in El Salvador remained his only constants. "That really helped me and supported me," Guillermo said, "because we would talk about anything other than family and the stuff that we were leaving behind—just to keep from breaking."

They lived bus to bus, with different coyotes handing them off each time, like relay runners passing a baton to the next teammate.

It takes about 25 hours to cross Mexico in a straight drive, and they'd done it in five days. In a motel room, Guillermo slept with 15 other migrants in the only city he learned the name of during his trip: Matamoros. Now just the Rio Grande lay between him and Texas.

In the morning, Guillermo, the sisters, and five others lay in the bed of a truck. Beside the driver sat a rubber tube and a kid who looked no older than 10. Close to the border, Guillermo sat up and spotted a bridge that connected Mexico to the United States. He stuck his head out into a rush of air. As he did, a sunflower smacked him in the face. It left a bruise.

When they reached the Rio Grande's edge, the seven migrants hunkered down in scrub and brush. The young boy climbed a tree and held a pair of binoculars to his eyes. The coyote stripped to his underwear and waded into the river, the raft tucked under his arm, slowly blowing it up.

Guillermo waited.

Then the boy in the tree shouted: "Dale! Dale! Dale!"—"Go! Go! Go!"

Guillermo ran to the river. He and the two sisters climbed inside the raft. With one hand on the tube, the coyote swam them to the bank of the United States.

When the others had crossed the same way, the migrants knelt behind a drainage canal, praying together.



Instead of taking the bus, Guillermo prefers to walk the 1.7 miles from his house to his high school. (Emily Jan / National Journal)

“Go to the bridge and find the first policeman you can and turn yourselves in,” Guillermo remembered the coyote telling them just before he swam back to Mexico. His advice seemed counterintuitive: Typically, migrants try to evade detection and walk for days through the desert. Perhaps he was a lazy coyote. Or perhaps, in his job as a smuggler, he knew that unlike Mexican migrants, Central Americans would not face immediate deportation.

Alone and without a guide, Guillermo and the seven others walked toward the bridge.

* * *

When Guillermo crossed, he knew nothing of the U.S. immigration system. He walked for 30 minutes in the desert, which he called “hellish,” until through the blurry heat he spotted a truck. He waved it down, unaware that the recent wave of child migrants had thrown the country into a panic. In one Border Patrol station, so many immigrants filled the building that agents made makeshift holdings cells of yellow tape tied to garbage buckets in the lobby.

Right around the time Guillermo arrived—on July 8, 2014—president Obama wrote a letter to Speaker of the House John Boehner requesting \$3.7 billion to help process the children. Congress debated. Nothing came of it. The president ordered the Federal Emergency Management Agency to head a response.

Shelters sprang up across the country—often to protests. In Murrieta, California, protesters greeted three buses of immigrant mothers and children with signs that read, “Go Home” and “Return to Sender.” In Oracle, Arizona, protesters yelled at a bus full of children, believing them migrants. Turned out they were local kids from the YMCA.

That same month, Representative Phil Gingrey of Georgia, a retired obstetrician-gynecologist, wrote a letter to the Centers for Disease Control and Prevention. In it, he said he feared the children carried “deadly diseases such as swine flu, dengue fever, Ebola virus, and tuberculosis.” The kids became a national-health issue. Several cities banned the migrants, citing health and safety concerns.

Mexican children had long made up the majority of unaccompanied minors, but in 2014, almost 80 percent were Central American. That difference matters, because when Border Patrol apprehends Mexican children, they’re often screened and quickly deported. But minors from Central America wait in Border Patrol shelters. Then they move to shelters run by the Office of Refugee Resettlement (refugee in agency name only). From there, the government finds relatives in the United States—documented or not—who can take them home while they await their immigration hearings. This procedure exists because of an anti-human trafficking law, and because the government was called out for allegedly mistreating minors in its care.



The Department of Homeland Security would not release a list of sites where it held Guillermo. But he remembers agents took him first to a small Border Patrol station, then transferred him to a place commonly called a hielera, or “icebox,” because of how cold agents keep the cells. This was the last place Guillermo saw the two sisters he’d befriended since they left El Salvador. Agents separated boys from girls, and the two girls wept as they walked away.

It was also the first time Guillermo called his mother. “Mom, Mom,” he said. “I’m in immigration.”

Lorena’s trip to America had been nothing like Guillermo’s. Her coyotes had kept her locked in a garage for nearly a month, feeding her little, and she’d wandered for days through the U.S. desert to avoid detection. As horrible as her journey turned out, she feared more for her son’s life if he stayed in El Salvador. Hearing his voice for the first time since he left, she was relieved. “I thanked God for his safety,” Lorena said.

As horrible as her journey turned out, she feared more for her son’s life if he stayed in El Salvador.

Guillermo remembers a concrete floor in the hielera and so many kids crammed into the cell that they slept in shifts. They shared one toilet, and

the water that agents provided tasted as if it was mixed with salt. “I didn’t drink water for three or four days,” Guillermo claimed.

His experience with Border Patrol bore a similar haste and confusion to his time with the coyotes. At sundown one day, agents loaded him and other children onto a bus and drove them to an airport where Guillermo rode his first-ever airplane. When he landed he saw a large sign that read “Tucson, Arizona.” Next, they stayed at a warehouse with rows of chain-link cages like indoor dog kennels. This was most likely an emergency shelter in Nogales, Arizona. Children here slept on pads with blankets seemingly made of tinfoil, beneath the omnipresent glow of fluorescent lights. The guards taught the kids American football. Guillermo said some placed bets on kids and made them race each other for microwavable burritos. There were TVs, too, so Guillermo watched Germany beat Argentina in the World Cup on July 13.



Guillermo is part of his high school's ESOL, or English as a Second or Other Language, program. When their schedules allow, students will stay an extra period after school to do homework together and get help, as needed, from an ESOL teacher. (Emily Jan / National Journal)

As he rested one day in the cages with the other children, a guard called his name. The children whooped and yelled and patted him on the back. “Is it me?” Guillermo asked. “Is it me?” It meant he was leaving.

He rode to Phoenix where he stayed in another shelter. Then two agents accompanied him and a few other children onto a plane at the airport bound for New York. There, he lived in a comfortable shelter run by the Office of Refugee Resettlement. He called his mother daily, and after a few weeks, in mid-August, she drove from Virginia to pick him up. The last time he’d seen his mom was two years earlier in El Salvador. He’d hugged her before he left for school in the morning, not sure he’d ever see her again. Back then, they were the same height, but now, as he ran around the window in the front lobby and into her arms, he’d grown a full head taller.

“There was my mom,” he said. “And I just couldn’t believe it.”

* * *

In Virginia, Guillermo enrolled in high school and earned straight As. He joined the soccer team. He had a girlfriend. All the while, his immigration court hearing hung above his head, threatening to deport him to a country where he was certain he’d be killed.



Guillermo helps out with his ESOL teacher's son's rec soccer team. His teacher says they like having him there because the kids really admire his soccer skills. The teacher also mentioned that during a high school game last season, Guillermo did a bicycle kick to score a goal, and his kid hasn't stopped talking about it since. (Emily Jan / National Journal)

One evening, at a parent-teacher night for English-as-a-second-language students, an attorney from the Legal Aid Justice Center gave a presentation. That's when Guillermo's mother learned about Special Immigrant Juvenile Status.

Ever since 2008, when the Wilberforce Trafficking Victims Protection Reauthorization Act was amended, a child needs to meet three criteria to qualify: He must be a dependent upon the court, state, private agency, or a private person; returning to the home country must not be in his best interest; and—the most important modification—reunification with one or both of his parents must not be viable for reasons of abuse, abandonment, or neglect.

Since SIJS begins in juvenile court, a child needs a reason to be there. Most often it's for a custody hearing. During the hearing, the lawyer asks the judge to make specific findings that fit the requirements of SIJS. Usually the attorney argues that a child's parents, or parent, failed to protect him from violence in their country and that one or both parents abused or neglected the child by paying a smuggler to take the child on a dangerous trip across the U.S. border. The one or both parents wording is crucial because it means that as long as a child's reunification with, say, a father who still lives in El Salvador, is against the child's best interest, a mother, with legal status or not, can petition for sole custody, then ask the judge to make findings that support SIJS. This is called a predicate order.

The rest is fairly easy. The lawyer asks the immigration judge to cancel

deportation, then sends the predicate order to the U.S. Citizenship and Immigration Services. Once granted SIJS, the child can immediately ask for a green card. This year, the government has approved 6,100 SIJS applications, which is 2,000 up from last year, and almost double the year before. Still, that's less than 10 percent of unaccompanied minors who arrived in 2014, meaning most will be deported.



After the presentation at the parent-teacher night, Guillermo and his mother called the Legal Aid Justice Center. They met Marritz, who added Guillermo to his growing caseload that topped 100.

Working with the mother and son, Marritz helped draft a three-page document filled with legal terms like “loss of life,” “violent physical harm,” “threatened by local gangs.” The judge slated for the case was known as a “King Solomon type”—meaning he often made peculiar rulings influenced by his own moral reading of the law.

In fact, family judges across the United States have offered vastly different interpretations of SIJS. In Nebraska, the Supreme Court ruled in 2012 that reunification with one or both parents really means both parents. This would require that children be completely abandoned. In contrast, California and New York have decided in four different decisions that

reunification with one or both parents means one parent.

In New Jersey, a juvenile-court judge ruled against a young boy from India who said he traveled to the United States illegally after his drug-addicted father ran off and his mother became ill. To support her, he worked construction 75 hours a week. The boy's brother now petitioned for custody, and in some courts it might have been an easy win. But the family-court judge in New Jersey didn't go for it. (The child later won on appeal.)

Virginia's Loudoun County—like Nebraska—requires proof that both parents have abandoned the child. But that's not true for all Virginia counties, creating a jigsaw puzzle of laws. Virginia also cuts off the age of eligibility for SIJS at 18—making it more stringent than federal law, whose cutoff is 21. “You are invariably going to have variation across the country,” said Kristen Jackson, an attorney with Public Counsel, the country's largest pro-bono network, located in California. “I don't think there's a way to work that out of the system.”



Guillermo and his mother work at the local university's football stadium on weekends. (Emily Jan / National Journal)

A more straightforward approach would be to adopt an immigration law that considers a child's best interest, said Jennifer Podkul, with the Women's Refugee Commission. A law like this would be more in line with the Convention on the Rights of the Child, which only Somalia and the United States have not signed. "Instead of trying to squeeze these round pegs into square holes," Podkul said. "This would be something more comprehensive."

Another option would be to consider these kids refugees. The U.N. High Commissioner for Refugees reports that almost 60 percent of unaccompanied minors could have grounds for international protection, and it points to the endemic violence across Central America that rivals that of war zones. For kids from El Salvador, the United Nations found 72 percent would likely qualify for protection. One 15-year-old girl, when asked of the gangs in her country, said, "In El Salvador they take young girls, rape them and throw them in plastic bags."

But for the time being, migrants seeking asylum in this country must fit stipulations written in 1951, long before the rise of present-day organized crime. To qualify today, people must prove they've suffered persecution due to race, religion, nationality, membership in a particular social group, or political opinion. U.S. courts have largely decided that teenagers are not a specific enough a social group. They've decided that Central American gangs do not meet the requirements of persecution.

"You could easily substitute the gangs in El Salvador for the Taliban, and we have huge success with Taliban cases, something like 95 percent," said Jason Dzubow, a lawyer who specializes in asylum cases and who created The Asylumist blog. "MS-13 is probably more violent than the Taliban. It's just not accepted that way in the U.S."

The anxiety judges have, Dzubow said, is that if courts broaden the

definition of “refugee” to help these children, a lot of people might fit that new definition. “When you look at them as a whole, you might say, ‘Well, this is an invasion,’” Dzubow said. “But if you look at this individual case, this 16-year-old boy, then what compassionate person wouldn’t say he has a right to stay? And if it really is necessary to turn them away, you sure as hell better know what you’re sending them back to.”

The issue critics take with SIJS, with granting these kids asylum, and with the surge, is that they doubt their intentions for coming. “I’ve got four kids and lots of grandchildren,” Representative Carter, who wrote the bill that would narrow SIJS, said. “I’m all for protecting kids.” Though Carter doesn’t go so far as Representative Goodlatte (who called violence in Central America an illegitimate reason for asylum), he agrees that the law is being abused. The problem with minors from the surge, Carter said, is that often the unaccompanied minors’ parents conspired with smugglers, who knew these kids could take advantage of loopholes in the U.S., and who all planned to overwhelm the immigration system last summer. A masterful orchestration. Not an exodus from increased violence.

Of a kid like Guillermo, Carter said, “If he’s fearing for his life—and that’s legitimate fact—the court will make that determination.”

* * *

The morning of Guillermo’s hearing, Marritz learned the judge originally scheduled to hear the case had taken a vacation. Whether that was good or bad news, he couldn’t tell.

Inside the brick courthouse, mothers in fast-food uniforms or dresses, fathers in construction clothes or buttoned shirts, lined the seats, which looked like church pews. Marritz sat in the middle of the three rows. Guillermo sat a row behind with his mother, who pulled nervously at her arm.

The court ran late. Some of the cases took on an air of absurdity in light of

what Guillermo had experienced. One mother complained that her ex-husband had created an unsafe environment for her kids because the man's new girlfriend lived in his backyard in a trailer without electricity or running water. In the corner, two lawyers whispered and laughed. The judge skipped one case altogether because a man left for the restroom and never returned.

An hour passed this way. Guillermo's mother pulled at her arm until she had a bright red mark near her elbow. Even Guillermo looked concerned. He sat with his legs spread, his head toward the floor.

Then they called Guillermo's name.

The judge held three pages of the "Agreed Custody Order." The judge asked Lorena to raise her right hand.

"Is this all true and correct?" the judge asked.

"Yes," Lorena said.

The judge flipped through the pages. Staped to the back was a signature from Guillermo's father. In order to ensure Guillermo's safety, Guillermo's father, who'd taken out a \$7,500 loan to pay for his journey to America, now had to declare that he'd failed to protect his son—and legally disown him.

The judge mumbled something about a similar case in another district. The judge flipped through the papers again. He looked at the boy who stood before him.

"I grant the order," the judge said.

"I have worried about this case more than any other. He'll never have to go back to a country that will kill him."

Quickly, Marritz rose and escorted his clients to the lobby. Lorena cried, Guillermo danced, and the mother and son hugged. “I have worried about this case more than any other,” Marritz confided to Lorena. “He’ll never have to go back to a country that will kill him.”

After they’d celebrated, they walked downstairs to the court clerk’s office to ask for copies of the judge’s order. One of the office aides had previously complained that SIJS cases should not be allowed in this court, because it was an abuse of the system. The aide behind the counter this time said nothing as she handed over the copies. The next day, Marritz would send that order to Guillermo’s immigration judge. One week later, that judge would close Guillermo’s deportation case.

This article was produced in collaboration with [Next America](#).

ABOUT THE AUTHOR

J. WESTON PHIPPEN is a staff correspondent for *National Journal*.
