

Michigan Law Review

Volume 121 | Issue 6

2023

Heeding the Voices of Migrant Youth: The Need for Action

Randi Mandelbaum
Rutgers Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Immigration Law Commons](#), [Law and Race Commons](#), and the [Legal Writing and Research Commons](#)

Recommended Citation

Randi Mandelbaum, *Heeding the Voices of Migrant Youth: The Need for Action*, 121 MICH. L. REV. 965 (2023).

Available at: <https://repository.law.umich.edu/mlr/vol121/iss6/6>

<https://doi.org/10.36644/mlr.121.6.heeding>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

HEEDING THE VOICES OF MIGRANT YOUTH: THE NEED FOR ACTION

Randi Mandelbaum*

UNACCOMPANIED: THE PLIGHT OF IMMIGRANT YOUTH AT THE BORDER. By *Emily Ruehs-Navarro*. New York: New York University Press. 2022. Pp. ix, 163. Cloth, \$89; paper, \$28.

INTRODUCTION

Nicolas is a sixteen-year-old boy who was forced to flee Ecuador due to extreme poverty as well as threats to him and his family (pp. 1–2). His father had resided in the United States for a decade, so not only was the United States a place of safety, it also was where Nicolas could achieve his dream of reuniting with his dad (pp. 1–2). As Emily Ruehs-Navarro’s *Unaccompanied: The Plight of Immigrant Youth at the Border*¹ unfolds, we learn what happens to Nicolas, as well as many other migrant youth and the professionals who work with them. We also see how critical it is to listen to the stories of these young people and learn from their experiences. For it is these first-hand accounts that expose, in shocking detail, the hardships and inhumane treatment that so many migrant youth are forced to endure.

Much has been written about the suffering and appalling treatment of unaccompanied immigrant youth. But sociologist Emily Ruehs-Navarro’s new book provides a unique perspective through a graphic account of what happens to them once they are released from government custody into the care of parents, relatives, and close family friends. Her discussion, based largely on interviews with youth² and those working with them, is rich and deeply nuanced, revealing the complexities and immense challenges that noncitizen youth face when they flee to the United States (p. 20).

* Distinguished Clinical Professor of Law, Annamay Sheppard Scholar, and Director, Child Advocacy Clinic, Rutgers Law School. A huge note of gratitude is due to my exceptional research assistant, Brenda Milouchev.

1. Emily Ruehs-Navarro is an Assistant Professor of Sociology, Elmhurst University.

2. Throughout the book, Ruehs-Navarro elects to use the term “youth” as opposed to “minor” or “child.” P. 20. She rejects the term “minor,” as it often denotes a “legal category.” P. 20. She also avoids the term “child” because it “connotes a stage that lacks agency, and that connotation does a disservice to the young people . . . who are decidedly agentic, regardless of their age.” P. 20. Accordingly, this Review will only use the word “youth” or “young people” unless quoting a source that does not do so.

Having been denied access to the many detention centers and shelters around the country where youth are detained and warehoused, Ruehs-Navarro instead decides to focus on what occurs once youth are permitted to leave government custody. In particular, she centers her analysis on how youth first experience the United States and the relationships they develop with three distinct groups of people: (1) their caregivers, (2) their attorneys, and (3) the teachers and other staff who comprise our educational systems (pp. 33–34).

Through narratives, Ruehs-Navarro discusses the experiences and perspectives of both young people and the professionals who work with them. She vividly details the intricate systems in which they operate and demonstrates the difficulties migrant youth face in attempting to stabilize their lives and immigration statuses. In doing so, she is appropriately critical of the family reunification, legal, and educational systems with which the youth interface, and the professionals who work within or at the margins of these systems. Finding that “the adult professionals who intend to help youth do so within the restraints of a system that works at the crossroads of border security, racialized child welfare, and neoliberal humanitarianism” (p. 2), Ruehs-Navarro pronounces that the systems intended to help migrant youth are, in fact, broken.³ And within these broken systems, it is impossible for many youth to have a voice, stabilize their immigration status, and successfully transition into adulthood. At best, the professionals working in these systems face a host of ethical and moral dilemmas in doing their jobs; at worst, they are complicit in the harm inflicted on these young people (pp. 150–51).

Ruehs-Navarro concludes her book by beautifully describing what a non-racist, nonviolent, child-centered world would look like—one free of border police, detention centers, immigration courts, and laws and policies that force youth to be traumatized or retraumatized in order to receive immigration relief (pp. 158–62). She imagines an easier path for youth to reunify with their parents or extended family members, advocates for financial and social service support for these reunifications, and proposes that no youth should have to appear in immigration court. Rather, migrant youth should have the support of a multidisciplinary team to determine what will happen in their best interest (pp. 156–57). In making these recommendations, Ruehs-Navarro highlights how the current system does not work to achieve the wellbeing of these young people, but instead intentionally works against it.

While the book brilliantly provides a first-hand account of how unaccompanied youth experience their first few months and years in the United States and the many obstacles they face, its focus is limited in that it only concentrates on youth who are released from government custody and end up connected with attorneys, school personnel, and/or other social service providers. On a more systemic level, Ruehs-Navarro discusses racialized child welfare systems primarily in the context of the professionals who work within the immigration system. She does not situate the circumstances of migrant youth into the larger discussion of child welfare and human rights.

3. See pp. 150–51.

Ruehs-Navarro would have enhanced her analysis by taking a deeper look at how the treatment of these youth is not only racist, but a violation of our domestic child welfare laws and policies, as well as the United Nations Convention on the Rights of the Child (CRC).⁴ For example, there are no more than a few passing references to how the systems created to care for migrant youth operate entirely differently and separately from domestic child welfare systems. And while there is some discussion of how the systems work against the agency and voice of youth and the promotion of their wellbeing (p. 104), there is little discussion of how these transgressions fit into the larger conversation around human rights and youth as possessors of these rights.

This Book Review is divided into three parts. Part I reviews the challenges Ruehs-Navarro uncovered in the family reunification, legal, and educational systems. It also details the many obstacles and dilemmas present for the people working within these systems, mainly professionals who are trying to help the youth but are thwarted at every turn due to the systems' many failings. Part II highlights how Ruehs-Navarro's analysis and conclusions could be augmented by situating the circumstances of noncitizen youth into the larger discussion of child welfare reform and the care and treatment of youth in government custody. When considered in this context, it becomes clear that the current system that takes in migrant youth is not only racist, but contrary to best practices in child protection and international human rights standards in its failure to meet the needs of unaccompanied youth. But why is this so? Why does the federal government fail to comply with the laws and policies demanded of our domestic child welfare systems? Moreover, why are international human rights standards not applicable to noncitizen youth in the United States? Part III takes Ruehs-Navarro's recommendations and builds upon them, calling for a nonracist system focused on the wellbeing of youth that does not distinguish between citizen or noncitizen and that is grounded in the principles of child wellbeing, liberty, and autonomy.

I. LISTENING TO YOUTH AND THOSE WHO WORK WITH THEM

Unaccompanied is divided into five chapters. After a lengthy introductory chapter, the next three chapters focus on the systems with which the youth interface: the family reunification system, the legal system, including the attorneys who work with young people, and the educational system. Chapter Four then discusses the pervasive and insidious themes that Ruehs-Navarro finds operating in these systems—those of border security, racialized child welfare, and neoliberal humanitarianism. Chapter Five concludes with recommendations as to how the systems should be overhauled.

In the introductory chapter, Ruehs-Navarro explains why so many youth are forced to migrate to the United States, what happens to them when they arrive alone at our southern border, and how the majority of youth end up in

4. United Nations Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

our communities, with family, but with little, if any, support. She also describes her interview methods. Ruehs-Navarro met with fifteen youth and sixty-seven professionals (p. 26). The youth were ages seventeen to twenty-four and included three females and twelve males from Ecuador, El Salvador, Guatemala, Honduras, and Mexico (p. 29). The professionals, eleven men and fifty-six women, consisted of eighteen attorneys and legal service providers, fourteen government workers, six government facility workers, seventeen educators, and twelve other professionals, who constituted a mix of social workers, community members, and activists (pp. 27–28). The majority of the professionals described themselves as white, and a third as Latinx (p. 28).

Chapter One, entitled *Leaving and Finding Home* (p. 37), focuses on what happens when the youth arrive in the United States and the process of placing them with family members or close family friends, what Ruehs-Navarro calls the “family reunification process” (p. 46). It begins with the stories of five youths who migrated to the United States for various reasons, including child abuse and neglect, abandonment by one or both parents, extreme poverty, gang violence, and discrimination against Indigenous people.⁵ All the youths, like Nicolas, viewed the United States as a place of safety with educational and economic opportunities (p. 45). Many were also seeking to reunify with parents who had fled to the United States years earlier.⁶ Scholars view these diverse migration reasons as “push and pull” factors⁷ and discuss how most youth have a myriad of reasons for migrating.⁸

When youth under the age of eighteen arrive in the United States without a parent or legal guardian and without any immigration status, they must be designated as “unaccompanied.”⁹ This provides some protections, including

5. Ch. 1. The chapter narrates the experiences of Angelica, Cynthia, Carlos, Edwin, and Mariana.

6. P. 44. For example, Edwin not only fled to the United States to help financially support his grandmother in Honduras, but he also was excited to reunite with his father who had been in the United States for years. P. 44.

7. See *Push or Pull Factors: What Drives Central American Migrants to the U.S.?*, NAT'L IMMIGR. F. (July 23, 2019), <https://immigrationforum.org/article/push-or-pull-factors-what-drives-central-american-migrants-to-the-u-s/> [perma.cc/2UDK-UBHU].

8. See, e.g., Matthew Lorenzen, *The Mixed Motives of Unaccompanied Child Migrants from Central America's Northern Triangle*, 5 J. ON MIGRATION & HUM. SEC. 744 (2017).

9. Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2) (denoting the definition of an “unaccompanied” youth). The statute uses the term “unaccompanied alien children.” However, this Review will not use the term “alien,” as it has been found to be dehumanizing. This is consistent with actions recently taken by the U.S. Department of Homeland Security in April 2021 wherein the agency was ordered to alter how it referred to noncitizens. Maria Sacchetti, *ICE, CBP to Stop Using ‘Illegal Alien’ and ‘Assimilation’ Under New Biden Administration Order*, WASH. POST (Apr. 19, 2021, 9:14 AM), https://www.washingtonpost.com/immigration/illegal-alien-assimilation/2021/04/19/9a2f878e-9ebc-11eb-b7a8-014b14aeb9e4_story.html [perma.cc/89UW-LN8W]. It is also consistent with a sweeping immigration reform bill that President Biden introduced early in his term. Nicole Acevedo, *Biden Seeks to Replace ‘Alien’ with Less ‘Dehumanizing Term’ in Immigration Laws*, NBC NEWS (Jan. 22, 2021, 3:34 PM), <https://www.nbcnews.com/news/latino/biden-seeks-replace-alien-less-dehumanizing-term-immigration-laws-n1255350> [perma.cc/F2M5-JSQC].

the right to not be held for more than seventy-two hours by Customs and Border Protection (CBP) and to be quickly turned over to the custody of the Department of Health and Human Services' Office of Refugee Resettlement (ORR).¹⁰ Pursuant to federal consent decrees and the Trafficking Victims Protection Reauthorization Act (TVPRA), once in the custody of ORR, a search for a "sponsor" must begin immediately.¹¹ These sponsors can be parents, relative caregivers, or close family friends.¹² Depending on the specific relationship, there may be more or less vetting and investigation prior to permitting the youth to be released.¹³

The process of approving a sponsor is conducted by ORR case managers through interviews with the youth, followed by verification of the sponsor's identity and relationship to the youth through documentation and fingerprinting (p. 46). Ruehs-Navarro emphasizes how "[t]he lived realities of poor, undocumented, and transnational families may impede the release of a young person from a shelter" (p. 51). For instance, some relatives may be fearful of coming forward (p. 50), while others may not have the means to obtain the necessary documentation, especially if the family is from a remote area abroad (p. 48).

Ruehs-Navarro also highlights how deep-seated flaws in our family reunification systems cause some sponsorships to be unstable, eventually leaving youth homeless and searching for alternate caretakers (p. 51). This is not a fact that many advocates focus on, but it is a reality for some young people. While not a scientific sampling, of the seven youths interviewed by Ruehs-Navarro who had been given a placement by the government, only two remained with those caregivers (p. 51). Additionally, community professionals whom she interviewed "had numerous stories of working with youth who quickly left the placement they received from ORR" (p. 51).

Ruehs-Navarro further explains that, at times, placements with parents can be disrupted because the "stresses of migration rupture family ties before, during, and after the migration of a family member" (p. 51). Four of Ruehs-Navarro's research participants were reunited with a parent, but only one remained with their parent at the time of the interview (p. 57). While family reunification is often highly anticipated, it can leave many "teens disillusioned and alienated" (p. 57). This can be "especially true of older teens and in cases" where "parents have started new families," particularly where there are few, if

10. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(b)(3), 122 Stat. 5044, 5077 (codified in scattered sections of 42 U.S.C.). See *generally Unaccompanied Children Released to Sponsors by State*, OFF. OF REFUGEE RESETTLEMENT (Sept. 27, 2019) [hereinafter ORR UAC], <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state> [perma.cc/7BRC-MAXF].

11. See William Wilberforce Trafficking Victims Protection Reauthorization Act § 235(c)(2); see also Stipulated Settlement Agreement at 9–10, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997); ORR UAC, *supra* note 10.

12. See ORR UAC, *supra* note 10.

13. William Wilberforce Trafficking Victims Protection Reauthorization Act § 235(c)(3)(A).

any, therapeutic supports (p. 57). Many of the youth also have lived independently before arriving in the United States and reject the notion that they now need to be dependent.¹⁴

With regard to nonparent sponsors, there is an implicit, but at times false, assumption by ORR that these sponsors will act as a parent or guardian to the youth placed in their care (p. 52). For example, in order for youth to be released by the federal government to sponsors, these relative caregivers must sign a document agreeing to enroll the youth in school and ensuring that the youth will appear in immigration court (p. 52). Additionally, they must consent to file papers in court to become the youth's formal legal guardian as soon as possible (p. 52). However, these relative caregivers acquiesce to all of this, and to financially and emotionally supporting the youth, *without* any financial assistance or social services.¹⁵ Consequently, they essentially become "foster parents" without receiving any of the social services or monetary support which domestic foster parents receive (p. 53). Ruehs-Navarro aptly calls this a "racialized foster system, in which predominantly Latinx families are charged with providing foster care without the financial support that other foster families would" receive (pp. 53–54). Rightfully, many advocates have called for there to be increased and enhanced postrelease services for these "foster parents."¹⁶ However, these services must be voluntary and based on the needs of the youth and families,¹⁷ as many sponsoring relatives may be undocumented themselves and nervous about any government intervention (p. 50).

In Chapter Two, Ruehs-Navarro turns her attention to the attorneys whom the youth seek out for legal representation. While she finds most of the attorneys caring and well-intentioned, Ruehs-Navarro is critical of the legal system because it causes attorneys to become "gatekeepers" of a legal process that molds and "massage[s]" the stories of the youth to fit into legal claims and selective definitions of trauma, what Ruehs-Navarro labels "borderland legends" (pp. 64–65). She avers that immigrant youth must find a way to tell their life stories "in such a way that [they] can be traded for benefits in the United States" (p. 64). For example, Ruehs-Navarro explains that "the story of a [youth] wanting a better future is not an acceptable narrative" for the legal system (p. 71). Instead, "[a]n attorney must brush past those facts and ask [the youth] to dig into the traumas in [their] life," requiring the young person to redefine their life story and frame themselves as a "victim[]," rather than the resilient human being that they are (p. 71). Similarly, in cases where a youth may

14. P. 59. For example, although Edwin had looked forward to reuniting with his father in the United States, Edwin was largely independent in Honduras and no longer needed his father's advice. P. 59.

15. See pp. 53–54.

16. See, e.g., MARK GREENBERG ET AL., *MIGRATION POL'Y INST., STRENGTHENING SERVICES FOR UNACCOMPANIED CHILDREN IN U.S. COMMUNITIES* 42 (2021).

17. BENJAMIN J. ROTH & BREANNE L. GRACE, *POST-RELEASE: LINKING UNACCOMPANIED IMMIGRANT CHILDREN TO FAMILY AND COMMUNITY* 33 (2015).

have been neglected by their parents, they are pushed by their attorneys to talk negatively about their parents even when they do not want to (p. 73).

In Chapter Three, Ruehs-Navarro turns the spotlight onto our educational systems, finding that some schools demonstrate “an intentional and thoughtful commitment to all students, including undocumented, unaccompanied immigrant youth” (p. 84). Yet many others act in the exact opposite manner, “participat[ing] in the marginalization of the poor and of communities of color,” and in doing so place many barriers and obstacles in the way of youth succeeding in school (p. 84). In fact, some school districts will not even permit migrant youth to enroll.¹⁸ Because many youth either do not have, or have a difficult time obtaining, the “proper” documentation (birth certificates, immunization records, or proof of residency), they are covertly prohibited from attending school due to these “bureaucratic” issues, despite the absolute right to do so.¹⁹ Other schools are even more blatant about their discrimination and will use the youth’s age²⁰ or undocumented status as the basis for keeping them from attending.²¹

Many of the youth often find school unwelcoming, given that English is not their first language and they may not have had a comparable education in their home countries. This leads some youth to fall through the cracks and drop out (pp. 95, 98–99). Ruehs-Navarro also highlights the tension many of these young people feel between the need to go to school and the need to work to support themselves (because the systems do not) (p. 98) and, often, their families back in their home country (pp. 86–88). For many youth, “[n]ot working is not an option” (p. 86).

The last two chapters and the conclusion are where Ruehs-Navarro moves from telling stories to examining the system as a whole and making recommendations for structural change, which are discussed below. Ruehs-Navarro describes what happens to unaccompanied youth from the moment they step on U.S. soil to the time they are released to sponsors and beyond. In describing this trajectory, she portrays the institutionalization of the youth as criminalizing and imprisoning (p. 105). Ruehs-Navarro’s characterization is fitting. Criminalization begins from the moment youth arrive at the U.S. southern border without documentation and without a parent or legal guardian

18. See p. 85; see, e.g., *SPLC Offers Guide on Immigrant Students’ Right to a Public Education*, S. POVERTY L. CTR. (June 17, 2021) [hereinafter *SPLC Offers Guide*], <https://www.splcenter.org/news/2021/06/17/splc-offers-guide-immigrant-students-right-public-education> [perma.cc/Z4V4-M384].

19. See p. 89; S. POVERTY L. CTR., PROTECTING IMMIGRANT STUDENTS’ RIGHTS TO A PUBLIC EDUCATION 23–24 (2021), https://www.splcenter.org/sites/default/files/cr_plyler_guide_final_june_2021.pdf [perma.cc/CDR5-PXWQ].

20. Pp. 93–94, 96. For example, one youth, Florencio, wanted to enroll in school, but he was past the age limit for secondary education. Therefore, he never attended school even though he wanted to. Pp. 93–94.

21. Pp. 95–96. See, e.g., Garance Burke, *Report: Immigrant Students Blocked from Enrolling in School*, AP NEWS (Apr. 11, 2016), <https://apnews.com/article/4d49a60d2ce34c60b047ab9fe7ecfecfd> [perma.cc/B8YA-F7EJ].

(pp. 106–07). Their initial interactions are often with CBP,²² a law enforcement unit of the Department of Homeland Security (DHS).²³ CBP likely will apprehend the youth (unless they are from Mexico or Canada),²⁴ designate them as unaccompanied,²⁵ and charge them with entering the country without permission. This then places the youth into removal proceedings before the Executive Office for Immigration Review (EOIR), the agency within the U.S. Department of Justice that houses the immigration courts.²⁶

The youth will initially be detained by CBP, most commonly in small, overcrowded, and often freezing cells or cages.²⁷ The youth are then transferred to ORR,²⁸ where they will be placed in an ORR facility. Typical ORR placements are shelters, transitional foster care placements, residential treatment centers, or secure facilities.²⁹ Even young children (defined as under the age of thirteen) are not permitted to be placed into traditional foster homes.³⁰ Instead, they are placed into what is called “transitional foster care,”³¹ where

22. See *About CBP*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/about/perma.cc/R5F6-CPHD> (last modified Mar. 8, 2023).

23. *Operational and Support Components*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/operational-and-support-components> [perma.cc/V3CN-7Q2H] (last updated Feb. 28, 2023).

24. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(a)(2), 122 Stat. 5044, 5075 (codified in scattered sections of 42 U.S.C.). The TVPRA excludes Mexican and Canadian children because they hail from a contiguous country. They are not designated as unaccompanied and, therefore, are denied the statutory protections afforded to other unaccompanied youth. Instead, the TVPRA requires the immediate repatriation of Mexican and Canadian youth to their country of origin unless: (1) there are indications of human trafficking, (2) the child indicates a fear of persecution in the home country, or (3) the child lacks the capacity to choose to return to the child’s country of origin. *Id.* § 235(a)(2)(A)(i)–(B)(ii).

25. See 6 U.S.C. § 279(g)(2).

26. P. 15; *Executive Office for Immigration Review: About the Office*, U.S. DEP’T OF JUST., <https://www.justice.gov/eoir/about-office> [perma.cc/EVM6-BG65] (last updated May 18, 2022).

27. Teo Armus, *Unaccompanied Migrant Children Suffer ‘Inhumane and Cruel Experience’ in CBP Custody*, *Report Alleges*, WASH. POST (Oct. 30, 2020, 5:31 AM), <https://www.washingtonpost.com/nation/2020/10/30/migrant-children-border-unaccompanied/> [perma.cc/D2ML-KQL3]; see also Geoff Bennett, Julia Ainsley & Jacob Soboroff, *Record Number of Unaccompanied Migrant Children Held in Facilities Meant for Adults*, NBC NEWS (Mar. 8, 2021, 9:19 PM), <https://www.nbcnews.com/news/investigations/record-number-unaccompanied-migrant-children-held-facilities-meant-adults-n1260097> [perma.cc/QV9S-QEZH].

28. U.S. OFF. OF REFUGEE RESETTLEMENT, ORR UNACCOMPANIED CHILDREN PROGRAM POLICY GUIDE § 1.1 (2022) [hereinafter ORR POLICY GUIDE], <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-1> [perma.cc/PCG5-JD8L].

29. *Id.* § 1.2; see also *id.* § 1.2.2.

30. See *id.* § 1.2.2.

31. *Id.*

they sleep in a family home but typically report back to the facility for “schooling” (which takes place in the contracted facility rather than a public school in the community).³²

As explained above, if there is a family member in the United States, ORR will look to release the youth to the care of this “sponsor” while the youth awaits their immigration hearing.³³ When youth are unable to be placed with sponsors, they will remain in ORR custody until they reach the age of eighteen or are deported, at which point they are either released or transferred to an adult Immigration and Customs Enforcement (ICE) facility within DHS.³⁴ At some point, a select few of these youth may be moved to more traditional foster care, either through ORR’s Long Term Foster Care (LTFC) program³⁵ or its Unaccompanied Refugee Minor (URM) program.³⁶ But the stark reality is that only a very small percentage of youth are placed into more traditional foster care programs and most who cannot be placed with a sponsor remain in large-scale institutionalized settings, at times even secure settings, for months, or even years.³⁷

32. ORR *Unaccompanied Children Program Policy Guide: Guide to Terms*, U.S. OFF. OF REFUGEE RESETTLEMENT (July 19, 2022), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-guide-terms> [perma.cc/UAX4-KDT8].

33. ORR UAC, *supra* note 10.

34. *See id.*; *Ramirez v. U.S. Immigr. & Customs Enf’t*, 568 F. Supp. 3d 10, 19, 30 (D.D.C. 2021); *Ramirez*, No. 18-cv-508 (D.D.C. Sept. 21, 2021) (final judgment and permanent injunction); *Ramirez*, No. 18-cv-508 (D.D.C. Nov. 10, 2021) (addendum to final order and permanent injunction).

35. ORR POLICY GUIDE, *supra* note 28, § 1.2.6.

36. 8 U.S.C. § 1522(d)(2); *see* KIMBERLY FOLEY, LIZA RODLER, SAM ELKIN & SARAH CATHERINE WILLIAMS, OFF. OF PLAN., RSCH., & EVALUATION, ADMIN. FOR CHILD. & FAMS., FINAL REPORT OF THE DESCRIPTIVE STUDY OF THE UNACCOMPANIED REFUGEE MINORS PROGRAM 4 (2021) (“Youth are eligible for the URM Program through six legal categories: refugees, asylees, youth with Special Immigrant Juvenile (SIJ) classification, victims of trafficking, Cuban/Haitian entrants, and U-status recipients For all categories, youth must be under age 18 when they enter the URM Program and not have a parent or relative who is available and willing to care for them.”). For a comprehensive history of the URM program, *see* M. Aryah Somers, Pedro Herrera & Lucia Rodriguez, *Constructions of Childhood and Unaccompanied Children in the Immigration System in the United States*, 14 U.C. DAVIS J. JUV. L. & POL’Y 311, 335–37 (2010).

37. NEHA DESAI, MELISSA ADAMSON, LEWIS COHEN, & ELIZABETH PIRROTTA, NAT’L CTR. FOR YOUTH L., CHILD WELFARE & UNACCOMPANIED CHILDREN IN FEDERAL IMMIGRATION CUSTODY 12 (2019), <https://youthlaw.org/sites/default/files/attachments/2022-02/Briefing-Child-Welfare-Unaccompanied-Children-in-Federal-Immigration-Custody-A-Data-Research-Based-Guide-for-Federal-Policy-Makers.pdf> [perma.cc/E2VM-Q48P] (noting that there are generally far more eligible youth than LTFC placements available). As of February 28, 2022, there were 356 children, ages 0–12, in transitional (short-term) foster care. The high was in November 2021 with 672 children. Admin. for Child. & Fams., *Latest UC Data—FY2022: Tender Age (0–12) UC by Shelter Type*, U.S. DEP’T HEALTH & HUM. SERVS., <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2022/index.html> [perma.cc/7QZA-FSRC] (last reviewed Dec. 16, 2022); *see also* Caitlin Dickson, *Biden Administration Looks to State Foster Care and Shelters to House Growing Number of Migrant Children at Border*, YAHOO NEWS (Apr. 26, 2021), <https://news.yahoo.com/biden-administration-looks-to-state-foster->

II. ENHANCING AND CONTEXTUALIZING RUEHS-NAVARRO'S ANALYSIS

At various points throughout the book, Ruehs-Navarro switches from telling individual stories of youth and/or the professionals who work with them to a commentary on the immigration system as a whole. Yet, her focus on the system's failures—why it is so broken and what can be done to begin to transform it—is incomplete in two key ways. First, the analysis is limited by the people she interviews, as she only focuses on youth who are released from government custody and who end up connected with attorneys, school personnel, and other social service providers. Second, on a more systemic level, while Ruehs-Navarro rightly speaks of “racialized child welfare,” her analysis, which primarily focuses on the professionals who work within the immigration system, is not sufficiently contextualized in that she does not situate the circumstances of unaccompanied immigrant youth into the larger discussion of child welfare and human rights.

First, because she was denied access to all ORR facilities, Ruehs-Navarro could not shed light on the deplorable circumstances of the approximately 20 percent of migrant youth who are not released from government custody,³⁸ and who, therefore, must remain in detention, even secure jail-like settings, for months or even years.³⁹ Instead, Ruehs-Navarro's interviews were limited to youth who were released from ORR custody and placed with sponsors, mainly family members. However, even here, because she only interviewed youth who were connected to a professional of some sort (postrelease case-workers, attorneys, school officials), her interview pool was constrained to a fraction of the youth who are released from government custody.

Ruehs-Navarro's critique of the child-caring systems that serve migrant youth also is limited in that its focus is largely on the failings of those working within these systems. In fact, Ruehs-Navarro herself acknowledges that “it is

care-and-shelters-to-house-growing-number-of-migrant-children-at-border-161542421.html [perma.cc/DHL3-4M2Q] (“According to HHS, as of April 16 [2021], approximately 6 percent of all unaccompanied children in its custody were in some kind of foster care placement, the most common of which is what HHS calls ‘transitional,’ or short-term, foster care. These spots are typically reserved for children under 12, those who are pregnant or parenting, younger sibling groups and other particularly vulnerable children. They essentially serve as an alternative to staying in a shelter or other residential facility while case managers with the refugee office work to locate and vet an appropriate sponsor—a process that usually takes around 30 to 35 days.”).

38. For example, comparing the number of referrals to ORR in FY 2021, *Fact Sheets and Data*, OFF. REFUGEE RESETTLEMENT (Feb. 24, 2023), <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data> [perma.cc/5GRR-DVGJ], with the releases in FY 2021, *Unaccompanied Children Released to Sponsors by State—November 2021*, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.hhs.gov/programs/social-services/unaccompanied-children-released-to-sponsors-by-state-november-2021.html> [perma.cc/RDH7-D24V] (last reviewed Dec. 30, 2021), one finds that 88 percent (107,646/122,731) of the children were released in FY21.

39. See NEHA DESAI, MELISSA ADAMSON, LEWIS COHEN & ELIZABETH PIRROTTA, NAT'L CTR. FOR YOUTH L., *A NEW WAY FORWARD: WHAT CONGRESS MUST DO TO PROTECT THE DIGNITY, HEALTH, AND SAFETY OF CHILDREN IN IMMIGRATION CUSTODY* (2021), https://youth-law.org/sites/default/files/attachments/2022-02/2021_NCYL-Congressional-Briefing_A-New-Way-Forward.pdf [perma.cc/HQV9-GA5D].

easy to criticize the aid apparatus” and “much more difficult to find solutions,” especially ones that address “the root causes of the issue and also ease the suffering in the present moment” (p. 156). If Ruehs-Navarro situated the circumstances of unaccompanied youth and the professionals who work with them into the larger discussion of child protection, child wellbeing, and human rights, she would have enhanced her structural analysis and made the plight of unaccompanied youth and the discrimination they experience even more stunning and distressing. In other words, one way to understand the inequitable way the United States treats unaccompanied youth is to listen to their experiences and the experiences of those who are trying to help them, as Ruehs-Navarro so thoughtfully does. But this is not a complete picture. The understanding can be deepened through an examination of how the treatment of undocumented immigrant youth (1) violates the U.S. Constitution, with its strong foundation in family integrity and the right of parents to rear and raise their children, (2) fails to comply with our domestic child welfare laws and policies, and (3) is contrary to the rights set forth in the CRC. These comparisons are especially pertinent when one considers that migrant youth have suffered similar trauma and present with comparable needs and vulnerabilities to citizen youth who may be in state custody due to child abuse or neglect.

For example, Ruehs-Navarro offers an extensive and insightful analysis of the flaws in the “family reunification” system for immigrant youth and families (pp. 46–51). These flaws, though, become even more egregious when the constitutional rights of parents are considered and when the immigration system is contrasted against other government systems where family reunification is at issue, namely our domestic child welfare systems. Outside of a few passing references, Ruehs-Navarro fails to question why the system created to care for immigrant youth in its custody operates entirely differently and separately from our domestic foster care systems. And while Ruehs-Navarro is critical of some of the attorneys who work with unaccompanied youth, she does not highlight the alarming fact that most of these young people are not provided any government-funded representation,⁴⁰ unlike youth who are brought before our state courts due to allegations of parental abuse and neglect.⁴¹ Finally, while Ruehs-Navarro discusses how these systems fail to listen to youth and promote their wellbeing, these lapses must be situated into the larger conversation of family integrity, the rights of youth, and basic human rights standards. To add these perspectives, we must look to the U.S. Constitution, federal law, and international human rights standards.

40. See *Legal Services for Unaccompanied Children*, VERA, <https://www.vera.org/projects/legal-services-for-unaccompanied-children> [perma.cc/Q3LF-M76D] [hereinafter VERA] (explaining that a small percentage of unaccompanied youth are provided attorneys funded by ORR through the Vera Institute).

41. See Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5119 (2018)).

Family integrity has long been recognized as a core interest protected by the Constitution.⁴² In fact, the “interest of parents in the care, custody, and control of their children[] is perhaps the oldest of the fundamental liberty interests recognized by” the Supreme Court.⁴³ And the Constitution, with its protections against state intervention into the family and for the right of parents to rear and raise their children, pertains to all persons regardless of immigration status.⁴⁴ Thus, the immigration family reunification system’s policies that mandate parents, who are not being charged with abuse or neglect, “apply” to ORR to have their children reunified with them flies in the face of these constitutional precepts. Worse yet, ORR often presumes that parents of unaccompanied youth are unfit by virtue of their child’s unaccompanied status.⁴⁵ However, under the Constitution, as well as laws in all fifty states and other U.S. jurisdictions, children are not to be removed *or kept* from a parent or parents unless there is a serious safety concern and an imminent risk of harm.⁴⁶ In fact, in the well-known case that helped to put an end to President Trump’s “Zero Tolerance” policy, *Ms. L v. ICE*, the court held that the practice of “separating [parents] from their children, and failing to reunite those parents who have been separated, without a determination that the parent is unfit or presents a danger to the child violates the parents’ substantive due process rights to family integrity under the Fifth Amendment.”⁴⁷

Further, if a youth has no parents in the United States, other federal laws and policies are implicated which instruct that a youth should be placed with kin as expeditiously as possible. These laws encompass statutes specific to immigrant youth,⁴⁸ as well as many that govern our domestic child welfare programs.⁴⁹ Specifically, the TVPRA instructs that an unaccompanied youth is to be promptly released to family.⁵⁰ Moreover, the laws and policies that govern our domestic child protection systems mandate that kinship caregivers should

42. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

43. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).

44. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

45. Lauren Heidbrink, *Assessing Parental Fitness and Care for Unaccompanied Children*, RUSSELL SAGE FOUND. J. SOC. SCIS., July 2017, at 37, 44.

46. See, e.g., CHILD.’S JUST. TASK FORCE, ILL. DEP’T OF CHILD. & FAM. SERVS., MANUAL FOR MANDATED REPORTERS 36 (rev. ed. 2020); N.J. STAT. ANN. §§ 9:6-8.29, 8.30 (West 2021); MICH. CT. RULE 3.963; ARIZ. REV. STAT. ANN. § 8-821 (West 2018).

47. *Ms. L v. U.S. Immigr. & Customs Enf’t*, 310 F. Supp. 3d 1133, 1142 (S.D. Cal. 2018).

48. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified in scattered sections of 42 U.S.C.); see also Stipulated Settlement Agreement, *supra* note 11.

49. See Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949, 3950 (emphasizing a child’s right to remain with their family by connecting and supporting relative caregivers); see also Family First Prevention Services Act, Pub. L. No. 115-123, § 50711, 132 Stat. 232 (2018) (codified as amended in scattered sections of 42 U.S.C.) (identifying a foster care prevention strategy so a “child may remain safely at home, live temporarily with a kin caregiver until reunification can be safely achieved, or live permanently with a kin caregiver”).

50. See William Wilberforce Trafficking Victims Protection Reauthorization Act, § 235.

not only be encouraged to take in their young relatives, but supported in doing so, both financially and with necessary social services.⁵¹

However, because ORR does not comply with these child welfare practices, its processes are anything but encouraging, supportive, or transparent. Rather than assisting family members in coming forward to care for a young relative, ORR has established obstacles and disincentives. As explained above, caregivers, who are often undocumented themselves, must first apply to care for their young relatives, agree to be fingerprinted, and guarantee that the youth in their care will appear at immigration court and enroll in school. The caregiver also promises to seek custody or guardianship of the youth in courts in their localities. And they are expected to do all of this without any assistance, financial or otherwise. Why are youth placed with relatives through our immigration system treated differently than youth placed with relatives through our domestic foster care systems? Why do the same principles and laws not apply?

The situation becomes even more stark when one compares youth who remain in the custody of ORR with those youth who are in the custody of our local- and state-run child welfare programs. For the latter group, the principles of safety, wellbeing, and permanency apply. In the domestic child welfare systems, youth are to be placed in the most family-like settings, local and state agencies are charged with meeting all of their needs, and youth are appointed representatives who help ensure that the agency is held accountable.⁵² Furthermore, in most jurisdictions, the youth's child welfare cases are able to stay open until they turn twenty-one, and in some cases twenty-three, so that they can be assisted with transitioning into adulthood.⁵³ In contrast, the majority of unaccompanied youth who are not able to be placed with a sponsor typically spend months and at times a year or more in ORR detention, likely residing in large congregate care settings, where they are not permitted to attend community schools, and even their recreation and time spent outdoors is limited.⁵⁴ Then, on their eighteenth birthday, they are either released, often into homelessness (pp. 91–92), or worse yet, they are turned over to ICE and placed into adult immigration detention.⁵⁵

51. See Family First Prevention Services Act, Pub. L. No. 115-123, § 50741, 132 Stat. 232, 253–57 (2018) (codified as amended in scattered sections of 42 U.S.C.).

52. See Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(B)(xiii) (2020).

53. The Family First Prevention Services Act permits states to extend services to the age of twenty-three. See § 50753(a); see also KATRINA BREWSAUGH, AUDREY RICHARDSON & ANNELESE LOVELESS, STATE APPROACHES TO EXTENDING CHAFEE SERVICES TO AGE 23 3 (2021), <https://www.urban.org/sites/default/files/publication/104773/state-approaches-to-extending-chafee-services-to-age-23.pdf> [perma.cc/3KTE-C7FJ].

54. See *Services Provided*, OFF. OF REFUGEE RESETTLEMENT (May 16, 2019), <https://www.acf.hhs.gov/orr/about/ucs/services-provided> [perma.cc/2JH7-SCP2]; see DESAI ET AL., *supra* note 39, at 13, 22.

55. *Ramirez v. U.S. Immigr. & Customs Enft*, 568 F. Supp. 3d 10 (D.D.C. 2021) (challenging ICE's policy of detaining immigrants who entered the United States as unaccompanied youth after they turn eighteen).

While ORR is not explicitly governed by the federal laws and regulations that oversee state and local child welfare agencies,⁵⁶ a careful reading of other federal statutes and policies show that ORR is under the statutory obligation to “ensur[e] that the interests of the child[ren] are considered in decisions and actions relating to the[ir] care and custody.”⁵⁷ Moreover, the written policies of ORR state that it adheres to “child welfare best practices”⁵⁸ and the TVPRA mandates that youth in the custody of ORR must be placed “in the least restrictive setting that is in the best interest of the child.”⁵⁹ Thus, because child welfare laws are aimed at ensuring that state and local agencies who receive federal foster care funds are complying with best practices, it is incumbent to look to these laws and policies to understand the appropriate child welfare practices.⁶⁰

Moreover, there are delineations of “best interest” principles and child protections in international law, namely the CRC.⁶¹ Despite the fact that the United States is the only country that has not ratified the CRC,⁶² its principles afford a comprehensive framing of children’s rights.⁶³ The CRC is based on

56. Congress has used amendments to the Social Security Act to legislate in the child welfare arena. This funding scheme mandates that states and localities comply with federal laws and regulations to receive federal funds. *See, e.g.*, Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended at 42 U.S.C. § 671); Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 11 Stat. 2115 (codified as amended at 42 U.S.C.A. § 679); Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949; Family First Prevention Services Act.

57. 6 U.S.C. § 279(b)(1)(B).

58. ORR POLICY GUIDE, *supra* note 2828.

59. 8 U.S.C. § 1232(c)(2).

60. For a more comprehensive analysis of why and how child welfare principles should be applied to the circumstances of migrant children and families, see Randi Mandelbaum, *Why Does the Federal Government Get a Pass? Applying Best Practices in Child Protection to the Circumstances of Migrant Children and Families*, 71 AM. U. L. REV. 1977 (2022).

61. *See* CRC, *supra* note 4. While the Convention on the Rights of the Child has never been submitted to and ratified by the U.S. Senate, the United States is a signatory to the Convention, and thus cannot act against the principles of the Convention, even if it is not bound by its terms.

62. *See* Richa Mathur, *The UN Convention on the Rights of the Child: Why Federal Rights for Children are Important*, FIRST FOCUS (Nov. 2016), <https://firstfocus.org/wp-content/uploads/2016/11/UN-Convention-Child-Rights-Fact-Sheet-1.pdf> [perma.cc/CN2A-NEFH]; Sarah Mehta, *There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US*, ACLU (Nov. 20, 2015), <https://www.aclu.org/news/human-rights/theres-only-one-country-hasnt-ratified-convention-childrens> [perma.cc/JWD9-HEXX].

63. *See* U.S. IMMIGR. & NATURALIZATION SERV., THE BASIC LAW MANUAL: U.S. LAW AND INS REFUGEE/ASYLUM ADJUDICATIONS 12 (1995) (“Treaties to which the United States is not a party, while not legally binding, can be evidence of customary international law.”). At least one Circuit, in dicta, held that the CRC had attained the status of customary international law. *See* Cabrera-Alvarez v. Gonzales, 423 F.3d 1006, 1010 (9th Cir. 2005); *see also* Shani M. King, *U.S. Immigration Law and the Traditional Nuclear Conception of Family: Toward a Functional Definition of Family that Protects Children’s Fundamental Human Rights*, 41 COLUM. HUM. RTS. L. REV. 509, 548–49 (2010) (discussing whether the CRC could be considered customary international law); Olga Byrne, *Promoting a Child Rights-Based Approach to Immigration in the United*

four principles: nondiscrimination, the best interests of the child, the right to participation, and the right to life, survival, and development.⁶⁴ It also respects the rights of youth as members of families, emphasizes the right to protection against abuse, neglect, and exploitation, and asserts the right not to be separated from one's parents unless necessary.⁶⁵ Of particular relevance to the plight of migrant youth in the United States, Article 3 decrees that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁶⁶

Yet, these critical principles are disregarded. Nowhere in immigration policy do we see the best interest of the child being mandated, or even prioritized. Migrant youth are not supported in reunifying with their family members and youth in the custody of ORR are not residing in facilities where their safety, health, and educational needs are being met, far from it. Rather than residing in family-like foster homes, like the majority of their citizen peers, migrant youth are primarily residing in large congregate care facilities where they cannot attend local schools, have limited time for recreation, and cannot participate in activities in the community.⁶⁷ Moreover, youth who are in the custody of state and local child welfare agencies are afforded a representative, who is usually an attorney,⁶⁸ while youth involved with ORR are only provided an attorney at government expense while they are in the custody of ORR.⁶⁹ The roughly 80 percent of youth who are released to sponsors⁷⁰ must seek out and retain their own attorneys, despite the fact that most have cases pending at EOIR, more colloquially known as Immigration Court, where the government is represented and is actively seeking the youth's removal from the United States.⁷¹ Thus, in almost every aspect of life, the interests of migrant youth are being flouted as compared to other similarly situated youth.

States, 32 GEO. IMMIGR. L.J. 59 (2018) (calling for policymakers and activists to implement a child-rights-based approach to immigration law grounded in international norms and conventions).

64. CRC, *supra* note 4, arts. 2–3, 6, 18–19.

65. *Id.* arts. 3, 5, 9, 14, 19, 27, 34.

66. *Id.* art. 3. For a good summary of the best interest standard in the CRC, see Bridgette A. Carr, *Incorporating a “Best Interests of the Child” Approach into Immigration Law and Procedure*, 12 YALE HUM. RTS. & DEV. L.J. 120, 127–28 (2009), and Andrew I. Schoenholtz, *Developing the Substantive Best Interests of Child Migrants: A Call for Action*, 46 VAL. U. L. REV. 991, 1001 (2012).

67. See AM. BAR ASS'N COMM. ON IMMIGR., STANDARDS FOR THE CUSTODY, PLACEMENT AND CARE; LEGAL REPRESENTATION; AND ADJUDICATION OF UNACCOMPANIED ALIEN CHILDREN IN THE UNITED STATES 25–26 (2018).

68. Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(B)(xiii) (2020).

69. See VERA, *supra* note 40.

70. See *supra* note 38 and accompanying text.

71. See *supra* note 26 and accompanying text.

III. CONTEMPLATING A PATH FORWARD

Ruehs-Navarro concludes her remarkable book with recommendations for a reimagined world (pp. 155–63). A world where there are no border police, only social workers and clinicians; no immigration courts, but rather multidisciplinary teams to decide what is in the youth’s best interest; and no detention centers or shelters, instead a rapid release to families who are supported in caring for the youth, or, if that is not possible, placement in a foster home where the youth is free to live the life of a young person in the community where the family resides (pp. 156–60).

While these recommendations might appear lofty and dreamlike, they are not, and we must resist the inclination to think of them as aspirational.⁷² Instead, an enactment of Ruehs-Navarro’s recommendations would bring the United States into compliance with the laws, standards, and policies described above. As discussed, the Constitution mandates that youth fleeing to the United States to reunite with a parent (roughly 40 percent of the unaccompanied youth arriving each year)⁷³ should immediately be placed with that parent without first being transferred to ORR custody. If it is necessary to ensure that a parent is in fact the parent of a young person during this transition, social workers and people trained in child welfare should lead these efforts, not border police and ICE agents.

For those unaccompanied youth with nonparent family members in the United States, there is no reason why the laws and policies that govern our domestic child welfare systems should not be applicable. Just like young people in state custody who may have a family member with whom they can live, migrant youth should be treated the same when they are unable to be with a parent and have a family member who is able and willing to take them in. There is no basis for encouraging and supporting youth placed with relative

72. They also are very much in line with the ABA Standards for the “Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States,” first published in 2004 and revised and republished in 2018, as well as recent reports by several youth advocacy organizations calling for reforms and a youth-centered immigration system. See AM. BAR ASS’N COMM’N ON IMMIGR., *supra* note 67, at 8–14 (2018); see, e.g., YOUNG CTR. FOR IMMIGRANT CHILD.’S RTS., REIMAGINING CHILDREN’S IMMIGRATION PROCEEDINGS (2020), https://static1.squarespace.com/static/597ab5f3beba0a625aaf45/t/5f9acdcb38fc5b520e882eb1/1603980749320/Reimagining+Children%E2%80%99s+Immigration+Proceedings_Young+Center+for+Immigrant+Children%27s+Rights.pdf. [perma.cc/JXX3-TGSN]; GILLIAN HUEBNER & RHONDA FLEISCHER, UNICEF, BUILDING BRIDGES FOR EVERY CHILD: RECEPTION, CARE AND SERVICES TO SUPPORT UNACCOMPANIED CHILDREN IN THE UNITED STATES 16–37 (2021); GREENBERG ET AL., *supra* note 16; KIDS IN NEED OF DEF., KIND BLUEPRINT: CONCRETE STEPS TO PROTECT UNACCOMPANIED CHILDREN ON THE MOVE 17–18 (2020).

73. *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, U.S. DEP’T HOMELAND SEC. (Mar. 16, 2021), <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation> [perma.cc/9AGA-HXKD].

caregivers through our domestic child welfare systems,⁷⁴ but not those youth placed with relatives by ORR. If we are following “child welfare best practices,” as ORR policy states it does,⁷⁵ then we must at a minimum begin to do so.

Perhaps the strongest case for applying domestic child welfare mandates to migrant youth is present when considering the circumstances of youth who remain in ORR custody. The needs of these youth are nearly identical to those in our domestic foster care systems. It is not safe for them to return to a parent or to alternate family members, and their needs for safety, wellbeing, and permanency are paramount and must be met. Consequently, if the provision that ORR is following “child welfare best practices” signifies anything, it must mean that migrant youth are entitled to no less than those youth who find themselves in our domestic foster care systems.⁷⁶ Yet, the ORR system does not begin to reflect “child welfare best practices” because there is no oversight by state family or juvenile courts⁷⁷ and no mandate that migrant youth are represented.⁷⁸ Nor is there a focus on the three pillars of child welfare—safety, wellbeing, and permanency. Instead, most youth remain in ORR shelters or secure facilities without the benefit of a family home in the community and without any efforts being made to help them find permanency and/or transition into adulthood.⁷⁹ Thus, it is vital that we begin to recognize that child welfare principles, along with constitutional protections and international human rights, obligate us to do better for migrant youth. It also must be acknowledged that there are very serious concerns with how our domestic child welfare system functions, particularly regarding its racist underpinnings, the racist implementation of its policies, the disproportionate number of children and parents of color involved within these systems, and the disparate outcome for families of color, especially Black and Native American families.⁸⁰ Unsurprisingly,

74. *But see* Josh Gupta-Kagan, *America’s Hidden Foster Care System*, 72 STAN. L. REV. 841, 844 (2020).

75. ORR POLICY GUIDE, *supra* note 28.

76. *See* Ravi K.S. Kohli, *Working to Ensure Safety, Belonging and Success for Unaccompanied Asylum-Seeking Children*, 20 CHILD ABUSE REV. 311, 315 (2011); *see also* STACY BRUSTIN, CATH. UNIV. OF AM. & U.S. CONF. OF CATH. BISHOPS, *A VISION FORWARD: POLICIES NEEDED TO PROTECT THE BEST INTERESTS OF “CATEGORY 4” UNACCOMPANIED IMMIGRANT CHILDREN* (2021), <https://justiceformigrants.org/wp-content/uploads/2021/06/FINAL-CUA-MRS-Report-1.pdf> [perma.cc/N2NF-LAXL].

77. *See* Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, § 475(5)(C), 94 Stat. 500, 511.

78. Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(B)(xiii) (2020).

79. *See* Shaina Aber, Megan Mack & Erica Bryant, *End the Cycle of Crises for Unaccompanied Immigrant Children*, IMPRINT (May 4, 2021, 7:40 PM), <https://imprintnews.org/child-welfare-2/end-cycle-crises-unaccompanied-immigrant-children/54095> [perma.cc/X6Q4-2CVH].

80. *See* *Disproportionality and Race Equity in Child Welfare*, NAT’L CONF. STATE LEGISLATURES (Jan. 26, 2021), <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx> [perma.cc/6S5J-E7VP]; *see also* Dorothy Roberts, *Race and Class in the Child Welfare System*, PBS FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html> [perma.cc/59UD-CJJV]. *See generally* Jessica

there have been calls to abolish or reinvent child welfare systems,⁸¹ which some have aptly named “family regulation systems.”⁸² Many scholars are also critical of the fact that our child welfare agencies are seldom in compliance with federal and state laws and regulations,⁸³ particularly with regard to how relative caregivers are treated by our domestic child welfare system.⁸⁴

Unquestionably, our domestic child welfare systems are racist and dysfunctional. And migrant youth face compounded racism because the federal government does not even attempt to comply with basic principles underlying our child protection systems. But the answer is not to bring migrant youth into an already racialized child welfare system. Instead, to use the words of Ruehs-Navarro, we must seek to change the defective systems and create a world where there are no distinctions between citizen and noncitizen youth, where *all* young people and families are supported in whatever their needs may be, and where the wellbeing of youth⁸⁵ is our primary consideration in *all* contexts.

And finally, we must heed the words of the impacted youth, as well as those working with and caring for them. Their stories help us understand the failings, contradictions, and gross inadequacies of our child-caring systems that beget the adversities and brutal treatment so many migrant youth experience. This is exactly why the accounts, interviews, and narratives that Ruehs-

Dixon, *The African-American Child Welfare Act: A Legal Redress for African-American Disproportionality in Child Protection Cases*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 109, 110 (2008).

81. DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022); Alan J. Dettlaff et al., *It Is Not a Broken System, It Is a System that Needs to Be Broken: The upEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 508–09 (2020).

82. Emma Williams, ‘Family Regulation,’ Not ‘Child Welfare’: Abolition Starts with Changing Our Language, IMPRINT (July 28, 2020, 11:45 PM), <https://imprintnews.org/opinion/family-regulation-not-child-welfare-abolition-starts-changing-language/45586> [perma.cc/E47X-8L49]; Ava Cilia, *The Family Regulation System: Why Those Committed to Racial Justice Must Interrogate It*, HARV. C.R.-C.L. L. REV. (Feb. 17, 2021), <https://harvard-crcl.org/the-family-regulation-system-why-those-committed-to-racial-justice-must-interrogate-it> [perma.cc/QD55-RM4F].

83. See Gupta-Kagan, *supra* note 74, at 898; see also Reese Oxner, “Serious, Harmful Consequences”: Texas Continues Placing Foster Children in Harm’s Way, Court Monitors Find, TEX. TRIB. (May 6, 2021, 10:00 PM), <https://www.texastribune.org/2021/05/06/texas-foster-care-system-lawsuit> [perma.cc/2EJC-4ULW]; Daniel Heimpel, *Analysis: 11 States Struggle to Meet Federal Education Requirements for Foster Youth*, IMPRINT (Jan. 17, 2018, 1:39 PM), <https://imprintnews.org/analysis/analysis-11-states-struggle-meet-federal-education-requirements-foster-youth/29482> [perma.cc/2YY4-4DJB].

84. See Gupta-Kagan, *supra* note 74 at 872–82.

85. It is important to note that the subjectivity and cultural biases of the best interest standard have been subject to much criticism in the child welfare context. See Byrne, *supra* note 63, at 88 (noting the fact that the best-interest-of-the-child standard has had a “troubled past that should be recognized and understood when invoking it today”); see also Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 370–76 (2008).

Navarro sets forth in her illuminating book are so critical. We need to listen to their stories, learn from their experiences, and be guided in our reforms by what they are telling us.

CONCLUSION

It is impossible to read *Unaccompanied: The Plight of Immigrant Youth at the Border* by Emily Ruehs-Navarro and not feel pain and the call to do better. Constitutional precepts, childprotection principles, and our understanding of basic human rights, along with the narratives of youth, parents, family members, attorneys, and aid workers help provide the beginnings of a roadmap. But no matter how we begin, this important discussion must occur immediately. We need to transform our immigration system, as well as our child welfare systems, and we cannot wait any longer. The youth are beseeching us to act.

