


5-2017

Truth or Dare: A Framework for Analyzing Credibility in Children Seeking Asylum

Karen Smeda

Cornell Law School, ko276@cornell.edu

Follow this and additional works at: <http://scholarship.law.cornell.edu/cllsrp>

 Part of the [Human Rights Law Commons](#), [Immigration Law Commons](#), [International Humanitarian Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Smeda, Karen, "Truth or Dare: A Framework for Analyzing Credibility in Children Seeking Asylum" (2017). *Cornell Law Library Prize for Exemplary Student Research Papers*. 13.
<http://scholarship.law.cornell.edu/cllsrp/13>

This Article is brought to you for free and open access by the Cornell Law Student Papers at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Library Prize for Exemplary Student Research Papers by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

Truth or Dare: A Framework for Analyzing Credibility in Children Seeking Asylum

I. Introduction

Assessing an individual's credibility is an art, not a science. Unexpected extraneous factors readily mold a person's credibility, from the color of a witness's blouse¹ to his or her tone of voice.² Outwardly, these peripheral elements are a superfluous concern. In reality, these extraneous considerations can have a significant effect on the immigration interviewer's human judgment.³ Hence, the subjective element of determining credibility is disconcerting in the high-stakes realm of noncitizens seeking asylum.

The United States defines refugees as any persons living outside the country of his or her nationality who is incapable or unwilling to return due to a "well-founded fear of persecution" on the basis of "race, religion, nationality, membership in a certain social group, or political opinion."⁴ Asylum is a form of protection a country offers to an individual who satisfies the requirements for refugee status.⁵ Asylees petitioning to avoid deportation must show that there is a "clear probability of persecution" if returned to the country from which he or she fled.⁶ Immigration adjudicators frequently labor with decrypting a claim of a "well-founded fear of

¹ See Gwendolyn S. O'Neal & Mary Lapitsky, *Effects of Clothing as Nonverbal Communication on Credibility of the Message Source*, 9 CLOTHING & TEXTILES RES. J. 28, 32 (1991).

² See Claire Gélinas-Chebat, Jean-Charles Chebat, & Alexander Vaninsky, *Voice and Advertising: Effects of Intonation and Intensity of Voice on Source Credibility, Attitudes Toward the Advertised Service and the Intent to Buy*, 83 PERCEPTUAL & MOTOR SKILLS 243, 246 (1996).

³ See, e.g., Jason Dzubow, *The "Unobservable Factors" that Influence Asylum Decisions*, THE ASYLUMIST, July 12, 2010, <http://www.asylumist.com/2010/07/12/the-unobservable-factors-that-influence-asylum-decisions/> (reporting that cultural biases may impact female asylum seekers' credibility determination).

⁴ Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952), § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A) [hereinafter *INA*] ("[R]efugee means: (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion").

⁵ See U.S. Citizenship & Immigration Services, *Refugees & Asylum*, <https://www.uscis.gov/humanitarian/refugees-asylum>; see also INA § 208(a), 8 U.S.C. § 1158(a) (1982); 8 C.F.R. 208.13 (2000) ("The burden of proof is on the applicant for asylum to establish that he or she is a refugee as defined in section 101(a)(42) of the Act.").

⁶ See *INS v. Stevic*, 467 U.S. 407, 422–423 (1984).

persecution” versus individuals seeking asylum for their personal interests.⁷ This daunting task lacks effectual solutions.

Recent international conflicts⁸ have reignited the focus on developing a proficient method for assessing the credibility of applicants seeking asylum. Upon comparing various models, several recurring themes emerge, including weighing the practicality of the facts claimed, the stability and coherence of the individual’s story, evidence supporting the applicant’s story, consistency with established facts, and the recognized status of a crisis in the applicant’s originating country.⁹ Still, other countries have adopted controversial methods for assessing credibility that have received backlash from the international community.¹⁰ While most countries have developed a rudimentary semblance of a system to assess credibility in adults seeking refugee status,¹¹ few nations have addressed how to assess the credibility of children seeking asylum status.

The United States uses the same procedures for both adult and children asylum seekers.¹² Children are neither appointed legal counsel nor provided special protections while their claims are adjudicated.¹³ Courts have not explicitly addressed how to assess the credibility of a child seeking asylum under 8 U.S.C. § 1158.¹⁴ Regrettably, the methodology used to assess the veracity of an adult’s tale of persecution does not readily translate to the child population. For

⁷ See Neal P. Pfeiffer, *Credibility Findings in INS Asylum Adjudications: A Realistic Assessment*, 23 TEX. INT’L L. J. 139 (1988).

⁸ See, e.g., Achilleas Galatsidas & Mark Anderson, *Syrian Refugees: 3.5 Million People Flee to Neighbouring Countries*, THE GUARDIAN, Mar. 11, 2015, <https://www.theguardian.com/global-development/2015/mar/11/syrian-refugees-asylum-seekers-unhcr>.

⁹ See Brian Gorlick, *Common Burdens and Standards: Legal Elements in Assessing Claims to Refugee Status*, 15 INT’L J. OF REFUGEE L. 357, 371 (2003).

¹⁰ See, e.g., Helen Foot, *EU Court Bans Credibility ‘Tests’ for Gay Refugees*, FREE MOVEMENT, Dec. 4, 2014, <https://www.freemovement.org.uk/eu-court-bans-credibility-tests-for-gay-refugees/> (reporting that the Court of Justice of the European Union held that certain ‘tests’ used to ascertain an individual’s sexual orientation, including intimate questions about sexual conduct, may be a violation of “human dignity and respect for private life” under Articles 1 and 7 of the Charter for Fundamental Rights).

¹¹ See, e.g., Juliet Cohen, *Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony?*, 69 MEDICO-LEGAL J. 2 (2001).

¹² See Christine M. Gordon, *Are Unaccompanied Alien Children Really Getting a Fair Trial? An Overview of Asylum Law and Children*, 33 DENV. J. INT’L L. & POL’Y 641, 642 (2004).

¹³ *Id.*

¹⁴ INA § 208(a), 8 U.S.C. § 1158(a) (1982).

instance, the dissent in *Mejilla-Romero v. Holder*¹⁵ emphasized that, while a child may be eligible for asylum status, he or she will likely face an impossible barrier in finding support for their asylum claim.

This paper argues that the United States should implement a system for assessing the credibility of children seeking asylum, independent of the model used to assess the credibility of adult applicants, that is sensitive to children's unique experiences of facing persecution. Part II of this paper provides a brief overview of the current procedures the United States uses to assess the credibility of individuals seeking asylum. It considers how the heavy reliance on behavioral cues, with little consideration for unique populations, creates a flawed system in need of repair. Part III critiques applying an adult method of assessing credibility to children seeking asylum. In particular, this paper argues that the current U.S. system for assessing credibility in adults cannot translate to children due to various considerations recommended by renowned developmental psychologists.

Part IV summarizes several U.S. cases and narratives of children seeking asylum. Those stories illustrate how a child's credibility determination can shape the success or failure of his or her asylum claim. Part V analyzes the efficacy of reforms proposed by immigration systems around the world. It highlights specific practices the United States could incorporate into its approach. Part VI suggests ways to shape the future conversation about children seeking asylum. Part VII argues that, without implementing some of the suggested reforms, the United States could be operating under constitutional violations. Finally, Part VIII provides a brief conclusion.

II. Assessing an Asylum Applicant's Credibility in the United States

¹⁵ *Mejilla-Romero v. Holder*, 600 F.3d 63 (1st Cir. 2010) (dissenting opinion) (“[t]hough children may be eligible for asylum, providing the evidence to support the claim may be impossible”).

The United States Citizenship and Immigration Services (“USCIS”) compares the similarities and differences between refugee status and asylum status.¹⁶ Refugee and asylum status are both options an individual may pursue if he or she has experienced persecution or reasonably fear persecution “on account of race, religion, nationality, and/or membership in a particular social group or political opinion.”¹⁷ However, only individuals located outside the United States may seek refugee status.¹⁸ Furthermore, refugees are commonly living outside their country of origin because they are incapable or unwilling to return home from fear of significant peril.¹⁹ Conversely, asylum status is reserved for noncitizens already on U.S. territory, petitioning to stay as form of protection.²⁰

A noncitizen seeking asylum begins by filing an application for asylum, normally within one year after arriving in the United States.²¹ The application asks the noncitizen to recount the facts that form the basis for his or her request for asylum.²² In affirmative asylum applications, an immigration officer interviews the noncitizen, assessing the applicant’s credibility.²³ For applications filed defensively in removal proceedings, an immigration judge decides whether to grant asylum as a form of relief from removal.²⁴

¹⁶ Refugees & Asylum, *supra* note 5.

¹⁷ *Id.*

¹⁸ INA § 101(a)(42).

¹⁹ *Id.*

²⁰ INA § 208(a).

²¹ *See* Asylum, USCIS, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum> (Form I-589, Application for Asylum and for Withholding of Removal).

²² *Id.*

²³ *See* The Affirmative Asylum Process, USCIS, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process> (“The asylum officer will determine whether you: [a] eligible to apply for asylum, [b] meet the definition of a refugee in section 101(a)(42)(A) of the INA, [or (c)] are barred from being granted asylum under section 208(b)(2) of the INA”).

²⁴ Immigration Benefits in EOIR Removal Proceedings, <https://www.uscis.gov/laws/immigration-benefits-eoir-removal-proceedings> (last updated Aug. 22, 2011).

U.S. courts have repeatedly affirmed that the Fifth Amendment's Due Process Clause entitles noncitizens to a "full and fair hearing" before deportation.²⁵ Under most contexts, if language poses a barrier to a full and fair hearing, the noncitizen may ask for a government interpreter or an interpreter of his or her choosing.²⁶ A USCIS asylum adjudicator interviews an affirmative asylum applicant.²⁷ The asylum adjudicator approves or denies the asylum application.²⁸

If the adjudicator denies an affirmative asylum application or if the noncitizen is in removal proceedings, he or she may request review by an immigration judge ("IJ").²⁹ The noncitizen can present evidence in support of his or her claim.³⁰ If an IJ denies asylum, the noncitizen may appeal to the Board of Immigration Appeals ("BIA").³¹ If the BIA denies the noncitizen's application for appeal, he or she may appeal to federal court.³²

Behind the veil of a simple procedure lies an imperfect system. Scholars frequently note the extraordinary amount of discretion in the hands of asylum adjudicators and IJs.³³ This discretion is often exercised in the form of credibility assessments. Asylum proceedings differ from other legal adjudications because the credibility of the applicant seeking asylum is often one of the few forms of evidence available.³⁴ Additionally, there is an increased reliance on the asylum seeker's

²⁵ See *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (holding that an immigration judge denied an undocumented citizen the right to a full and fair hearing by hindering his ability to present evidence in support of his asylum claim); see also *Amadou v. INS*, 226 F.3d 724, 726 (6th Cir. 2000) (holding that an undocumented noncitizen was denied due process when his asylum application was denied due to inconsistencies and "lack of credibility" that resulted from the interpreter failing to adequately translate in the noncitizen's dialect).

²⁶ 8 C.F.R. § 208.9 (1987); see *Gonzales v. Zurbrick*, 45 F.2d 934, 936 (6th Cir. 1930) (holding that an undocumented noncitizen is denied a full and fair hearing if his or her asylum application is denied due to an inadequate translation).

²⁷ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, ASYLUM DIVISION: AFFIRMATIVE ASYLUM PROCEDURES MANUAL (Nov. 2013), https://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum_Procedures_Manual_2013.pdf.

²⁸ 8 C.F.R. § 208.14 (2011).

²⁹ 8 C.F.R. § 1003.42 (1997).

³⁰ See Pfeiffer, *supra* note 7, at 141.

³¹ *Id.* at 142.

³² *Id.*

³³ Gregor Noll argues that the heightened subjectivity available in asylum proceedings can conflict with protections guaranteed as a matter of law. See Gregor Noll, *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, 24 REFUGEE SURV. Q. 1 (2005).

³⁴ See *El-Sheikh v. Ashcroft*, 388 F.3d 643, 646 (8th Cir. 2004).

credibility, instead of the applicant's complete case file, to reduce the IJ's caseload.³⁵ Thus, the field has increased attention on ensuring that credibility assessments are valid.

In 2005, Congress enacted its first standard for assessing an asylum applicant's credibility through the REAL ID Act.³⁶ The REAL ID Act gave asylum adjudicators significantly more discretion to deny an asylum application based on an adverse credibility determination.³⁷ The REAL ID Act expanded existing USCIS guidelines³⁸ by requiring asylum applicants to demonstrate that at least one of the five grounds for obtaining asylum—race, religion, nationality, and/or membership in a particular social group or political opinion—will be a fundamental cause of persecution.³⁹ Furthermore, an asylum adjudicator may find an asylum applicant not credible due to minor inconsistencies that are not central to the noncitizen's application.⁴⁰ Therefore, the REAL ID Act has elevated the hurdle asylum applicants must overcome to obtain a favorable credibility finding.

Despite the expanded considerations implemented in credibility assessments, four main features shape the outcome of a noncitizen's credibility assessment: the noncitizen's demeanor, testimonial consistency, the noncitizen's ability to show detailed facts about the persecution, and the consistency between the claim of persecution and documentary records.⁴¹ The United States has adopted a psycholegal model incorporating scientific findings on how to use behavior cues,

³⁵ See Sara L. McKinnon, *Citizenship and the Performance of Credibility: Audiencing Gender-Based Asylum Seekers in U.S. Immigration Courts*, 29 TEXT & PERFORMANCE Q. 205 (2009).

³⁶ CHARLES GORDON, STANLEY MAILMAN, STEPHEN YALE-LOEHR, & RONALD Y. WADA, IMMIGRATION LAW AND PROCEDURE, § 34.02 1, 274 (2015).

³⁷ *Id.* at 280.

³⁸ Refugees & Asylum, *supra* note 5 (“Refugee status or asylum may be granted to people who have been persecuted or fear they will be persecuted on account of race, religion, nationality, and/or membership in a particular social group or political opinion.”).

³⁹ See Gordon, Mailman, Yale-Loehr, & Wada, *supra* note 36, at 284–85.

⁴⁰ *Id.* at 288.

⁴¹ See Pfeiffer, *supra* note 7, at 142.

such as heart rates, for lie detection.⁴² Unsurprisingly, nonverbal behavioral cues, such as smiles, accents, and eye contact, are strong determinants of an asylum applicant's credibility.⁴³ Additionally, inconsistencies⁴⁴ and the inability to recount precise facts⁴⁵ impact perceptions of credibility. Asylum adjudicators fail to consider how post-traumatic stress disorder ("PTSD") or depersonalization affect recall abilities.⁴⁶

Empirical evidence points to several extraneous factors that question the accuracy of credibility assessments. Recall errors and other psychological phenomena make an asylum seeker's credibility an imperfect form of evidence.⁴⁷ For instance, confirmation bias describes a psychological phenomenon where one's personal biases serve as a lens through which new information is processed.⁴⁸ Information incongruence with preexisting beliefs is subsequently rejected.⁴⁹ As such, if a noncitizen child's asylum story does not match the immigration official's preconceptions of persecution, the child may be deemed not credible.⁵⁰

Confirmation bias is acutely problematic when extracting a child's testimony because children are more vulnerable to creating false reports if their testimony does not match the interviewer's conclusions on the persecution claim.⁵¹ A false report is an account of an event

⁴² See generally Kevin Colwell, Cheryl K. Hiscock, & Amina Memon, *Interviewing Techniques and the Assessment of Statement Credibility*, 16 APPLIED COGNITIVE PSYCHOL. 287 (2002).

⁴³ See Pfeiffer, *supra* note 7, at 142–44.

⁴⁴ See, e.g., *Saballo-Cortez v. INS*, 761 F.2d 1259, 1263–65 (8th Cir. 1985) (stating that inconsistencies between the applicant's testimony before the IJ and the asylum application contributed to a finding that the undocumented noncitizen was not credible).

⁴⁵ *Carvajal-Munoz v. INS*, 743 F.2d 563, 579 (7th Cir. 1984) ("When objective evidence does not exist . . . the applicant's own testimony must set forth specific facts that give rise to an inference that the applicant was persecuted or has some other good reason to fear persecution on one of the specified grounds.").

⁴⁶ *Id.*

⁴⁷ See Cohen, *supra* note 11, at 11.

⁴⁸ See Gail S. Goodman & Annika Melinder, *Child Witness Research and Forensic Interviews of Young Children: A Review*, 12 LEGAL & CRIM. PSYCHOL. 1, 2–3 (2007).

⁴⁹ *Id.*

⁵⁰ See Kenneth S. Pope, *Psychological Assessment of Torture Survivors: Essential Steps, Avoidable Errors, and Helpful Resources*, 35 INT'L J. OF L. & PSYCHIATRY 418, 422 (2012) ("For example, upon hearing an interviewee report nightmares, we may jump to the conclusion that the nightmares resulted from torture.").

⁵¹ See Amelia C. Hritz, Caisa E. Royer, Rebecca K. Helm, Kayla A. Burd, & Karen Ojeda, *Children's Suggestibility Research: Things to Know Before Interviewing a Child*, ANUARIO DE PSICOLOGÍA JURÍDICA (2014).

that did not occur.⁵² Despite misconceptions about children being prone to lying, false reports often arise as a function of source misattributions, where the child confuses the source of the memory.⁵³ As the child continues to respond to the interviewer's questions, the child may build upon the false report until a false memory, or a memory of an event that did not actually occur, is created.⁵⁴ In the context of child asylum seekers, these false reports often reflect incorrect information fed to the child by the interviewer's questioning, laced with sincere emotions from the child's persecution experiences.⁵⁵ Consequently, the child's testimony may consist of factual inconsistencies that create further doubts of credibility down the road and generate suspicions of lying.⁵⁶

From a physiological perspective, increased levels of cortisol, a stress hormone, impairs recall abilities.⁵⁷ Also, empirical studies have shown that recalling upsetting memories, like torture, increases arousal that diminishes recall of peripheral details.⁵⁸ Likewise, mental health conditions can impact a noncitizen's memory and capacity to communicate trauma. For example, PTSD has been associated with dissociative amnesia and disturbances of Broca's area, the brain region used for speech.⁵⁹ Nonetheless, despite concern that children's testimonies are

⁵² See Stephen J. Ceci, Elizabeth F. Loftus, Michelle D. Leichtman, & Maggie Bruck, *The Possible Role of Source Misattributions in the Creation of False Beliefs Among Preschoolers*, 42 INT'L J. OF CLINICAL & EXPERIMENTAL HYPNOSIS 304, 307 (1994).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See Michelle D. Leichtman & Stephen J. Ceci, *The Effects of Stereotypes and Suggestions on Preschoolers' Reports*, 31 DEV. PSYCHOL. 568, 569 (1995).

⁵⁶ See, e.g., Marcus Choi Tye, Susan L. Amato, Charles R. Honts, Mary K. Devitt, & Douglas Peters, *The Willingness of Children to Lie and the Assessment of Credibility in an Ecologically Relevant Laboratory Setting*, 3 APPLIED DEV. SCI. 92 (2010).

⁵⁷ For an overview on the psychological factors impacting perceptions of credibility, see Juliet Cohen, *Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers*, 13 INT'L J. REFUGEE L. 293, 302 (2001).

⁵⁸ See Sven-Åke Christianson, Elizabeth F. Loftus, Hunter Hoffman, & Geoffrey R. Loftus, *Eye Fixations and Memory for Emotional Events*, 17 J. OF EXPERIMENTAL PSYCHOL.: LEARNING, MEMORY, & COGNITION 693, 695 (1991).

⁵⁹ See Hannah Rogers, Simone Fox, & Jane Herlihy, *The Importance of Looking Credible: The Impact of the Behavioral Sequelae of Post-Traumatic Stress Disorder on the Credibility of Asylum Seekers*, 21 PSYCHOL., CRIM. & L. 139 (2015).

susceptible to the dangers of suggestibility, creating an inaccurate picture of their persecution, empirical studies have shown that negative or traumatic events are more resilient to suggestible conditions than neutral or positive memories.⁶⁰

In addition to mental health considerations, gender may impact an asylum seeker's perceived credibility. The challenge of overcoming cultural differences readily manifests in the case of females seeking asylum.⁶¹ Female noncitizens face the unique challenge of having their asylum claim for domestic violence characterized as a private matter instead of as a political persecution.⁶² Additionally, female asylum seekers from particular cultural groups must overcome a heightened barrier of obtaining physical evidence to support their claim. For instance, it is hard to obtain information about the experiences of relatives in cultures where men do not disclose those details.⁶³

Gender and psychological trends are two examples of peripheral factors that theoretically should not impact a noncitizen's credibility. Nonetheless, it is clear that wholly divorcing these outlying factors from credibility assessments is an unlikely outcome.

III. Applying the U.S. Asylum Structure to Children

Determining a child's credibility is an insatiable interdisciplinary enigma. Children's credibility is often scrutinized due to age,⁶⁴ ability to comprehend and communicate their experiences, limited memory development, and education level.⁶⁵ Despite misconceptions about children's limited abilities, science has debunked stereotypical fallacies that question children's

⁶⁰ See Ceci, Loftus, Leichtman, & Bruck, *supra* note 52, at 316.

⁶¹ See Dzubow, *supra* note 3.

⁶² See McKinnon, *supra* note 35, at 212.

⁶³ See Gorlick, *supra* note 9, at 365–66.

⁶⁴ See, e.g., *Kahssai v. INS*, 16 F.3d 323, 326 (9th Cir. 1994) (reviewing the BIA's conclusion that the child's credibility could not be determined because the events leading to the deaths of her father and brother occurred when she was 3-years-old); see also Karen Ojeda, *Black and White Makes Gray: A Look at the Impact of Race on Child Witness Credibility* 1, 16–17 (June 23, 2015) (unpublished M.A. thesis, Cornell University) (on file with author).

⁶⁵ See Ojeda, *supra* note 64.

credibility. Although language development may impact a child's capacity to narrate incidents in precise detail,⁶⁶ children may be as competent as adults in eyewitness identifications and answering non-misleading questions.⁶⁷ Furthermore, while children may be more prone to suggestibility and poorer memory under some conditions, they may be equal or superior to adults in others.⁶⁸ Despite scientific findings suggesting the contrary, child witness are often perceived as exceedingly suggestible, impressionable to others, and "prone to fantasy."⁶⁹

Children seeking asylum face additional hurdles. The psychological challenges of recalling traumatic experiences likely interact with a child's restricted communication capabilities, leaving a minor unable to share their testimony of persecution.⁷⁰ Additionally, the child's parents often pose an additional barrier by keeping the child from recounting the afflicting events to protect the child.⁷¹

Considering the challenges adults face in meeting the "reasonable fear of persecution" standard, it is unsurprising that the current U.S. system for determining the credibility of adults seeking asylum does not translate well to children seeking asylum. First, the lack of legal representation poses a greater obstacle for noncitizen minors.⁷² Because noncitizens are not entitled to representation, many noncitizen minors enter the United States without legal help.⁷³

⁶⁶ See Goodman & Melinder, *supra* note 48, at 6.

⁶⁷ See Gail S. Goodman & Rebecca S. Reed, *Age Differences in Eyewitness Testimony*, 10 L. & HUM. BEHAV. 317, 327–328 (1986).

⁶⁸ See Stephen J. Ceci, David F. Ross, & Michael P. Toglia, *Suggestibility of Children's Memory: Psycholegal Implications*, 116 J. OF EXPERIMENTAL PSYCHOL. 38, 47 (1987) (finding that there were no significant differences in recognizing neutral information between preschool children and adults).

⁶⁹ *Id.* (finding that adults generally remember more information than children, partially due to a child's limited vocabulary); See also Judy Cashmore & Kay Bussey, *Judicial Perceptions of Child Witness Competence*, 20 L. & HUM. BEHAV. 313 (1996).

⁷⁰ See Gorlick, *supra* note 9, at 365.

⁷¹ *Id.*

⁷² See Jacqueline Bhabha, *Seeking Asylum Alone: Treatment of Separated and Trafficked Children in Need of Refugee Protection*, 42 INT'L MIGRATION 141, 142–143 (2004).

⁷³ See Gordon, *supra* note 12, at 657.

Furthermore, noncitizen children are not assigned a guardian ad litem.⁷⁴ Without advocates, this greatly increases the likelihood that their stories will not be properly heard.

Second, the U.S. detention protocol exercised on all noncitizens raises human rights concerns. Upon apprehension, noncitizen minors are often handcuffed and shackled, dressed in prison attire, locked in a cell, and housed with the general delinquent population.⁷⁵ The criminal-like conditions impact the noncitizen's credibility by associating the minor with illegal activity⁷⁶ or provoking the fear of an influx of criminality in adjudicators.⁷⁷ Conversely, the impressionable child could internalize the distressing environment in delinquent facilities, building on the trauma the child experienced in his or her country of origin.⁷⁸

In response to a push to increase the visibility of children seeking asylum, the 1989 United Nations Convention on the Rights of the Child ("CRC") established several principles to guide the discussion on the best approach for child asylum seekers. First, the theme underlying all action is to pursue the "best interest of the child."⁷⁹ Since the 1948 Universal Declaration of Human Rights ("UDHR"),⁸⁰ there is a global emphasis on guarding the dignity of all human beings, including children.⁸¹ Still, this vague standard is routinely interpreted through the eyes

⁷⁴ *Id.*

⁷⁵ *Id.* at 657–58.

⁷⁶ See, e.g., Craig Haney, W. Curtis Banks, & Philip G. Zimbardo, *A Study of Prisoners and Guards in a Simulated Prison*, 9 NAVAL RES. REV. 1 (1973).

⁷⁷ See Emily Torstveit Ngaru, *Fear-Mongering and Immigration Policymaking*, CRIMMIGRATION, Jan. 19, 2016, <http://crimmigration.com/2016/01/19/fear-mongering-and-immigration-policymaking/>.

⁷⁸ See Heaven Crawley & Trine Lester, *No Place for a Child: Children in UK Immigration Detention: Impacts, Alternatives and Safeguards*, SAVE THE CHILDREN 1, 24 (2005), <http://www.savethechildren.org.uk/sites/default/files/docs/NO-PLACE-FOR-A-CHILD.pdf>.

⁷⁹ The Convention on the Rights of the Child, Part I, Art. III. Adopted by the United Nations General Assembly on Nov. 20, 1989. Entered into force on Sept. 2, 1990 [hereinafter *CRC*].

⁸⁰ See Memorandum from Jeff Weiss, Acting Dir., Office of Int'l Affairs to Asylum Officers, Immigration Officers, & Headquarters Coordinators (Asylum and Refugees), Guidelines for Children's Asylum Claims (Dec. 10, 1998),

<https://www.uscis.gov/sites/default/files/USCIS/Laws%20and%20Regulations/Memoranda/Ancient%20History/ChildrensGuidelines121098.pdf> [hereinafter *Memorandum from Jeff Weiss*].

⁸¹ See Universal Declaration of Human Rights, UNITED NATIONS (1948).

of cultural variations⁸² and inconsistencies in decision making.⁸³ Furthermore, it is susceptible to the idiosyncratic beliefs of what is best for a child—reuniting with the family in a potentially unsafe third country versus asylum, or detention versus an unaccompanied child.⁸⁴

A second principle in the CRC emphasizes the autonomy of the child seeking asylum. While many U.S. juvenile proceedings embrace a paternal tone that restricts the child’s sovereignty,⁸⁵ the CRC imposes a “procedural responsibility” to provide an adequate chance for the child to fully express their viewpoint.⁸⁶ It also urges a presumption of competency, a stark departure from the typical treatment of children in U.S. proceedings.⁸⁷

Finally, the CRC establishes an obligation to maximize the “survival and development of the child.”⁸⁸ Specifically, this goal includes humanitarian, economic, social, and cultural rights, including protecting the child from abuse and exploitation, access to health care, and the right to an education.⁸⁹ The CRC fittingly contains a savings clause, which creates a minimum level of

⁸² See Jacqueline Bhabha & Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.*, 1 J. HIST. CHILDHOOD & YOUTH 126, 134 (2006).

⁸³ See Jacqueline Bhabha & Wendy Young, *Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines*, 11 INT’L J. REFUGEE L. 84, 95 (1999).

⁸⁴ *Id.* at 97.

⁸⁵ See Bruce C. Hafen & Jonathan O. Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT’L L. J. 449, 491 (arguing against children’s legal autonomy).

⁸⁶ See Bhabha & Young, *supra* note 83, at 96.

⁸⁷ See M. Aryah Somers, *Child Competence in Legal Proceedings*, ABA, Nov. 2014, http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_uac_docs_vera_institute_somers_concepts_of_capacity_competency_11_2014.authcheckdam.pdf; see, e.g., Trey Bundy, *Legal Tactic Raises Issues for Juveniles*, N.Y. TIMES, July 9, 2011, <http://www.nytimes.com/2011/07/10/us/10bcjuvenile.html>; see also Molly Hennessy-Fiske, *This Judge Says Toddlers Can Defend Themselves in Immigration Court*, L.A. TIMES, Mar. 6, 2016, <http://www.latimes.com/nation/immigration/la-na-immigration-judge-20160306-story.html>; compare with Jeffrey J. Haugaard, N. Dickon Reppucci, Jennifer Laird, & Tara Naful, *Children’s Definitions of the Truth and their Competency as Witnesses in Legal Proceedings*, 15 L. & HUM. BEHAV. 253, 270 (1991) (concluding that children’s competency should be questioned under certain circumstances, like a young eyewitness child’s memory).

⁸⁸ CRC, *supra* note 79.

⁸⁹ See Bhabha & Young, *supra* note 83, at 98–99.

protection that governments should afford children.⁹⁰ Similarly, the United Nations High Commissioner for Refugees (“UNHCR”) echoes the sentiment behind the CRC’s guidelines.⁹¹

Still, the United States fails to model the CRC’s approach in many regards. While the UNHCR addresses age concerns by giving the child the “benefit of the doubt” if the precise age is unknown,⁹² the United States requires immigration officials to conduct dental radiographs and bone x-rays to try to determine an exact age.⁹³ Of greater concern, the United States is one of three U.N. nations—along with Somalia and South Sudan—that have not ratified the CRC.⁹⁴ The United States signed the CRC under the Clinton administration in 1995 but failed to ratify it, thereby validating the CRC’s principles but not legally binding itself to its terms.⁹⁵

Nonetheless, perhaps in light of the CRC and UNHCR, the USCIS adopted guidelines for children seeking asylum in 2009.⁹⁶ The USCIS guidelines are a step in the right direction. The USCIS guidelines implement several themes from the CRC and the UNHCR, including the presence of a trusted adult, asylum officers specializing in child refugee cases, child-sensitive questioning and active listening, and considering the unique status of children in determining if a reasonable fear of persecution exists.⁹⁷ Additionally, the USCIS guidelines note the need for sensitivity in interviewing children, even individuals above age eighteen, who may have

⁹⁰ See Elizabeth M. Calciano, *United Nations Convention on the Rights of the Child: Will it Help Children in the United States?*, 15 HASTINGS INT’L & COMP. L. REV. 515, 524 (1991).

⁹¹ See Joanna Ruppel, *The Need for a Benefit of the Doubt Standard in Credibility Evaluation of Asylum Applicants*, 23 COLUM. HUM. RTS. L. REV. 1, 31 (1991–92).

⁹² See C.A. Michie, *Age Assessment: Time for Progress?*, 90 ARCHIVES DISEASE CHILDHOOD 612 (2005).

⁹³ See Bhabha & Young, *supra* note 83, at 92; for a report on how dental age estimations are used in asylum cases around the world, see Emilio Nuzzolese & Giancarlo Di Vella, *Forensic Dental Investigations and Age Assessment of Asylum Seekers*, 58 INT’L DENTAL J. 1, 2 (2008).

⁹⁴ See Karen Attiah, *Why Won’t the U.S. Ratify the U.N.’s Child Rights Treaty?*, THE WASHINGTON POST, Nov. 21, 2014, https://www.washingtonpost.com/blogs/post-partisan/wp/2014/11/21/why-wont-the-u-s-ratify-the-u-n-s-child-rights-treaty/?utm_term=.859cba61a235.

⁹⁵ See S.C., *Why Won’t America Ratify the UN Convention on Children’s Rights?*, THE ECONOMIST, Oct. 6, 2013, <http://www.economist.com/blogs/economist-explains/2013/10/economist-explains-2>.

⁹⁶ Guidelines for Children’s Asylum Claims (Sept. 1, 2009), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Guidelines-for-Childrens-Asylum-Claims-31aug10.pdf>; see also Memorandum from Jeff Weiss, *supra* note 80.

⁹⁷ See Memorandum from Jeff Weiss, *supra* note 80.

experienced persecution as minors.⁹⁸ For instance, stressful interviewing conditions may be more amenable to children seeking asylum by taking breaks, having a legal guardian present, and creating a non-threatening atmosphere.⁹⁹ However, the recommendations are seldom implemented.¹⁰⁰ For instance, a common perception of a child’s asylum claim is that it is derivative of the parent’s asylum claim, whereas children applying for asylum independently often have their claims dismissed as trivial threats.¹⁰¹

Noncitizen children receive some protections, like placement in regular removal proceedings instead of expedited proceedings that require them to prove reasonable persecution soon after apprehension.¹⁰² Nonetheless, the few protections afforded by the U.S. asylum system fall short of the potential dangers, such as violence and exploitation, that noncitizen children frequently encounter.¹⁰³ Since credibility assessments play a determinative role in asylum cases, the greatest danger children face is an adverse credibility determination.¹⁰⁴

IV. Accounts Where Credibility Determinations Impacted Children Seeking Asylum

Few U.S. cases discuss children seeking asylum, likely due to child privacy concerns. Still, a few stories peek out from behind the curtain of invisibility. Lucienne Yvette Civil, a fifteen-year-old Haitian girl, sought asylum in the United States after expressing support for ousted Haitian President Jean-Bertrand Aristide.¹⁰⁵ In response to her political activism, she experienced death threats, people threw stones at her home, and murdered her dog.¹⁰⁶ The BIA

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Crystal Estrada, *Misperceived Child Testimony: Why Credibility Should Be Presumed for Unaccompanied and Separated Children Seeking Asylum*, 31 T. JEFFERSON L. REV. 121, 133 (2008).

¹⁰¹ See, e.g., *Civil v. INS*, 140 F.3d 52, 55 (1st Cir. 1998) (dismissing a Haitian minor’s asylum claim because it was “inconceivable” that a rebel leader would be disturbed by a 15-year-old’s conversation).

¹⁰² See Gordon, *supra* note 12, at 657.

¹⁰³ *Id.* at 658–59; see also Bhabha & Schmidt, *supra* note 82, at 129 (“[M]igrant children . . . face an increased risk of military recruitment, sexual violence, gross deprivation, exploitation and abuse.”).

¹⁰⁴ See Bhabha & Young, *supra* note 83, at 123.

¹⁰⁵ *Civil*, 140 F.3d at 53–54.

¹⁰⁶ *Id.* at 54.

concluded that her fears of persecution were not “well-founded.”¹⁰⁷ The perceived seriousness of Civil’s persecution impacted her credibility.¹⁰⁸ Unsurprisingly, courts often pigeonhole children’s asylum claims by applying the adult standard for a “well-founded fear.”¹⁰⁹ By applying an adult standard, credibility assessments fail to capture circumstances uniquely dangerous to children, like familial violence, where children are particularly vulnerable without their caregiver.¹¹⁰ *Civil* exemplifies the ramifications when courts do not substantially weigh dangerous circumstances in their credibility determination.

Additionally, immigration officials fall prey to losing focus on the goals of asylum when the child’s demeanor becomes the ultimate determinant of credibility. Bernard Lukwago sought asylum from Uganda’s Lord’s Resistance Army, a prolific rebel group known for terrorizing and killing children.¹¹¹ After escaping to New York, Lukwago applied for asylum, but an IJ denied his application, holding that Lukwago’s testimony was not credible.¹¹² Specifically, the IJ stated that his courtroom demeanor and inconsistencies in his testimony made Lukwago suspicious.¹¹³ A child’s demeanor can be fatally deceptive if the immigration official fails to delve deeper into the reasons behind the child’s behavior. For example, in Ugandan culture, a child does not look a court official in the eye as a sign of respect for the court.¹¹⁴

Similarly, the court in *Mayorga-Vidal* failed to give credence to evidence supporting a child’s persecution.¹¹⁵ Henry Edgardo Mayorga-Vidal, a young Salvadoran citizen, sought

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 55.

¹⁰⁹ See Estrada, *supra* note 100, at 123.

¹¹⁰ *Id.* at 129.

¹¹¹ Lukwago v. Ashcroft, 329 F.3d 157, 164 (3d Cir. 2003).

¹¹² *Id.* at 165.

¹¹³ *Id.*

¹¹⁴ See Rachel Bien, *Nothing to Declare but Their Childhood: Reforming U.S. Asylum Law to Protect the Rights of Children*, 12 J. L. & POL’Y 797, 799–800 (2003) (Here, scholars explain that, in Ugandan culture, a child does not look a court official in the eye as a sign of respect for the court.).

¹¹⁵ *Mayorga-Vidal v. Holder*, 675 F.3d 9, 17 (1st Cir. 2012).

asylum on two grounds. First, Mayorga-Vidal claimed he was a member of a “particular social group” that resisted gang activity outside the protection of his parents.¹¹⁶ Second, Mayorga-Vidal claimed he faced political persecution due to his “anti-gang, pro-establishment political opinion.”¹¹⁷ Despite the seemingly lenient standard of seeking the best interest of the child, a noncitizen minor bears the burden of proof in establishing his or her asylum claim.¹¹⁸ Even so, the asylum officer must consider the objective factors present, like expert testimony, information about the child’s country of origin, and other reports that validate the child’s credibility.¹¹⁹

Mayorga-Vidal provided expert testimony about the prevalent gang problem in El Salvador, testifying that his status as a child without parental support made him an optimal candidate for gang recruitment.¹²⁰ An expert witness testified that if Mayorga-Vidal refused to join the gang, he would likely face threats of physical violence or death.¹²¹ Despite providing expert testimony and documentary evidence about El Salvador’s conditions, Mayorga-Vidal lost his asylum case.¹²² *Mayorga-Vidal* highlights the incongruity of a corroborated asylum claim adjudicated not credible.¹²³

Even when scholars repeatedly point to credibility as the guiding light to the outcome of an asylum case,¹²⁴ Edgar Chocoy’s story¹²⁵ exemplifies the rare circumstances where the court finds a child credible yet denies asylum. Edgar sought asylum in the United States due to gang

¹¹⁶ *Id.* at 11.

¹¹⁷ *Id.*

¹¹⁸ See Danuta Villareal, *To Protect the Defenseless: The Need for Child-Specific Substantive Standards for Unaccompanied Minor Asylum-Seekers*, 26 HOUSTON J. INT’L L. 743, 762–63 (2003).

¹¹⁹ *Id.*

¹²⁰ *Mayorga-Vidal*, 675 F.3d 9 at 12.

¹²¹ *Id.*

¹²² *Id.* at 19 (The first IJ dismissed Mayorga-Vidal’s asylum application. Mayorga-Vidal appealed to the BIA, and the BIA affirmed the first IJ’s dismissal.).

¹²³ *Id.*

¹²⁴ See Bhabha & Young, *supra* note 83, at 123.

¹²⁵ See Bruce Finley, *Bound for a Better Life, Deported to Despair*, DENVER POST, June 13, 2004, <http://brucefinley.com/migration/bound-for-better-life-deported-to-despair/>.

violence in Guatemala.¹²⁶ Despite USCIS guidelines urging the “best interests of the child” standard to guide asylum decisions,¹²⁷ Edgar was denied asylum. The IJ found Edgar’s demeanor compelling, stating that “he told his story honestly and directly.”¹²⁸ Nonetheless, the IJ denied Edgar’s asylum application. The judge rationalized that Edgar’s efforts to self-rehabilitate were too late and that his past spoke “more loudly than his present.”¹²⁹ Tragically, gang members killed Edgar shortly after his deportation to Guatemala.¹³⁰

Finally, the concurrence in *Kahssai v. INS*¹³¹ underscores that courts may deprive noncitizens from a fair consideration of their asylum claim by declining to do a credibility assessment altogether. Tsion Kahssai sought asylum from political turmoil and religious persecution in Ethiopia after her father was tortured and killed during a communist revolution, the government arrested and killed her eldest brother, and her mother disappeared shortly after her arrest.¹³² The IJ denied Kahssai’s asylum application, concluding that Kahssai’s testimony was filled with second-hand knowledge because, at age three, she was too young at the time of the persecution to know the facts of her testimony first-hand.¹³³ The BIA affirmed the IJ’s ruling.¹³⁴ The Ninth Circuit granted Kahssai’s petition to review and remanded the case to the BIA.¹³⁵ The concurrence scrutinized the IJ’s decision, stating that the IJ deprived Kahssai of a proper chance to establish her asylum claim.¹³⁶ The concurrence noted two truths. Even at age three, a person

¹²⁶ *Id.*

¹²⁷ See Memorandum from Jeff Weiss, *supra* note 80.

¹²⁸ Greg Campbell & Joel Dyer, *Death by Deportation - A Denver Judge Denied a 16-year-old’s Political Asylum Application and Sentenced Him to Death*, BOULDER WEEKLY 1, 9.

¹²⁹ Sergio De Leon, *Guatemalan Youth Slain 17 Days After Being Deported from U.S.*, L.A. TIMES, May 9, 2004, <http://articles.latimes.com/2004/may/09/news/adfg-deport9>.

¹³⁰ *Id.*

¹³¹ *Kahssai*, 16 F.3d 323.

¹³² *Id.* at 324.

¹³³ *Id.*

¹³⁴ *Id.* at 323.

¹³⁵ *Id.* at 325.

¹³⁶ *Id.* at 326.

can remember a deeply traumatizing experience.¹³⁷ Second, the majority failed to apply the presumption that the asylum applicant was not fabricating her persecution claim.¹³⁸ These tales reinforce the fear of invisibility as a well-founded reality among child asylum claims.

V. Lessons from the International Response to Children Seeking Asylum

The European Union (“EU”) differs from the United States in several ways in its approach to processing a child asylum applicant’s credibility.¹³⁹ Article 3 of the European Court of Human Rights (“ECHR”) considers the child’s development and age in asylum credibility assessments.¹⁴⁰ This approach allows the interviewer to use the child’s unique experiences as a lens to determine if the child’s fear of persecution is sincere.

European countries assess a child asylum seeker’s credibility using various methodologies. For instance, the United Kingdom still places an explicit emphasis on credibility in driving asylum case outcomes, an approach in line with the United States’.¹⁴¹ Because the weight placed on credibility assessments blends with stigmas against a child’s credibility, the United Kingdom’s approach can be detrimental to a child’s asylum claim.¹⁴² Conversely, in Sweden, a child’s credibility holds the potential of positively impacting the robustness of his or her family’s asylum claim.¹⁴³ One author notes that, while a child’s claim of persecution is not determinative

¹³⁷ *Id.*

¹³⁸ *Id.* at 327.

¹³⁹ See generally Amanda Levinson, *Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions*, MIGRATION POL’Y INST., Jan. 24, 2011, <http://www.migrationpolicy.org/article/unaccompanied-immigrant-children-growing-phenomenon-few-easy-solutions>.

¹⁴⁰ See Eeva Nykänen, *Protecting Children? The European Convention on Human Rights and Child Asylum Seekers*, 3 EUR. J. MIGRATION & L. 315, 338 (2001).

¹⁴¹ See Alison Hunter, *Between the Domestic and the International: The Role of the European Union in Providing Protection for Unaccompanied Refugee Children in the United Kingdom*, 3 EUR. J. MIGRATION & L. 383, 395 (2001).

¹⁴² See, e.g., Farrah Bokhari, *Falling Through the Gaps: Safeguarding Children Trafficked into the UK*, 22 CHILD. & SOC’Y 201, 207 (2008).

¹⁴³ See Jane McAdam, *Seeking Asylum Under the Convention on the Rights of the Child: A Case for Complementary Protection*, 14 INT’L J. CHILD. RTS. 251, 260 (2006).

on its own, the child's credibility can reinforce the family's claim,¹⁴⁴ inferring a presumption of credibility to the child asylum seeker's testimony that contrasts to the U.S. approach. If the child asylum seeker's testimony weighs as heavily as in other countries, this shift in favor of presumed credibility may have a significant impact on the outcome on child asylum applications.¹⁴⁵

Canadian immigration officials pursue the best interests of the child by assigning an official who walks through the asylum application process with the child.¹⁴⁶ The representative serves the role of legal counsel. The presence of a legal advocate increases the likelihood the child can establish his or her credibility, since the representative can clearly communicate the child's persecution claim, cultural considerations, and other factors that may impact credibility.¹⁴⁷ Although several scholars claim infrequent application of this practice, the United States has frequently proposed a comparable legal advocate system.¹⁴⁸ Additionally, Canada applies a flexible burden of proof standard to match the child's maturity level,¹⁴⁹ ensuring that the noncitizen child's abilities meet the immigration official's expectations. Experts generally point to the Canadian Immigration and Refugee Board and the *Canadian Guidelines* as leading methods for upholding the "best interests of the child" standard.¹⁵⁰

Data on asylum procedures in other countries provides an important lesson: an abbreviated approach to assessing a child's credibility may not be the best protocol. A UNHCR official in

¹⁴⁴ *Id.* (Schiratzki describes how a six-year-old's testimony of her mother's rape and abuse strengthened her mother's claim for asylum. Ultimately, both mother and daughter were granted refugee status.).

¹⁴⁵ See Bhabha & Young, *supra* note 83, at 123. Alternatively, the UNHCR recommends weighing objective evidence, such as documented country conditions, more heavily than error-prone subjective evidence, like the child's testimony on persecution. *But see* Estrada, *supra* note 100, at 134; *see also* Deirdre M. Giblin, *Does It Take a Village, or Just a Good Circuit Court Decision? Enforcing Child Testimony Guidelines for Child Asylum Seekers*, 40 INT'L L. NEWS 20, 21 (2011).

¹⁴⁶ See Wendy Ayotte, *Separated Children Seeking Asylum in Canada*, Ottawa: United Nations High Commissioner for Refugees 1, 2, 16 (2001).

¹⁴⁷ *Id.* at 35.

¹⁴⁸ See Bien, *supra* note 114, at 822.

¹⁴⁹ *Id.* at 814.

¹⁵⁰ See Bhabha & Young, *supra* note 83, at 89–90. For a review of how the Canadian government implemented asylum system reforms, see Evaluation of the In-Canada Asylum System Reforms, <http://www.cic.gc.ca/english/resources/evaluation/asylum.asp>.

Austria candidly stated that an expedited asylum application process creates a vacuum where children may not receive the medical support they need to account for the impact that trauma may have on their credibility assessments.¹⁵¹ Also, individualized credibility assessments allow each person, including the child seeking asylum, an opportunity to testify. Consequently, the child may not experience the same level of intimidation commonly claimed of expedited procedures.¹⁵² Norway provides for individual credibility assessments, even for families seeking asylum status together.¹⁵³

The United States acknowledges the value of several foreign nations' approaches to the issue of assessing a child asylum applicant's credibility.¹⁵⁴ Nonetheless, these international rules are not binding on the United States.¹⁵⁵ The 1951 Refugee Convention responded to a surging number of refugee and asylum seekers post-WWII.¹⁵⁶ After the Convention, 142 nations, including the United States,¹⁵⁷ ratified a protocol¹⁵⁸ establishing the minimum standards of treatment for refugees and asylum seekers, like access to legal recourses, to basic education, to work, and to the provision of documentation.¹⁵⁹ However, critics frequently characterize this treaty as "outdated, unworkable, irrelevant, or an unacceptably complicating factor in today's migration environment."¹⁶⁰ Several countries have expanded on the treaty's basic principles

¹⁵¹ See Rosemary Byrne & Andrew Shacknove, *Safe Country Notion in European Asylum Law*, 9 HARV. HUM. RTS. J. 185, 221 (1996) (citing Interview with UNHCR Official in Austria (June 1992)).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See Estrada, *supra* note 100, at 133.

¹⁵⁵ See, e.g., *Batista v. Batista*, 1992 Conn. Super. LEXIS 1808 1, 18 (Conn. Super. Ct. June 18, 1992) (noting that the CRC is not binding on U.S. courts).

¹⁵⁶ See Holly Yan, *Are Countries Obligated to Take in Refugees? In Some Cases, Yes*, CNN, Dec. 29, 2015, <http://www.cnn.com/2015/09/08/world/refugee-obligation/>.

¹⁵⁷ States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, UNHCR United Nations High Commissioner for Refugees, <http://www.unhcr.org/3b73b0d63.html>.

¹⁵⁸ Convention and Protocol Relating to the Status of Refugees, UNHCR The UN Refugee Agency, <http://www.unhcr.org/3b66c2aa10.html>.

¹⁵⁹ See Yan, *supra* note 156.

¹⁶⁰ See Erika Feller, *The Evolution of the International Refugee Protection Regime*, 5 WASH. U. J. L. & POL'Y 129, 136 (2011).

since its inception.¹⁶¹ Therefore, while the basic premises and humanitarian sentiment behind the 1951 Refugee Convention are binding on the United States, other countries' detailed, modern approaches to assessing a child asylum seeker's credibility are not.

VI. Proposed Reforms

Given the rising number of children seeking asylum abroad¹⁶² and in the United States,¹⁶³ now is the time to translate empirical research into law. U.S. immigration officials should establish safeguards to prevent interviewing child asylum applicants under highly suggestible conditions. There is ample empirical evidence to suggest that the accuracy of a child's testimony is highly correlated with interviewing conditions.¹⁶⁴ Therefore, the United States should invest in interviewer training programs based on modern, empirically-supported methodology.

For instance, contemporary research is more informed on the parameters of suggestive questioning. Open-ended questions—commonly who, what, when, where, why, and how—are widely accepted for facilitating spontaneous narrative, as opposed to close-ended questions, which are framed by expected responses.¹⁶⁵ Additionally, interviewers should be wary of repeated questioning's impact on false reports. Repeated questioning, particularly with close-ended questions, can cause the child to rehearse the false event.¹⁶⁶ Inevitably, the recurring

¹⁶¹ See, e.g., Joan Fitzpatrick, *Revitalizing the 1951 Refugee Convention*, 9 HARV. HUM. RTS. J. 229, 233–34 (1996) (The Organization of African Unity (OAU) Convention expanded several UNHCR principles, like the “refugee” definition.).

¹⁶² See Nykänen, *supra* note 140, at 332; see also Daniel Wainwright, *Rise in Lone Children Seeking Asylum in England*, BBC NEWS, Sept. 7, 2016, <http://www.bbc.com/news/uk-england-36714617>.

¹⁶³ See, e.g., Pete Williams, *U.S. Expands Asylum Program for Central American Children*, NBC NEWS, July 26, 2016, <http://www.nbcnews.com/storyline/immigration-border-crisis/u-s-expands-asylum-program-central-american-children-n617096>.

¹⁶⁴ See, e.g., Stephen J. Ceci & Maggie Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis*, 113 PSYCHOL. BULLETIN 403, 425 (1993).

¹⁶⁵ See J. Zoe Klemfuss, Jodi A. Quas, & Thomas D. Lyon, *Attorneys' Questions and Children's Productivity in Child Sexual Abuse Criminal Trials*, 28 APPLIED COGNITIVE PSYCHOL. 780 (2014).

¹⁶⁶ See Ceci, Loftus, Leichtman, & Bruck, *supra* note 52, at 316 (“[A]fter repeatedly being encouraged to imagine false events, [the children] have come to believe that they are accurately recalling real events.”); see also Memorandum from Jeff Weiss, *supra* note 80 (suggesting interviewers use child-sensitive questioning and active listening when interviewing child asylum applicants).

suggestive questioning creates a false memory that becomes difficult to detect.¹⁶⁷ This situation is problematic for a child who has internalized a suggested tale of persecution, but has objective evidence in his or her application that may be inconsistent with the interview.

In addition to suggestive questioning, the U.S. immigration system should increase attention to confirmation biases. Confirmation bias is an automatic practice that a specific trigger outside an individual's active control unconsciously triggers.¹⁶⁸ If the interviewer has a preconceived notion about what the child's testimony should look like, the interviewer may be more prone to use suggestive questioning.¹⁶⁹

Open-ended questioning is the most robust method to combat confirmation bias.¹⁷⁰ Some scholars propose monitoring confirmation bias by screening for an interviewer's self-control skills, like following directions to ask only open-ended questions.¹⁷¹ Researchers believe confirmation bias is tied to self-control.¹⁷² Nonetheless, by asking only open-ended questions, there is a higher probability that any confirmation bias the interviewer may possess will be masked¹⁷³ because the child asylum seeker will be speaking with more frequency. Finally, the interviewer should keep in mind that a child's testimony may be more reliable than an adult's account in some circumstances, because adults are more likely to encode their understanding of an event, whereas children are more likely to encode an event as it occurred.¹⁷⁴

¹⁶⁷ See Ceci, Loftus, Leichtman, & Bruck, *supra* note 52, at 316.

¹⁶⁸ See Martine B. Powell, Carolyn H. Hughes-Scholes, & Stefanie J. Sharman, *Skill in Interviewing Reduces Confirmation Bias*, 9 J. INVESTIGATIVE PSYCHOL. OFFENDER PROFILING 126, 127 (2012).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* 168; see also E-mail from Damir Utrzan, Licensed Marriage and Family Therapist, Doctoral Candidate in Family Social Science, University of Minnesota, to Karen Smeda (Jan. 24, 2017, 7:44 AM EST) (on file with author).

¹⁷¹ See Powell, Hughes-Scholes, & Sharman, *supra* note 168.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ See Charles J. Brainerd & Valerie F. Reyna, *Fuzzy-Trace Theory and False Memory*, 11 CURRENT DIRECTIONS IN PSYCHOL. SCI. 164, 167; see also Utrzan, *supra* note 170 (“Children encode events as they occurred, without embellishment. Adults, on the other hand, encode an interpretation of events. This includes unintentional embellishment and makes adults more susceptible to incomplete or altogether wrong memories.”).

Providing legal counsel for each child seeking asylum may be an ideal, yet lofty goal. Alternatively, children should be appointed a guardian ad litem who would promote the best interests of the child. Although legal counsel offers the child asylum seeker necessary assistance through the asylum application process, the guardian ad litem serves a wellness role, ensuring that the judge and attorney hear the child's wishes, which the child's legal counsel may not otherwise consider.¹⁷⁵ Additionally, providing an unaccompanied child asylum seeker with an adult representative is a closer step towards ensuring that the child is receiving minimum due process protection in his or her immigration proceedings.¹⁷⁶ The guardian ad litem invests in the child's success by thoroughly learning the child's story, supporting the child in articulating his or her views, explaining the child's options, learning about the child's preferences, and acting as the child's advocate in all aspects of the immigration proceedings.¹⁷⁷

This relationship between the child and guardian ad litem is crucial in situations where the child seeking asylum is an unaccompanied minor since the child may not otherwise have an adult advocate. Nonetheless, guardians ad litem would also be a resource for indigent parents who face language barriers or who are unfamiliar with navigating the asylum process. While a guardian ad litem, relative to appointed legal counsel, cannot guarantee that the child will receive adequate due process protection, it would be a positive stride.

Both guardian ad litem and legal counsel may be cost-effective options. Legal counsel may be encouraged to provide pro bono service by serving as a child asylum applicant's legal

¹⁷⁵ See Joyce Koo Dalrymple, *Seeking Asylum Alone: Using the Best Interests of the Child Principle to Protect Unaccompanied Minors*, 26 B.C. THIRD WORLD L. J. 131, 156–57 (2006).

¹⁷⁶ See Michael A. Olivas, *Unaccompanied Refugee Children: Detention, Due Process, and Disgrace*, 2 STAN. L. & POL'Y REV. 159, 161 (1990).

¹⁷⁷ See Wendy A. Young, *Refugee Children at Risk*, 28 HUM. RTS. 10, 11 (2001); see also Memorandum from Jeff Weiss, *supra* note 80 (noting that, although the 2009 USCIS guidelines recommend the presence of a trusted adult or legal guardian, it is unsure how often these recommendations are implemented).

counsel.¹⁷⁸ Additionally, the guardian ad litem program, staffed by professional advocates and volunteers, could expand to the immigration context.¹⁷⁹ Even though the USCIS acknowledges the value of guardian ad litem to children in asylum proceedings,¹⁸⁰ the United States does not currently provide for the mandatory appointment of any designated representative.¹⁸¹ Therefore, the United States would take a step in the right direction by increasing volunteer advocates or requiring the appointment of a child advocate for children seeking asylum.

For children fleeing persecution from countries with a primary language other than English, an alternative proposal is to conduct credibility assessments in the child's native tongue.¹⁸² According to the UNHCR, a trained independent interpreter should be present if the interviewer does not speak the child's native language.¹⁸³ However, it is unknown how often the U.S. government follows this measure. Since the child's native language would theoretically be more comfortable to the child, the credibility assessment's accuracy would improve as a function of creating a more secure environment for recounting traumatic events.¹⁸⁴ Additionally, disclosure is enabled by recalling incidents in one's native tongue because it facilitates the association of ideas.¹⁸⁵

Finally, the United States should weigh a child's testimony equal to an adult's testimony, which would require giving more weight to a child's testimony than he or she currently receives.

¹⁷⁸ See Kids in Need of Defense (KIND), https://www.probono.net/oppsguide/organization.519490-Kids_In_Need_of_Defense_KIND.

¹⁷⁹ See Kelly Albinak Kribs, *U.S. GAO Concludes the Expansion of the Young Center's Child Advocate Program Should Continue in Order to Keep Pace with the Increasing Number of Vulnerable Immigrant Children*, U. CHI. L. SCH., Apr. 22, 2016, <http://www.law.uchicago.edu/clinics/theadvocate/us-gao-concludes-expansion-young-center%E2%80%99s-child-advocate-program-should-continue>.

¹⁸⁰ See Bien, *supra* note 114, at 821.

¹⁸¹ See Dalrymple, *supra* note 175, at 156.

¹⁸² See, e.g., Villareal, *supra* note 118, at 761.

¹⁸³ UNHCR, REFUGEE CHILDREN: GUIDELINES ON PROTECTION AND CARE 1, 44 (1994).

¹⁸⁴ *Id.*

¹⁸⁵ See Saeed Farooq & Chris Fear, *Working Through Interpreters*, 9 ADVANCES IN PSYCHIATRIC TREATMENT 104, 105 (2003); see also Memorandum from Jeff Weiss, *supra* note 80 (discussing strategies to reduce the stressfulness of asylum interviews for children, such as taking breaks and creating a comfortable environment).

Often, U.S. immigration officials expect a noncitizen child to provide documented proof of witnesses, expert testimony, and other forms of objective evidence.¹⁸⁶ However, these expectations create an impossible standard, because most children seeking asylum are less likely than adult asylum seekers to have the resources or access to these types of evidence.¹⁸⁷ Additionally, this emphasis on using objective evidence alone to evaluate a child asylum seeker's credibility "encourage[s] the misconception that children are disabled by an inability to testify."¹⁸⁸

Finally, immigration officials sometimes dismiss a children's asylum claim as marginal claims of persecution, rather than considering the severity of the experience in the context of an impressionable child.¹⁸⁹ By giving a child's testimony as much weight as an adult asylum seeker's testimony, immigration officials would permit the child an opportunity to develop a robust account of his or her persecution.

In light of the various areas needing improvement, some proposals should be prioritized over others. Given how heavily immigration officials weigh credibility assessments, the principal recommendation for reform is to standardize non-biased interviewing conditions. First, interviewers should be made aware of their biases and the potential impact this may have on their credibility determinations. Interviewers can learn strategies to self-regulate for biases that contribute to confirmation bias.¹⁹⁰ In addition to monitoring for interviewer biases, interviewers should have a short, standardized list of open-ended questions to combat suggestive questioning. Interviewers can acclimate to the open-ended questioning technique and integrate it when the

¹⁸⁶ See Cynthia R. Mabry, *Coming to America: The Child's Voice in Asylum Proceedings- A Guide to Representing Children in Asylum Proceedings*, 11 TEMP. POL. & CIV. RTS. L. REV. 63, 93 (2001).

¹⁸⁷ See Gorlick, *supra* note 9, at 363.

¹⁸⁸ Estrada, *supra* note 100, at 138.

¹⁸⁹ See, e.g., *Civil*, 140 F.3d at 56.

¹⁹⁰ See, e.g., AMOS TVERSKY & DANIEL KAHNEMAN, *Judgment Under Uncertainty: Heuristics and Biases*, in UTILITY, PROBABILITY, AND HUMAN DECISION MAKING 1, 2 (1975).

interview compels the interviewer to deviate from the standardized questions. Standardizing interview questions is most important for younger children seeking asylum because confirmation biases and suggestive questioning have a greater effect on younger versus older children.¹⁹¹ Finally, interviewers should concentrate on creating a secure environment for child asylum seekers. Interviewers can develop a comfortable setting by forming a bond with the child through short, casual conversation, like, “What’s your favorite subject in school?”¹⁹² The interviewer may also incorporate other practices that focus on the interviewer’s body language, such as maintaining eye contact and adapting to the child’s disposition.¹⁹³ By implementing several of the suggested changes, immigration actors can move towards creating a uniform standard for assessing a child asylum seeker’s credibility.¹⁹⁴

VII. Legal Ramifications

Many would argue that the United States can do better than the system currently in place.¹⁹⁵ However, must it do better? The court in *Fong Yue Ting* decided that due process¹⁹⁶ does not apply in immigration hearings because deportation is not a “punishment for a crime.”¹⁹⁷ Most

¹⁹¹ See Ceci & Bruck, *supra* note 164, at 417.

¹⁹² See Utrzan, *supra* note 170 (“Anyone interviewing children about traumatic experiences should take the time to “build rapport” (i.e., build a relationship). A relationship facilitates disclosure without compromising the integrity of information. Building rapport by asking children, initially for no more than 5-10 minutes, about their hobbies, likes, and preferences is an effective technique for creating comfort.”).

¹⁹³ *Id.* (“Other effective techniques for creating comfort is sitting with the child at his or her level, making eye contact, asking questions in a gentle non-intimidating manner, dressing casually, and conforming your body language (i.e., posture and movements) to the child’s personality (Barker, 1999). Although these techniques have been developed for facilitating comfort in the clinical setting, such as diagnostic assessments, they are applicable to the asylum process.”).

¹⁹⁴ *Id.* (“[R]eform should focus on establishing a uniform set of practice standards. While different professional associations (e.g., American Psychological Association, American Association for Marriage and Family Therapy, American Bar Association) offer guiding principles, there is no standard for practice regarding interviewing children in the context of asylum. This may not only considerably improve children’s testimony, and perhaps increase their asylum grant rates, but also enable researchers to evaluate and improve existing techniques.”).

¹⁹⁵ See, e.g., Mariano Castillo, *For Immigrant Children, Fate in U.S. A Roll of the Dice*, CNN, Oct. 7, 2014, <http://www.cnn.com/interactive/2014/10/us/immigrant-children/>.

¹⁹⁶ U.S. Const. amend. V.

¹⁹⁷ *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893).

constitutional protections do not apply in civil law immigration proceedings.¹⁹⁸ Therefore, asylum seekers are not entitled to all due process protections available to citizens under the U.S. Constitution.

Noncitizens in asylum proceedings are not entitled to free legal counsel.¹⁹⁹ Like most adults in asylum proceedings, children seeking asylum have little to no resources to pay an immigration attorney's fees.²⁰⁰ Therefore, approximately one-half of all children in Department of Homeland Security ("DHS") detention do not have legal representation.²⁰¹ Although both adult and child asylum seekers would significantly benefit from legal representation,²⁰² child asylum seekers are more vulnerable without legal counsel. While adult asylum applicants may have access to law libraries in their detention facilities and sufficient English skills to process relevant information,²⁰³ most children, even those fluent in English, will not possess the language capacities to navigate an asylum application without legal assistance.²⁰⁴ Additionally, adult asylum seekers may benefit from the advice and experience fellow asylum seekers share,²⁰⁵ meanwhile, some children may not have reached the developmental stage to recognize that other people may have insight that is valuable to their asylum application.²⁰⁶

¹⁹⁸ *Id.* (explaining that the constitutional protections available in criminal proceedings do not translate to the immigration context).

¹⁹⁹ See Olivas, *supra* note 176.

²⁰⁰ Cf. Angie Junck & Rachel Prandini, Immigrant Legal Resource Ctr., *Best Practices for Representing Unaccompanied Children in Removal Proceedings*, Address at the American Bar Association (Jan. 6, 2015), <http://www.americanbar.org/content/dam/aba/administrative/immigration/UACBestPractices.authcheckdam.pdf>.

²⁰¹ See Dalrymple, *supra* note 175, at 133.

²⁰² See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015) ("[D]etained immigrants with counsel obtained a successful outcome (i.e., case termination or relief) in 21% of cases, ten-and-a-half times greater than the 2% rate for their pro se counterparts.").

²⁰³ See Christie Thompson, *America's Toughest Immigration Court*, THE MARSHALL PROJECT, Dec. 12, 2016, <https://www.themarshallproject.org/2016/12/12/america-s-toughest-immigration-court#.qGPZoDOmO>.

²⁰⁴ See Dalrymple, *supra* note 175, at 133; see also Rhona H. Flin, Yvonne Stevenson, & Graham M. Davies, *Children's Knowledge of Courtroom Proceedings*, 80 BRIT. J. PSYCHOL. 285, 286, 294 (1989).

²⁰⁵ See Thompson, *supra* note 203.

²⁰⁶ See generally Allison M. Ryan, Margaret H. Gheen, & Carol Midgley, *Why Do Some Students Avoid Asking for Help? An Examination of the Interplay Among Students' Academic Efficacy, Teachers' Social-Emotional Role, and the Classroom Goal Structure*, 90 J. EDUC. PSYCHOL. 528 (1998) (explaining a developmental trend, where children "who need help the most seek it the least").

Additionally, children in immigration detention facilities experience a loss of liberty that violates the Fifth Amendment right to counsel and Sixth Amendment Due Process.²⁰⁷ A child seeking asylum is often placed in “preventative custody,” a standard of care theoretically analogous to parental care.²⁰⁸ In reality, many noncitizen children are held in deplorable detention facilities that mimic prisons rather than nurturing homes.²⁰⁹ Some detention facilities face allegations of abuse, lack of medical care, and anxiety-evoking environments that frequently re-traumatize detained children and affect their endurance to overcome the lengthy asylum process.²¹⁰

Courts have begun to acknowledge that child asylum seekers are entitled to some due process protection. Broadly speaking, immigration officials may not interfere with a noncitizen’s right to seek asylum. For instance, the court in *Perez-Funez*²¹¹ held that children are entitled to a full and fair hearing. Additionally, the court in *Orantes-Hernandez* maintained that immigration officers may not use coercive practices to thwart a noncitizen’s asylum application.²¹² Finally, the court in *Batista* referenced the CRC as persuasive authority, thus highlighting the CRC’s importance, even though the United States has not ratified it.²¹³

²⁰⁷ See generally Linda K. Hill, *The Right to Be Heard: Voicing the Due Process Right to Counsel for Unaccompanied Alien Children*, 31 B.C. THIRD WORLD L. J. 41, 60–61 (2011).

²⁰⁸ *Id.* at 58.

²⁰⁹ See Nigel Duara, *Hundreds of Women and Children are Released from Texas Immigration Detention Facilities*, L.A. TIMES, Dec. 6, 2016, <http://www.latimes.com/nation/la-na-texas-immigration-detention-release-20161204-story.html>. *But c.f.* J. Weston Phippen, *Is it an Immigration Detention Facility or a Child-Care Center?*, THE ATLANTIC, May 6, 2016, <http://www.theatlantic.com/national/archive/2016/05/immigration-childcare/481509/> (describing the mixed responses to the detention facility controversy—although some, like the Obama administration, believe that certain detention facilities should receive a child care designation, some immigration advocates believe the facilities should be closed because they closely resemble prisons).

²¹⁰ See Reynaldo Leanos Jr., *Advocates Say Another Privately Operated Immigration Detention Center for Women and Child is the Wrong Approach*, PRI, Aug. 26, 2016, <https://www.pri.org/stories/2016-08-19/advocates-say-another-privately-operated-immigration-detention-center-women-and>.

²¹¹ *Perez-Funez v. District Director, Immigration & Naturalization Service*, 619 F. Supp. 656, 660 (1985).

²¹² *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990).

²¹³ *Batista*, 1992 Conn. Super. LEXIS 1808 at 18–19.

Still, the current asylum adjudication system violates fundamental due process principles. The United States should expand due process under *Perez-Funez* to include fair procedures that ensure accurate credibility assessments for child asylum seekers. Although some jurisdictions require judges to use child-sensitive questioning techniques, like accommodating to the child's mental development when assessing a child's credibility,²¹⁴ the EOIR guidelines²¹⁵ are not universally implemented. Unless a standard is mandatory, it is unlikely that many immigration officials and judges will undertake the additional work necessary for a fair credibility assessment. Therefore, Congress should require immigration officers and judges to incorporate the recommended reforms into the credibility interview protocol. If an asylum adjudicator fails to oblige and the child's asylum application is denied, the asylum applicant should have a strong argument on appeal for a due process violation that should be subject to remand.

Additionally, given the disparities in outcome between applicants with access to legal representation and those without,²¹⁶ the government should start to address unconstitutional flaws by providing each child asylum applicant free legal representation. This reform is crucial because many child asylum applicants do not have the financial resources to retain private counsel,²¹⁷ and immigration regulations may prevent an asylum applicant's parents from obtaining work authorization.²¹⁸ Free legal counsel may also be the most cost-effective reform.

Like criminal procedures, legal representation for both parties can improve productivity in the

²¹⁴ See Hill, *supra* note 207, at 63–64.

²¹⁵ Memorandum from the Off. of the Chief Immigration Judge to all Immigration Judges, all Court Administrators, all Judicial Law Clerks, & all Immigration Court Staff (Sept. 16, 2004), <https://www.immigrantjustice.org/sites/default/files/EOIR%2520guideline%2520on%2520Children%2520in%2520immigration%2520court.pdf>.

²¹⁶ See Eagly & Shafer, *supra* note 202; see also Hill, *supra* note 207, at 65 (“a child represented by counsel is four times more likely to win asylum”).

²¹⁷ See Andrew I. Schoenholtz & Jonathan Jacobs, *The State of Asylum Representation: Ideas for Change*, 16 GEORGETOWN IMMIGR. L. J. 739, 747 (2002).

²¹⁸ See, e.g., Ilona Bray, *When Can Asylum Applicants Get a Work Permit?*, NOLO, <http://www.nolo.com/legal-encyclopedia/asylum-applicants-work-permit-timing-32297.html> (“Asylum applicants don’t qualify for a work permit until their case is won or 180 days have passed with no decision.”).

courtroom and eliminate meritless child asylum claims.²¹⁹ Finally, the child asylum applicant's legal counsel can serve as a check on immigration officials' adherence to the reforms.

VIII. Conclusion

U.S. border agents detained at least 52,000 unaccompanied minors from only four Central American countries—Mexico, Guatemala, El Salvador, and Honduras—in 2014,²²⁰ while 95,000 unaccompanied children sought asylum in Europe in 2015.²²¹ Given the ongoing turmoil in various parts of the world, these numbers will likely rise.²²² Children are narrowly escaping their native countries.²²³ With little help available from legal counsel and little time to gather supporting evidence, more children are relying on the gamble of a positive credibility assessment in an asylum application.

The stakes are high—either a new life in the United States, or probable fatality at home if deported.²²⁴ The lives of all children should receive more security than the subjective judgment

²¹⁹ See Hill, *supra* note 207, at 67.

²²⁰ See Tom Dart, *Child Migrants at Texas Border: An Immigration Crisis That's Hardly New*, THE GUARDIAN (July 9, 2014), <https://www.theguardian.com/world/2014/jul/09/us-immigration-undocumented-children-texas>; see also Jens Manuel Krogstad, *U.S. Border Apprehensions of Families and Unaccompanied Children Jump Dramatically*, PEW RES. CTR., May 4, 2016, <http://www.pewresearch.org/fact-tank/2016/05/04/u-s-border-apprehensions-of-families-and-unaccompanied-children-jump-dramatically/>.

²²¹ See Safya Khan-Ruf & Maeve McClenaghan, *Migration Crisis Revealed: Fourfold Rise as 95,000 Unaccompanied Children Claim Asylum in Europe in 2015*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Apr. 10, 2016), <https://www.thebureauinvestigates.com/2016/04/10/revealed-fourfold-rise-95000-unaccompanied-children-claim-asylum-europe-2015/>; see also Phillip Connor & Jens Manuel Krogstad, *Europe Sees Rise in Unaccompanied Minors Seeking Asylum, with Almost Half from Afghanistan*, PEW RES. CTR., May 10, 2016, <http://www.pewresearch.org/fact-tank/2016/05/10/eu-unaccompanied-minors/>; Cf. David Barrett, *Britain Took in More Migrants than 17 Other EU Countries put Together, New Data Shows*, THE TELEGRAPH, May 12, 2005, <http://www.telegraph.co.uk/news/uknews/immigration/11599609/Asylum-figures-take-centre-stage-in-new-EU-negotiations.html> (explaining that Great Britain granted asylum to 14,065 applicants in 2014, a number that greatly exceeded the other seventeen EU countries combined).

²²² See, e.g., Jie Zong & Jeanne Batalova, *Refugees and Asylees in the United States*, MIGRATION POL'Y INST. (Oct. 28, 2015), <http://www.migrationpolicy.org/article/refugees-and-asylees-united-states> (“The Obama administration proposed to significantly increase the number of refugees the United States accepts each year—from 70,000 in FY 2015 to 85,000 in FY 2016 and 100,000 in FY 2017.”); see generally Phillip Connor, *Number of Refugees to Europe Surges to Record 1.3 Million in 2015*, PEW RES. CTR., Aug. 2, 2016, <http://www.pewglobal.org/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/> (reporting that 35,000 unaccompanied minors seeking asylum entered Sweden in 2015 alone).

²²³ See, e.g., Sonia Nazario, *The Refugees at Our Door*, N.Y. TIMES, Oct. 10, 2015, <http://www.nytimes.com/2015/10/11/opinion/sunday/the-refugees-at-our-door.html>.

²²⁴ See generally Finley, *supra* note 125.

of the immigration official conducting the child's credibility assessment. Current strategies used to increase the accuracy of credibility determinations are often misguided by outdated methodology. By implementing more robust, updated guidelines to increase the accuracy of credibility appraisals and ensuring that the recommendations are practiced with regularity, we can enhance the visibility of children facing persecution.