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A Benefit-Cost Analysis of Expanding Federally Funded Counsel Programs for Unaccompanied Immigrant Children in Removal Proceedings in the United States

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Executive Summary

Over the past decade, the number of unaccompanied alien children (UACs) arriving at U.S. borders has risen dramatically, to an average annual level of 50,000 during fiscal years (FY) 2014–2018. UACs now account for a significant fraction of the flow of unauthorized migrants to the United States. An issue that has been the subject of much debate is whether these children should be provided with legal representation in immigration court at the government's expense. The John D. and Catherine T. MacArthur Foundation funded the Institute for Defense Analyses' (IDA's) research to develop objective, rigorous estimates of the impacts of UACs having access to counsel on their case outcomes and immigration processes and capacities, and to estimate the monetary cost of an expansion of access to counsel.

A UAC arriving at a U.S. border who does not have legal permission to enter the country is apprehended and processed by a U.S. law enforcement agency, taken to a shelter, and placed into care with an appropriate sponsor, usually a family member. The UAC is also placed in removal proceedings and required by law to go through an immigration court removal process that permits them to seek permission to legally reside in the United States. U.S. law provides for several relief channels that might potentially be appropriate to a UAC's circumstances, including affirmative asylum, defensive asylum, special immigrant juvenile status (SIJS), and the T and U visas. Although agencies other than an immigration court are involved in making adjudication decisions for most of these channels, they must all end with a final decision in immigration court by a judge. Some UACs participate in the immigration court process to a final decision, whereas others participate up to a point but then cease participating, and others do not participate at all. Those who never participate or cease participating at some point are ruled by the immigration judge to be *in absentia*, and a formal removal order is issued. The typical UAC case that goes to a final decision involves several hearings that take place over several years. Although the U.S. government is not required by federal law to provide representation for a UAC in immigration court, UACs are permitted to be represented, and 65 percent of UACs whose cases were initiated during FY 2008–2016 had representation, either through private-sector lawyers hired by them or through subsidized or pro bono representation through non-governmental organizations (NGOs).

In this research, we quantify the impact of representation on UAC case outcomes in immigration court, including the likelihood that a UAC is successful in immigration court (which we equate to not receiving an order of removal), and the likelihood that a UAC stops participating in the immigration court process and receives an *in absentia* order of

removal. We also quantify the impact of representation on the number of hearings held in immigration court that are associated with UAC cases. This is only a subset of the potential impacts of having representation. We lack data to quantify the impact of representation on the efficiency of non-immigration-court adjudication processes and on the average immigration court hearing length.

We estimate these impacts using administrative immigration court records for UAC cases initiated during FY 2008–2016, and we use insights gained from interviews with NGOs providing access to counsel to refine our statistical methodology, which controls for challenges that arise in assessing the impact of representation on outcomes (selection bias and data censoring.) After estimating the historical impacts of representation, we then evaluate a counterfactual policy scenario, in which the representation of UACs is increased to a level of 100 percent at the beginning of all cases during the historical period of FY 2008–2016. Our results suggest that an expansion to 100 percent representation would have had the following impacts:

- The success rate for UAC cases would have increased by at least 22 percent.
- The rate of UACs *in absentia* would have fallen by at least 22 percent.
- The failure rate for UAC cases would have remained roughly unchanged.
- The overall number of UAC immigration court hearings would have fallen by 6.7 percent, because a rise in the number of hearings due to fewer *in absentia* outcomes and more hearings per case is more than offset by the elimination of a larger number of hearings that were historically adjourned to find counsel.

We then use data on key representation parameters and costs obtained from NGO interviews to develop an estimate of what the monetary cost of expanding representation to 100 percent for cases initiated in FY 2008–2016 might have been. We estimate the cost of this expansion at $157 million for FY 2008-2016, with the estimated annual cost rising from $4 million in FY 2008 to $33 million in FY 2016 as the number of cases increased.

We also assess the role of NGOs in coordinating the provision of social services to UACs, which benefits UACs, their families, and the communities in which they live. We are not able to quantify the benefits of these services due to lack of data. The cost of providing these services to all UACs is estimated at $4 million per year on average during FY 2010–2016, rising from a level of $1.2 million in FY 2010 to $9.7 million in FY 2016.

Contents

1. Study Overview

Over the past decade, the number of unaccompanied alien children (UACs) arriving at U.S. borders has risen dramatically to an average annual level of 50,000 during fiscal years (FY) 2014–2018. UACs now account for a significant fraction of the flow of unauthorized migrants to the United States. An important issue that has been the subject of much debate is whether these children should be provided with legal representation in immigration court at the government's expense. The John D. and Catherine T. MacArthur Foundation funded the Institute for Defense Analyses (IDA) to develop objective, rigorous estimates of the impacts of UACs having access to counsel on their case outcomes and immigration processes and capacities, and to estimate the monetary cost of an expansion of access to counsel.

When a UAC arrives at a U.S. border and does not have legal permission to enter the country, they are apprehended by a U.S. law enforcement agency that processes them and issues them a "Notice to Appear" (NTA) in an Executive Office of Immigration Review (EOIR) immigration court. They are then taken to a shelter, where they reside until an appropriate sponsor can be identified. After determining that the sponsor is suitable, the UAC is released into their care. Because the UAC has been placed in removal proceedings, they are required by law to go through an immigration court removal process, which consists of one or more proceedings that are carried out through a series of court hearings that the UAC attends. A UAC that participates in the immigration court process will attend at least one hearing, and if they participate until the process's conclusion, an immigration judge renders a final decision on the case. A UAC can also stop participating in the court process, in which case they are ruled by the immigration judge to be *in absentia*, and a formal removal order is issued. The typical UAC case involves several hearings that take place over several years.

The process through which a UAC seeks permission to legally reside in the United States is complex. There are several options available to a UAC to seek this permission—affirmative asylum, defensive asylum, special immigrant juvenile status (SIJS), and the T and U visas. Decisions on affirmative asylum, T visas, and U visas are made by a federal agency outside of the immigration court, the U.S. Citizenship and Immigration Service (USCIS). Initial decisions on SIJS are made by state family courts and are then referred to USCIS for further review and approval. Only defensive asylum is decided solely by an immigration court judge. However, for all of these channels, the process must end with a final decision in immigration court by a judge.

A UAC is permitted to be represented by a lawyer in immigration court and in state family court, and assisted by a lawyer in USCIS administrative processes. The U.S. government is not required by federal law to provide representation. For UAC immigration court cases initiated during FY 2008–2016, 35 percent of UACs did not obtain access to counsel while engaging in the immigration court process, and 65 percent did. UACs who obtained counsel either hired private-sector lawyers on their own account or obtained subsidized or pro bono representation through non-governmental organizations (NGOs).

Having representation potentially has impacts on a range of processes and outcomes. Representation might increase the chance that a UAC receives a favorable decision in immigration court, family court, or in a USCIS process.[1] Representation might also reduce the likelihood that a UAC stops participating in the immigration court process and receives an *in absentia* order of removal. Representation might affect the processing burden of cases in immigration court, family court, and USCIS processes. In immigration court, representation might reduce the number of hearings required to complete a case, the average time of a hearing, and the number of hearings that are held unnecessarily while a UAC is looking for a lawyer. Representation could also increase the number of hearings by lowering the chance of going *in absentia* or by having a lawyer more aggressively pursue success through multiple forms of relief. Representation could reduce the amount of time that the attorney representing the government in immigration court has to spend on preparing a case, or it might increase the chance that the attorney decides to not seek removal, which would lower the case's processing burden on the court. Representation could reduce the amount of time that a USCIS adjudicator spends on making a decision in a USCIS process, and it could also make processes in state family courts more efficient. Finally, representation could have spillover benefits that benefit a UAC and the community in which they reside, such as better access to education, health care, and housing, and a reduced chance of the UAC making bad decisions and engaging in criminal activity.

In this study, we quantify the impact of representation on UAC case outcomes in immigration court, including the likelihood that a UAC obtains success in immigration court (which we equate to not receiving an order of removal), and the likelihood that a UAC stops participating in the immigration court process and receives an *in absentia* order of removal.[2] We also quantify the impact of representation on the number of hearings held in immigration court that are associated with UAC cases. We lack data to quantify the

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1 Previous research on the impacts of representation in immigration court has focused on the representation of adults and suggests that having representation has large impacts on case outcomes. See Chapter 3 for discussion of previous research.

2 Because a UAC who is represented in state family court or in USCIS processes is highly likely to also be represented in immigration court, our estimated impacts on immigration court outcomes are arguably picking up the impact of representation in these other processes.

impact of representation on the efficiency of state family court and USCIS processes.[3] We also lack data to quantify the impact of representation on average immigration court hearing length.[4] The set of impacts that we quantify is thus only a subset of potential impacts.

To estimate these impacts, we used administrative immigration court records for UAC cases initiated during FY 2008–2016. We also carried out interviews with 13 NGOs providing access to counsel to UACs in 10 U.S. cities to obtain insights into a range of issues that helped us define our statistical methodology.[5] The methodologies that we use controls for two important issues that arise in quantifying the causal impact of representation on these outcomes. First, we control for selection bias, which could result from lawyers only taking UAC cases with intrinsically better case characteristics. Second, our methodologies take into account the large number of UAC cases that were still pending at the end of our data sample. After estimating the historical impacts of representation, we then evaluate a counterfactual policy scenario in which the representation of UACs is increased to a level of 100 percent at the beginning of all cases during the historical period FY 2008–2016. Our results suggest that an expansion to 100 percent representation would have had the following impacts:

- The success rate for UAC cases would have increased by at least 22 percent.
- The rate of UACs going *in absentia* would have fallen by at least 22 percent.
- The failure rate for UAC cases would have remained roughly unchanged.
- The overall number of UAC immigration court hearings would have fallen by 6.7 percent, because a rise in the number of hearings due to fewer *in absentia* outcomes and more hearings per case is more than offset by the elimination of a larger number of hearings that were historically adjourned to find counsel.

We then use data on key representation parameters and costs obtained from NGO interviews to develop an estimate of what the monetary cost of expanding representation to 100 percent for cases initiated in FY 2008–2016 might have been.[6] We estimate the cost

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3 USCIS and Immigration and Customs Enforcement (ICE) hold administrative records that could be used to quantify impacts, but they do not make these data available to the public, and they did not make these data available to this research project. State family courts might hold administrative records that could be used to quantify impacts, but trying to obtain these data was beyond the scope of this project.

4 The EOIR, which manages U.S. immigration courts, has recently started to record the exact times that a hearing begins and ends, and these data could be used to assess this impact, but these "timestamp" data were not available for this study.

5 We also sought to conduct interviews with immigration court judges but were not able to do so.

6 We do not try to develop projections of impacts and costs for UAC cases in future years because of potentially significant recent changes to immigration court processes that make developing such projections substantially more difficult and uncertain.

of this expansion at $157 million for FY 2008-2016, with the estimated annual cost rising from $4 million in FY 2008 to $33 million in FY 2016 as the number of cases increased.

In addition to representation, we also evaluate the role of NGOs in coordinating the provision of social services to UACs, which produces benefits to UACs, their families, and the communities in which they live. We were not able to quantify the benefits of these services due to lack of data. The cost of providing these services to all UACs is estimated at $4 million per year on average during FY 2010–2016, rising from a level of $1.2 million in FY 2010 to $9.7 million in FY 2016.

The study is organized into three chapters. Chapter 2 provides an extensive overview of the processes that UACs enter into in order to obtain a successful outcome in the immigration enforcement system, the relevant laws that govern these processes, and the provision of lawyers to UACs and the potential impacts that having representation has on case and immigration court outcomes. Chapter 3 quantifies the impacts of having representation on key case and immigration court outcomes, including the probability that a UAC has a successful case outcome, the probability that a UAC goes *in absentia*, and the total number of hearings held for UAC cases. The impacts of expanding access to counsel to a 100 percent representation rate for UAC cases that were initiated in FY 2008–2016 are then quantified. Chapter 4 monetizes the cost of an expansion to 100 percent representation using the estimates of Chapter 3 and cost values obtained from interviews with NGOs providing counsel to UACs.

2. Unaccompanied Children in U.S. Immigration Proceedings

A. Unaccompanied Children: Characteristics and Trends

UACs are juveniles less than 18 years of age who arrive at a U.S. border without an accompanying adult. In U.S. law, an unaccompanied child migrant is defined as a child who has no lawful immigration status in the United States, has not attained 18 years of age, and who either has no parent or legal guardian in the United States or no parent or legal guardian in the United States who is available to provide care and physical custody.[7] Most UACs are male teenagers over 13 years of age from the Central American countries of El Salvador, Guatemala, and Honduras who are apprehended between ports of entry on the U.S.-Mexico land border.[8]

Figure 1 shows quarterly apprehensions by U.S. Border Patrol of UACs at the U.S.-Mexico land border during FY 2010–2018. After remaining constant at roughly 4,300 per quarter during FY 2010–2011, the number of UAC apprehensions started rising in late 2011 and surged to a peak in the second quarter of 2014, when apprehensions were almost 29,000. This initial peak was followed by a sharp fall and subsequent surges and falls. In 2018, average quarterly apprehensions were roughly 13,500. Figure 1 also shows the number of new UAC cases initiated in immigration court through an NTA from the last quarter of 2007 to the third quarter of 2016.[9] The dynamics of the two series in Figure 1 suggest that new immigration court cases rise or fall with apprehensions with a one-quarter lag. After apprehension and subsequent processing (described in more detail below), roughly half of UACs are united with a parent who is resident in the United States, and

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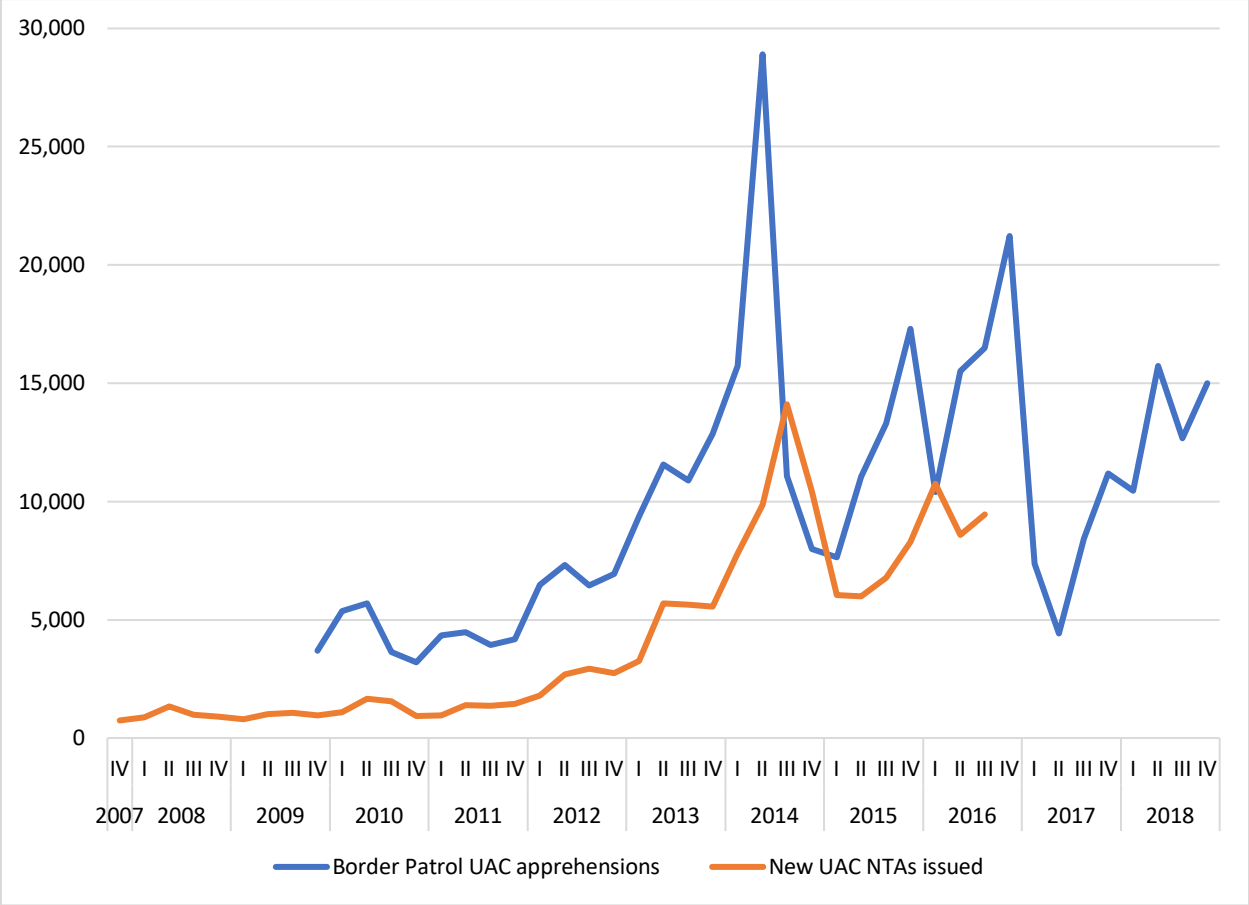
7 See 6 U.S.C. §279(g)(2), accessible at https://www.law.cornell.edu/uscode/text/6/279.

8 William A. Kandel, "Unaccompanied Alien Children: An Overview," Report R43599 (Washington, DC: CRS, January 2017), https://fas.org/sgp/crs/homesec/R43599.pdf; and Olga Byrne and Elise Miller, "The Flow of Unaccompanied Children through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers" (Vera Institute of Justice, February 2012), https://www.vera.org/publications/the-flow-of-unaccompanied-children-through-the-immigration-system-a-resource-for-practitioners-policy-makers-and-researchers, who provide overviews of UAC characteristics and issues related to UACs. Relatively small numbers of UACs also arrive at ports of entry or are apprehended in the interior of the United States and determined to have no adult guardian. In FY 2017–2018, apprehensions of UACs at ports of entry were 13 percent of all UAC apprehensions by the Department of Homeland Security (DHS)'s Customs and Border Protection agency (calculated from data posted to DHS-Customs and Border Protection website).

9 An NTA is a court order asking a person to appear in court on a stated date.

most others are united with a family member such as a sibling, aunt or uncle, or grandparent.[10]



Source: Border Patrol apprehensions reported by the DHS-Customs and Border Protection (CBP) website. New NTAs (immigration court cases) calculated from EOIR data (see Chapter 3 for details.)

Figure 1. Quarterly Border Patrol Apprehensions and EOIR Notices to Appear: Unaccompanied Children

B. Unaccompanied Children in U.S. Immigration Court

1. The Flow of Unaccompanied Children from the Border to Immigration Court

The basic steps involved in the movement of a UAC from initial contact at the border to their final destination in the United States were clearly established in U.S. law by 2008.[11]

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[10] Data are provided in annual reports of the Office of Refugee Resettlement (ORR), U.S. Department of Health and Human Services.

[11] Kandel, "Unaccompanied Alien Children," and Byrne and Miller, "The Flow of Unaccompanied Children through the Immigration System," provide detailed reviews of this process. Lisa Seghetti

UACs arrive at a U.S. border without legal permission to enter the country, and cross into the United States at a port of entry or between ports of entry. Almost all UACs arrive at the U.S.-Mexico land border, and the large majority of them cross between ports of entry and are apprehended by the U.S. Border Patrol, which processes them by designating them as UACs, screening them for claims of persecution and trafficking, and issuing an NTA in an EOIR immigration court.[12] After no more than 72 hours, Immigration and Customs Enforcement (ICE) is required to transport the UAC to an Office of Refugee Resettlement (ORR) shelter, where the UAC resides until an appropriate sponsor can be identified.[13] At the shelter, a "Know Your Rights" presentation is given to the UAC to help them understand their legal rights and responsibilities, and an individual legal screening is also carried out.[14]

UACs who enter the United States without legal permission and who pass the screening for claims of persecution and trafficking are automatically placed in removal proceedings and issued an NTA to appear in an immigration court, and they are required by law to go through an immigration court removal process. Immigration court cases are specific to one individual and consist of one or more *proceedings.* Proceedings are carried out through a series of court *hearings* that the UAC attends, and at which family members are typically present, as well as a lawyer, if the UAC has obtained counsel. Master calendar hearings permit the immigration judge to deal with administrative issues, including scheduling, filing applications, pleading by the UAC, and other issues. A UAC who participates in the immigration court process will attend at least one master calendar hearing. The final hearing in a UAC case is a "merits hearing," at which the immigration judge renders a decision. UACs often have more than one master calendar hearing take place prior to their merits hearing. The UAC can also stop participating in the court process,

"Unaccompanied Alien Children: A Processing Flow Chart" (Washington, DC: CRS Insights, 2014), https://fas.org/sgp/crs/homesec/IN10107.pdf, provides a simple flow chart.

12 UACs who enter the United States through a port of entry undergo what is essentially an identical process.

13 The 1997 Flores Agreement identifies sponsors in order of preference as (1) a parent, (2) a legal guardian, (3) an adult relative, (4) an adult individual or entity designated by the child's parent or legal guardian, (5) a licensed program willing to accept legal custody, or (6) an adult or entity approved by ORR.

14 This process applies to UACs from non-contiguous countries. For UACs from contiguous countries (Mexico and Canada), the large majority are immediately returned to their home country under voluntary departure or withdrawal of application for admission, which is permitted under U.S. law, although they are also screened and given an opportunity to make an asylum claim. Those who pass this screening are then issued an NTA and placed in "240" removal proceedings, which gives them the opportunity to apply for asylum and other forms of relief.

in which case they are ruled by the immigration judge to be *in absentia*. The typical UAC case involves several hearings that take place over several years.[15]

a. Overview of Asylum in the United States

UACs are generally treated as asylum seekers and are treated as such by immigration courts. Although UACs face legal provisions and have options that are specific to their status as an unaccompanied child, they are also affected by general provisions of U.S. asylum laws, guidelines, and procedures.

Asylum can be granted to foreign nationals already in the United States or arriving at a U.S. border who meet the definition of a "refugee," which was established by the United Nations 1951 Convention and 1967 Protocol, both of which were signed by the United States. These treaties define a refugee as someone who is outside the country of their nationality and is unable or unwilling to return to that country due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion."[16] The U.S. Congress codified these international legal obligations in U.S. domestic law through the Refugee Act of 1980. The Refugee Act provides refugees with two pathways to settling in the United States: as a refugee who applies to the U.S. government to come to the United States while resident outside of the country, or as an asylum seeker who applies after arriving at a U.S. border. An asylum seeker must successfully prove their case in order to obtain asylum status. Those granted asylum can legally reside and work in the United States, petition to bring family members to the United States, be eligible for certain public benefits, apply for lawful permanent residence after one year, and apply for citizenship four years after becoming a legal permanent resident.[17]

For asylum seekers generally, there are two ways they can apply for asylum: affirmative asylum and defensive asylum. Someone not in removal proceedings can apply for *affirmative asylum*. Application is made to USCIS. If the USCIS asylum officer does not grant the application, the case is referred to immigration court for removal proceedings, and the person can apply for *defensive asylum* in immigration court. An immigration judge at the EOIR adjudicates defensive asylum.

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15 See Government Accountability Office (GAO), "Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges," GAO-17-438 (Washington, DC: GAO, June 2017), https://www.gao.gov/assets/690/685022.pdf for a review of the immigration court process.

16 See U.N. General Assembly, "Convention Relating to the Status of Refugees," July 28 1951, section I.1.A.(2), accessible at https://www.refworld.org/docid/3be01b964.html.

17 See American Immigration Council, "Asylum in the United States," May 14, 2018, https://www.americanimmigrationcouncil.org/research/asylum-united-states for an overview of the U.S. asylum system.

Some restrictions are placed on the ability to apply for asylum. Migrants must generally apply for asylum within one year after arrival in the United States. Foreign nationals who arrive at the U.S. border at a port of entry without proper documentation, or are apprehended or present themselves to a Border Patrol agent between ports of entry, are subject to expedited removal (an accelerated removal process) but can apply for asylum on the basis of having a "well-founded fear" of persecution if they are removed to the country of their nationality. Those who apply undergo an initial "credible fear" screening interview with an asylum officer who will determine whether there is a "significant possibility" of grounds for asylum. If the determination is positive, the person will be referred to immigration court to proceed with the defensive asylum process.

b. Unaccompanied Children in Immigration Law[18]

Unaccompanied children are treated as a special category in U.S. immigration law.[19] The 1997 Flores Settlement "established a nationwide policy for the detention, treatment, and release of UACs" and provided policy guidance that UACs generally not be subject to expedited removal.[20] The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that UACs not be subjected to expedited removal, and that UACs not from contiguous countries (Mexico and Canada) be placed directly into immigration court proceedings after apprehension. However, even though they are placed in removal proceedings, USCIS takes initial jurisdiction over a UAC's asylum application, and UACs can first apply for affirmative asylum and be adjudicated by a USCIS asylum officer rather than an immigration court judge.[21] If their affirmative-asylum application is not approved, the UAC can then apply for defensive asylum before an immigration judge, or for other

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[18] This section is based on Ruth Ellen Wasem, "Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief," Report R43664 (Washington, DC: CRS, July 2014), https://fas.org/sgp/crs/homesec/R43664.pdf; Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff, "The U.S. Asylum System in Crisis: Charting a Way Forward" (Migration Policy Institute, September 2018), https://www.migrationpolicy.org/research/us-asylum-system-crisis-charting-way-forward; and the Center for Gender and Refugee Studies (CGRS) and Kids in Need of Defense (KIND), *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, February 2014, https://cgrs.uchastings.edu/our-work/treacherous-journey, which review legislation, standards, guidelines, procedures, and practices related to unaccompanied children and immigration court.

[19] The two other categories of asylum seekers arriving at U.S. borders are single adults and families with children. Policies and procedures with respect to these two groups are defined in the Immigration and Nationality Act as amended by the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (Wasem, "Asylum Policies for Unaccompanied Children," 1).

[20] Wasem, "Asylum Policies for Unaccompanied Children," 5.

[21] The October 2018 "Matter of M-A-C-O-" decision may affect USCIS's jurisdiction over UAC asylum cases.

relief options (see below). Unaccompanied children are also exempted from the one-year rule regarding filing of an asylum claim.

Both USCIS and EOIR immigration courts have taken special steps to handle UAC cases and to take into account the age of the applicant when conducting interviews, considering evidence, and carrying out other activities required by the process. EOIR also established juvenile dockets in immigration courts in several cities on which only juvenile cases are scheduled, and it established the Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC) that sponsors of UACs can attend to learn about the immigration court process and options open to them.[22]

2. Forms of Relief for Unaccompanied Children

UACs have potentially several options to obtain the right to live legally in the United States. We refer to these options as "relief channels," and they include affirmative asylum, defensive asylum, SIJS, T visas, and U visas. It is important to note that only defensive asylum is adjudicated in immigration court. The other options are adjudicated by other government agencies. However, regardless of the specific relief channel being pursued, every UAC is required to also go through an immigration court process.

a. Affirmative Asylum

A migrant applies for affirmative asylum by filling out a USCIS Form I-589, "Application for Asylum and Withholding of Removal," providing supporting evidence and documentation, and then submitting fingerprints for a criminal background investigation followed by an interview with an asylum officer.[23] After these steps, a USCIS asylum officer adjudicates the application. If affirmative asylum is granted, after the immigration court is informed of this, an immigration judge will generally terminate the UAC's court proceedings. If affirmative asylum is not granted and the UAC is in the United States illegally, the case is referred by USCIS to immigration court, and the UAC has the option to pursue defensive asylum or another relief channel.[24]

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22 Wasem, "Asylum Policies for Unaccompanied Children," 7; and CGRS and KIND, *A Treacherous Journey*.

23 This form is available at https://www.uscis.gov/sites/default/files/files/form/i-589.pdf.

24 See USCIS, Asylum Division, "Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children," Memorandum, March 25, 2009, https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Minor%20Children%20Applying%20for%20Asylum%20By%20Themselves/jurisdiction-provision-tvpra-alien-children2.pdf; and USCIS, "Questions and Answers: Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children," June 10, 2013, https://www.uscis.gov/sites/default/files/USCIS/Refugee%2C%20Asylum%2C%20and%20Int%27l%20Ops/Asylum/ra-qanda-determine-jurisdiction-uac.pdf for a discussion of the affirmative asylum process with respect to UACs.

Table 1 displays statistics on affirmative asylum applications to USCIS by "minor principal applicants" (UACs) for the period FY 2012–2018. Several observations can be made about this relief channel:

- Most UACs do not apply for affirmative asylum. The sum of all applications filed during FY 2012–2018 is roughly 60,000, whereas the total number of UACs apprehended by U.S. Border Patrol in the same period is roughly 323,000. Even making allowance for the absence of data on applications filed in 2015, the number of applications is clearly far below the number of UACs entering the United States.
- Most UAC affirmative-asylum applicants apply after they reach the age of 18. This reflects the fact that many UACs are older teens when they arrive in the United States and do not file for affirmative asylum until after the deadline.
- A large backlog has built up in UAC affirmative asylum applications over time. Roughly 24,000 applications remained unprocessed at the end of FY 2018.
- Application approval rates are typically higher for those filing by the 18-year-old cutoff date, and approval rates have been falling over time for both groups. It is unclear to what degree this fall is due to falling inherent qualification for asylum status versus a rising backlog.[25]

[25] If less meritorious applications are more quickly processed than more meritorious applications, a rising backlog could induce a fall in the approval rate.

Table 1. Affirmative Asylum Cases for "Minor Principal Applicants" (UACs)

Fiscal Year	Pending Cases: Beginning of Year	New Cases Filed	Case Decisions							Pending Cases: End of Year	Approval Rate[d]
			Approved	Denied	Interviewed Referred[a]	Un-interviewed Referred[b]	Rejected	No USCIS Jurisdiction	Administratively Closed[c]		
Those who filed by the 18-year-old cutoff date											
2012	373	330	250	10	90	23	1	10	54	275	71%
2013	514	377	266	2	69	12	0	5	21	521	79%
2014	783	651	423	1	42	9	2	9	40	917	91%
2015	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2016	1,035	1,044	509	11	280	28	6	47	99	1,146	64%
2017	1,386	2,237	787	10	601	48	2	126	184	1,991	56%
2018	1,902	2,074	648	25	777	88	4	176	236	2,198	45%
Those who filed after the 18-year-old cutoff date[e]											
2012	454	410	130	1	162	1	1	185	211	358	44%
2013	397	718	63	0	117	4	0	65	97	834	35%
2014	868	2,797	289	0	258	20	0	47	112	2,986	53%
2015	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
2016	6,294	14,711	3,461	1	5,596	92	1	344	632	11,222	38%
2017	12,364	18,060	4,906	2	8,089	177	6	518	948	16,296	38%
2018	17,057	16,155	2,594	3	7,474	105	3	367	1,078	21,955	26%

Source: USCIS, Refugees, Asylum and Parole System, "MPA and PRL Report," various years.

[a] Cases that USCIS interviewed, found ineligible for asylum status, and referred to immigration judge.

[b] Cases that USCIS referred to immigration judge because applicant failed to appear for interview or withdrew their asylum application.

[c] Cases withdrawn by an applicant who is a lawful permanent resident or found ineligible due to status as a U.S. citizen, abandoned by applicant, or denied for failure to appear.

[d] Approved/(Approved + denied + interviewed referred).

[e] Applicants of any age filing with USCIS under the initial jurisdiction provision of the TVPRA while in removal proceeding.

b. Defensive Asylum

Defensive asylum is pursued only in immigration court, and an immigration judge makes a final decision on a defensive asylum claim.[26] A total of 1,762 UAC cases obtained a successful defensive asylum outcome in immigration court during FY 2008–2016, which is a small fraction of successful immigration court outcomes (see Table 4 and Table 5).[27] Most UACs obtain successful outcomes through the affirmative asylum and SIJS channels.

c. Special Immigrant Juvenile Status (SIJS)

SIJS was established in U.S. law in 1990 to protect immigrant children who are victims of abandonment, abuse, or neglect, and for whom return to their home country is not in their best interest. A UAC who obtains SIJS can apply for legal permanent residency. Obtaining SIJS is dependent on a process that happens outside of immigration court. First, a UAC goes to a state court with authority to make placement decisions about juveniles (e.g., a family court or a juvenile court) in order to obtain a predicate order, which, if granted by the state court, declares that the UAC cannot be reunited with one or both of their parents due to abuse, abandonment, or neglect.[28] If a predicate order is obtained, the UAC then files an application with USCIS to obtain SIJS classification using USCIS Form I-360. If USCIS approves this application, the UAC then applies for legal permanent residency using USCIS Form I-485. With respect to immigration court, practices have varied across immigration judges on how they handle a UAC who is pursuing SIJS from USCIS while simultaneously being subject to proceedings in their court. Some immigration judges administratively close cases of UACs who have filed Form I-360, other judges grant continuances until the I-360 is adjudicated, and other judges terminate immigration court proceedings.[29]

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[26] This decision can be appealed up to 30 days after the immigration judge's decision, in which case the Board of Immigration Appeals (BIA) will make the final decision.

[27] It is not clear how many UACs lost a defensive asylum case. The maximum number would be 5,688, which is the number of removal orders issued after a final merits hearing, but it is not clear that all of these removal orders resulted from losing a defensive asylum claim.

[28] Technically, there are five requirements for a predicate order: the UAC must be under 18 years old, they must be unmarried, they must be dependent on the state court and/or placed by the court in the custody of someone, they cannot be reunified with one or both parents because of abuse/neglect/abandonment, and it's not in the UAC's best interests to return to their home country.

[29] "A "juvenile court" is "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles" (8 C.F.R. § 204.11(a)). See National Immigrant Justice Center, "Basic Procedural Manual for Representing Children and Youth Seeking Special Immigrant Juvenile Status" (Chicago, IL: National Immigrant Justice Center, December 2014), https://www.immigrantjustice.org/sites/default/files/SIJS%2520Manual%252012%25202014%2520Final.pdf; Wasem, "Special Immigrant Juveniles: In Brief," Report R43703 (Washington, DC: CRS, August 2014), https://fas.org/sgp/crs/homesec/R43703.pdf; Children at Risk, "Children on the Border:

Prior to 2008, only children deemed eligible for long-term foster care could obtain SIJS, and immigration authorities had to consent to state court jurisdiction prior to filing in state court. The 2008 TVPRA clarified what "eligible for long-term foster care" meant and amended the consent requirements. A key aspect of this relief channel is that state courts are responsible for determining whether a UAC has been abused, neglected, or abandoned by a parent, which introduces considerable heterogeneity in relevant law, court practices, guidelines, etc., and ultimately affects an individual UAC's ability to apply for SIJS. In particular, some state court judges are more willing and likely to grant predicate orders than others. UACs also face various filing deadlines and restrictions with respect to SIJS.[30]

Table 2 displays statistics on SIJS applications (Form I-360) received by USCIS during FY 2010–2018 (with FY 2018 restricted to the first three quarters). The volume of SIJS applications has risen sharply over the period, as has the backlog of unadjudicated applications.

Table 2. SIJS Applications Received by USCIS

Fiscal Year	Received by USCIS	Approved	Denied, Terminated, Withdrawn	Pending	Approval Rate[a]
2010	1,646	1,590	97	35	94%
2011	2,226	1,869	84	47	96%
2012	2,968	2,726	119	220	96%
2013	3,994	3,431	190	702	95%
2014	5,776	4,606	247	1,826	95%
2015	11,500	8,739	412	4,357	95%
2016	19,475	15,101	594	8,533	96%
2017	20,914	11,335	890	18,878	93%
2018[b]	16,806	3,780	1,112	30,233	77%

Source: USCIS, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Citizenship/I360_sij_performancedata_fy2018_qtr3.pdf

[a] Approvals/(Approvals + denied/terminated/withdrawn)

[b] First three quarters of FY 2018 only.

The Use and Limitations of Special Immigrant Juvenile Status," 2015, http://childrenatrisk-org.vps-texasschoolguide-org.vps.ezhostingserver.com/wp-content/uploads/2017/06/Children-On-The-Border2014.pdf; and CGRS and KIND, *A Treacherous Journey*, for discussions of SIJS and related processes with respect to UACs.

30 A UAC must be unmarried when applying to USCIS to obtain SIJS through Form I-360, and Form I-360 must be filed with USCIS prior to the UAC's 21st birthday. State courts may have further age restrictions specific to state law (e.g., in some state courts, jurisdiction lapses for any person over the age of 18).

d. T and U Visas

The T visa was created by the Victims of Trafficking and Violence Protection Act of 2000 and is intended to support combating human trafficking for labor or sex purposes and punishment of traffickers.[31] Trafficking victims must generally cooperate with law enforcement investigations or prosecutions, but migrants under the age of 18 or unable to cooperate due to physical or psychological trauma are exempt from this assistance requirement and may not need to show that they complied with law enforcement requests.

The U visa was also created by the Victims of Trafficking and Violence Protection Act of 2000 and is intended to aid U.S. law enforcement agencies to detect, investigate, and prosecute criminal cases involving foreign nationals.[32] To obtain a U visa, the migrant must provide certification from a U.S. law enforcement agency that the migrant has assisted or is likely to assist an investigation or prosecution of a covered crime. Unlike the T visa, migrants under the age of 18 are not exempt from the assistance-to-law-enforcement requirement, but parents, guardians, and others are permitted to present information to a law enforcement agency on behalf of a migrant of age 16 years or less. Certifying agencies include federal, state, local, tribal, or territorial law enforcement agencies; prosecutors; judges; and other government authorities who detect, investigate, and prosecute criminal activity.

Both the T and U visas are non-immigrant visas that confer permission to legally reside in the United States for up to four years, and visa holders can apply for permanent residence after three years. Both T and U visa holders can also petition for family members to get a visa.

Table 3 displays statistics on T and U visa applications for all applicants, not just UAC applicants (data are not publicly available for UAC applicants only). Applications for T visas rose significantly during FY 2009–2018 but have remained at fairly low levels.

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31 See Suzanne B. Seltzer et al., *T Visa Manual: Identification and Legal Advocacy for Trafficking Survivors*, 4th Edition (New York: The Seltzer Firm, March 2018), http://theseltzerfirm.com/wp-content/uploads/2018/03/T-Visa-Manual.pdf; William A. Kandel, "Immigration Provisions of the Violence Against Women Act (VAWA)," Appendix C, Report R42477 (Washington, DC: CRS, May 2012), https://fas.org/sgp/crs/misc/R42477.pdf; and CGRS and KIND, *A Treacherous Journey*, for discussions of the T and U visas. Official guidelines for T visa applicants are available at https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status. Official guidelines for U visa applicants are available at https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status.

32 Criminal cases covered by the U visa include rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting, and attempt, conspiracy, or solicitation to commit any of these crimes.

Applications for U visas also rose significantly in this period and were at much higher levels than for T visas. Backlogs in processing of applications for both visas have also risen significantly. The U visa for victims is subject to an approval cap of 10,000 per year, and annual applications have been significantly higher than that since 2010. Approval rates for both visas have been quite high and averaged 80 percent for each during FY 2010–2018.[33]

[33] The approval rate is calculated as Approved/(Approved + Denied).

Table 3. T and U Visa Statistics: All Applicants

T Visas												
Fiscal Year	Victims (T-1)				Family of Victims (T-2,3,4,5)				Total			
	Receipts	Approved	Denied	Pending	Receipts	Approved	Denied	Pending	Receipts	Approved	Denied	Pending
2002	163	17	12	n/a	234	9	4	n/a	397	26	16	n/a
2003	750	283	51	n/a	274	51	8	n/a	1,024	334	59	n/a
2004	566	163	344	n/a	86	106	11	n/a	652	269	355	n/a
2005	379	113	321	n/a	34	73	21	n/a	413	186	342	n/a
2006	384	212	127	n/a	19	95	45	n/a	403	307	172	n/a
2007	269	287	106	n/a	24	257	64	n/a	293	544	170	n/a
2008	408	243	78	203	118	228	40	n/a	526	471	118	203
2009	475	313	77	318	235	273	54	247	710	586	131	565
2010	574	447	138	304	463	349	105	448	1,037	796	243	752
2011	967	557	223	494	795	722	137	500	1,762	1,279	360	994
2012	885	674	194	560	795	758	117	586	1,680	1,432	311	1,146
2013	799	848	104	421	1,021	975	91	546	1,820	1,823	195	967
2014	944	613	153	613	925	788	105	583	1,869	1,401	258	1,196
2015	1,062	610	294	808	1,162	694	192	858	2,224	1,304	486	1,666
2016	953	750	194	866	895	986	163	715	1,848	1,736	357	1,581
2017	1,141	672	226	1,175	1,118	690	122	1,101	2,259	1,362	348	2,276
2018	1,336	469	237	1,810	1,046	534	187	1,455	2,382	1,003	424	3,265

U Visas												
Fiscal Year	Victims (U-1)				Family of Victims (U-2,3,4,5)				Total			
	Receipts	Approved	Denied	Pending	Receipts	Approved	Denied	Pending	Receipts	Approved	Denied	Pending
2009	6,835	5,825	688	11,863	4,102	2,838	158	9,275	10,937	8,663	846	21,138
2010	10,742	10,073	4,347	7,403	6,418	9,315	2,576	6,242	17,160	19,388	6,923	13,645
2011	16,768	10,088	2,929	10,184	10,033	7,602	1,645	8,329	26,801	17,690	4,574	18,513
2012	24,768	10,122	2,866	19,899	15,126	7,421	1,465	15,592	39,894	17,543	4,331	35,491
2013	25,432	10,030	1,829	33,540	18,263	8,198	1,440	24,956	43,695	18,228	3,269	58,496
2014	26,039	10,020	4,056	45,898	19,229	8,500	3,017	33,111	45,268	18,520	7,073	79,009
2015	30,106	10,026	2,715	63,762	22,560	7,662	1,965	46,541	52,666	17,694	4,680	110,303
2016	35,044	10,046	1,843	86,980	25,666	7,891	1,318	63,624	60,710	17,937	3,161	150,604
2017	36,531	10,031	2,128	110,511	25,155	7,695	1,645	79,850	61,686	17,726	3,773	190,361
2018	27,096	9,915	1,767	128,079	18,822	7,413	1,472	89,999	45,918	17,328	3,239	218,078

Sources: T visas: http://www.immigration.com/sites/default/files/t_u_visas_stat.pdf; https://www.uscis.gov/sites/default/files/USCIS/Resources /Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2018_qtr3.pdf. U visas: https://www.uscis.gov/sites/default/files /USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2018_qtr3.pdf.

Relief Channels: Choice Patterns

Depending on individual case circumstances, a UAC may potentially be eligible for multiple forms of relief, and the best option is determined by circumstances specific to the case. It was noted in a 2014 report, for example, that UACs who might have been eligible for a T or U visa often tried to get SIJS instead, as the SIJS process at that time was significantly faster due to relative processing times. Obtaining the state-court predicate order for SIJS in certain states was easier than getting a T or U visa approval from USCIS, and T and U visa holders had to wait for three years to apply for permanent legal residence, but SIJS holders could apply for it immediately.[34] Processing times and adjudication favorability are conditions that can change over time, and UACs or (more likely) their counsel will be aware of changing conditions and able to determine the most promising relief channel.

Our interviews with access-to-counsel NGOs generally suggest that for their UAC clients, SIJS applications are the most commonly chosen relief channel, followed by affirmative or defensive asylum, with U visas being a distant third and T visas the least common.[35] Some noted that the backlog for SIJS Form I-360 petitions has become so large that the past preference for SIJS may be changing.

3. Immigration Court Outcomes

All UACs from non-contiguous countries and UACs from contiguous countries who pass the required screening who are apprehended by federal authorities are automatically placed in removal proceedings and issued an NTA in immigration court. Although they may apply for relief channels outside of immigration court, they are required by law to go through an immigration court removal process. This process is carried out through a series of court hearings that the UAC attends, and at which family members are typically present, as well as a lawyer if the UAC has obtained counsel. The first hearing that a UAC attends is the "initial master calendar hearing," and the final hearing is a "merits hearing" at which the immigration judge renders a decision. One or more hearings can be held between the first hearing and the merits hearing; these hearings are referred to as master calendar hearings. The UAC can also stop participating in the court process, in which case the immigration judge will order them removed *in absentia.* The typical UAC case involves several hearings that take place over several years. Many UACs also go *in absentia.*

The court process can result in several core types of outcomes. Understanding these outcomes in detail is important both for understanding the UAC experience in immigration

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34 CGRS and KIND, *A Treacherous Journey*, 52.

35 In locales where it is much more difficult to obtain SIJS predicate orders from state courts, asylum applications are more common than SIJS applications.

court and for making key decisions regarding empirical analysis of UACs in immigration court.

a. Relief Outcomes

A UAC can obtain the following outcomes in immigration court, which reflect the U.S. government's decision to no longer pursue removal of a UAC residing in the United States:

- A positive decision on a defensive asylum claim, which is rendered by the immigration judge at the final merits hearing.
- *Administrative closure:* Immigration judges have often administratively closed cases in which a UAC has applied for affirmative asylum, SIJS, or a T or U visa. Administrative closure is also used when ICE prosecutors exercise the use of prosecutorial discretion and cease pursuing a UAC removal case for an indefinite period of time. In this case, administrative closure does not lead to a clear grant of permission to reside and work in the United States legally—only to a decision by the U.S. government to not pursue removal of the UAC at this point (and this decision can be withdrawn at any time).
- *Termination*: Immigration judges will also sometimes terminate a case when a positive decision is received on an affirmative asylum, SIJS, or a T or U visa application. Some judges will also grant a motion to terminate proceedings if the NTA is faulty or was not served properly (although in most of those cases, a new NTA can be generated and served) or if the charges of removability are not properly established. As in the case of administrative closure, termination is also used when ICE prosecutors exercise the use of prosecutorial discretion.

A key decision that must be made in analysis of immigration court outcomes is to determine what defines "success" for the UAC in immigration court. In this study, we define a successful outcome for a UAC as one that results in receiving legal permission to reside in the United States, which includes receiving a positive decision on a defensive asylum claim, administrative closure, or termination. It is important to recognize that not all administrative closures reflect a success by this definition, which will be discussed further below. It is also important to recognize that some administrative closures and terminations due to prosecutorial discretion or improper NTA service do not lead to a clear grant of legal permission to reside in the United States. We nonetheless treat these outcomes as a success, because the UAC has not been ordered removed or required to leave the United States.

b. Removal Outcome at Final Merits Hearing

If a UAC participates in the immigration court process to the final merits hearing but does not succeed in proving eligibility for relief, the immigration judge will issue a removal

order for the UAC. This order can be appealed to the Board of Immigration Appeals (BIA). We treat this as an unsuccessful outcome from the UAC's perspective.

c. Voluntary Departure

A UAC can decide in the course of a court case to request voluntarily departure from the United States and return to their home country. We treat this as an unsuccessful outcome from the UAC's perspective, as the UAC must return to their home country.

d. Removal Outcome Due to Failure to Appear

If a UAC stops participating in the immigration court process, the immigration judge will issue a removal order in the UAC's absence or *in absentia*, and will issue a removal order.[36] Significant numbers of UACs receive *in absentia* orders in immigration court, and it is very important to understand this outcome and why it happens.

With regard to UACs who receive *in absentia* removal orders, two important groups can be distinguished. One group consists of UACs who do not attend any immigration hearing, including the first master calendar hearing, and thus do not engage with the immigration court process at all. For convenience, we refer to this group as "never-shows." The other group consists of UACs who attend one or more immigration hearings but subsequently stop participating in the process by dropping out and ceasing to attend hearings. For convenience, we refer to this group as "show-ups."

No survey of UACs who have received *in absentia* removal orders has ever been done to assess the reasons for this outcome. Our interviews with access-to-counsel NGOs have provided significant insights into the *in absentia* phenomenon; however. NGO lawyers exert great efforts to prevent *in absentia* outcomes, and they have developed close relationships with UACs and their communities that permit understanding of the key reasons that help explain why this outcome happens:

- *Having an attorney.* Having an attorney is often cited as the single most important factor in whether a UAC receives an *in absentia* order. Attorneys have strong incentives to keep their clients engaged in the court process. Judges also often strongly urge a UAC to have an attorney, and if they cannot get one, the UAC may decide to drop out in the belief that an attorney is required in order to proceed.
- *Misperceptions about the court process and likely outcomes (and other peer influences).* Misinformation about the court process and the chances of getting

[36] Some immigration judges will not issue an *in absentia* removal order if a UAC does not show up for one hearing (or more rarely, two hearings). The continuance reason in these instances could be "re-notice."

relief can circulate in undocumented migrant communities. This misinformation can create the perception of risks involved in going to court—for example exposing the family to the risk of arrest and deportation (this is particularly acute when a family member has an outstanding removal order). Migrants may also perceive from the community that they have a low chance of getting relief. Additionally, as UACs are typically teenage boys, peer influences can sometimes lead them to decide to drop out of immigration court.

- *Access to transportation.* UACs and their family members need to get to immigration court, which can be located far from where the UAC is living and sometimes requires overnight stays in a hotel. Being driven by family or a friend is not always possible, given the high prevalence of unauthorized status in these communities. Public transport is not always available, and taxis—as well as hotels—can be costly options that the UAC and their family might not be able to afford. Some courts can waive the presence of a UAC in the courtroom if the UAC's lawyer is present, but this is dependent on the court and decisions of individual judges.
- *Other costs associated with court process.* These costs include missed work days by the UAC or their sponsor, and application fees. UACs and their families also sometimes have a large smuggling fee debt that must be paid off, and this is prioritized ahead of costs associated with immigration court. The challenge of financing the court process is exacerbated by the fact that UACs and their families generally earn very low incomes, by U.S. standards.
- *Breakdown in UAC family support.* Family relationships can break down, such that UACs lose the support of their family to engage in the court process. Some UACs become homeless as a result of a breakdown in family support. One NGO cited a breakdown rate of 10–15 percent in their experience, and another NGO cited a rate of 30 percent.
- *Non-receipt of NTA.* The government agency that issues an NTA, usually DHS's Customs and Border Protection (CBP), is the first agency to have contact with the UAC. This agency files the NTA with the immigration court (EOIR), which can take time and has been subject to process breakdowns in the past. It can also be the case that by the time the agency files the NTA, the UAC's address may have changed, particularly if there has been a breakdown in the UAC-sponsor relationship.
- *Obtaining information on time and place of hearings.* Most NTAs do not give information on the time of the first master calendar hearing. UACs are supposed to get a first hearing notice in the mail, but mailing address inaccuracy can create obstacles. A UAC family may also move to a new address after a hearing

is set, and because mail from the federal government is not forwarded to new addresses as a matter of policy of the U.S. Postal Service, mail forwarding is at the mercy of their former landlord. EOIR provides a "1-800" number to call to find out the time, but this number is not given on the NTA, and a UAC might not know about it. Some UACs also cannot read or write in English or Spanish and cannot understand basic instructions for hearings or the "1-800" number. EOIR does have an internet portal for attorneys, but this cannot be accessed by the migrants themselves. In general, having a lawyer mitigates these problems to a great extent because an attorney is kept informed of hearing times.

- *Long delays in scheduling of a hearing.* Increasing backlogs and demands on immigration courts have led to increasing delays in hearing scheduling, and long waits can deter participation.
- *Return to home country.* Some UACs have come to the United States to earn money and return home and are not interested in getting permanent residency.

An important population from the perspective of this study's analysis is the never-show group of UACs who do not attend a single court hearing. In interviews, NGO experts stressed that the above reasons explaining why UACs may receive *in absentia* removal orders generally also apply to this group. They also made the following observations specific to this group:

- *Misinformation and lack of knowledge.* UACs generally have poor-quality information on the possibilities of getting relief and have no understanding of the detailed law specific to individual relief channels. This causes some to not engage with the court process at all.
- *Lack of contact with a lawyer.* UACs released from ORR custody who never have contact with a lawyer in the jurisdiction where they are released have no way of knowing if they have a valid or potentially valid case, because they do not understand the bases of claims and the intricate technicalities involved with asylum, SIJS, and T and U visa claims.
- *Trafficking nexus.* UACs who are trafficked for labor or sex purposes will almost certainly be in the never-show group.
- *Potentially viable cases.* Most NGOs believe that the large majority of never-shows have potentially viable cases. One NGO that has a universal-representation model observed that they get a random sample of the UAC population, and their experience has been that very few UACs with whom they have had contact have had non-viable cases. Two NGOs believe that many never-show UACs have experienced parental abandonment and/or severe trauma

that may establish, on average, a stronger case for relief than cases of those who do appear in court.

e. UAC Case Outcomes During FY 2008-2016

Table 4 shows the number of UAC cases initiated during FY 2008–2016 that resulted in each outcome by January 2, 2018. A significant fraction of these cases (29 percent) were still pending as of that date. The *in absentia* rate was also quite significant, with 9 percent of all cases being "never-shows" who did not attend a single hearing in immigration court, and 15 percent being "show-ups" who attended at least one hearing before going *in absentia*. Of those whose cases ended in a definite outcome by January 2, 2018, the majority were successful.

Table 4. UAC Cases in Immigration Court during FY 2008–2016

Case Outcome	Number	Percent
Success	*58,153*	*39%*
Relief granted by court	1,762	1%
Administrative closure	25,741	17%
Termination	30,650	21%
Failure	*10,741*	*7%*
Removal ordered at merits hearing	5,688	4%
Voluntary departure	5,053	3%
In absentia	*36,192*	*25%*
"Never-shows"	13,746	9%
"Show-ups"	22,446	15%
Pending as of January 2 2018	*42,321*	*29%*
Total	**147,407**	**100%**

Source: Tabulation of EOIR data on final proceedings for UAC cases.

Note: Totals for all UAC cases whose NTA was issued during FY 2008-2016.

4. Issues Related to UAC Case Decisions

UACs can potentially obtain relief through several channels, and each of these channels has seen significant controversy over relevant law and judicial decision making.

With respect to affirmative and defensive asylum, most UACs have pursued asylum claims on the basis of membership in a "particular social group," and social group claims are often based on intrafamilial violence or potential or actual victimization by organized criminal gangs. The social group basis for asylum is, however, the most contentious and challenging. Some courts and judicial institutions have approved social groups defined by characteristics such as childhood, gender, and nationality, but other courts and judicial

institutions have rejected defining social groups along these lines, and one immigration court is not bound by another court's decisions on this issue unless those decisions come from the same Federal Circuit Court in which the lower court exists. As a result, this is an unsettled area of U.S. law; decision making by immigration court judges varies widely with respect to defensive asylum claims, as well as by USCIS asylum officers with respect to affirmative asylum claims.[37] Several interviewed NGOs noted that some UAC cases clearly fall within the rules for asylum, whereas others do not, and in particular that gang violence cases are not very popular as an asylum claim as they are often not viewed by adjudicators as fitting the "social group" principle.[38]

With respect to SIJS, after the Congress opened up the possibility of one-parent SIJS claims, there have been different interpretations of what constitutes such a claim. Many interpret the relevant law to permit only claims of abuse, neglect, or abandonment against one parent while the UAC lives with the non-offending parent. Others interpret the law to only permit claims against one parent if the child lives with a non-parent. This has introduced variation in how state courts make rulings on whether to grant the predicate orders required for SIJS claims.[39]

Considerable variation also exists across immigration courts with respect to ICE attorney practices regarding prosecutorial decisions and use of prosecutorial discretion.[40]

Interviewed NGOs pointed out that individual immigration courts tend to lean in particular directions with respect to how their judges decide cases, and that some immigration courts are more difficult than others when it comes to positive decisions with

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37 CGRS and KIND, *A Treacherous Journey*, 10–11 and 20–21. See Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (New York: New York University Press, 2009), https://books.google.com/books/about/Refugee_Roulette.html?id=NazjK3REq94C&printsec=frontcover&source=kp_read_button#v=onepage&q&f=false; and Andrew I. Schoenholtz, Philip G. Schrag, and Jaya Ramji-Nogales, *Lives in the Balance: Asylum Adjudication by the Department of Homeland Security* (New York: New York University Press, 2014), https://books.google.com/books/about/Lives_in_the_Balance.html?id=myhEAgAAQBAJ&printsec=frontcover&source=kp_read_button#v=onepage&q&f=false, for in-depth statistical analysis of variance in EOIR and USCIS asylum decisions.

38 The 2008 decision "Matter of S-E-G-" explicitly ruled out resistance to criminal gang recruitment as a basis for a social-group asylum claim. See https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3617.pdf. The June 2018 "Matter of A-B-" decision will make it more difficult to get relief on the basis of membership in a social group and states explicitly that "Generally, claims by aliens pertaining to domestic violence or gang violence by nongovernmental actors will not qualify for asylum."

39 CGRS and KIND, *A Treacherous Journey*, 37–38, and Rodrigo Bacus, "Defending One-Parent SIJS," *Fordham Urban Law Journal* 42, no. 4 (April 2016): 921–66, https://ir.lawnet.fordham.edu/ulj/vol42/iss4/3/.

40 CGRS and KIND, *A Treacherous Journey*, 26–27.

respect to defensive asylum. This also holds true with respect to state court decisions on SIJS predicate orders.

These issues introduce substantial variation in outcomes across individual immigration courts and judges, and the statistical analysis done in this study must control for this variation.

5. Immigration Court Process and Management Issues

a. Issues Specific to UAC Cases

As discussed at the beginning of this chapter, immigration court cases are specific to one individual and consist of one or more proceedings, carried out through a series of master calendar hearings that end with a merits hearing at which the immigration judge renders a decision. In the case of UACs, a significant number of them have more than one proceeding. In the large majority of these cases, the first proceeding takes place under the jurisdiction of one immigration court, but when the UAC moves to another region of the country that is under the jurisdiction of another court, this initial proceeding is closed and a new proceeding is opened in the new immigration court. These initial proceedings result in a "change of venue" outcome in EOIR case data. The number of change-of-venue proceedings is not trivial. For UACs whose NTAs were issued during FY 2008–2016, 91,305 change-of-venue proceedings were held, as compared to 147,407 final proceedings.[41]

In past years, EOIR took steps to make the immigration court process more friendly and amenable to UACs and their cases.[42] In particular, immigration courts were encouraged to create dockets specifically for UAC cases, provide courtroom orientations to familiarize UACs and their families with the court, and encourage UACs to obtain legal representation if the child is not represented by counsel.

Most interviewed NGOs noted that special dockets for UACs were established in their immigration court, and that individual judges specialized in hearing UAC cases. Most of these NGOs also noted that immigration judges in their court not only encourage UACs to obtain legal representation, but also grant continuances and provide information to help make that happen. Some of these NGOs noted that these conditions may change in the near future due to retirement of specific judges and introduction of new policies by EOIR, including official elimination of a specialized juvenile docket and specialized judges. Some

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41 Calculated from EOIR administrative data on UAC cases. A total of 18,789 "other" proceedings were also held for UACs.

42 Kandel, "Unaccompanied Alien Children," 11.

NGOs also noted the presence of judges who were generally hostile to immigration cases (including UACs) and who imposed difficult deadlines and unfair hearing scheduling.

b. Immigration Courts as a Queueing System

EOIR immigration courts comprise a complicated judicial system that has been characterized by a rising number of cases but a relatively stagnant number of immigration judges to hear those cases. As a result, immigration court backlogs have grown steadily over the past decade. Figure 2 shows pending cases for all immigrants and UACs only in immigration court at year's end for the period FY 2008–2018. All pending cases rose dramatically from roughly 100,000 to 800,000 over this period. Figure 3 shows that the number of immigration judges did not change from 2010 to 2015, which helps explain this development. As a result of the rising backlog, the median number of days to complete a removal case rose from 28 days in 2008 to 336 in 2015.[43] These developments in the immigration court system have been noted by analysts inside and outside the U.S. government.[44]

Figure 2 also shows that pending UAC cases have risen even more dramatically than total pending cases. After slowly rising from roughly 3,000 to 7,000 during FY 2008–2013, pending UAC cases grew explosively during FY 2014–2018, reaching over 80,000 by the end of the period. This is due in part to the dramatic rise in UAC flow to the United States and related immigration court cases in those years. It is also due in part to the fact that the system for UACs is significantly more complex because other application processes are operating in parallel with the immigration court system that are each subject to their own policies and constraints and, as discussed in the previous section on relief channels, backlogs have been growing significantly in all of those channels (affirmative asylum, SIJS, and T and U visas) as well.[45]

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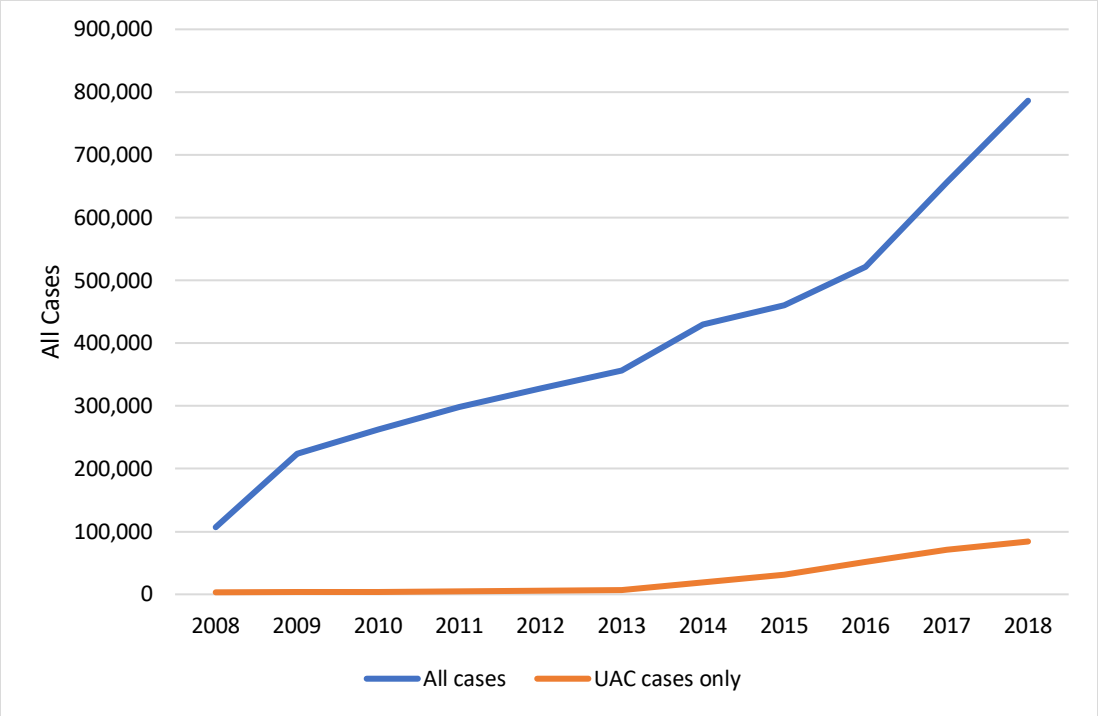
[43] GAO, "Immigration Courts," Table 1, 26. It should be noted that GAO did not control for the fact that there were pending cases for each year in this table. How to treat pending cases in this kind of statistical analysis is addressed in detail in Chapter 2 of this study.

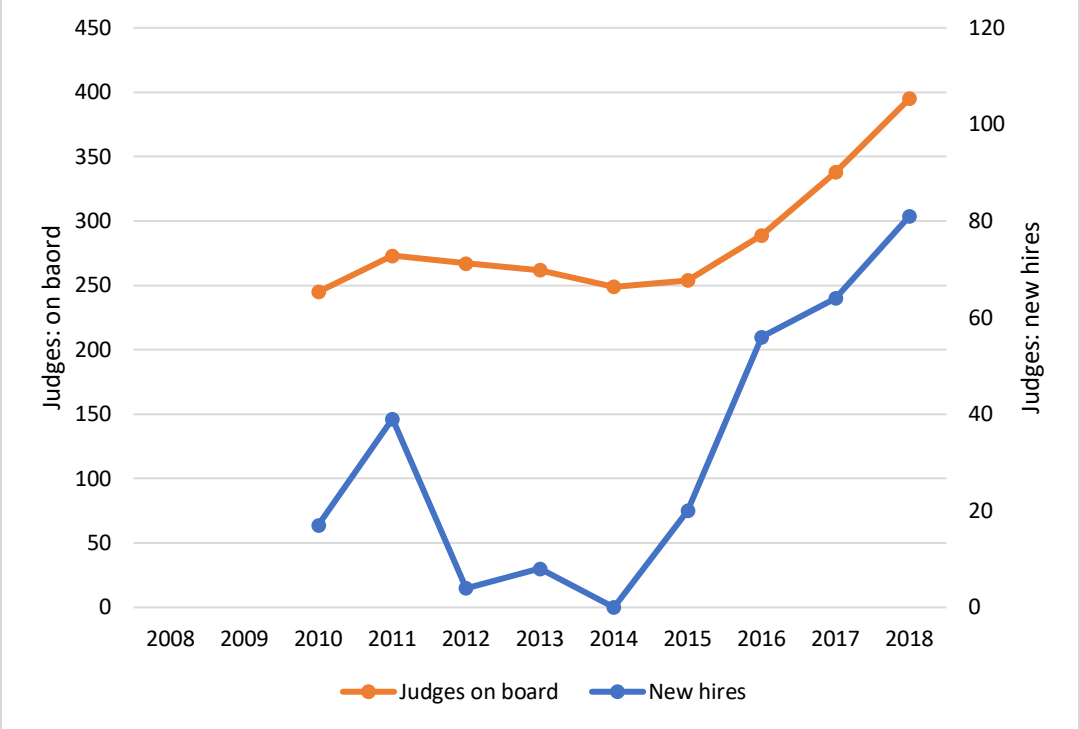
[44] See GAO, "Immigration Courts," for a review of the rising backlog problem and evaluation of ways to reduce it. See Meissner et al. (2018) for a review of the current asylum system and the challenges that it faces.

[45] It is also true that EOIR prioritized UAC cases over other cases in 2016 (GAO, "Immigration Courts," 27 and 64–65). However, it is not clear what impact this policy has when UAC cases are highly dependent on outcomes in non-EOIR processes.



Source: All cases, EOIR website: https://www.justice.gov/eoir/page/file/1060836/download ; UAC cases, EOIR website: https://www.justice.gov/eoir/page/file/1060871/download.

Figure 2. Pending Cases in Immigration Court



Source: EOIR website, https://www.justice.gov/eoir/page/file/1104846/download.

Figure 3. Immigration Judges: Number on Board and New Hires

In analytical terms, the immigration court system is a queuing system, which involves new arrivals (migrants) arriving at servers (immigration courts, USCIS officers) for processing. Simple queuing systems have been the subject of a great deal of mathematical analysis since the early 1900s. A classic application of queuing theory is the arrival of automobiles at tollbooths on a highway. Cars arrive at a certain rate per minute, it takes them a certain number of seconds to be processed at a tollbooth, and there are a certain number of tollbooths open that can process them. Given assumptions on the arrival rate, the processing rate, and the number of servers (tollbooths) open, mathematical expressions can be derived for whether a queue (backlog) is present and the length of that queue in terms of number of cars and average waiting time to get to a tollbooth.

Developing a queuing-theory model of the much more complicated immigration court system is beyond the scope of this study.[46] However, some key observations can be made on immigration courts as a queuing system that are useful for the purposes of this research:

- Arrival rates are systematically higher than processing rates in the immigration court system.[47] Queuing theory generally assumes that the typical rate of arrivals is lower than the typical rate of processing, and that queues appear only when an unusually high rate of arrivals and unusually low rate of processing occurs.
- The mean or median number of days to case completion is an equilibrium outcome of the court system that is equivalent to the wait time in a queuing (e.g., tollbooth) system. It is the single most important outcome of the queuing system from the public's point of view, but it is an endogenous outcome whose value is determined by fundamental parameters of the arrival and server processes. In order to reduce wait time, it is necessary to lower the arrival rate and/or reduce the processing time.
- In the immigrant court system, the key processing parameter that determines how long it takes to resolve a case is the number of hearings that a case requires.

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46 The immigration court system is in general a queuing system with a complicated server process, and the server process for UAC cases is more complicated than for other cases (e.g., detained adult migrants). Queuing models for criminal court processes have been developed—for example, John B. Jennings, "A Theory of Court Scheduling," RAND P-4732 (Santa Monica, CA: The RAND Corporation, 1971), https://www.rand.org/pubs/papers/P4732.html; and William McAllister, James Atchinson, and Nancy Jacobs, "A Simulation Model of Pretrial Felony Case Processing: A Queuing System Analysis," *Journal of Quantitative Criminology* 7, no. 3 (September 1991): 291–314, https://www.researchgate.net/publication/226872860_A_simulation_model_of_pretrial_felony_case_processing_A_queuing_system_analysis. Jennings analyzes a relatively simple model of court calendars with adjournments that is not unreasonable as a first approximation to the immigration court system.

47 In the jargon of queuing theory, immigration court queues are "deterministic," because the queue will never disappear and will continue to grow over time (even though arrivals and their processing are stochastic in nature).

> This is also true for the immigration court system in aggregate: the larger the number of hearings that immigration courts must hold, the more processing burden is placed on the court system.

A key implication from these observations is that how a policy change such as increasing access to counsel affects the efficiency of the immigration court system should be assessed through how it affects two key parameters: (a) the number of hearings that take place, and (b) the average length of the typical hearing. These parameters determine the hearing (processing) burden on the court system. If a policy change increases the average number of hearings per case and/or the average length of a typical hearing, then it is increasing the average processing time for a case and the overall processing burden on the court system.[48] Another implication is that the impact of a policy change should not be assessed on the basis of how many days it takes to complete a case, which is an equilibrium outcome of a complex system, but on how it affects the arrival or processing rate.[49]

Although increasing significantly in relative importance since 2013, UAC cases still comprise a relatively small fraction of all cases heard in immigration courts.[50] EOIR administrative records include data on individual hearings in immigration court. These data includes reasons for the adjournment of a hearing. These reasons include those related to the respondent (UAC), to the immigration judge, to DHS, and to operational factors. Table 5 provides the number of hearings for the most important individual adjournment reasons for UAC cases initiated in immigration court during FY 2008–2016 that had taken place by January 2, 2018.[51] The most important thing to note in this table is the number of hearings adjourned so that the UAC could find representation, which accounted for 20 percent of all hearings in this period. This will be of particular interest in evaluating the impact of providing increased access to representation in Chapter 3.

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48 Jennings, "A Theory of Court Scheduling,"develops analysis that support this conclusion.

49 Jennifer Stave et al., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* (New York: Vera Institute of Justice, November 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy_downloads/new-york-immigrant-family-unity-project-evaluation.pdf, evaluate whether providing adult immigrants with counsel increases the time that it takes to complete a case on average, but this approach does not evaluate the impact on either immigration court efficiency or capacity.

50 The majority of cases heard in immigration court are for non-UAC cases. Although the fraction of new cases that are for UACs has risen significantly since 2013, pending UAC cases comprised only 11 percent of all pending cases as of end-FY 2018.

51 Tabulations of hearing adjournments by detailed reason for all EOIR cases during FY 2006–2015 can be found in GAO, "Immigration Courts," Appendix III, Table 13.

Table 5. Hearing Continuance Reasons: UAC Cases in Immigration Court during FY 2008-2016

Hearing Adjournment Reason	Number of Hearings	Percent of Total
IJ Completion Prior to Hearing	111,554	21%
Alien to Seek Representation	105,673	20%
Preparation – Alien/Attorney/Representative	76,331	14%
DHS Application Process – Alien Initiated	58,094	11%
Other Alien/Alien's Attorney/Representative Request	42,040	8%
Other Operational/Security Factors	21,912	4%
Alien to File for Asylum	20,041	4%
Other No-Show by Alien/Alien's Attorney or Rep.	19,722	4%
Alien to File Other Application	13,669	3%
MC to IC – Merits Hearing	13,534	3%
DHS Application Process – DHS Initiated	12,345	2%
All other adjournment reasons	41,568	8%

Source: Tabulation of EOIR data hearings in final proceedings for UAC cases.

Note: Contains totals for all UAC cases whose NTA was issued during FY 2008–2016.

6. Immigration System Changes in 2018

Although the U.S. immigration court system was relatively stable during FY 2008–2016 with respect to formal law, guidelines, and practices, major changes have recently been made to policies and procedures, particularly in 2018. Although these changes are subject to ongoing litigation and may be reversed in court, they are generally narrowing grounds for asylum and affecting how immigration courts function.[52] Specific changes of note include:

- The June 2018 "Matter of A-B-"decision will make it more difficult to get relief on the basis of membership in a social group and states explicitly that "Generally, claims by aliens pertaining to domestic violence or gang violence by nongovernmental actors will not qualify for asylum."[53] Interviewed NGOs stated that this decision will disproportionately affect UAC cases and make representing these cases more time-consuming and costly.
- The October 2018 "Matter of M-A-C-O-" decision may cause UACs who have turned 18 by the time they apply for asylum to be put onto the adult docket, and

[52] Meissner, Hipsman, and Aleinikoff, "The U.S. Asylum System in Crisis," 17–18.

[53] U.S. Department of Justice, Office of the Attorney General, "Matter of A-B-, Respondent", June 11, 2018, 320, https://www.justice.gov/eoir/page/file/1070866/download.

it may have implications for whether a UAC who has reunified with a family member will be treated as being covered by the TVPRA law.[54]

- The May 2018 "Matter of CASTRO-TUM" decision significantly restricts the ability of immigration judges to use administrative closure in court cases.[55]
- The August 2018 "Matter of L-A-B-R-" decision significantly restricts the ability of immigration judges to grant continuances.[56]
- Several interviewed NGOs noted that, starting in 2018, terminations have become much more difficult to obtain for UAC cases.
- Because immigration courts generally no longer administratively close or terminate SIJS cases or issue continuances to permit SIJS applications with DHS to finish, and given that the SIJS application backlog is now several years long, several interviewed NGOs noted that the viability of SIJS cases is now in question.
- Several interviewed NGOs noted that, beginning in 2018, their immigration court no longer officially runs a juvenile docket, and that there is more rotation of new judges onto UAC cases. These changes are making the environment for UAC cases more uncertain and likely more difficult as the new judges may not have expertise in UAC cases.

As a result of these changes, decision making of all participants in the immigration court system is adapting. Immigrant attorneys for UACs are filing for multiple relief channels at the very beginning of a case (e.g., affirmative asylum, SIJS, and U visa). Caseloads for immigrant judges are rising dramatically, and they will also necessarily try to find ways to manage this.

C. Unaccompanied Children and Access to Counsel

1. Unaccompanied Children and Legal Counsel: Overview

A key issue for immigrants going through immigration court is whether or not they have legal representation. In the United States, immigrants are generally permitted to obtain legal representation at their own expense, but U.S. law generally does not require

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54 U.S. Department of Justice, Executive Office for Immigration Review (EOIR), BIA, "Matter of M-A-C-O-, Respondent," October 16, 2018, 477, https://www.justice.gov/eoir/page/file/1101226/download.

55 U.S. Department of Justice, Office of the Attorney General, "Matter of CASTRO-TUM, Respondent," May 17, 2018, 271, https://www.justice.gov/eoir/page/file/1064086/download.

56 U.S. Department of Justice, Office of the Attorney General, "Matter of L-A-B-R_ et al., Respondents," August 16, 2018, 405, https://www.justice.gov/eoir/page/file/1087781/download.

the government to provide an immigrant with representation.[57] Many immigrants nonetheless do gain access to counsel as they go through their immigration court process. Previous research suggests that having representation strongly increases the chance of an immigrant obtaining a favorable decision in immigration court. A 2015 study analyzes immigration court administrative data for 1.2 million adult immigrants during FY 2007–2012 and finds strong correlations between having representation and obtaining relief.[58] Ramji-Nogales et al. find strong correlations between representation and defensive asylum outcomes,[59] and Schoenholtz et al.[60] find strong correlations between representation and affirmative asylum outcomes.

Table 6 shows the number of UAC cases in immigration court whose NTAs were issued during FY 2008–2016 categorized by case outcome as of January 2, 2018 and whether a UAC was represented by the same date. It is important to note that a UAC could be represented at onset or after onset. Representation at onset means that a lawyer had attached to a UAC through the filing of an E-28 form (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) with EOIR by the time of the UAC's first hearing in their final proceeding. Representation after onset means that a lawyer attached to a UAC by filing an E-28 after the first hearing in the proceeding.[61]

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57 For a review of U.S. law and immigrants' right to counsel, see Manuel (2014).

58 Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (December 2015): 1–91, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review.

59 Ramji-Nogales, Schoenholtz, and Schrag, *Refugee Roulette*.

60 Schoenholtz, Schrag, and Ramji-Nogales, *Lives in the Balance*.

61 Lawyers also often provide services to UACs to fill out a USCIS affirmative asylum application. These lawyers must file a Form G-28 with USCIS to provide these services.

Table 6. UAC Cases in Immigration Court during FY 2008–2016

Case Outcome	Not Represented	Represented at Onset	Represented after Onset	Total	Pct.
Success					
Relief granted by court	288	611	863	**1,762**	1%
Administrative closure	3,708	8,030	14,003	**25,741**	17%
Termination	3,117	10,674	16,859	**30,650**	21%
Total	7,113	19,315	31,725	**58,153**	39%
Failure					
Removal ordered at merits hearing	2,341	1,412	1,935	**5,688**	4%
Voluntary departure	2,340	1,229	1,484	**5,053**	3%
Total	4,681	2,641	3,419	**10,741**	7%
In absentia					
"Never-shows"	13,575	164	7	**13,746**	9%
"Show-ups"	19,860	908	1,678	**22,446**	15%
Total	33,435	1,072	1,685	**36,192**	25%
Pending as of January 2 2018	6,012	12,101	24,208	**42,321**	29%
Total	**51,241**	**35,129**	**61,037**	**147,407**	**100%**
	35%	24%	41%	100%	

Source: tabulation of EOIR data on final proceedings for UAC cases that was merged with hearing-specific E-28 form data.

Note: Totals for all UAC cases whose NTA was issued during FY 2008-2016.

Table 6 shows that for these UACs, roughly two-thirds of them were or had been represented in immigration court by a lawyer as of January 2, 2018. This simple tabulation also suggests that having representation led to a significantly higher rate of successful outcome for the UAC. Eighty-nine percent of UACs who appeared in court and received a successful outcome had representation, whereas 60 percent of those who received a failure outcome had representation. Even UACs without representation who appeared in court obtained a successful outcome in more than half of all cases. However, no credible conclusion can be made on the basis of this simple comparison of success rates, for two reasons. First, there are large numbers of cases that are still pending or ended with an *in absentia* removal order as of January 2, 2018. *In absentia* cases are particularly problematic because few UACs who have representation receive an *in absentia* removal order, and failing to appear in court results in an *in absentia* removal order prior to a proper consideration of whether the UAC qualifies for relief. Second, there may be systematic differences in case characteristics of those who obtain and do not obtain representation that would induce selection bias. Both of these important methodological challenges will be

addressed in the next chapter, which develops estimates of the impacts of having representation on case outcome.[62]

2. Lawyer Supply for Unaccompanied Children

There are two basic sources of lawyer supply for UACs: private for-fee lawyers, and lawyers whose services are provided or coordinated by NGOs.

a. Private For-Fee Lawyers

The UAC and their family can hire a lawyer from the private sector at their own expense. Although we did not conduct interviews with private-sector lawyers who take on UAC cases, we did get insights into this source of counsel from interviews with NGOs. Several NGOs stated that many or most UAC families in their area are not able to afford the fees of a private-sector lawyer, given household income levels and the size of the fees. Others noted that even given this expense, a significant number of UAC families in their region do hire private-sector attorneys.[63] Several NGOs also noted limitations they perceive private-sector lawyers to have. First, private-sector lawyers are not always familiar with the intricacies and special challenges of asylum law in general and with respect to UACs specifically, and they are sometimes not able or willing to represent a UAC for more than one relief channel.[64] Second, the willingness of private lawyers to take asylum cases may vary across immigration courts, with private lawyers in more difficult courts more reluctant to take these cases due to perceived lower chances of a successful outcome.[65]

b. Nongovernmental Organization (NGO) Lawyers

NGOs have been providing federally funded legal assistance to UACs since 2005, when ORR carried out a pilot project to coordinate providing pro bono legal services to

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62 Existing analysis of the impact of representation is typically based on casual inspection of a table similar to Table 6. See, for example, Kandel, "Unaccompanied Alien Children," 12–13.

63 One interviewed NGO noted that the higher cost of private-sector lawyers is sometimes partly due to the willingness of an NGO lawyer to pursue all relief channels at no additional marginal cost to the UAC, but private-sector lawyers tend to charge for each channel pursued, and this quickly adds up.

64 Two NGOs noted that clinics for private-sector lawyers are run in their regions that train lawyers to improve their capabilities to handle UAC cases and provide technical information to them. Several NGOs noted that they have sometimes had to take over a UAC case from a private-sector lawyer and "clean it up," and this can lead to more hearings in a case proceeding.

65 Some NGOs also noted that in their region, a significant number of "notarios" operate, who are people who advertise immigration services but are not lawyers and cannot provide representation in immigration court or assistance with filling out USCIS forms. Notarios are not captured in the analysis of this study, because they cannot file E-28 forms and represent UACs in immigration court.

UACs in ORR custody.[66] The 2008 TVPRA legislation also states that "[t]o the greatest extent practicable, the Secretary of Health and Human Services shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge."[67] In subsequent years, ORR and EOIR have funded programs to provide various legal services to UACs, including:

- "Know Your Rights" presentations: all UACs at ORR shelters are provided these presentations in order to help them understand their legal rights and responsibilities.
- Individual legal screenings at shelters: all UACs residing in an ORR shelter are mandated to receive individual screenings by a legal service provider. These screenings are used to identify cases eligible for legal relief and suitable for referral to a pro bono attorney.[68]
- LOPC: This program funds local NGOs to provide legal orientation presentations to the adult sponsors of UACs. These presentations are made at courthouses, churches, and/or NGO offices and provide sponsors with basic information about the immigration system and their responsibilities.
- Representation by pro bono private-sector lawyers: NGOs have been funded to coordinate representation of UACs in immigration court by private-sector lawyers as part of the lawyers' pro bono activities. NGOs have lawyers on staff whose main job is to identify and recruit private-sector lawyers to do pro bono service, train and mentor them, match them with appropriate UAC cases, and support them over the course of a case.
- Representation by NGO staff lawyer: NGOs have also been funded to hire staff lawyers who directly represent some UACs in immigration court. These lawyers are also often technically pro bono, as UACs and their families are not charged any fees for their services, but they are a very distinct group from the pro bono private-sector lawyers that the NGOs coordinate.

The most important funding stream for providing UACs access to counsel has been a federal contract from ORR with the Vera Institute of Justice, through which Vera has funded NGOs serving UACs in ORR custody throughout the country, as well as UACs

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66 There may have been non-federally funded NGO programs prior to 2005.

67 See CGRS and KIND, *A Treacherous Journey*, 75–76, for discussion of developments through 2014.

68 The ProBAR initiative of the American Bar Association conducts the "Know Your Rights" presentations and legal screenings at ORR shelters in south Texas, where the large majority of UACs are initially detained. American Bar Association, "A Humanitarian Call to Action: Unaccompanied Children in Removal Proceedings Continue to Present a Critical Need for Legal Representation," May 2016, 4, 12–13, https://www.americanbar.org/content/dam/aba/administrative/immigration/uacstatement.pdf.

released to sponsors in certain parts of the country.[69] This contract has supported NGOs to both coordinate pro bono private-sector lawyers and directly represent a UAC with a lawyer on staff with the NGO. In 2018, ORR issued technical direction to Vera stating that no new direct-representation cases can be funded through the contract for released UACs, although existing cases can be completed and pro bono coordination can be done. This is a major change that will likely have a significant impact on the degree to which UACs gain access to counsel through NGO programs.

Another major program that provided access to counsel for UACs was the justice AmeriCorps (jAC) program, supported by EOIR, which ran from January 2015 to August 2017. It funded attorneys to directly represent UACs and coordinated pro bono representation by private-sector lawyers.[70] There are also other federal grant programs whose main mission is not supporting access to counsel for UACs specifically, but which do provide counsel for some UAC cases.[71] In addition to federal funding, NGOs have also sometimes obtained support from state and/or local governments, and funding from philanthropic organizations and/or individual donations. Eight out of thirteen interviewed NGOs indicated that they received funding from the state and/or local government, and six indicated that they received funding from private-sector donations.

Specific NGO funding streams for access-to-counsel programs have usually been subject to a variety of restrictions on who can be represented by the stream, including geographic restrictions on where the UAC is living, age of the UAC, detention status of the UAC, and timing of the UAC's release. NGOs may also have internal organizational priorities that influence whom they select for representation. One program that is of particular interest is ORR funding through the Vera Institute for direct representation by NGOs, because this funding requires that Vera implement a "universal" representation

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69 An initial ORR grant to Vera in 2005 funded a pilot project, the Unaccompanied Children Pro Bono Project, to coordinate provision of pro bono private-sector lawyer services to UACs. After the pilot project concluded, ORR funded a new project, the Division of Unaccompanied Children's Services (DUCS) Access to Legal and Child Advocate Services Project, which provided legal screenings, immigration court preparation and assistance, and pro bono lawyer coordination (Byrne and Miller, "The Flow of Unaccompanied Children through the Immigration System," 22–23). A Direct Representation Project grant was added in September 2014, which funded direct representation for the first time, and in 2015, ORR funded a new grant program based on a model of expanded direct representation services (ORR, Annual Report to Congress, 2014, 76; and 2015, 46).

70 For a summary of the jAC program, see "justice AmeriCorps Legal Services for Unaccompanied Children Program," American Bar Association, https://www.americanbar.org/groups/public_services/immigration/resources/justice-americorps-legal-services-for-unaccompanied-children-pro/.

71 For example, the Department of Justice's "Legal Assistance to Victims" and "Turnaround" programs, and ORR's "Torture Survivors" program.

model such that all UACs referred to an NGO must be represented, regardless of their case characteristics, until the NGO hits a capacity constraint.[72]

Although most NGOs provide legal services free of charge to UACs and their families, some NGOs (e.g., Catholic Charities) do require the UAC to pay a fee that is significantly less than that of a private-sector lawyer but does cause the UAC to bear part of the cost burden. These NGOs will usually have a pro bono coordinator so that if a family cannot afford these fees, they will try to place them with a pro bono attorney.

The degree to which NGOs operate in a specific immigration court varies widely across the United States. Immigration courts located in some large cities have multiple NGOs providing legal services to UACs, often at high rates of UAC representation; however, other immigration courts have more limited NGO presence, and some have almost none. Some interviewed NGOs identified a significant NGO network that serves some or all of the region covered by their immigration court (New York City, Washington-Baltimore, Los Angeles, and San Francisco), whereas others indicated significantly smaller networks (Atlanta, Miami, Houston), and others almost nothing (Charlotte). In two cities (New York and San Francisco), NGOs have formed formal coalitions that work together in various ways.

Although it would be worthwhile to identify whether a UAC is represented by a private-sector or NGO lawyer in the administrative EOIR data that we use in this study, it is not possible to comprehensively determine from E-28 form data what type of lawyer filed it. Identifying lawyer type using administrative data might be possible, but must be left as a task for future research given the level of effort that this would require.[73]

In order to represent UACs, NGOs first receive referrals on UACs who need representation and then screen them to decide what cases to represent.

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[72] This changed in 2018, because ORR has terminated the ability to provide direct representation for UACs after their release, although direct representation can be provided for detained UACs.

[73] It is possible that lawyer type could be identified, because government administrative data identify individual lawyers representing clients in immigration courts, and if lists of lawyers who have worked for NGOs could be obtained, it would be possible to match these lists to administrative data and identify cases represented by an NGO lawyer and cases represented by non-NGO lawyers. To do this, lawyer lists would be needed for all NGOs. (There would also be some error rate due to cases where a lawyer has represented UACs both as a private-sector lawyer and as an NGO lawyer: one interviewed NGO indicated that this does happen.) Eagly and Shafer, "A National Study of Access to Counsel in Immigration Court," 83, discussed using E-28 form data on attorneys' firms to classify attorneys by type (nonprofit, law school clinic, public defender, large/medium/small law firm, government) by using web searches and databases maintained by state bar associations and the American Immigration Lawyers Association.

c. NGO Case Referrals

NGOs receive UAC case referrals in a variety of ways. Through a contract with ORR, the Vera Institute of Justice provides funding to legal service providers throughout the country to provide legal screenings of every child in ORR custody. In order to help streamline the process of connecting children with counsel, Vera established an on-line referral system (UCORD) that enables legal service providers working with children in ORR custody to make referrals to, and share basic information with, available NGO legal service providers upon a UAC's release from custody. NGOs also receive referrals in the following ways:

- Through information sharing by EOIR on new cases appearing on court dockets;
- From immigration judges;
- Through NGO presence at LOPC briefings and/or immigration court hearings (particularly on juvenile docket days);
- From other NGOs who cannot take a particular case;
- From social service providers to UACs and their families, such as schools and community centers; and
- Through cold calls from potential clients.

Some interviewed NGOs stated that they run special "intake days" when UACs are invited to come to a particular place to meet with the NGO.

3. Screening of UACs

Screening of UACs by organizations providing counsel is of major importance to this study's analysis because of the issue of selection bias. Screening takes place at two key points: in ORR shelters, and during the NGO intake process. As discussed above, initial screening at ORR shelters is done to inform UACs about their legal options, streamline appropriate information sharing through UCORD for purposes of obtaining counsel, and in some instances identify cases suitable for referral to a pro bono attorney. This screening collects information on the UAC's background and case characteristics.

Once a UAC has been released and has been referred to an NGO for representation, the NGO will conduct their own screening process. Typically, the UAC and their sponsor are invited to come to the NGO's office for intake, which usually involves filling out a questionnaire followed by interviews of the UAC and sponsor together and then separately.[74] If the screening suggests that there is a basis for relief, the UAC will be offered

[74] Some interviewed NGOs indicated that they must often go to a great deal of effort to get some UACs whom they have learned about and believe to have a valid case to come to the NGO for intake. One

a lawyer. NGOs that operate both pro bono coordination and direct representation programs will typically seek to attach a pro bono lawyer to UAC cases that are relatively simple and straightforward in order to reduce the burden on volunteer private-sector lawyers, and attach an NGO staff lawyer to the more complex, challenging, and/or traumatic cases. If the NGO is operating under a "universal" representation model, they will offer representation to all UACs who are screened, regardless of how strong or weak the case initially appears. In some instances, NGOs will indicate to UACs who do not appear to have a strong case for relief that it can only represent the UAC for voluntary departure, and the UAC will usually decline representation.[75] These UACs might seek a second legal opinion, hire a private-sector lawyer, or decide to not appear in immigration court. If the NGO is not operating under a "universal" representation model, it has more flexibility to choose which cases it wants to represent. The NGO can decide to take the case for direct or pro bono representation, recommend that the UAC try another NGO, put the UAC on a wait list, or not take the case at all.

The degree to which UACs with cases unlikely to succeed at obtaining relief are not represented by NGOs is an important issue for the analysis of this study, because it determines the degree of selection bias that is present with respect to having counsel. Discussions with NGOs in interviews have helped to shed light on this issue:

- Out of eight NGOs that discussed the rate at which they could only offer to represent for voluntary departure under their "universal" representation program, seven stated that the percentage of such cases is very low, with one NGO stating that it is around 10 percent, and five NGOs stating that it is less than 5 percent.[76] Given that screening under a "universal" representation program is performed for a random sample of UACs arriving in the NGO's region, these responses suggest that the number of cases that would likely not be viable for relief under U.S. law is quite low.
- One of these NGOs also stated that under programs that permit them to select cases, there is some selection bias going on, but that this is only with regard to distinguishing between "frivolous" and "non-frivolous" asylum cases, and that there is a low bar in immigration court for "frivolous," so that the number of cases that are not taken is very low.

NGO stated that they do not invite the UAC to come to their office, but instead go to the UAC in order to make it easier for the UAC.

75 The NGO might indicate this to a UAC after multiple meetings as opposed to the initial screening.

76 One NGO stated that it is around 40 percent, but discussion about the criteria that this NGO uses to determine which cases they represent made clear that these criteria are much more stringent than those used by other interviewed NGOs.

4. NGOs and Social Services Coordination

A primary goal of NGO access-to-counsel programs is to keep UACs engaged in the court process and prevent them from failing to appear in court. However, UACs and their families typically face challenging living conditions that make them more likely to fail to appear. One NGO, Kids in Need of Defense (KIND), whose core activity is providing access to counsel to UACs, has offices in several U.S. cities and implements a model in which the activities of its lawyers in each of its offices is supported by a social services coordinator. These coordinators refer UACs to relevant public-sector agencies that provide social services, including health, education, counseling, and housing.[77] They also typically run workshops for UACs and their families on how to obtain social services and topics related to family issues. Coordinators serve as an adult with whom a UAC can have a stable relationship, which is important in the context of many UAC situations that involve family conflict, domestic violence, homelessness, and similar problems. Coordinators also provide in-house support to KIND lawyers, on such topics as how to interview UACs and how to help UACs without a home-country identity document get a passport from their consulate.

Other NGOs have also added staff members whose job is to provide social services coordination. NGOs generally believe that if a UAC does not receive social services support, they are significantly more likely to fail to appear in court at some point.[78] Several interviewed NGOs noted that if an NGO does not have someone providing this support, the NGO's lawyers will try to do it, but this is less effective at helping the UACs and an inefficient use of attorney time. These coordinators are generally viewed as a "force multiplier" that helps lower *in absentia* rates and also permits NGOs to support a larger caseload than they otherwise could.

5. Potential Impacts of Having Legal Counsel

a. Impact of Representation on Case Outcomes

Representation can potentially increase the chance that a UAC receives a favorable decision in immigration court, state family court, or in a USCIS process. With regard to immigration court, it is widely believed that having representation is essential for achieving a successful outcome. This belief is based on review of data like those in Table 6. However, as noted earlier, this casual inspection does not take into account pending and *in absentia* cases or control for selection bias. Chapter 3 carries out rigorous

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77 In some cases, they will try mediate broken family relationships, or help the UAC travel to immigration court.

78 Provision of this support became viewed in the New York City region as so important that the NGOs that participate in the ICARE coalition, which includes all NGOs providing access to counsel for UACs in New York City, now have people doing social services support.

analysis to quantify the impact of having representation on key case outcomes, including having a successful relief outcome and receiving an *in absentia* order, that controls for these issues.

We review here the reasons that have been offered to support the belief that having representation is essential for obtaining a successful outcome. We also review arguments that have been made for why having representation prevents *in absentia* outcomes. This review is derived from NGO interviews conducted for this study.

With regard to obtaining a successful case outcome with respect to relief, interviewed NGOs noted the following:

- All NGOs stated that it is basically impossible to get a state court predicate order for SIJS without a lawyer, and that it is almost as difficult to win an asylum claim, because the law and issues surrounding it are simply too complex, and only properly trained lawyers know which facts are relevant and which are not. UACs and their families have no expertise on even basic legal issues and often have misguided understandings of what asylum is all about.[79] NGOs noted that non-immigration lawyers cannot represent UACs without substantial training and mentorship, and that even immigration lawyers have trouble pursuing these cases if they are not familiar with UAC-specific issues.
- Several NGOs noted that the "courtroom culture" changes dramatically if a lawyer is present, and that immigration judges generally want to see an attorney present and involved in a case.
- Several NGOs noted that challenges associated with the language that a UAC and their family speak can arise, and that lawyers can help with this.

With regard to *in absentia* outcomes, reasons cited by NGOs for why this outcome happens are discussed in detail in section 2.B.3.d. NGOs noted the following with respect to how lawyers influence the likelihood that this outcome happens:

- Lawyers make UACs aware of when a hearing is scheduled, remind them of upcoming court dates, help them get to court, and make them aware of unexpected changes to scheduled hearings.
- Immigration judges often tell UACs without a lawyer to find one, and that if they cannot find one, to explain the basis of their case. Those who cannot find a lawyer can be intimidated by this and decide to drop out of the court process, and they do not always understand that dropping out will result in an *in absentia*

[79] Some NGOs stated that if a UAC is trying to go through immigration court without representation, someone with some expertise must be helping them.

order of removal. Lawyers often help UACs and their families to understand the consequences of their choices and decisions.

- Lawyers can mitigate problems that UACs and their families have that cause them to fail to appear in court. A UAC's family sometimes does not want to support the UAC generally or to go through the court process specifically.[80] Lawyers can help UACs stay in school and out of trouble, which enhances the chance that they will stay in the court process and also achieve a successful outcome. The ability of lawyers to mitigate these problems is significantly enhanced if they have help from social service coordinators.
- Finally, several NGOs noted that a lawyer can have more of an impact on case outcomes the earlier that the lawyer becomes involved in a case.

b. Impact of Representation on Immigration Court Efficiency Outcomes

As discussed above, when the immigration court system is evaluated as a queuing system, the impact of a policy change should be on how it affects the number of hearings that take place and the average length of the typical hearing. The key question is therefore how having representation affects the number of hearings that a represented UAC attends, and the average length of those hearings.[81] The impact of representation on the number of hearings will be assessed in Chapter 3. It can already be noted, however, that one impact of increasing the rate of representation is already obvious: there will be a reduction in the number of hearings that are adjourned so that a UAC can find representation.[82] Table 5 showed that roughly 20 percent of all hearings attended by UACs whose cases were initiated during FY 2008–2016 were adjourned due to lack of representation. It is important to note that although the actual length of a hearing that is adjourned so that a UAC can find representation may be short, the hearing was scheduled weeks or months in advance, and it was not known at the time of scheduling that it would end in adjournment. Because the

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80 One interviewed NGO stated that in their experience, roughly 30 percent of sponsors stop taking care of the UAC and leave them on their own.

81 The impact of representation should not be assessed by its impact on how many calendar days it takes to complete a case.

82 Several interviewed NGOs noted that immigration judges in their court were generally quite open to granting case continuances to UACs to seek counsel, because judges have a strong preference for counsel to be present. One NGO also noted that in some immigration courts, attorneys can update the court on progress in a case by submitting a written motion for a continuance, and this obviates the need to show up in court for a hearing. Submission must be made within a few days to a month before a scheduled master calendar hearing, and the hearing is then dropped. Another NGO noted that having representation would reduce the number of hearing adjournments made because of having the wrong interpreter; however, a review of the number of hearings adjourned for interpreter-related reasons suggests that this issue is insignificant.

court has pre-committed a block of time to the hearing, it loses the opportunity to substitute a quickly adjourned hearing with a hearing for another case.

There are several other potential immigration court efficiency outcomes that may be affected by having representation:

- Average length of hearing. Representation might affect how quickly a hearing takes place, due to better preparation or presence of a lawyer in the courtroom.[83]
- Representation might lead to better-quality merits rulings, which could result in fewer appeals and post-order motions.

c. Impact of Representation on Other Outcomes

As discussed above, lawyers try to keep their clients engaged in the court process, and in order to do so, they must often help a UAC and their family address various issues such as getting access to education, health care, and housing, and resolving family problems and UAC behavioral issues. A significant number of NGOs now employ social service coordinators to help their lawyers do this. The rate of positive outcomes with regard to the welfare of the UAC and their family may increase with the rate of representation, and if it does, this will produce positive benefits for the UAC, their family, and the community in which they are embedded.[84] Such benefits may include:

- Higher rates of education and associated job market gains, such as higher income earned in the future;
- Improved health care;
- Lower rates of participation in criminal activities; and
- Lower rates of domestic violence and abuse.

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[83] One interviewed NGO noted that having a lawyer present at a final merits hearing makes the hearing go faster, perhaps by 40 percent, and that these hearings typically take 2–4 hours. On the other hand, for master calendar hearings, which are much shorter than final merits hearings, lawyer presence might make hearings go longer, from 3–5 minutes to 10 minutes, because the immigration judge tends to ask the lawyer questions.

[84] In cost-benefit analysis, these impacts would be referred to as "secondary" benefits, because the primary benefit of representation is impact on a UAC's case outcome.

6. Summary Statistics on UAC Cases across Immigration Courts

Table 7 provides the number of cases and breakdown of key outcomes for UAC cases during FY 2008–2016, by immigration court.

- There is substantial variation in the completion rate across courts, with some courts having almost no pending cases as of January 2, 2018, and others having 40–50 percent still pending.
- There is substantial variation in the rate of representation of completed cases, with the rate being as low as 15 percent in Harlingen, TX, and as high as 81 percent in San Francisco.
- The rate of represented UACs receiving *in absentia* removal orders is uniformly very low across courts.
- The majority of unrepresented UACs received *in absentia* removal orders in almost all courts.
- Represented UACs who did not receive *in absentia* removal orders had a significantly higher chance of obtaining a successful outcome than a removal outcome, with some variation in the difference between these rates.

Table 7. UAC Cases Initiated during FY 2008–2016 across Immigration Courts

		Pending	*Completed*				Completed with Representation				Completed without Representation			
				% by Outcome				% by Outcome				% by Outcome		
Immigration Court	**Total Cases**	***% of Total***	***% of Total***	**Success**	**Removal**	***In Absentia***	**% of Completed**	**Success**	**Removal**	***In Absentia***	**% of Completed**	**Success**	**Removal**	***In Absentia***
TOTAL	147,407	*29%*	*39%*	55%	10%	34%	57%	85%	10%	5%	43%	16%	10%	74%
New York City	16,930	*32%*	*68%*	73%	5%	23%	71%	92%	4%	4%	30%	27%	6%	67%
Houston	13,140	*42%*	*59%*	19%	23%	58%	33%	52%	35%	13%	67%	3%	17%	81%
Los Angeles	11,634	*19%*	*81%*	68%	9%	23%	69%	89%	7%	3%	31%	20%	14%	66%
Arlington VA	11,375	*39%*	*61%*	65%	4%	31%	65%	93%	3%	4%	36%	15%	5%	81%
Miami	10,089	*24%*	*76%*	68%	7%	25%	60%	89%	7%	4%	40%	36%	7%	57%
Baltimore	9,463	*41%*	*59%*	52%	8%	40%	50%	88%	8%	4%	50%	15%	8%	77%
Dallas	6,494	*16%*	*84%*	32%	17%	51%	35%	70%	25%	6%	65%	12%	13%	75%
Charlotte	6,462	*21%*	*79%*	28%	19%	53%	37%	64%	28%	8%	63%	7%	13%	80%
San Francisco	**6,079**	*17%*	*83%*	88%	3%	9%	81%	98%	2%	1%	19%	45%	9%	46%
Atlanta	**6,048**	*26%*	*74%*	27%	22%	51%	44%	54%	38%	8%	56%	6%	10%	84%
Memphis	**5,969**	*25%*	*75%*	49%	11%	39%	56%	81%	12%	6%	44%	9%	10%	81%
Newark	**5,768**	*43%*	*58%*	62%	7%	31%	61%	90%	5%	5%	39%	20%	9%	71%
Boston	**4,911**	*36%*	*64%*	81%	4%	14%	80%	94%	4%	3%	20%	32%	7%	62%
New Orleans	**3,982**	*23%*	*77%*	55%	6%	39%	51%	87%	7%	6%	49%	21%	6%	74%
Orlando	**3,441**	*17%*	*83%*	51%	10%	39%	58%	81%	14%	5%	42%	10%	5%	85%
Chicago	**2,530**	*35%*	*66%*	41%	9%	50%	40%	80%	12%	8%	60%	15%	6%	79%
Harlingen	**2,381**	*1%*	*99%*	16%	14%	70%	15%	88%	9%	3%	85%	3%	15%	82%
Omaha	**2,235**	*50%*	*51%*	58%	9%	34%	66%	81%	11%	9%	34%	14%	5%	82%
Philadelphia	**2,221**	*28%*	*72%*	65%	5%	30%	62%	90%	5%	5%	38%	25%	5%	70%
San Antonio	**2,025**	*13%*	*87%*	65%	5%	31%	65%	93%	5%	3%	35%	15%	5%	81%
Cleveland	**1,944**	*35%*	*65%*	60%	5%	35%	62%	91%	5%	4%	38%	9%	5%	87%

		Pending	*Completed*				Completed with Representation				Completed without Representation			
				% by Outcome				% by Outcome				% by Outcome		
Immigration Court	**Total Cases**	***% of Total***	***% of Total***	**Success**	**Removal**	***In Absentia***	**% of Completed**	**Success**	**Removal**	***In Absentia***	**% of Completed**	**Success**	**Removal**	***In Absentia***
Kansas City	**1,822**	*30%*	*70%*	56%	14%	30%	63%	84%	14%	2%	37%	11%	15%	75%
Seattle	**1,589**	*14%*	*86%*	70%	15%	15%	70%	85%	14%	1%	30%	33%	20%	47%
Denver	**1,405**	*28%*	*72%*	66%	6%	29%	65%	93%	4%	3%	35%	15%	8%	77%
Bloomington MN	**1,335**	*16%*	*84%*	59%	14%	27%	63%	84%	13%	3%	37%	15%	17%	68%
Hartford	**1,240**	*22%*	*78%*	52%	12%	36%	59%	79%	15%	6%	41%	13%	8%	80%
Phoenix	**1,053**	*13%*	*87%*	61%	6%	33%	49%	94%	4%	3%	51%	29%	8%	63%
Detroit	**967**	*21%*	*79%*	62%	18%	20%	68%	78%	18%	4%	32%	30%	19%	52%
Las Vegas	**784**	*7%*	*93%*	71%	6%	23%	70%	91%	5%	4%	30%	25%	8%	67%
Portland OR	**593**	*45%*	*55%*	67%	8%	25%	53%	89%	8%	3%	47%	43%	8%	48%
San Diego	**585**	*9%*	*91%*	69%	10%	21%	62%	89%	8%	3%	38%	37%	13%	50%
Salt Lake City	**417**	*30%*	*70%*	43%	19%	38%	58%	70%	20%	11%	42%	7%	19%	75%
El Paso	**311**	*17%*	*83%*	49%	13%	38%	55%	78%	15%	7%	45%	13%	11%	76%
Buffalo	**185**	*16%*	*84%*	57%	18%	25%	58%	81%	16%	3%	42%	24%	21%	55%

Source: Tabulated from EOIR administrative records.

3. Impacts of Representation on Case and Court Outcomes

In this chapter, we quantify impacts on key case and court outcomes of UACs who had representation in immigration court and whose cases began during FY 2008–2016. Previous research on the impacts of representation in immigration court has focused on the representation of adults and suggests that having representation has large impacts on case outcomes. Ramji-Nogales, Schoenholtz, and Schrag evaluate outcomes of asylum adjudications in U.S. immigration courts and find that having representation was the single most important correlate with obtaining a successful outcome.[85] Eagly and Shafer used data on 1.2 million adult removal cases in immigration courts between 2007 and 2012 and found that having representation was highly correlated with obtaining a successful outcome.[86] Stave et al. evaluated a program in New York City that provided universal representation to detained immigrants and found that having representation was associated with a very large impact on obtaining a successful outcome.[87] Montgomery carried out a cost-benefit analysis of providing representation to all adult immigrants in removal proceedings in immigration court and found that the benefits of this policy change would likely exceed its costs.[88] Schoenholtz, Schrag, and Ramji-Nogales found that immigrants who had assistance from a lawyer to fill out an affirmative asylum application succeeded at a higher rate than those who did not.[89]

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85 Ramji-Nogales, Schoenholtz, and Schrag, *Refugee Roulette*. We refer to case outcomes in this study from the perspective of the immigrant, so that a successful outcome is one that is successful from the immigrant's point of view. Ramji-Nogales, Schoenholtz, and Schrag evaluate immigration court decisions across all asylum applicants, including adults and children. Because adults have historically accounted for the majority of asylum applications, their results are driven largely by outcomes for adults.

86 Eagly and Shafer, "A National Study of Access to Counsel in Immigration Court."

87 Stave et al., *Evaluation of the New York Immigrant Family Unity Project*.

88 John D. Montgomery, "Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings" (White Plains, NY: NERA Economic Consulting, 2014), last updated June 3, 2014. http://www.mondaq.com/unitedstates/x/318120/general+immigration/Cost+Of+Counsel+In+Immigration+Economic+Analysis+Of+Proposal+Providing+Public+Counsel+To+Indigent+Persons+Subject+To+Immigration+Removal+Proceedings. His finding of net benefits results from lower costs associated with immigrant detention due to shorter cases through having representation for those who are detained, and reduced costs associated with foster care of children of deported adults. Montgomery focuses on outcomes and impacts for adult immigrants and excludes quantification of costs and benefits for juvenile immigrants such as UACs.

89 Schoenholtz, Schrag, and Ramji-Nogales, *Lives in the Balance*.

In this study, we use a methodology that controls for pending cases, *in absentia* cases, and selection bias. We then develop a counterfactual scenario of what the impacts of an expansion of access to counsel for UACs to a 100 percent representation might have been.

A. Quantified and Non-Quantified Impacts

Representation impacts that we are able to quantify in this study include the following:

- Impact on obtaining a successful outcome in immigration court. Representation might also increase the chance that a UAC receives a favorable decision in state family court or in a USCIS process. Because it is likely that a UAC who is represented in state family court or for a USCIS process is also represented in immigration court, our estimated impacts on immigration case outcomes are arguably picking up the impact of representation in these processes as well.
- Impact on the chance that a UAC stops participating in the immigration court process and is ruled *in absentia* and issued a removal order by the immigration court judge.
- Total number of hearings held for UAC cases that began during the historical period FY 2008–2016, as though these cases were followed all the way through to completion.

Representation impacts that we are not able to quantify in this study include the following:

- Processing efficiency of state family court and USCIS processes (affirmative asylum, T visa, and U visa adjudications). Representation could reduce the amount of time that a USCIS adjudicator spends on making a decision in a USCIS process, and it could also make processes in state family courts more efficient. We lack the data to quantify these impacts.[90]
- Average length of a particular type of hearing (master calendar, final merits). Although EOIR has apparently collected time-stamp data on individual hearings that note the time that a hearing started and ended, we were not able to get access to these data to carry out our analysis.

We also lack data to quantify secondary benefits of representation for the UAC and the community in which they are embedded, such as higher rates of education and

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[90] USCIS holds administrative records that could be used to quantify impacts, but these data are not made available to the public and were not made available to this research project. State family courts might hold administrative records that could be used to quantify impacts but trying to obtain these data was beyond the scope of this project.

associated job market gains (e.g., higher income earned in the future), improved health care, lower rates of participation in criminal activities, and lower rates of domestic violence and abuse.[91]

B. Baseline and Counterfactual Scenarios

Quantification of the impacts of having representation in FY 2008–2016 provides a *historical baseline* for these impacts. After developing this baseline, we will project how expanding access to counsel might affect key outcomes. This will be referred to as a *counterfactual* policy scenario. Potential counterfactual scenarios that could be explored include:

- Expanding access to counsel to full (100 percent) representation over a future projection horizon;
- Expanding access to counsel to full representation over the historical FY 2008–2016 period and following those cases to completion under the historical success and removal criteria; and
- Expanding access to counsel to a level less than full representation (historically or in the future).

The original intent of this study was to project flows of UACs to the United States over a future horizon (e.g., the next 10 years) so as to establish a future baseline, and use estimated historical impacts to develop counterfactuals of increasing representation to higher levels. It became clear, however, that historical impacts could not be used as credible measures of future impacts, because too many changes have taken place in the immigration court system in 2018 with respect to law and court operation. These changes likely represent structural shifts in the likelihood of failing to appear in court, obtaining a successful outcome, and the average number of hearings, but we have no way of estimating what those shifts are, as so little time has passed since they occurred. It is also not clear whether these changes are permanent or temporary.

We therefore quantify in this study what key outcomes would have been in the historical period FY 2008–2016 if representation of UACs had been increased and we followed cases to completion under the historical success and removal criteria. We also evaluate the scenario of increasing representation at onset to a 100 percent level, which is

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[91] These data would require tracking of education, health care, and crime involvement outcomes for UACs that had representation and those that did not have representation. Although NGOs could presumably track outcomes for UACs whom they represent, it is not clear how such data for unrepresented UACs could be obtained.

analogous to what is mandated in U.S. criminal courts. It is straightforward methodologically to quantify this counterfactual.[92]

C. Data Description

We utilize data from the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, which consists of all immigration court cases with an initial NTA in FY 2008–2016. This includes detailed information on the corresponding 8,685,550 hearings and 2,838,781 proceedings seen by EOIR from October 1, 2007 to January 2, 2018.[93] At the hearing level, we have the court date of the hearing, adjournment code, and hearing type to distinguish master calendar and merits hearings from custody hearings and other appearances outside the scope of this study. For each proceeding, we have the final decision made by the immigration judge, NTA date, decision date, immigration court city, migrant country of origin, primary language of the migrant, and multiple UAC indicators.

To determine which cases involve a UAC, TRAC collects two UAC indicators. The first denotes DHS's designation on the NTA, which is the same designation that CBP assigns upon apprehension of the migrant, and which would allow us to sufficiently define a UAC study population. Unfortunately, this UAC indicator was only populated starting in FY 2014. We describe in detail in section A of Appendix A how we develop a UAC designator, given this limitation. We also drop observations that are outside the scope of this study or are logically inconsistent.[94] After making these drops, our regressions include 147,407 cases.

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92 It might be possible to quantify scenarios expanding representation at onset to levels less than 100 percent, but it would be significantly more difficult and perhaps not possible to quantify scenarios where representation is obtained after onset.

93 Our data do not include some important ancillary information, such as applications and state court appearances for SIJS through USCIS. However, when a UAC applies for relief outside of immigration court, EOIR will administratively close the case and reopen it later once a decision has been made. If a UAC is granted relief outside of immigration court, EOIR will then terminate the case. Hence, even though we do not know the details of outcomes made by someone other than the immigration judge, we are still able to identify that the UAC attained relief.

94 We dropped the following proceeding and/or hearing observations: 2,547,238 proceedings and 7,189,143 hearings that correspond to non-UAC cases; 649,300 hearings outside the scope of this study (for custody, attorney discipline, etc.); 109,916 hearings that adjourned after the completion date of the hearing; 59,014 hearings that did not occur based on the adjournment code (data entry error, court closure, immigration judge on unplanned leave, etc.); 45,771 hearings that were scheduled but did not occur by January 2, 2018; 43,811 hearings with a missing proceeding ID; 7,287 completely duplicated hearings; 2,765 hearings with duplicated case ID, adjournment date, and hearing start time; 134 hearings that do not match to a proceeding; and 1 proceeding that was abandoned. We also dropped the following cases: 11,308 cases with a detained proceeding in the final city; 5,306 cases with 0 hearings in the final city (these are automatically dropped in a survival model); 359 cases with a proceeding NTA in FY 2018; 206 cases in cities with less than 100 total cases during our study period; and 95 cases that have an ambiguous final proceeding (the proceeding IDs and decision dates within each case do not align). It is important to note that we have excluded detained cases from our analysis of non-

D. Final City Proceedings and Change of Venue

During our period of analysis, cases frequently changed venue due to the historical precedent of an NTA being issued in the city of apprehension only to have the migrant relocate to live with a guardian. Since hearings in a proceeding that results in a change of venue are rarely substantive, we only consider hearings and proceeding outcomes in the final observed city of each case. Each case's final city typically only has a single proceeding, but in a minority of cases, there are two or more.

E. Determining the Treatment Effect

In order to estimate statistical models of the impact of representation on outcomes, we must identify when a UAC is "treated," or has representation. We establish treatment using data on the filing of an E-28 form, which must be filed if a lawyer is to represent someone in immigration court.[95] These forms are typically filed in open court at the first hearing after representation has begun or by mail prior to this hearing.[96] To determine which hearings are represented within each case, we use data on E-28 filings that cover our entire period of analysis. Among the population of filed E-28s, we remove those filed in the board of appeals, by ICE attorneys, and for custody cases; we thus retain all filings for immigration court by migrant attorneys for non-custody purposes. Each E-28 in our data is filed for an individual case and includes a filing date. However, our E-28 data do not include withdrawals, so we only attach lawyers to cases in cities in which each lawyer actually practices. Since we only consider hearings in the final city of each case, once a single hearing is considered represented, all subsequent hearings in the case are assumed to be represented as well.

We consider a hearing represented if an E-28 is filed on or before the hearing adjournment date and if the filing attorney practices in the city of the immigration court

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detained cases. If a UAC is still detained well into their proceedings, they are probably in a "staff secure" setting as opposed to a regular ORR shelter. Characteristics and outcomes for this group (e.g., representation rate, success rate) are very different from those of the much larger set of non-detained cases.

95 This form is available at https://www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir28.pdf. Lawyers also often provide services to fill out a USCIS affirmative asylum application: these lawyers must file a Form G-28 with USCIS. Lawyers who represent UACs in state courts for SIJS must follow procedures of the state court.

96 UACs are sometimes represented by non-attorney "friends of the court" in court hearings. NGO interviews indicated, however, that this does not qualify as representation, as friends of the court cannot advocate on the UAC's behalf, and that using the filing of an E-28 to identify representation is the correct methodological approach. Some friends of the court are volunteers who sit in a courtroom to identify UACs who might need advice or representation. In other instances, an NGO might initially perform friend-of-the-court representation prior to the filing of an E-28 form. Some NGOs also sometimes perform friend-of-the-court representation for UACs who are likely to move to another immigration court, thus avoiding the need to file an E-28 for someone they will not represent over the long run.

where the hearing occurs. In addition to this time-varying, hearing-level representation indicator, we also create two static, case-level representation measures. First, we consider a case to be represented at onset if the first hearing in the first proceeding of the final city is represented. Alternatively, we denote a case as represented if *any* hearing is represented.[97]

We also assume that if a UAC is represented when applying for relief through USCIS (such as SIJS, affirmative asylum, or a U or T visa), the lawyer files a G-28 form with USCIS and also files an E-28 form with EOIR to represent the UAC in immigration court. If this is not always the case, we will understate the true representation rate that is relevant for determining case outcomes.[98]

F. Determining Case Outcomes

Case outcomes are defined by decision of the final observed proceeding in each case. Cases are partitioned into *in absentia*, removal, success, and pending. Table 6 (on page 34) shows the distribution of case outcomes. It is important to note the following about our approach to defining these outcomes:

- For cases whose outcome is *in absentia*, we have two groups of UACs: those who never appear in immigration court ("never-shows"), and those who show up for one or more hearings but then go *in absentia* ("show-ups"). Never-shows are defined as UACs who went *in absentia* with at most one non-detained hearing in the final city (which would be a hearing at which they did not appear and were ruled *in absentia*). Since UACs must show up to court while detained, we only count non-detained hearings for this designation. A UAC with a single non-detained hearing during an *in absentia* final proceeding is assumed to have not shown up to court for this hearing. Likewise, show-ups are defined as UACs who went *in absentia* with two or more hearings in the final city.
- The removal outcome excludes *in absentia* cases that received removal orders. The removal outcome consists only of cases resulting in voluntary departure or any other removal order.

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97 A pending case is represented if any hearing is represented or if an E-28 is filed (in a city in which that attorney practices) before January 2, 2018.

98 If a lawyer files only a G-28 and not an E-28, but represents the UAC in immigration court, our methodology will designate the UAC as unrepresented when in fact the UAC had representation. However, it is almost certainly the case that a lawyer cannot represent a UAC in immigration court without filing an E-28. A dataset that links together EOIR administrative data and USCIS application data, including data on the filing of forms E-28 and G-28, would permit evaluating the validity of this assumption, but this dataset is not available.

- The success outcome includes cases in which the immigration judge granted relief, terminated the case, or administratively closed the case. While administrative closures are a type of non-final decision, we find that cases that are administratively closed either do not reopen during our period of analysis or reopen and are terminated with a high probability. Hence, we consider cases with a final proceeding that concludes with an administrative closure to be a success because, at the very least, the UAC is no longer being pursued by the immigration court.
- Pending cases are simply cases in which the final proceeding has not yet concluded by the end of our sample period. These are identified in the data by having a missing proceeding decision date.

G. Estimation Methodology

1. Competing Risks Analysis

The estimation methodology that we use in this study is a "competing risks" analysis. In particular, we adopt a parametric approach to competing risks based on the estimation of proportional hazards models. This methodology permits estimation using censored data, allows for the simultaneous evaluation of representation on different types of outcomes, and enables us to produce estimates of the impact of representation on both outcome likelihoods and the number of hearings simultaneously.

An important issue for the analysis of immigration court cases is that a significant portion of these cases are *censored*: they were pending at the end of our sample time period, and final decisions were not made on them. In statistical analysis terms, pending cases are subject to "Type I administrative right censoring," and their outcome and final duration are not known.[99] Approximately 29 percent of the cases in our sample are censored by the end of our sample period, which is a significant percentage that suggests that analysis of outcomes using only closed cases is likely to yield biased results.[100] This is especially true if representation changes a case's trajectory toward a different joint distribution of outcomes and duration relative to not having representation, and thus creates an unrepresentative sample of completed cases in the presence of censoring.

Survival analysis is a branch of statistics that analyzes the expected duration of time until one or more events happen and constitutes a set of methods designed to be able to handle the analysis of censored data. These methods predict the outcomes of censored cases

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[99] Cases whose uncensored duration would be long are more likely to be censored in our sample.

[100] An additional 17.5 percent of cases are administratively closed. Although these cases may be reopened, we treat them as successful outcomes for the UAC and do not classify them as pending.

using the outcomes of completed cases and the partial information offered by cases not yet completed. The predictions are valid if and when the censoring is independent.[101] Administrative censoring caused by the end of the study period satisfies this criterion.

A standard model that is used to analyze survival in the presence of censoring is the Cox proportional hazards model. In a competing-risks setting with the presence of multiple outcomes, such as success, removal, and in absentia, the results of a Cox model are not directly informative of the fractions of cases that attain each type of outcome. However, Cox models still yield valid cause-specific hazard models for each type of outcome that we will use as intermediate inputs into a final competing-risks model of outcomes. Let the outcomes of success, removal, and *in absentia* be indexed by i={1,2,3}, respectively. We estimate in this study the following Cox specification at the individual case level:

$$\lambda_{i,j,k,l,s}(t) = \lambda_{0,i}(t)e^{\beta_{1,i}Rep(t)+\beta_{2,i}Highrep\times Rep(t)+\alpha_{i,j}+\gamma_{i,k}+\delta_{i,l}+\theta_{i,k}} . \qquad (3.1)$$

In equation (3.1), $\lambda_{i,j,k,l,s}(t)$ represents the cause-specific hazard of outcome i for base city j, nationality k, language l, and fiscal year s at elapsed hearing number t. The hazard rate $\lambda_{i,j,k,l,s}(t)$ is the rate at which outcome i happens at time t (conditional on this outcome not happening prior to time t.) The base hazard rate is given by $\lambda_{0,i}(t)$. Representation is measured by E-28 filings and enters as a time-dependent covariate Rep(t). The specification includes fixed effects for the base city ($\alpha_{i,j}$), nationality ($\gamma_{i,k}$), language ($\delta_{i,l}$), and fiscal year ($\theta_{i,k}$).[102] A term that interacts the Rep(t) variable with the variable *Highrep* is also included; the variable *Highrep* is discussed below.

2. Time Unit

In this study, we define the unit of time used to measure case durations as the number of elapsed hearings. We choose the number of hearings instead of the number of days because the number of hearings measures administrative burden, and, conditional on number of hearings, elapsed days do not. Elapsed days are heavily influenced by the overall EOIR system backlog as well as backlogs in collateral proceedings such as SIJS in state courts or asylum in USCIS.

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[101] In particular, censoring is independent if, conditional on covariates, the joint distribution of outcomes and durations that an observation censored at time t would face going forward in the absence of censoring is the same faced by an uncensored observation going forward from the same time t (Kalbfleisch and Prentice 2002, Chapter 1, p.13).

[102] See section D of Appendix A for further discussion of estimation issues associated with these fixed effects, as well as the methodology that we use to resolve "ties" in the time data, and our choice to use a continuous-time as opposed to discrete-time model.

3. Identification

The indicator variable *Highrep* is introduced into estimation in order to address the important issue of achieving identification of the true impact of representation in the presence of potential selection bias. Assignment of lawyers to UACs historically may have been subject to selection bias. In particular, UAC cases with better prospects of success may have had a greater chance of having representation, due to NGO screening or to the decisions of the UAC and their family with regard to hiring counsel on their own. If such selection bias were present in the historical data on which we are estimating, not controlling for it would mean that the impact of having representation on the chance of obtaining a successful outcome would be overestimated. It would also mean that the estimated impact on success rates of expanding access to counsel to a 100 percent level would be too large, because the cases that this expansion would cover would have a lower average chance of attaining a successful outcome than the cases represented in the past.

To control for this selection bias, we take advantage of the fact that in the study sample, there are base cities and associated quarters in which the degree of representation, as measured by E-28 filings, exceeds 85 percent. These high-representation cities/quarters create the possibility of predicting what a full-representation scenario would have looked like for cities/quarters with much less representation. We construct an indicator variable, *Highrep*, that takes on a value of 1 for city/quarter observations that have very high levels of representation (85 percent or more), and 0 otherwise. Section B of Appendix A discusses this issue, our approach to controlling for it using the variable *Highrep*, and the empirical pattern of high levels of representation across cities and time.

In the estimated equation (3.1), the variable *Highrep* is interacted with the variable *Rep(t)*. The estimated coefficient $\beta_{2,i}$ on this interaction helps to determine whether a city-wide scale-up in the fraction of cases represented results in an economically significant difference in outcomes for an average represented individual. If $\beta_{2,i}$ is negative for i=1 (success), that would be suggestive of the average quality of cases falling as representation is scaled up in the presence of lawyer case selection bias. In this instance, case quality could be underlying merit, the degree of commitment of the UAC and their sponsor to the court process, or the stability of their family relationships. If $\beta_{2,i}$ is zero for i=1 (success), that would be suggestive of a universal representation model whereby cases are selected without regard for their quality or merit. Lastly, if $\beta_{2,i}$ is positive for i=1, that would be suggestive of an environment in which scale-ups, which in most cases would be driven by NGOs, result in an increase in the average quality of lawyer representation.

4. Multiple Case Outcomes and the Cumulative Incidence Function

As previously stated, a key goal of our analysis is the evaluation of the effect of representation on more than one type of outcome simultaneously. We classify outcomes broadly into success, removal, and *in absentia*, and each outcome has its own hazard rate.

However, the cumulative incidence—or eventual fraction—of cases that attain a particular outcome depends not only on the hazard rate of that outcome over time, but also on the hazard rates of all of the other outcomes over time.[103] For example, the chance of success depends not only on the cause-specific success hazard but also on the removal and *in absentia* hazards. The same interdependence holds true for the cumulative incidences of removal and *in absentia*. We use a technique that accounts for this interdependence and permits us to compute *cumulative incidence functions* (CIFs) that fully reflect this interdependence. Section C of Appendix A provides a technical review of our application of the methodology.

H. Estimation Results

1. Cox Hazard Function

We first present estimation results for the Cox proportional hazard model described by equation (3.1). These results are an intermediate input that is used to compute CIFs for the success, removal, and *in absentia* outcomes. They thus provide an incomplete degree of insight into the effect of representation, which may not translate over to the final effect as reflected in the CIFs. With that caveat stated, Table 8 presents the results of three models. The first controls only for time-dependent representation. The second adds in the interaction term to arrive at our theoretically preferred specification. The third model adds in the *Highrep* term itself, as a check on whether it is a change in underlying merit that is driving the shift in lawyer supply represented by the interaction term.

All models suggest that representation drastically reduces the *in absentia* hazard and increases the success and removal hazards. Results for model 2 show relatively small effects of the interaction of representation with a high-representation city/quarter on the cause-specific hazards. Results for model 3 suggest that underlying merit is not changing (at least not in a sensible direction consistent with an endogenous shift in lawyer supply and positive selection.) Instead, the model 3 combination of *Highrep* and interaction term coefficients appears to be poorly identified since there is a 71 percent correlation between the *Highrep* and interaction term, and the *Highrep* and interaction term coefficients in model 3 have diverged from the model 2 interaction term coefficient in a largely offsetting manner that is also indicative of poor identification.

Given these results, we therefore proceed with model 2 in developing the CIFs. For model 2, representation very substantially reduces the *in absentia* hazard, by a multiplicative factor of 0.07, and increases the success and removal hazards by

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[103] Hein Putter, Marta Fiocco, and Ronald B. Geskus, "Tutorial in Biostatistics: Competing Risks and Multi-State Models," *Statistics in Medicine* 26: 2389-2430, 2007.

multiplicative factors of 6.75 and 1.51, respectively. The full set of model 2 coefficients is provided in section E of Appendix A.

Table 8. Cox Proportional Hazard Model Estimations

	Model 1		Model 2		Model 3	
Covariates	exp(coef)	Pr(>|z|)	exp(coef)	Pr(>|z|)	exp(coef)	Pr(>|z|)
Rep(t): success outcome	6.83	0.00	6.75	0.00	6.45	0.00
Rep(t): removal outcome	1.51	0.00	1.51	0.00	1.54	0.00
Rep(t): *in absentia* outcome	0.07	0.00	0.07	0.00	0.07	0.00
*Highrep*Rep(t):* success outcome			1.08	0.00	1.52	0.00
*Highrep*Rep(t):* removal outcome			0.92	0.23	0.59	0.00
*Highrep*Rep(t): in absentia* outcome			0.82	0.00	0.94	0.32
Highrep: success outcome					0.66	0.00
Highrep: removal outcome					1.91	0.00
Highrep: *in absentia* outcome					0.77	0.00
Base city dummies	Y		Y		Y	
FY dummies	Y		Y		Y	
Nationality dummies	Y		Y		Y	
Language dummies	Y		Y		Y	
No. of cases[104]	147,407		147,407		147,407	
Pseudo R squared	0.157 (max possible 0.978)		0.157 (max possible 0.978)		0.158 (max possible 0.978)	

2. Cumulative Incidence Functions

Results from estimation of model 2 are used to predict what would happen under a 100 percent representation counterfactual, and this prediction is compared to an historical status quo. Establishing a status quo can be done in two different ways: using a semi-parametric model with covariates, or using a non-parametric Aalen-Johansen estimate.[105]

[104] The actual number of observations was 205,436 per outcome type. Because the regression was stratified by three outcome types, there was a total of 616,308 observations. The regression robust standard errors were clustered by case.

[105] Relative to "fully parametric problems … semiparametric problems or fully nonparametric problems … typically involve fewer assumptions of structure and distributional form." See David R. Cox, *Principles of Statistical Inference*, (New York: Cambridge University Press, 2006), 2.

Section F of Appendix A discusses this issue in depth. Figure 4 presents the CIF for the 100 percent representation scenario together with both the semi-parametric and non-parametric (Aalen-Johansen) status quo estimates. Table 9 summarizes the key predictions that emerge from Figure 4.

There are two main findings that emerge from these results. The first is that full representation is predicted to increase the portion of UACs who attain a successful outcome by at least 22 percentage points, and to decrease the portion who receive *in absentia* removals by 23 percentage points. These changes are obtained by comparing the "100 percent representation" scenario against the "Status quo prediction" scenario (with the non-parametric Aalen-Johansen status quo included as a reference).[106] The changes are statistically significant with greater than 95 percent confidence.[107] The overall removal percentage does not change by an economically significant amount.

The second finding is that the high-representation interaction term, which we introduced to detect whether selection bias has a more pronounced effect as a larger fraction of respondents in a city are represented, is associated with a statistically significant 2-percentage-point increase in UACs who attain a successful outcome. Therefore, the interaction term shows that there is yet another effect of being in a high-representation environment that goes over and above what the base city fixed effects already account for.[108] The unexpected positive effect of the interaction term may be due to both weak selection bias and greater efficacy of the NGO lawyers that might predominate in high-representation cities and quarters.

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[106] Impacts are calculated by comparing levels at the endpoints of CIFs, where all cases have arrived at a final decision.

[107] The confidence intervals that are plotted here actually represent an upper bound on the true 95 percent confidence interval.

[108] Note that the cause-specific hazards models that feed into these CIF predictions already control for base city fixed effects separately from the interaction term, and in a Cox proportional hazard model, the base city fixed effects have a multiplicative, scaling effect on the effect of representation.

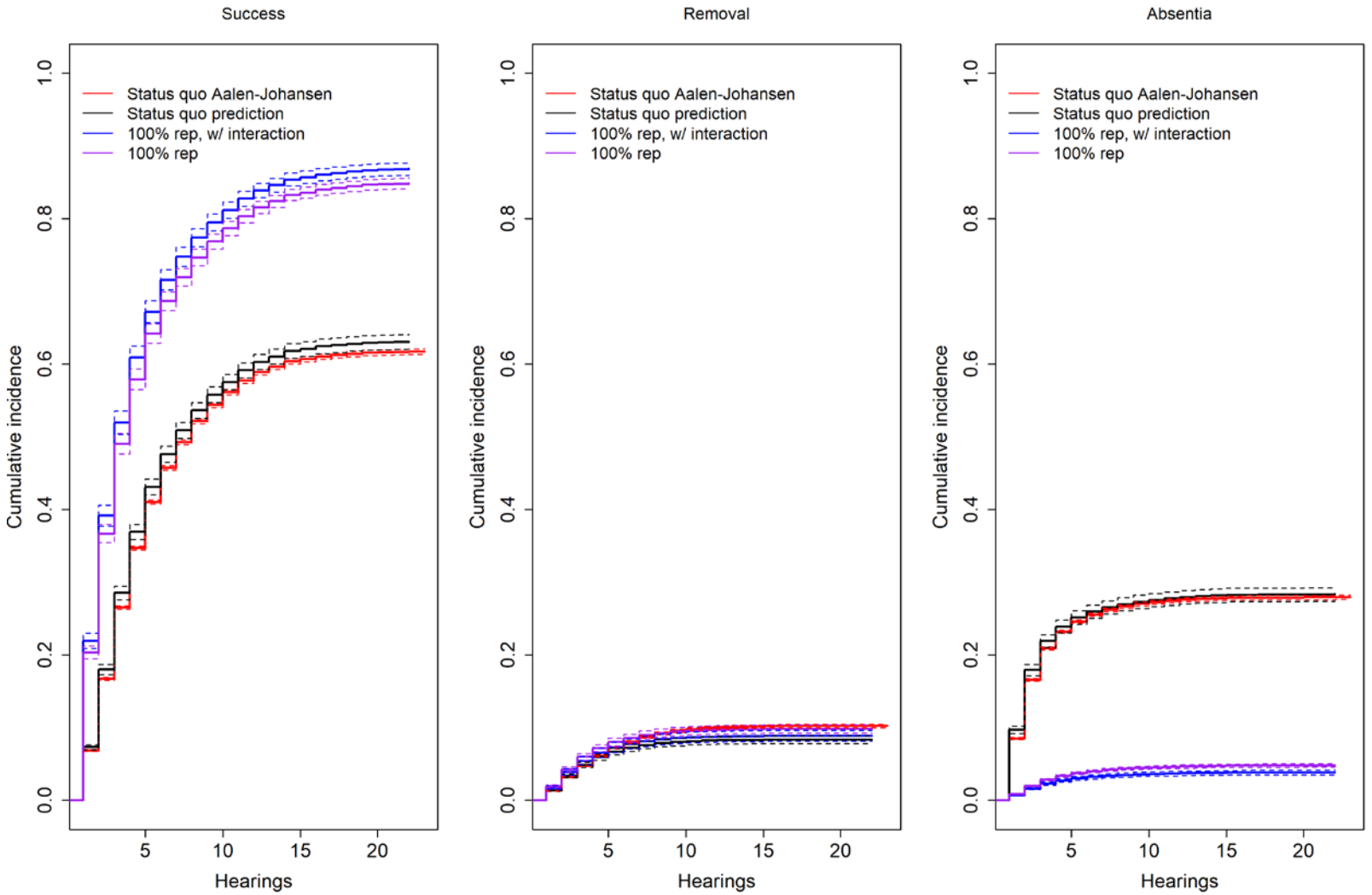

Figure 4. Cumulative Incidence Functions: Status Quo and Counterfactual (100%-Representation) Estimates

Table 9. Key Predictions of Cumulative Incidence Functions

	Hearing number	Success	Removal	*In absentia*	Pending
Status quo Aalen-Johansen	23	62%	10%	28%	0%
Status quo prediction	22	63%	8%	28%	0%
100% representation with interaction	22	87%	9%	4%	0%
100% representation	22	85%	10%	5%	0%

Section G of Appendix A develops a robustness check that splits the sample into cases that received representation by the end of the observation period and cases that never received representation. This robustness check suggests that some form and degree of selection bias is present, and that such selection bias has been controlled for to a non-trivial extent in the full-representation prediction.

3. Status Quo and Counterfactual Number of Total Hearings and Represented Hearings

Another key impact of moving to 100 percent representation is the change in the number of total hearings that might take place, as this is a key measure of burden on the capacity of the immigration court system. It is also necessary to estimate the change in the number of represented hearings in order to develop the incremental cost estimates of the next chapter. To quantify these impacts, we must develop estimates of both the number of hearings that would take place under the status quo, and the number of hearings that would take place under 100 percent representation. Estimates are developed under the assumption that all cases complete, even though the data itself is censored. We first develop estimates of the status quo number of represented hearings in the presence of censoring by defining and non-parametrically estimating a multi-state model, which is discussed in more depth in section H of Appendix A. We then develop estimates of a full-representation scenario using (as before) a time-varying representation covariate in addition to static measures of nationality, language, base city, and fiscal year of the first NTA in the final city of the case. Table 10 presents the key estimation results.

Table 10. Status Quo and Counterfactual Estimates of Number of Hearings

	Features	Status Quo 1	Status Quo 2	Status Quo Rep'd Hearings	Full Rep 1	Full Rep 2	Full Rep 3
Results	Estimate	638,121	656,878	392,474	612,707	590,617	628,162
	Lower 95% CI	631,325	635,410	388,932	592,043	567,641	627,505
	Upper 95% CI	644,917	678,418	396,015	633,372	613,593	628,819
Model basics	Covariates	No	Yes	No	Yes	Yes	Yes
	Non-/semi-/parametric	Non	Semi	Non	Semi	Semi	Para
	Continuous/step-function survival curve	Step	Step	Step	Step	Step	Step
	Model name	Kaplan-Meier	Cox PH	Multi-state model	Competing risks	Competing risks	Lognormal
Model appropriate-ness	Estimation includes hearings adj to seek rep	Yes	Yes	Yes	Yes	Yes	No
	Plausibility of time-dependent rep coefficient	N/A	N/A	N/A	High	High	High
	High-rep interaction	N/A	N/A	N/A	No	Yes	No
Counts	Cases estimated on	147,407	147,407	147,407	147,407	147,407	143,711
	Cases predicted on	147,407	147,407	147,407	146,943	146,943	147,407
	Cases multiplied by	147,407	147,407	147,407	147,407	147,407	147,407

Note: The number of represented hearings in the status quo (assuming all cases complete) is estimated using a non-parametric multi-state model. Details are provided in section H of Appendix A.

One complication that arises is the approximately 20 percent of all hearings that adjourn for the UAC to seek representation, which will not occur under a full-representation scenario. These hearings occur at the onset of a case when the immigration judge deems it appropriate to allow the UAC more time to find a lawyer. To ensure that these hearings do not artificially inflate any counterfactual predictions, we pursue two different strategies. First, a parametric duration model is fit on the population of hearings that excludes those adjourned for the UAC to seek representation.[109] This strategy would allow the hazard to be estimated on only substantive hearings that will also exist in the counterfactual, and the parametric distribution would enable predictions to extend beyond the observed number of hearings. Alternatively, we could model all hearings using the flexible semiparametric duration model from the preceding competing-risks outcomes analysis that would effectively eliminate hearings that adjourn for the UAC to seek representation from the full-representation counterfactual since these hearings take place before a lawyer is attached to a case.

[109] Note that the corresponding population of cases fed into a model is composed of 3,696 fewer cases because these cases only have hearings that adjourn to seek representation and zero other hearings.

We have estimated models using both options. Section I of Appendix A presents the full set of estimated models of status quo and counterfactual total number of hearings. Table 10 presents the models from this set that we believe are the most plausible. We also use blue and red highlight in Table 10 to represent positive and problematic model features, respectively. Section I of Appendix A reviews in depth how we determine whether a model feature should be deemed positive or negative.

When hearings that adjourn to seek representation are removed prior to estimating the effect of representation, we find that the presence of a lawyer adds to the expected number of hearings in a case. This is consistent with our intuition. There is a very small chance that an unrepresented UAC is aware of all options, whereas a well-versed lawyer will consider and potentially pursue multiple forms of relief, resulting in more hearings on average. While the result aligns with intuition, the necessity of using a parametric distribution that can support a predicted increase in durations leaves us wanting to explore whether a semi-parametric method would work on a sample of all hearings.

When we use the sample of all hearings, we find that it is necessary to employ a model that is sufficiently flexible in estimating representation to account for the loss of hearings adjourned to seek representation while reflecting the increase in substantive hearings brought about by the lawyer's activities. Section J of Appendix A uses insufficiently flexible models to demonstrate that the true time-dependent effect of representation likely switches from shortening cases to lengthening them as the time of lawyer attachment moves toward the end of the case. We use the competing-risks model from the preceding outcomes analysis as a sufficiently flexible, semiparametric model to capture the time-dependent effect of lawyer attachment.

Taking all of these considerations into account, we prefer the Status Quo 2 model in Table 10 as the baseline (status quo) predicted number of total hearings, and the Full Rep 1 model as the full-representation counterfactual prediction. We prefer the semiparametric Full Rep 1 model over the semiparametric Full Rep 2 model because it is the more conservative estimate, and because results of the Full Rep 3 model, which is our preferred parametric model for the counterfactual, is close to the estimate of the Full Rep 1 model. It is important to note that standard errors for these predictions are calculated differently depending on the model.[110]

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[110] To begin with, the point estimate of the expected number of hearings is obtained by summing across all values of the survival curve S(t). For the non- and semi-parametric models, we upper-bound the standard error of the expectation by assuming a correlation of 1 between all estimates of S(t). The upper bound of the standard error of the expectation is thus equal to the sum of the standard errors of S(t). For the semi-parametric competing risks model, there is another upper bound involved in obtaining the standard errors of S(t) in the first place; we form a composite survival curve by weighting all of the different covariate groups' survival curves and calculate an upper bound to the composite

I. Summary of Key Impacts

In this chapter, we estimate that a full representation counterfactual would have increased the percentage of UACs who achieved a successful outcome by 22 percentage points and correspondingly decreased the *in absentia* outcomes by almost the same amount, while leaving the removal percentage roughly unchanged. We find this result after testing for selection effects and finding evidence that it has no economically significant effect on outcome rates when the portion of UACs represented increases by more than 20 percentage points to exceed 85 percent representation. While this does not guarantee that selection will not become apparent when representation approaches 100 percent, the previously mentioned qualitative evidence from NGO interviews also suggests that the fraction of cases that NGO lawyers would not take is small, with responses indicating 10 percent or less.

The same outcomes analysis also predicts that if all cases in the sample were followed to completion, a 6.7 percent decrease in the overall number of hearings would occur under full representation. This difference between Status Quo 2 and Full Rep 1 is statistically significant, even with the upper bounds on confidence intervals.

For the purposes of the cost analysis to follow, we note that although the overall number of hearings under full representation is predicted to fall, our models predict that the number of represented hearings will increase by 220,233, which is statistically significant.

survival curve estimates with the same method discussed in the outcomes section. Finally, for the lognormal predictions, we bootstrap to obtain standard errors.

4. Cost of Expanding Access to Counsel to 100 Percent Representation

This chapter develops an estimate of the monetary cost of expanding to full representation at onset of all UAC cases initiated during FY 2008–2016. The estimate is based on the change in the number of represented hearings. A simple methodology to develop a per-hearing cost measure is developed, and we then use data on lawyer caseload and average salary to determine a cost of expansion. We then review a range of important issues involved with expanding access to counsel.

A. Estimate Based on Change in the Number of Hearings

1. Average Cost per Hearing

Define the following variables as:

- d: Average number of days between hearings in a UAC final proceeding
- c: Average number of open final proceedings that a typical lawyer supports (average caseload)
- s: Annual fully loaded salary of average lawyer

Then it is straightforward to derive the following measures:

$$\text{Hearings per final proceeding per year: } \frac{365}{\text{d}} \tag{4.1}$$

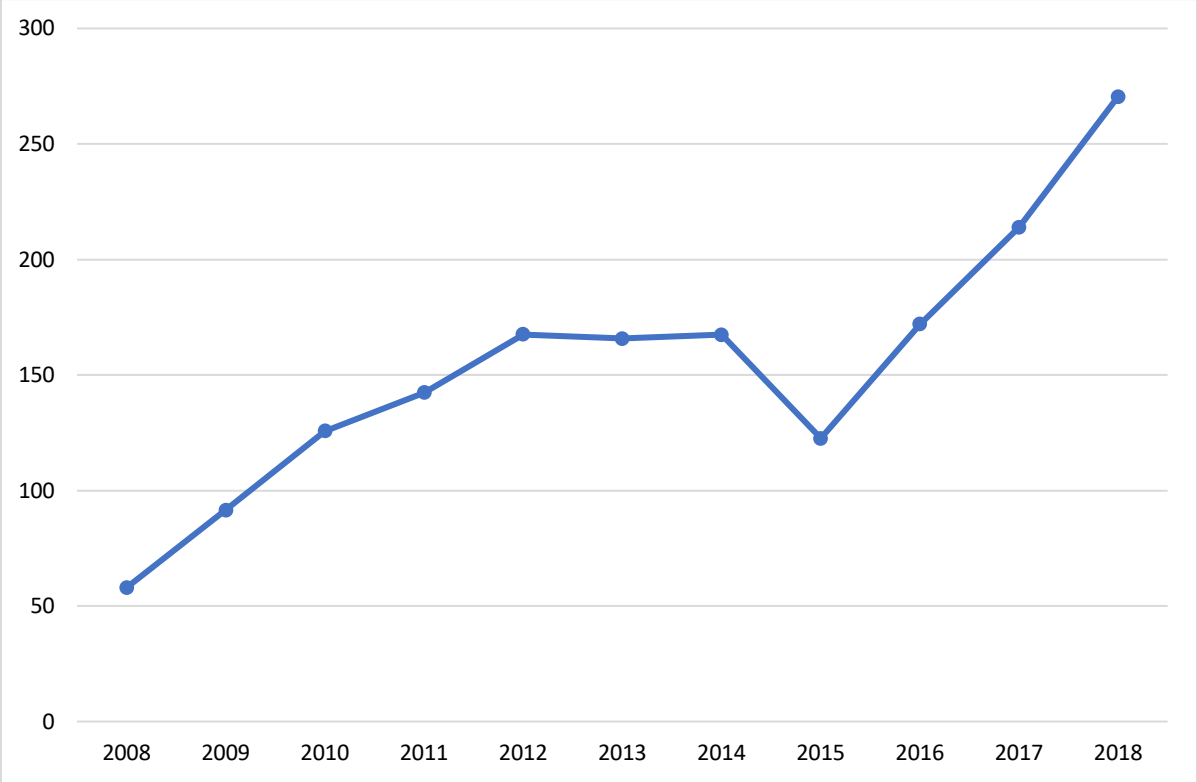
$$\text{Total hearings per year per lawyer: } \left[\frac{365}{\text{d}}\right] * \text{c} \tag{4.2}$$

$$\text{Average per-hearing cost: } \left(s \Big/ \left\{\left[\frac{365}{d}\right] * c\right\}\right) \tag{4.3}$$

2. Average Days between Hearings

The variable d, average days between hearings, is determined as an outcome of the immigration court system, which is equivalent to a queuing system (as discussed in Chapter 2.) As the overall backlog of the immigration court system changes, the value of d will change. Figure 5 shows the average number of days between hearings for UAC cases that began during FY 2008–2016. The variable d rose significantly during FY 2008–2011,

was relatively stable during FY 2011–2016, and rose significantly again during FY 2017–2018.



Source: Calculated from EOIR data on UAC final proceedings for cases initiated during FY 2008–2016. Hearings include those adjourned to seek representation.

Figure 5. Average Number of Days between Hearings

3. Average Caseload per Lawyer

Several interviewed NGOs provided information on the average number of open cases that their lawyers support, including the number of cases being represented by pro bono volunteer private-sector lawyers and coordinated by an NGO staff lawyer, and the number of cases directly represented by an NGO staff lawyer. It is also possible to use information collected from NGOs that run both pro bono coordination programs and direct representation programs to calculate the percentage of an NGO's total caseload that is performed by pro bono private-sector lawyers and direct representation lawyers. Table 11 summarizes this information. The mean caseload for direct representation lawyers at any given point in time is 52, and is 133 for pro bono coordinators. The percentage of caseload that is performed by pro bono private-sector lawyers ranges widely but averages roughly 50 percent.

Table 11. NGO Caseload Measures

	# of NGOs providing information	Range	Mean
Average per lawyer caseload at given point in time:			
Pro bono coordinator lawyer	6	80–200	133
Direct representation lawyer	10	35–70	52
Pro bono caseload as % of total caseload	6	8%–87%	51%[a]

Source: Interviews with NGOs conducted for this study.

[a] Unweighted average. Average using NGO total cases as weights gives value of 53%.

An issue that arises with caseload is whether it is an exogenous or endogenous variable. From a lawyer's perspective, the variable d results from the overall immigration court system and is thus exogenously given. The total number of hearings per year that a lawyer attends is $\left[\frac{365}{d}\right] * c = H$. This can be rewritten as $\left[\frac{365}{d}\right] = \frac{H}{c}$. Consider an exogenous rise in d due to an increase in arrivals of final proceedings but no change in immigration court processing resources. The equation above shows that the variables H and c must adjust such that H/c falls. Either H must fall, or c must rise, or some combination of the two. This is potentially significant for developing a cost estimate of expanding access to counsel in the presence of an increasingly backlogged immigration court with rising d, which Figure 5 shows was happening in this study's sample period. If lawyer caseload cannot increase, more lawyers must be hired to cover new migrant final proceedings. If lawyer caseload can increase, the necessary cost increase will be mitigated to some extent.[111] Caseload data presented in Table 11 was collected in 2018, when d was at its highest point in the sample period. The cost estimates that we develop here are thus conservative, in the sense that they do not take into account that c may have had higher values in earlier years when d was lower.

4. Annual Lawyer Salary and Other Costs

Several NGOs provided information about the average yearly gross salary (inclusive of benefits) of a staff lawyer (pro bono coordinator or direct representation) in 2018.[112] The

[111] Which constraint is operative depends on the nature of preparatory work that a lawyer needs to do for a client over the course of a year. If preparatory work typically happens in bursts immediately prior to a hearing, there will be a constraint on the number of hearings H that a lawyer can support. If, on the other hand, work on behalf of a given final proceeding is fairly steady over the course of a year, the more likely constraint is on caseload c.

[112] Provided salary levels are inclusive of employee benefits. Information on average lawyer cost was obtained for NGOs in Boston, New York City, Newark, Washington DC area, Baltimore, Houston, Los Angeles, San Francisco, and Seattle.

average salary was roughly $95,000.[113] Information was also provided on the percentage markup on salary that the NGO requires to cover other costs, including office space, office overhead, bar dues, interpretation services, telephone appearance costs, litigation contractors, court filing costs, and mileage/travel. An average fully loaded lawyer salary that covers all relevant costs of an NGO equals roughly $121,000.[114]

It is important to note that our estimate of the cost of expanding to 100 percent representation is based on the costs of the sample of NGOs that provided information to us—NGOs in nine cities. These cities accounted for 55 percent of all UAC cases (see Table 7). This is not a random sample of NGOs, and there may be biases with regard to the NGOs sampled from the NGO population in each city, and with regard to the cities sampled from all immigration courts. We cannot evaluate the first type of bias, but we can evaluate the second type of bias using U.S. government data on the average annual salary of those employed in law firms.[115] Table 12 shows average annual salaries for simple averages across cities, and values weighted by UAC caseloads during FY 2008–2016. These estimates suggest that the cities our NGO interviews sampled from are cities with systematically higher lawyer salaries. Comparison of the case-weighted averages suggests that a national case-weighted value across all immigration courts would cost roughly 10 percent less than our nine-city sample ($115,284 as compared to $128,117). We therefore reduce the average fully loaded lawyer salary from $121,000 to $109,000.

Table 12. Reweighted Average Lawyer Salary

Average NGO lawyer salary	
Unweighted average across 9 cities	$94,855
Case-weighted average across 9 cities	$94,853
Average annual salary: "Office of lawyers"[a]	
Unweighted average across 9 cities	$126,011
Unweighted average across all cities	$103,180
Case-weighted average across 9 cities	$128,117
Case-weighted average across all cities	$115,284

[a] Calculated from 2017 county-level data from the Quarterly Census of Employment and Wages, NAICS code 541110 ("Offices of lawyers").

[113] Table 12 shows that weighting NGO values by UAC caseload during FY 2008–2016 makes no material difference to this value.

[114] This markup is 28 percent over gross annual lawyer salary.

[115] These data are obtained for 2017 from the U.S. Bureau of Labor Statistics' Quarterly Census of Employment and Wages (QCEW) for the NAICS code 541110, "Offices of lawyers." These data are available at the county level. Some cities comprise more than one county: in these cases, county salaries are aggregated using total employment for NAICS code 541110 as weights. Annual salary values in the QCEW are gross salary inclusive of most benefits.

It is also important to note that our expansion cost estimate is based on NGO costs. An expansion based on the cost of private-sector lawyers that UACs hire would be significantly higher. Finally, it is important to note that for NGOs that are funded by the Vera contract with ORR, their fully loaded rate does not cover some costs that were incurred by the Vera Institute for Justice to administer the contract and run the overall program.[116]

5. Cost of Expansion to 100 Percent Representation

Given values for d, c, and s, a per-hearing cost can be calculated for direct-representation and pro bono coordinator lawyers using equation (4.3). In order to use these values to derive a monetary cost for expansion to 100 percent representation for all UAC cases initiated in FY 2008–2016, it is necessary to assume what part of the expansion would be covered by pro bono private-sector volunteer lawyers versus direct-representation lawyers. We use the mean value of 50 percent that was reported by several interviewed NGOs. Under this assumption, a projected cost for the expansion is $157 million total for the period of FY 2008–2016 (estimates of annualized expansion cost values are given below). Table 13 summarizes parameter values used to make this estimate.

Table 13. Monetary Cost of Expansion to Full Representation for Period FY 2008–2016

Parameter	Value
Increase in number of represented hearings	220,233
Fully-loaded lawyer salary	$109,000
Average days between hearings	179
Average caseload:	
Direct representation lawyer	52
Pro bono coordination lawyer	133
Average cost per hearing:	
Direct representation lawyer	$1,026
Pro bono coordination lawyer	$403
% of increased hearings covered by volunteer private-sector lawyers	50%
Total cost of expansion	*$157 million*
Of which:	
Direct representation	$113 million
Representation by pro bono volunteers	$44 million

Note: Value is in 2018 dollars, as lawyer salary value is 2018 value.

[116] In order to assess how important these costs were and how they would have potentially added to the monetary cost of expansion in the period FY 2008–2016, a detailed review of the costs of Vera and its NGO subcontractors would be needed.

We carry out a validation exercise in Appendix B using an alternative methodology that is based on the change in number of represented cases and an estimate of the lifecycle cost of an NGO directly representing a UAC case through a final merits hearing. Only two NGOs provided a lifecycle representation cost estimate, and the results of our alternative methodology must be regarded as highly tentative and uncertain. Given this important limitation, Appendix B shows that the two methodological approaches suggest quite similar values for the cost of a 100 percent representation expansion.

It is not possible to calculate a standard error for the expansion cost estimate that takes into account uncertainty in all variables. The observations that we have from NGOs on caseloads per lawyer, percentage of total caseload that is done by volunteer pro bono lawyers, and lawyer salaries are too few in number to generate credible uncertainty parameters.[117] We can, however, use the standard error of the estimated change in the number of represented hearings to develop uncertainty in expansion cost due to uncertainty in that one variable.[118]

The point estimate of change in the number of represented hearings of 220,233 has a 95 percent confidence interval of 196,027 and 244,440. The 95 percent confidence interval for the point estimate of expansion cost of $157 million is $140 million and $175 million. This confidence interval reflects uncertainty only in the estimate of the number of represented hearings and does not take into account uncertainty in any of the other variables that are used to estimate the expansion cost.

B. Annualized Expansion Cost Values

In order to annualize a total expansion cost of $157 million, it must be allocated to the years in which hearings were held for these cases. Under an assumption of how many hearings are held over time for each annual cohort of new cases, total expansion cost can be allocated to individual years.[119] Table 14 shows that annual cost expansion values are relatively low through 2012 but rise significantly afterwards, which reflects the large rise in newly initiated cases after 2012.

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[117] If standard errors could be obtained for these variables, we could use them and a standard error for the variable days between hearings to run a Monte Carlo analysis on the expansion cost estimate.

[118] This standard error is less than or equal to the sum of the standard errors from the status quo multi state model prediction and full rep counterfactual prediction described in detail in Chapter 3. Hence, we sum the standard errors to produce a confidence interval that can be thought of as the most conservative 95 percent confidence interval for the change in the number of represented hearings.

[119] The assumption is that for each annual cohort of newly initiated cases, 1.5 hearings are held on average per case in the first year, 1.5 hearings in the second year, 0.8 hearings in the third year, 0.5 hearings in the fourth year, and none after the fourth year. This is only an approximation to the true distribution across years of average hearings per case for each annual cohort, but annualized values are little affected by changes in distribution assumptions. It is also assumed that the number of newly initiated cases in FY 2005, 2006, and 2007 equaled the number in FY 2008 (3,934).

The average annual monetary cost associated with expansion over the entire period (FY 2008–2019) is $13 million. However, the number of new UAC cases rose sharply after 2012, and annual cost values later in the period will better reflect what the annual cost of an expansion might be in future years. The years 2015 and 2016 reflect the cost of the expansion after the large increase in the number of cases in 2014, and the average annual cost for these two years is $31 million.[120]

Table 14. Annualized Expansion Cost Values (Values are 2018 $ Million)

Fiscal Year	Total Expansion Cost = $173 Million
2008	$4
2009	$4
2010	$5
2011	$5
2012	$6
2013	$11
2014	$22
2015	$29
2016	$33
2017	$23
2018	$10
2019	$4
Average during:	
2008–2019	$13
2015–2016	$31

C. Key Issues Related to a Scale-Up to 100 Percent Representation

1. Who Bears the Cost of an Expansion in Representation?

Although we have estimated the cost of expanding representation to 100 percent for the FY 2008–2016 UAC case cohort, we have not determined who would bear the cost of this expansion. Key potential stakeholders who could participate in financing this expansion include UACs and their families, the U.S. federal government, state

[120] Annual cost values for FY 2017–2019 reflect the change in cost of representing in those years the cohort of cases that began during FY 2008–2016. They do not reflect the cost of representing cases that began after 2016.

governments, local (city or county) governments, NGOs (e.g., bar associations), and philanthropic donors.

Developing alternative scenarios for how costs could have been shared between these parties is beyond the scope of this study. This would also require detailed information that is not currently available and would be challenging to collect. We would note the following important issues that arise in considering the financing of an expansion in representation:

- *Crowding out of UAC financing.* NGO interviews suggest that in many places, a significant number of UACs and their families have hired private-sector lawyers. The counterfactual policy analyzed in this study assumes that this financing remains in place. If, however, the counterfactual is that the public sector finances all representation, the cost to the public sector will be higher than what is estimated here, because the public sector will take over the financing of representation for cases that previously had hired lawyers.
- *UAC cost sharing.* Some NGOs have required UACs and their families to share in the cost of representation by paying fees that offset some of the cost. For families that cannot afford these fees, the NGOs try to place the UAC with a pro bono lawyer. Cost sharing by UACs and their families should arguably play a role in the financing of an expansion, as they are the primary beneficiaries of the service provided (representation). However, determining what UAC fees should be, and which families should be required to pay them, pose challenges. More insights from these NGOs on how they implement their model would be useful.
- *Cost sharing between different levels of government.* If the public sector is involved in financing increased representation, there is a range of possibilities for how this could be implemented and the cost burden shared between the federal government and state and local governments. NGO interviews suggest that the willingness of state and/or local governments to participate in the financing of UAC representation varies widely, with some states and cities already actively involved in such financing, and others not.

The first two issues raise the question of whether means testing can be implemented to determine which UAC families should be required to pay a full fee or subsidized fee to obtain representation. Approaches to implementing efficient and effective cost sharing could potentially be identified through a review of NGOs currently providing representation to UACs on a cost-sharing basis, as well as of the practices of public defender offices providing representation to defendants in criminal cases before U.S. courts.

2. Should Social Services Coordination be Included in an Expansion?

As discussed in Chapter 2, some NGOs have on their office staff a social services coordinator who works with UACs and their families to help them access social services such as health care, education, counseling, and housing. This assistance is believed to produce tangible benefits for UACs, their families, and the communities in which they live, and to reduce the chance that a UAC will go *in absentia* in immigration court.

We do not know how many UACs were served by social services coordinators historically, so we cannot calculate the incremental cost of providing all UACs with these coordinators. However, we can estimate the total cost. Four interviewed NGOs that have a coordinator on staff provided data on caseloads that suggest that the typical social services coordinator supports roughly 600 open cases at any given time. Under the assumption that the average UAC case lasts for 2.5 years, the average number of open cases at any point in time during FY 2010–2016 was roughly 37,000, and roughly 78,000 during FY 2015–2016. Under the assumption that one coordinator can support 600 open cases, this implies a total number of coordinators equal to 62 and 130 for those years, respectively. The average fully loaded cost of a social services coordinator in 2018 was $70,400 (or roughly $125 per case). This implies that average annual expenditures on social services coordinators *for all UAC cases* would be $4 million per year for the entire period FY 2010–2016, rising from an estimated level of $1.2 million in FY 2010 to $9.7 million —in FY 2016.

3. Challenges of Scaling Up Representation

- *Initial screening and case referrals.* A UAC representation system can obtain efficiencies through initial UAC screening at ORR shelters and dissemination of case information through an electronic referral database. This approach enables matching a UAC to a lawyer in the city in which the UAC is released. This system was essentially established through ProBAR screenings and Vera's UCORD referral system. ProBAR screening has apparently covered most UACs in recent years.
- *Increasing staff and lawyer supply constraints.* Interviewed NGOs were asked what the most important challenges they would face in increasing current levels of representation would be. Increasing the number of staff attorneys was overwhelmingly cited as the biggest challenge. However, many NGOs indicated that even though this would be the biggest challenge, they nonetheless would be able to manage even a large scale-up, as it is possible to deal with and overcome these challenges in creative ways. The following specific issues were mentioned with regard to increasing staff:
  - Regions with a large supply of potential volunteer pro bono lawyers tend to also have highly competitive markets for lawyers, increasing the difficulty

and expense of hiring lawyers to coordinate pro bono volunteers and directly represent cases.

- Recruiting pro bono lawyers is challenging in some areas, due to either a small presence of potential volunteer private-sector lawyers, or a reluctance of private-sector lawyers to represent immigrants as part of their pro bono activity. This problem will intensify if UAC cases become more difficult and complex to represent.
- Attorneys need to have appropriate language abilities and immigration law knowledge, and this combination can sometimes be hard to find.
- For some NGOs, staff turnover is an important issue, because these NGOs offer relatively low salaries in comparison with private law firms, and the special difficulties involved with representing UAC cases make retention even more challenging.

Appendix A.
Details on Analytical Methodologies

A. Data Processing

Executive Office of Immigration Review (EOIR) records did not contain an indicator denoting the Department of Homeland Security (DHS)'s designation of an Unaccompanied Alien Child (UAC) on the Notice to Appear (NTA) before fiscal year (FY) 2014. In addition to the UAC designation on the NTA, EOIR records a code for every proceeding that distinguishes migrant adults from accompanied migrant children and UACs. The second UAC indicator in the Transactional Records Access Clearinghouse (TRAC) data reflects the entire sequence of such EOIR codes within each case. This study seeks to mirror the Customs and Border Patrol (CBP) UAC designation upon apprehension, so we classify UACs by taking the union of the following three steps based on the date of the initial NTA of each case:

1. FY 2008–2014: CBP UAC designation and EOIR UAC designation (including UACs who turn 18 or are reunited with a guardian) in at least one proceeding.
2. FY 2008–2014: EOIR designates migrant as an accompanied child or a UAC (including UACs who turn 18 or are reunited with a guardian) in at least one proceeding and the case has a non-lead alien number (ANUM).
3. FY 2015–2016: CBP UAC designation.

B. Identification of Treatment Impacts

It is unlikely that the historical assignment of attorneys to UACs in the study's sample period was random. UACs obtaining representation from NGOs were subject to screening, and some degree of selective representation has occurred at different times and places with respect to whether the UAC might have a chance of obtaining success. Distance to court, whether the respondent received the NTA at the correct updated address, family situation, and network-derived misinformation are also factors that may influence both lawyer attachment and court outcomes.

The quantitative objective of this study is to predict the case outcomes of UACs under a full-representation scenario and contrast that with the current rates of outcomes. We therefore focus attention on the outcome that a case without representation would have if it were counterfactually represented. In a similar vein, we also need to predict how a case

would evolve if it had representation from the beginning instead of gaining representation partway through.

Given such non-random lawyer assignment, we might be concerned that the case outcome rates of represented respondents in the data may not be predictive of unrepresented respondents' outcomes if they counterfactually had a lawyer. However, in the study sample, there are EOIR base cities and associated quarters in which the degree of representation, as measured by E-28 filings, exceeds 85 percent. These high-representation cities/quarters, when paired with other controls in a regression setting, create the possibility of predicting what a full-representation scenario would have looked like for cities/quarters with much less representation.

We code observations in such cities and quarters with a *Highrep* indicator variable that takes on values of 0 or 1. Because representation rates generally increase over time, we determine the *Highrep* variable in a city-specific manner as follows. For each city, we compute the cumulative incidence function (CIF) of representation (where having a case outcome prior to obtaining representation constitutes a competing risk). If the CIF does not attain 85 percent, we remove the earliest quarter of data for that city and repeat. If it does attain 85 percent before the number of remaining observations that have either attained representation or an outcome drops below 10, we label all observations in that city's remaining quarters as *Highrep* observations. In Table A-1, we cross-tabulate the number of resulting *Highrep* observations by city and fiscal year for the subset of cities that eventually attained a *Highrep* value of 1.[1]

[1] The increase in number of cities with *Highrep* observations in 2015 is likely due to an expansion of provision of direct representation by NGO access-to-counsel programs.

Table A-1. Number of *Highrep* Observations

City	Fiscal Year									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Baltimore										29
Bloomington										15
Boston	88	135	210	181	340	466	1164	1097	1164	66
Buffalo										18
Charlotte										18
Cleveland										28
Kansas City										11
Los Angeles								2372	2894	91
Las Vegas									198	20
New Orleans										28
New York City										29
Omaha									459	44
Phoenix										11
Seattle								141	414	30
San Francisco		92	221	227	345	471	1257	1360	1824	57
Salt Lake City									28	10
San Diego								11	149	9
Washington DC								1445	3527	85

Just under 20 percent of represented cases fall within such cities/quarters. In Figure A-1, we plot the overall CIF for representation, the CIF for representation in non-high representation cities/quarters, and the CIF for representation in high representation cities/quarters.

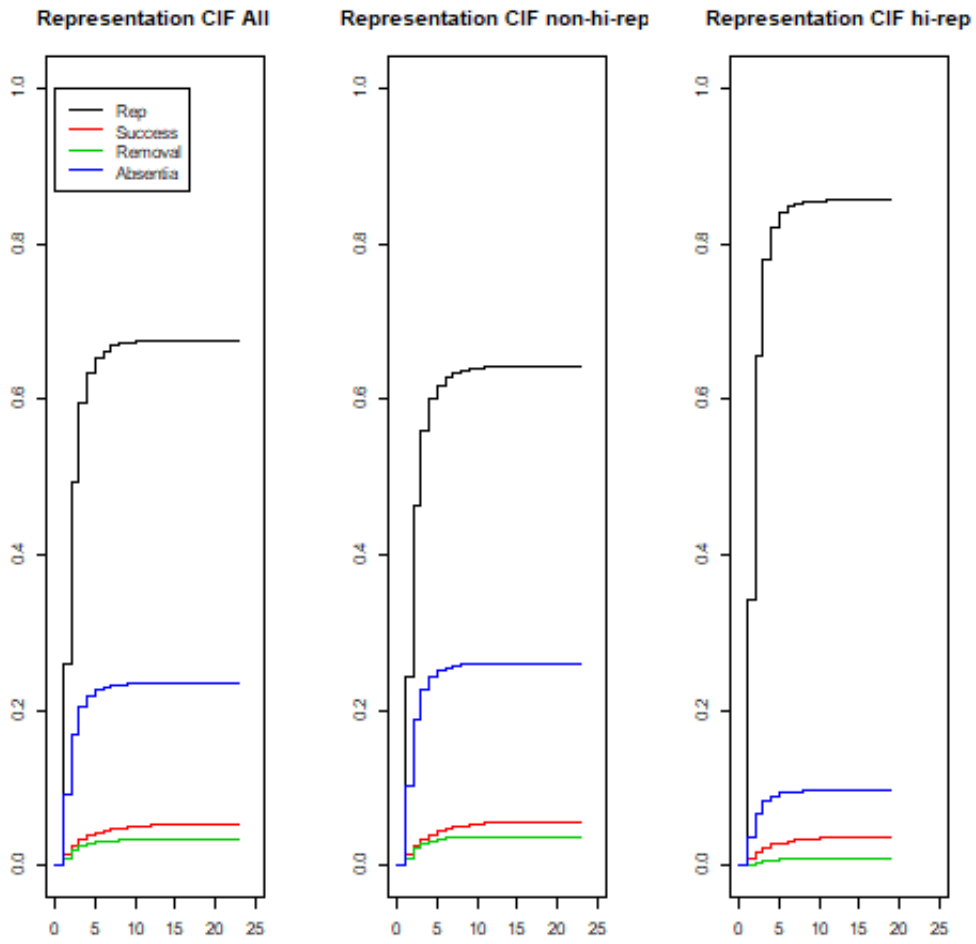

Figure A-1. CIFs for the Representation Rate in All, Highrep, and Non-Highrep City-Quarters

We look for evidence of a smooth, common aggregate marginal return to representation as a function of the aggregate percent of cases represented in a city/time-period. The existence of such a smooth function would justify the out-of-sample prediction exercise outlined above. To look for this evidence, we compute the incremental likelihood of a represented individual achieving success when in a high-representation city/quarter and evaluate the sign and magnitude of that incremental likelihood as evidence for or against a smooth marginal return and the representativeness of the high-representation cities/quarters. In our results, we find a small, positive, and statistically significant

incremental effect of representation on success when in a high-representation environment versus other times and places.

Conversely, it may be possible that the aggregate marginal return to representation is discontinuous when representation exceeds 90 percent, or that the UAC populations and/or lawyer assignment processes are so different between times and places that the high-representation cities/quarters simply cannot be generalized. Our results suggest that this is unlikely to be the case, although we cannot rule it out conclusively unless we have truly experimental data or close to 100 percent representation across a broad swath of times and places.

C. Estimation Strategy: Competing Risks Modeling and the Cumulative Incidence Function

The Cox proportional hazard model that we estimate is:

$$\lambda_{i,j,k,l,s}(t) = \lambda_{0,i}(t)e^{\beta_{1,i}Rep(t)+\beta_{2,i}Highrep\times Rep(t)+\alpha_{i,j}+\gamma_{i,k}+\delta_{i,l}+\theta_{i,k}}, \qquad \text{(A-1)}$$

where $\lambda_{i,j,k,l,s}(t)$ represents the cause-specific hazard of outcome *i* for base city *j*, nationality *k*, language *l*, and fiscal year *s* at elapsed hearing number *t*, *Rep(t)* is the time-varying representation indicator variable, and the base hazard is given by $\lambda_{0,i}(t)$, and the variable *Highrep* is as described in section B above.

Standard survival analysis on one type of outcome at a time can yield misleading results on its own if the object of interest is the cumulative incidence of particular outcomes over time.[2] This occurs because the cumulative incidence of success depends not only on the cause-specific success hazard but also on the removal and *in-absentia* hazards. The same interdependence holds true for the cumulative incidences of removal and *in-absentia*. To address this interdependence, we form transition matrices using the cause-specific relief, removal, and *in-absentia* hazards and compute the CIFs of those outcomes by multiplying out the transition matrices.

The CIF represents the cumulative probability that a respondent will have attained a particular final outcome by time *t*. Let pending be state 0 and success, removal, and *in-absentia* be states 1, 2, and 3 as before. Then the vector *p(t)* is the vector of CIFs for states of pending, success, removal, and *in-absentia*:

$$p(t) = [p_0(t) \quad p_1(t) \quad p_2(t) \quad p_3(t)] \qquad \text{(A-2)}$$

The initial state *p(0)* is given by

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[2] A good example of standard survival analysis is the cause-specific Cox proportional hazards regression.

$$p(0) = [1 \quad 0 \quad 0 \quad 0]. \tag{A-3}$$

We are interested in predicting *p(t)* for a given individual's covariate vector X_j. Define a transition matrix as follows:

$$T(t) = \begin{bmatrix} 1 - \Lambda_{0,1}(t,X) - \Lambda_{0,2}(t,X) - \Lambda_{0,3}(t,X) & \Lambda_{0,1}(t,X) & \Lambda_{0,2}(t,X) & \Lambda_{0,3}(t,X) \\ 0 & 1 & 0 & 0 \\ 0 & 0 & 1 & 0 \\ 0 & 0 & 0 & 1 \end{bmatrix} \tag{A-4}$$

The transition probabilities $\Lambda_{0,i}(t,X)$ are calculated as follows by the mstate R package according to de Wreede, Fiocco, and Putter (2010)[3]:

$$\Lambda_{0.i}(t,X) = \frac{e^{\widehat{\beta} X_{i,j} \Delta N_i(t)}}{\sum_{k=1}^{n} e^{\widehat{\beta} X_{i,k} Y_{i,k}(t)}} \tag{A-5}$$

where $\Delta N_i(t)$ is the number of observations that transition from state 0 to state i at time *t* and $Y_{i,k}(t)$ is an indicator function of whether individual k is at risk of transitioning from 0 to i at time *t*.

Then the predicted vector *p(t)* is computed as

$$p(t) = p(0) \prod_{s \le t} T(s). \tag{A-6}$$

Finally, in the prediction, we set representation to be equal to 1, but there are approximately 3000 combinations formed by the base city, nationality, language, and fiscal year covariates. We make a separate prediction of *p(t)* for each of the 3000 combinations and then form a weighted average to obtain a composite point estimate that is representative of the entire sample population. We calculate an upper bound to the standard error of this composite point estimate as follows:

$$\sqrt{Var(\sum w_i \widehat{p_i(t)})} \le \sqrt{w_1^2 Var(\widehat{p_1(t)}) + w_2^2 Var(\widehat{p_2(t)}) + 2w_1 w_2 \sqrt{Var(\widehat{p_1(t)}) Var(\widehat{p_2(t)})} + \cdots} = \sum w_i \sqrt{Var(\widehat{p_i(t)})} \tag{A-7}$$

Note that the transition matrix *T(t)* calculated using cause-specific hazard estimates can have a nonsensical negative element $T(t)_{11}$, especially because the cause-specific hazards are estimated separately. Such a negative first diagonal element would imply a

[3] de Wreede, Fiocco, and Putter (2010)

negative probability of transitioning from pending to pending at time *t*. One way to detect the presence of this problem is to examine the resulting $p_{pending}(t)$ vector for negative values.

In practice, among the thousands of covariate combinations there are a non-trivial number that result in estimates of T(t) with negative first diagonal elements. Estimates of T(t) with negative first diagonal elements predominate for the last value of *t* (in this case, *t=23*) or are very close to 0 in magnitude otherwise. Accordingly, we drop all predictions for *t=23*, and we also drop those covariate combinations that give $p_{pending}(t) \leq -0.00001$ for any value of *t<23* across the three cumulative incidence models that we predict.[4] This results in approximately 5 percent of observations being dropped. The dropped observations were spread across cities, but Charlotte and Atlanta had the most (at under 2000 each).

It is important to note that because we estimate the effect of representation as a time-dependent covariate, our method of computing CIFs using estimated cause-specific hazards must be used instead of the alternative Fine and Gray (1999) method of directly estimating covariate effects on CIFs.[5] The Fine and Gray model's directness comes at the cost of needing to artificially keep observations at risk of failing from the cause of interest even after they have already failed from other competing causes. Cortese and Anderson (2009) point out that this leads to a problem with time-dependent covariates such as representation, since observations that failed from other competing causes must be kept at risk with an imputed value of representation that is not observed in actuality.[6]

By estimating cause-specific hazards, we are able to avoid the aforementioned problem with imputation when estimating the effect of time-varying representation, but we will only be able to make predictions about the cumulative incidences of outcomes under a constant distribution of representation such as full representation at case onset. As Cortese and Anderson point out, any attempt to predict outcomes under, for example, the prevailing incidence of representation during the sample period would require the specification of a distribution for the representation process or the estimation of a multi-

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4 The three models are one for 100 percent representation with interaction term, a second for 100 percent representation, and a third for the status quo in which the time-varying representation has been replaced with representation at onset to allow for sensible prediction. In practice, because the first two models form combinations over four variables whereas the third model forms a sometimes incompatible set of combinations over five variables, the observations corresponding to some of the omitted combinations from the third model are simply weighted at zero for the first two models.

5 Fine and Gray (1999)

6 Cortese and Anderson (2009)

state model with representation as one of the states.[7] For our purpose of estimating a counterfactual with universal representation at onset, this point is not a problem.

D. Estimation Strategy: Other Issues

1. Continuous vs. Discrete Time Modeling, and Tie-Breaking Method

We choose to use a continuous time model, as opposed to a discrete time model, because a discrete time model is incompatible with the R mstate package. A method to resolve "ties" in hazard model estimation must be chosen. We set the tie-breaking method to "Efron," which is the default setting in the coxph() R survival package function that we use for estimation. Kalbfleisch and Prentice[8] indicate that the Efron method is suitable for heavily-tied failure times. This characterizes our data, since it is produced by a discrete-time process. Alternatives would be to use a discrete time model or use the "exact" but extremely intensive tie-breaking method in coxph() to more faithfully represent discrete data. Coxph() with Efron represents a time-efficient compromise that is compatible with the R mstate package for estimating and manipulating transition matrices to arrive at cumulative incidence functions.[9] Use of a discrete time model or a Cox proportional hazards model with an "exact" but extremely intensive tie-breaking method to more faithfully represent discrete data is a task for future research.

2. Incidental Parameters Bias

Our estimation specification includes the fixed effects $\alpha_{i,j} + \gamma_{i,k} + \delta_{i,l} + \theta_{i,k}$ which are respectively the base city, nationality, language, and fiscal year. The first three fixed effects do not increase in number as the number of respondents increases over time, so their estimates are not subject to consistency problems as described by the incidental parameters bias problem. Fiscal year fixed effects do increase in number as the sample grows over time, but the large number of respondents per fiscal year will sufficiently limit the size of the resulting incidental parameters bias.

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7 Cortese and Anderson (2009)

8 John D. Kalbfleisch and Ross L. Prentice, *The Statistical Analysis of Failure Time Data*, (New York: Wiley, 2002).

9 The authors of the mstate package have not tested its performance using the Efron tie-breaking method.

E. Full Results for Cause-Specific Hazard Coefficients from Model 2

Table A-2. Full Results for Cause-Specific Hazard Coefficients from Model 2

Covariates	Coefficient	exp(Coefficient)	Robust standard error	Pr(>|z|)
Rep(t): success outcome	1.909573	6.750205095	0.013948348	0
Rep(t): removal outcome	0.415251	1.51475151	0.023435795	0
Rep(t): *in absentia* outcome	-2.68548	0.068188369	0.021095586	0
*Highrep*Rep(t):* success outcome	0.07595	1.078909095	0.01856661	0
*Highrep*Rep(t):* removal outcome	-0.08619	0.917416344	0.072450378	0.23
*Highrep*Rep(t): in absentia* outcome	-0.19415	0.823530788	0.06470224	0.003
City-Atlanta: Success	-0.15559	0.855907848	0.029503012	0
City-Atlanta: Removal	2.583655	13.24546735	0.060103657	0
City-Atlanta: *In Absentia*	1.252338	3.498514088	0.02988884	0
City-Baltimore: Success	-0.13776	0.871308982	0.021792012	0
City-Baltimore: Removal	1.001464	2.722263575	0.066332797	0
City-Baltimore: *In Absentia*	0.68926	1.992239756	0.028932631	0
City-Bloomington: Success	0.698475	2.010683571	0.04633583	0
City-Bloomington: Removal	1.942482	6.976041143	0.0958901	0
City-Bloomington: *In Absentia*	0.651653	1.918709464	0.060830933	0
City-Boston: Success	0.071992	1.074646368	0.028518133	0.012
City-Boston: Removal	0.122215	1.129996693	0.105430974	0.246
City-Boston: *In Absentia*	-0.25253	0.776831707	0.051769987	0
City-Buffalo: Success	0.139808	1.150053338	0.110153329	0.204
City-Buffalo: Removal	1.386668	4.001494319	0.19359719	0
City-Buffalo: *In Absentia*	0.102336	1.10775589	0.157908774	0.517
City-Chicago: Success	-0.1011	0.903841169	0.040106781	0.012
City-Chicago: Removal	1.081343	2.948635775	0.094306576	0
City-Chicago: *In Absentia*	1.008007	2.740134054	0.039726038	0
City-Charlotte: Success	-0.20711	0.812932547	0.028394577	0
City-Charlotte: Removal	2.388295	10.8948997	0.058760123	0
City-Charlotte: *In Absentia*	1.321001	3.747170852	0.029182033	0
City-Cleveland: Success	0.202726	1.224736835	0.037788163	0
City-Cleveland: Removal	0.595855	1.814581923	0.128581277	0
City-Cleveland: *In Absentia*	0.233722	1.26329301	0.050258758	0
City-Dallas: Success	0.63008	1.877761106	0.027460639	0
City-Dallas: Removal	2.78151	16.1433717	0.059667651	0
City-Dallas: *In Absentia*	1.57554	4.83335271	0.028600678	0
City-Denver: Success	0.355498	1.426891017	0.039362919	0

Covariates	Coefficient	exp(Coefficient)	Robust standard error	Pr(>|z|)
City-Denver: Removal	0.632162	1.881674997	0.136488447	0
City-Denver: *In Absentia*	0.243904	1.276222338	0.060980256	0
City-Detroit: Success	0.203358	1.225511255	0.047384207	0
City-Detroit: Removal	1.455045	4.284674764	0.104519653	0
City-Detroit: *In Absentia*	0.190235	1.209534136	0.081636647	0.020
City-El Paso: Success	-0.67023	0.511591985	0.085144999	0
City-El Paso: Removal	0.549507	1.732397878	0.189730098	0.004
City-El Paso: *In Absentia*	0.512314	1.669149542	0.097308777	0
City-Hartford: Success	-0.39301	0.675020653	0.043948012	0
City-Hartford: Removal	1.14145	3.131305238	0.098400709	0
City-Hartford: *In Absentia*	0.43106	1.538888467	0.057484854	0
City-Harlingen: Success	0.068259	1.070642469	0.047857083	0.154
City-Harlingen: Removal	1.777193	5.913236705	0.082543652	0
City-Harlingen: *In Absentia*	1.655124	5.233727134	0.032975782	0
City-Houston: Success	-1.10202	0.332199988	0.028096811	0
City-Houston: Removal	2.004948	7.425709503	0.053054967	0
City-Houston: *In Absentia*	1.036359	2.818934595	0.025737953	0
City-Kansas City: Success	0.358913	1.431772689	0.03897708	0
City-Kansas City: Removal	2.020017	7.538449927	0.087251849	0
City-Kansas City: *In Absentia*	0.539863	1.715771647	0.0531911	0
City-Los Angeles: Success	0.225906	1.253458336	0.018113068	0
City-Los Angeles: Removal	1.005686	2.733781733	0.059184827	0
City-Los Angeles: *In Absentia*	0.442081	1.555941118	0.029800115	0
City-Las Vegas: Success	0.612647	1.845309034	0.045239124	0
City-Las Vegas: Removal	0.87661	2.402740323	0.164377936	0
City-Las Vegas: *In Absentia*	0.798961	2.223229205	0.085210791	0
City-Memphis: Success	0.706631	2.027150004	0.025026646	0
City-Memphis: Removal	2.201569	9.039186943	0.066383256	0
City-Memphis: *In Absentia*	1.227273	3.411910858	0.030506646	0
City-Miami: Success	0.576207	1.779276264	0.019925631	0
City-Miami: Removal	1.246892	3.479512005	0.063359127	0
City-Miami: *In Absentia*	0.327593	1.387624405	0.029862964	0
City-Newark: Success	-0.16788	0.845458512	0.025072643	0
City-Newark: Removal	0.401264	1.493711974	0.081699505	0
City-Newark: *In Absentia*	0.268687	1.308245373	0.035771302	0
City-New Orleans: Success	0.334725	1.397556141	0.029452281	0
City-New Orleans: Removal	1.280208	3.59738885	0.08529094	0
City-New Orleans: *In Absentia*	0.805766	2.238409989	0.034176614	0

Covariates	Coefficient	exp(Coefficient)	Robust standard error	Pr(>|z|)
City-Omaha: Success	-0.12113	0.885921982	0.042175377	0.004
City-Omaha: Removal	1.009655	2.74465518	0.110970291	0
City-Omaha: *In Absentia*	0.615608	1.850781375	0.057655946	0
City-Orlando: Success	0.21414	1.238796315	0.029019137	0
City-Orlando: Removal	1.544659	4.686375199	0.078864712	0
City-Orlando: *In Absentia*	0.861387	2.366441695	0.034909629	0
City-Philadelphia: Success	0.157119	1.170135391	0.034178319	0
City-Philadelphia: Removal	0.456413	1.578401919	0.126092816	0
City-Philadelphia: *In Absentia*	0.406877	1.50212003	0.048369557	0
City-Phoenix: Success	1.090086	2.97452872	0.05550944	0
City-Phoenix: Removal	0.84545	2.329024735	0.146944341	0
City-Phoenix: *In Absentia*	0.775947	2.172648305	0.059416722	0
City-Portland: Success	-0.06556	0.936547404	0.074614716	0.380
City-Portland: Removal	0.650975	1.917408823	0.194510237	0
City-Portland: *In Absentia*	-0.2482	0.780205102	0.11389688	0.029
City-Seattle: Success	1.162902	3.199203474	0.038217896	0
City-Seattle: Removal	1.967671	7.153993882	0.092277564	0
City-Seattle: *In Absentia*	0.505198	1.657313693	0.074572261	0
City-San Francisco: Success	0.911009	2.48682969	0.025221054	0
City-San Francisco: Removal	0.233302	1.262763264	0.101663996	0.022
City-San Francisco: *In Absentia*	-0.2265	0.797319204	0.049441899	0
City-Salt Lake City: Success	-0.23705	0.788953356	0.091592183	0.010
City-Salt Lake City: Removal	1.773822	5.893337569	0.148048473	0
City-Salt Lake City: *In Absentia*	0.697757	2.009241231	0.099404596	0
City-San Antonio: Success	0.191665	1.211264831	0.032368955	0
City-San Antonio: Removal	0.391323	1.478936446	0.120427216	0.001
City-San Antonio: *In Absentia*	0.462794	1.588506766	0.044262346	0
City-San Diego: Success	0.919139	2.507131722	0.060236353	0
City-San Diego: Removal	1.152491	3.166068735	0.149846804	0
City-San Diego: *In Absentia*	0.615079	1.84980335	0.09636741	0
City-Arlington (VA): Success	0.311508	1.365483104	0.019966843	0
City-Arlington (VA): Removal	0.463976	1.590384989	0.078392164	0
City-Arlington (VA): *In Absentia*	0.529264	1.697682719	0.028599114	0
Nationality-El Salvador: Success	-0.00242	0.997583671	0.01125244	0.830
Nationality-El Salvador: Removal	-0.32313	0.723879423	0.027296945	0
Nationality-El Salvador: *In Absentia*	-0.76495	0.465355836	0.015186763	0
Nationality-Honduras: Success	-0.00371	0.996295329	0.012188198	0.761
Nationality-Honduras: Removal	-0.26742	0.765351909	0.028205267	0

Covariates	Coefficient	exp(Coefficient)	Robust standard error	Pr(>|z|)
Nationality-Honduras: *In Absentia*	-0.35296	0.702608137	0.013654862	0
Nationality-Mexico: Success	-0.11803	0.888672076	0.024520548	0
Nationality-Mexico: Removal	0.586545	1.797765963	0.041400334	0
Nationality-Mexico: *In Absentia*	-0.53186	0.587512378	0.033570688	0
Nationality-Other: Success	0.181756	1.199321511	0.022593568	0
Nationality-Other: Removal	-0.19968	0.818990093	0.062358923	0.001
Nationality-Other: *In Absentia*	-0.50242	0.60506279	0.039831047	0
Language-English: Success	-0.16286	0.849706843	0.033573499	0
Language-English: Removal	-0.96664	0.380358904	0.071975646	0
Language-English: *In Absentia*	-0.86534	0.420909155	0.067346858	0
Language-Quiche: Success	-0.25661	0.773667022	0.047947165	0
Language-Quiche: Removal	-0.2838	0.752918214	0.110912638	0.011
Language-Quiche: *In Absentia*	-0.60059	0.548488099	0.057018955	0
Language-Mam: Success	-0.04003	0.960758617	0.043146425	0.354
Language-Mam: Removal	-0.28509	0.751944028	0.136553529	0.037
Language-Mam: *In Absentia*	-0.66499	0.514278095	0.072062797	0
Language-Other: Success	-0.1376	0.871450573	0.026739861	0
Language-Other: Removal	-0.50871	0.601268808	0.07988398	0
Language-Other: *In Absentia*	-0.75422	0.470378415	0.050270736	0
FY2008: Success	-0.55946	0.571517933	0.033818824	0
FY2008: Removal	1.879057	6.547327735	0.043180972	0
FY2008: *In Absentia*	-0.42084	0.656496928	0.039981955	0
FY2009: Success	-0.38572	0.679958232	0.029516529	0
FY2009: Removal	1.565274	4.783986536	0.040495159	0
FY2009: *In Absentia*	-0.36165	0.696528925	0.036080824	0
FY2010: Success	-0.0806	0.92256586	0.024066923	0.001
FY2010: Removal	1.398929	4.050859471	0.039873753	0
FY2010: *In Absentia*	-0.23805	0.788163035	0.031803655	0
FY2011: Success	0.028024	1.028420831	0.02334177	0.230
FY2011: Removal	0.993129	2.69966852	0.044521115	0
FY2011: *In Absentia*	-0.23845	0.787850199	0.033339633	0
FY2012: Success	0.15877	1.172068754	0.017839359	0
FY2012: Removal	0.705069	2.023985695	0.039398986	0
FY2012: *In Absentia*	-0.11985	0.887050716	0.024418459	0
FY2013: Success	0.359077	1.432006896	0.014806518	0
FY2013: Removal	0.215952	1.241043161	0.038262006	0
FY2013: *In Absentia*	0.069509	1.071982079	0.019075301	0
FY2015: Success	-0.15681	0.854868241	0.012419594	0

Covariates	Coefficient	exp(Coefficient)	Robust standard error	Pr(>|z|)
FY2015: Removal	-0.3762	0.686466768	0.033048759	0
FY2015: *In Absentia*	-0.11415	0.89212267	0.015510496	0
FY2016: Success	-0.45015	0.63752983	0.014258505	0
FY2016: Removal	-1.0329	0.355974586	0.045592195	0
FY2016: *In Absentia*	-0.11164	0.894367871	0.016077698	0
FY2017: Success	-0.73662	0.478730583	0.067470394	0
FY2017: Removal	-0.78878	0.45440107	0.210409851	0
FY2017: *In Absentia*	0.157213	1.170244771	0.063453955	0.013

F. Establishing a Status Quo

There are two approaches that can be taken to establish a status quo to which a counterfactual 100 percent representation scenario can be compared. First, the status quo can be predicted using a semi-parametric model with covariates (a cause-specific-hazards-derived prediction), which is intended to correct for censoring bias. Second, a non-parametric Aalen-Johansen estimate can be developed. Figure A-2 compares a semi-parametric status quo prediction to a non-parametric Aalen-Johansen status quo estimate. The pattern of divergence evident in the figure—negligible at the beginning where most observations are, and smoothly growing toward the end where the least observations are—suggests that the semi-parametric model's proportional hazards assumption is mostly, but not entirely, correct.

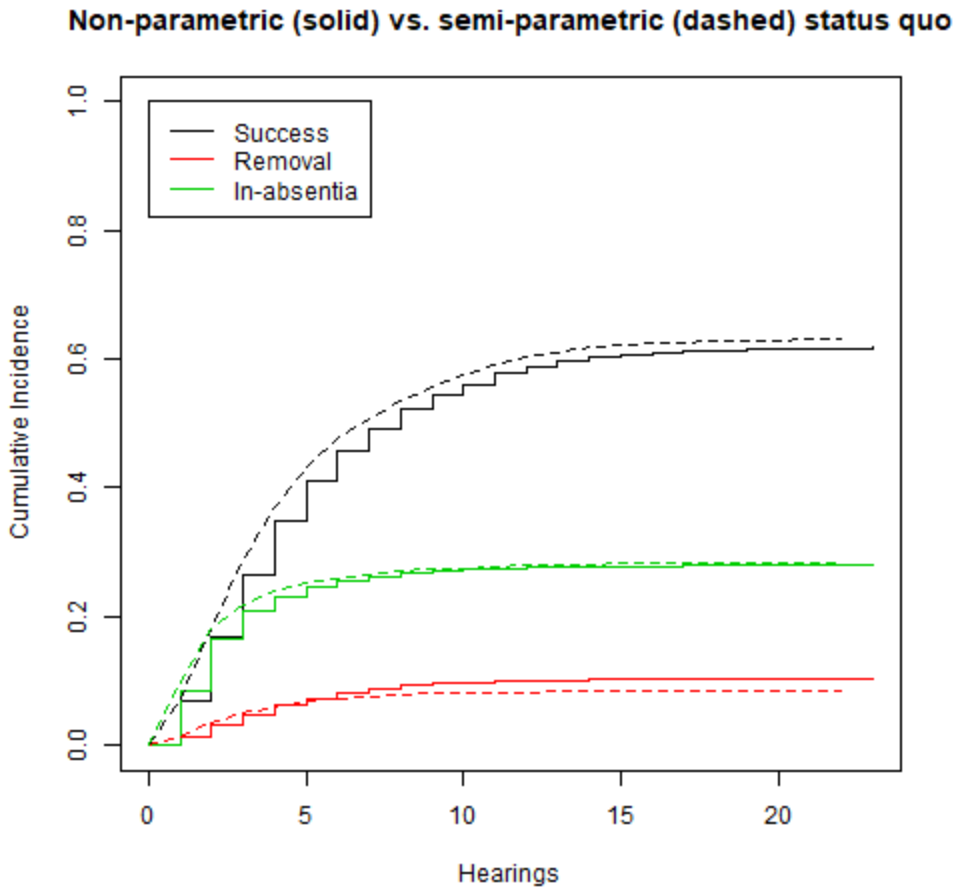

Figure A-2. Non-Parametric (Solid) vs. Semi-Parametric (Dashed) Status Quo

In Figure A-3, we evaluate both measures of the status quo against the full-representation predictions for the subset of cases with representation at onset, since this is the only subset for which all four types of model estimates can be directly compared. This confirms that, regardless of why the three semi-parametric models diverge from the Aalen-Johansen, there appears to be internal consistency between the semi-parametric models themselves.

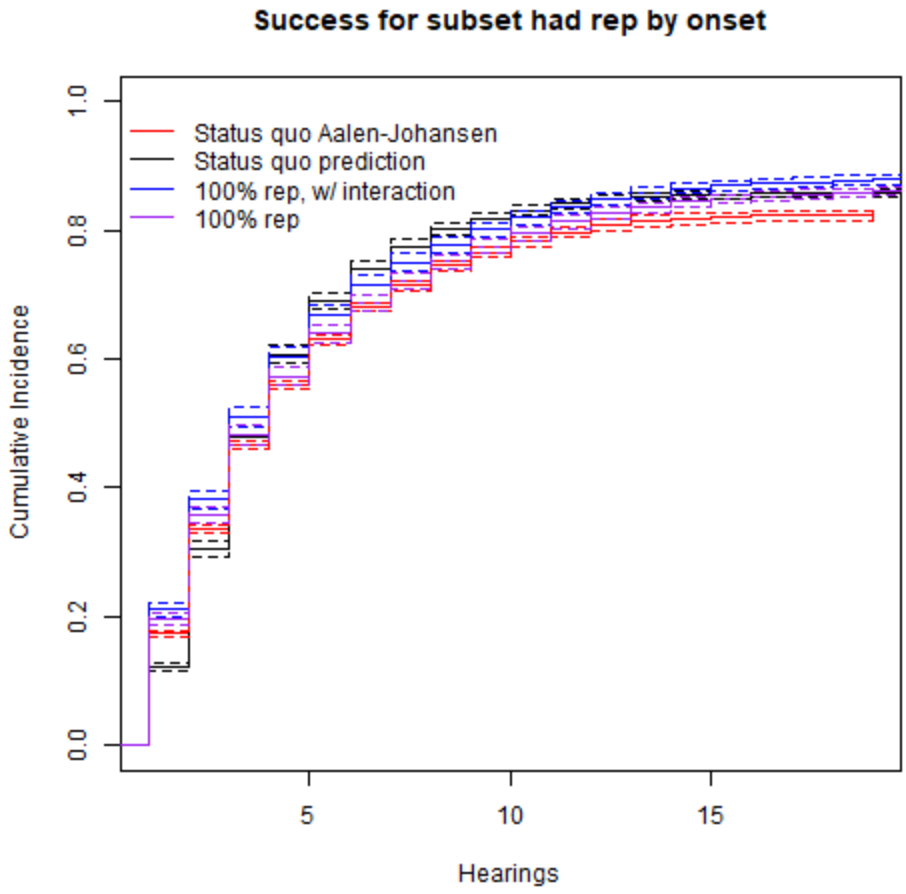

Figure A-3. Success for Subset Had Rep by Onset

G. Robustness Check Using a Split Sample

As a robustness check on how our methodology arrived at full-representation predictions for success, we split up the sample into cases that received representation by the end of the observation period and cases that never received representation. In Figure A-4, we plot the Aalen-Johansen non-parametric "status quo" success CIF against the cause-specific hazard-derived predicted full-representation CIF for each of the two subsamples:

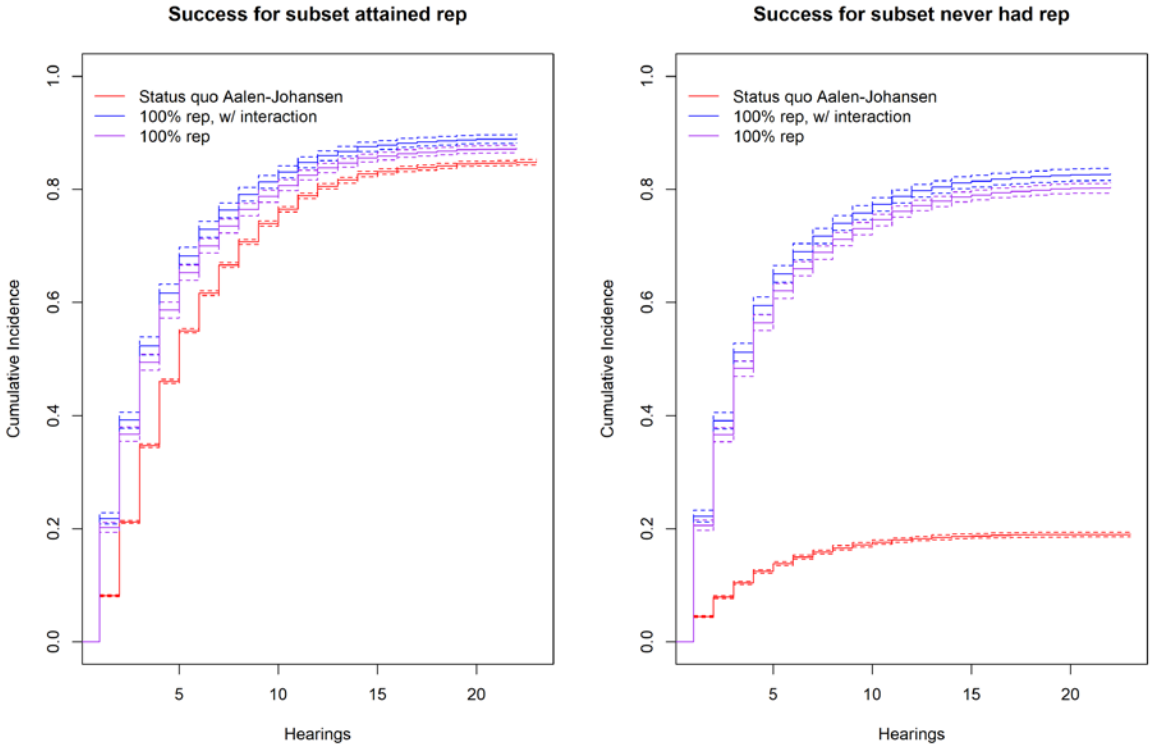

Figure A-4. Split Sample Robustness Check

Caution should be taken when interpreting the Aalen-Johansen CIFs for these two subsets, because the subsample that attained representation needed to survive long enough to do so, whereas the subsample that did not attain representation needed to complete soon enough to avoid doing so. The implication is that the subsample that attained representation is biased toward longer durations even absent the effect of representation. This bias may not just lie in the realization of their stochastic duration but could also arise more fundamentally from a higher conditional probability of longer durations that may also correlate with different distribution outcomes. The converse applies for the subsample that did not attain representation.

For this robustness check, we primarily focus on the outcomes rather than the durations, and insofar as controlling for covariates in the full-representation prediction has adjusted for the bias discussed above, we can make informative and internally consistent comparisons between the Aalen-Johansen status quo estimates and the cause-specific hazards-derived full-representation predictions. For the subsample that attained representation, the full-representation prediction lies above the Aalen-Johansen status quo by a small but statistically significant amount; this suggests that a small percentage of respondents who attained representation later in their case would have switched to a successful outcome if they had instead attained representation at the outset of their case. However, we cannot distinguish this suggested effect from the small over-prediction of

success exhibited by the semi-parametric model in Figure A-2. However, the full-representation prediction more clearly indicates faster arrival at success than the Aalen-Johansen status quo for this subsample. This is to be expected, both because the Aalen-Johansen result is already biased toward longer durations and because a full-representation scenario would assign lawyers at the beginning, thereby eliminating hearings to seek representation and other types of delay.

For the subsample that did not attain representation, the full-representation prediction lies well above the Aalen-Johansen status quo—in fact, the more useful comparison is that the full-representation prediction for those that did not attain representation lies below all of the CIFs for the subsample that did attain representation. The proportional hazards assumption built into the Cox model means that the estimated effect of representation is a multiplicative factor (on top of the unrepresented cause-specific hazards) that does not vary by respondent. Given that invariance, it is possible to work backward to see that the model results are implying that the (counterfactual) pro-se success rate for the subset that was actually represented would have been higher than for the subset that actually went unrepresented.

Overall, this comparison suggests that some form and degree of selection bias is present and that such selection bias has been controlled for to a non-trivial extent in the full-representation prediction.

Table A-3 details all of the endpoint values for the robustness check predictions by subset. The aforementioned difference in predicted full-representation success outcomes is mirrored in removal rates.

Table A-3. Robustness Check Predictions

	Attained Representation		Never Had Representation	
	100% rep: Interaction for subset attained rep	**100% rep: Subset attained rep**	**100% rep: Interaction for subset never had rep**	**100% rep: Subset never had rep**
Success	89.0% +/- 0.8%	87.2% +/- 0.7%	82.7% +/- 1.1%	80.4% +/- 0.9%
Removal	7.1% +/- 0.6%	7.9% +/- 0.5%	12.4% +/- 0.9%	13.6% +/- 0.7%
In absentia	3.6% +/- 0.3%	4.5% +/- 0.3%	4.4% +/- 0.4%	5.5% +/- 0.3%

Note: +/- indicates confidence interval lower and upper bounds.

H. Non-Parametric Multi-State Model for Number of Represented Hearings

We want to predict the number of represented hearings in the status quo when following all cases to completion, even in the presence of censoring in the data. One way to do this is to define and non-parametrically estimate a multi-state model.

Define state 1 as pending without representation, 2 as represented and pending, and 3 as completed.

The transition matrix looks like this:

$$T(t) = \begin{bmatrix} 1 - \Lambda_{12}(t) - \Lambda_{13}(t) & \Lambda_{12}(t) & \Lambda_{13}(t) \\ 0 & 1 - \Lambda_{23}(t) & \Lambda_{23}(t) \\ 0 & 0 & 1 \end{bmatrix} \quad \text{(A-8)}$$

The probability-in-state vector, $p(t)$, is given by

$$\begin{aligned} p(t) \quad &= [p_1(t) \quad p_2(t) \quad p_3(t)] \\ &= p(0)\prod T(t) \end{aligned}. \quad \text{(A-9)}$$

Note that in treating representation as an event rather than as a covariate, we have to shift timing. Therneau, Crowson, and Atkinson (2019) state that in survival analysis, time intervals are open on the left and closed on the right: $(t-1, t]$.[10] They state that "Time dependent covariates apply from the start of an interval and events occur at the end of an interval."[11] This statement is in keeping with how we have calculated the representation variable in relation to hearings; if the E-28 form is filed on or before the hearing, that hearing is considered represented. However, survival analysis assigns mass to events only after they've happened—see any plot of a survival curve as a reference. Thus in order to faithfully represent the mass that is implied by the representation covariate instead in the form of an event, we have to shift the hearings-to-representation time variable back by one period and treat the beginning of that period as the new time at which a respondent goes into state 2: represented and pending.

Thus, the initial probability-in-state vector $p(0)$ takes on values

$$p(0) = [p_1(0) \quad p_2(0) \quad 0], \quad \text{(A-10)}$$

where both $p_1(0)$and $p_2(0)$can take on positive values.

1. Non-parametric estimation of multi-state model

The transition intensities $\Lambda_{ij}(t)$ are non-parametrically estimated as

$$\widehat{\Lambda_{ij}(t)} = \frac{N_{ij}(t)}{Y_i(t)}, \quad \text{(A-11)}$$

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[10] Terry Therneau, Cynthia Crowson, and Elizabeth Atkinson, "Using Time Dependent Covariates and Time Dependent Coefficients in the Cox Model," March 29, 2019, https://cran.biodisk.org/web /packages/survival/vignettes/timedep.pdf.

[11] Therneau, Crowson, and Atkinson, "Using Time Dependent Covariates and Time Dependent Coefficients in the Cox Model," 5.

where $N_{ij}(t)$is the number of observations that change from state i to state j in $t \in (t-1, t]$ and $Y_i(t)$ is the number of observations in the set at-risk of transitioning out of state i in $t \in (t-1, t]$. Note that if an observation stops being observed after $t-1$(censored), it is no longer included in the set at-risk of transitioning out of state i in $t \in (t-1, t]$.

2. Objective of estimation of multi-state model

We want the probability of representation in each time period: $\{p_2(0), p_2(1), p_2(2), \ldots, p_2(T)\}$. If N is the total number of respondents, then the predicted number of represented hearings (under the assumption that all cases complete) is given by:

$$N \sum_0^T p_2(t). \tag{A-12}$$

Standard errors are obtained via bootstrapping.

I. All Estimated Models and Analysis of Positive and Negative Features

Table A-4 and Table A-5 provide all estimated model results for status quo and counterfactual total number of hearings, respectively. A review of these results helps identify positive and negative features of specific models. In Table 10 of the main text (page 63) and Table A-4 and Table A-5, blue highlights represent positive model features, whereas red highlights represent problematic model features. To arrive at the judgments represented in the table's blue and red colors, two general principles can first be applied in the following descending order of importance.

First, non-parametric and semi-parametric models are preferred over parametric models. Among parametric distributions, we first identify the lognormal as by far the best parametric distribution among a standard set of choices when judged by the Cox-Snell residual plot. However, for the continuous-time lognormal model, an additional consideration of continuous versus discretized survival curves presents itself in this study's context of inherently discrete time-hearing processes. It is possible to discretize a continuous parametric survival curve by treating all transitions in (t-1,t] as occurring exactly at time t, as would be the case in the EOIR court system. This yields a step-function survival curve. However, when we perform tests of fit against a Kaplan-Meier survival curve, we find inconsistent results on whether discretizing the lognormal survival curve improves or worsens fit.

We compare the corresponding predicted number of hearings to the Kaplan-Meier when no covariates are added and to the Cox PH model when covariates are present. However, the columns for Status Quo 3 and 4 in Table A-4 reveal the complication that when the sample of all hearings is used, discretizing the lognormal survival curve to calculate a mean duration moves the obtained result farther away from the mean duration obtained from the Kaplan-Meier. Likewise, when we add time invariant covariates to the

lognormal model in the columns for Status Quo 5 and 6 in Table A-4, a discretized prediction is further from that of the Cox PH model relative to the continuous prediction. Confusingly, in the columns for Status Quo 8 and 9 in Table A-4, we see that discretization improves the obtained mean duration relative to the Kaplan-Meier duration when the sample of hearings excluding those adjourned to seek representation is used instead. Such inconsistency further disadvantages the lognormal relative to non-parametric and semi-parametric models.

The second principle is that models with covariates are preferred over models without, even for predicting the status quo. This is because the prediction of censored observations' trajectories can benefit from conditioning on covariates to approximate independent censoring. Hence, to obtain our baseline predicted number of hearings were every observed case to complete, we utilize a semi-parametric Cox proportional hazards model with covariates to control for representation, nationality, language, base city, and fiscal year of the first NTA in the final city of the case.[12] We also estimate a non-parametric multi-state model to obtain the status quo number of represented hearings were all cases to complete. Unfortunately, a multi-state model with covariates is outside the scope of this study. Details of multi-state model estimation are in section H above.

[12] It is not possible to predict the status quo using a time-dependent representation variable, because such a variable is dependent on the duration outcomes themselves, and semi-parametric joint modeling of duration and representation distributions is not within the scope of this study. Instead, to predict the status quo, we can only control for representation using time-invariant representation status as of the first hearing in the final city of each case.

Table A-4. All Estimated Models: Status Quo Total Number of Hearings

	Features	Status Quo 1	Status Quo 2	Status Quo 3	Status Quo 4	Status Quo 5	Status Quo 6	Status Quo 7	Status Quo 8	Status Quo 9	Status Quo 10	Status Quo 11
Results	Estimate	638,121	656,878	614,486	686,801	614,292	708,953	531,228	485,816	556,306	486,122	574,025
	Lower 95% CI	631,325	635,410	613,865	683,624	610,603	705,430	524,558	485,187	553,501	482,464	571,093
	Upper 95% CI	644,917	678,418	615,107	689,978	617,981	712,476	537,897	486,446	559,111	489,779	576,957
Model basics	Covariates	No	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes
	Non-/semi-/parametric	Non	Semi	Para	Para	Para	Para	Non	Para	Para	Para	Para
	Continuous/step-function survival curve	Step	Step	Continuous	Step	Continuous	Step	Step	Continuous	Step	Continuous	Step
	Model name	Kaplan-Meier	Cox PH	Lognormal	Lognormal	Lognormal	Lognormal	Kaplan-Meier	Lognormal	Lognormal	Lognormal	Lognormal
Model appropriate-ness	Estimation includes hearings adjourned to seek representation	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No
Number of cases		147,407	147,407	147,407	147,407	147,407	147,407	143,711	143,711	143,711	143,711	143,711

Table A-5. All Estimated Models: Counterfactual Total Number of Hearings

	Features	Status Quo 2	Full Rep 1	Full Rep 2	Full Rep 3	Full Rep 4	Full Rep 5	Full Rep 6
Results	Estimate	656,878	612,707	590,617	628,162	541,515	710,348	637,810
	Lower 95% CI	635,410	592,043	567,641	627,505	538,036	709,546	634,159
	Upper 95% CI	678,418	633,372	613,593	628,819	544,994	711,150	641,461
Model basics	Covariates	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Non-/semi-/parametric	Semi	Semi	Semi	Para	Para	Para	Para
	Continuous/step-function survival curve	Step	Step	Step	Step	Continuous	Step	Continuous
	Model name	Cox PH	Competing risks	Competing risks	Lognormal	Lognormal	Lognormal	Lognormal
Model appropriateness	Estimation includes hearings adjourned to seek representation	Yes	Yes	Yes	No	No	Yes	Yes
	Plausibility of time-dependent representation coefficient	N/A	High	High	High	High	Low	Low
	High-rep interaction	N/A	No	Yes	No	No	No	No
Counts	Cases estimated on	147,407	147,407	147,407	143,711	143,711	147,407	147,407
	Cases predicted on	147,407	146,943	146,943	147,407	147,407	147,407	147,407
	Cases multiplied by	147,407	147,407	147,407	147,407	147,407	147,407	147,407

J. Need for a Sufficiently Flexible Model Using the Sample of All Hearings

When the sample of all hearings is used, we find that it is necessary to employ a model that is sufficiently flexible in estimating representation to account for the loss of hearings adjourned to seek representation while reflecting the increase in substantive hearings brought about by the lawyer's activities. In Table A-6, we demonstrate using a lognormal model that the true time-dependent effect of representation likely switches from shortening cases to lengthening them as the time of lawyer attachment moves toward the end of the case. This can be seen in the coefficient for representation at onset taking on a negative sign, whereas the coefficient for time-dependent representation takes on a positive sign. Such a sign-change would be consistent with our understanding of how the court process works. A time-dependent effect that switches sign over time cannot be estimated effectively using a simple model. Instead, the semiparametric competing-risks model from the outcomes analysis can effectively estimate the time-dependent effect of representation because it does so on cause-specific hazards of success, removal, and *in-absentia*. Such outcome-specific effects are theoretically unlikely to change sign over the course of a case. In Figure A-3, we see that the time-dependent representation prediction aligns with the time-invariant representation-at-onset prediction, demonstrating that the actual time-dependent cause-specific effects are unlikely to have changed signs over the course of a case.

Table A-6. Representation at Onset Versus Time-Dependent Representation

	All Hearings, lognormal: Model 1	All Hearings, lognormal: Model 2
Represented case at onset	-0.156***	
Represented(t)		0.095***
Fixed effects	Yes	Yes
Observations	147,407	469,519
AIC	280,536	281,120
BIC	281,061	281,706
Log lik.	-140,215	-140,507

* p<0.1, ** p<0.05, *** p<0.01

Appendix B.
Estimate Based on Change in the Number of Cases

An alternative to using the change in number of represented hearings to estimate expansion cost is to use the number of unrepresented Unaccompanied Alien Children (UACs) in fiscal year (FY) 2008–2016 from Table 6 on page 34 of the main body (51,241) and an estimate of the lifecycle cost of a non-governmental organization (NGO) directly representing a UAC case through a final merits hearing. Fewer NGOs provided estimates of lifecycle direct representation cost as compared to lawyer cost.[1] One NGO cited a cost of $3,500, and another NGO cited a cost range of $3,500–5,000, depending on case complexity.[2] Given this (very limited) information, a mean value of $4,000 seems plausible.

It needs to be determined how many of the 51,241 historically unrepresented UACs would have not gone *in absentia* if they had been represented. Almost all "never-shows" were unrepresented: based on NGO assessments of how many UAC never-show cases are nonviable, we assume that 4 percent would have gone *in absentia* even if representation had been available. We make the same assumption that 4 percent of the unrepresented who went *in absentia* would have still gone *in absentia* if representation had been available. We also assume that 4 percent of pending unrepresented cases would have gone *in absentia*. Under these assumptions, 49,963 UAC cases would have been represented and gone to completion.

We also assume that 50 percent of these cases would have had direct representation by NGOs, and 50 percent by private-sector volunteer lawyers coordinated by NGOs. Applying the ratio of per-hearing costs in Table 13 to values of direct-representation lifecycle cost ranging between $4,000 and $5,000 gives a range for pro bono coordination lifecycle cost of $1,573–1,966. Applying these lifecycle costs to a 49,963-UAC case load yields the estimates of Table B-1. The estimate based on a $4,000 lifecycle cost of $138 million is somewhat below the hearing-based estimate of $157 million, but the estimate

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1 This is unsurprising, as annual lawyer cost and relevant overhead margins are readily available from accounting records. Calculating a lifecycle representation cost is not required for tax or reporting purposes, and is a more difficult calculation.

2 A third NGO stated that early in their history, they had estimated a lifecycle cost of $2,500, but subsequent experience showed that this was significantly too low.

based on a $4,500 lifecycle cost is almost exactly equal to the hearing-based estimate. Given the very limited data on lifecycle representation cost available, it is unclear what a plausible mean value is for lifecycle cost. Given this important limitation, the two methodological approaches do suggest quite similar values for a 100 percent representation expansion.

Table B-1. Lifecycle Cost-Based Expansion Cost Estimates

Lifecycle NGO Direct Representation Cost	Total Expansion Cost
$4,000	$138 million
$4,500	$156 million
$5,000	$173 million

Illustrations

Figures

Tables

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Abbreviations

ANUM	Alien Number
BIA	Board of Immigration Appeals
CBP	Customs and Border Protection
CGRS	Center for Gender and Refugee Studies
CIF	Cumulative Incidence Function
DHS	Department of Homeland Security
DUCS	Division of Unaccompanied Children's Services
EOIR	Executive Office of Immigration Review
FY	Fiscal Year
GAO	Government Accountability Office
ICE	Immigration and Customs Enforcement
IDA	Institute for Defense Analyses
jAC	Justice Americorps
KIND	Kids in Need of Defense
LOPC	Legal Orientation Program for Custodians of Unaccompanied Alien Children
NAICS	North American Industry Classification System
NGO	Non-Governmental Organization
NTA	Notice to Appear
ORR	Office of Refugee Resettlement
QCEW	Quarterly Census of Employment and Wages
SIJS	Special Immigrant Juvenile Status
TRAC	Transactional Records Access Clearinghouse
TVPRA	Trafficking Victims Protection Reauthorization Act of 2008
U.S.	United States
U.S.C.	United States Code
UAC	Unaccompanied Alien Child
USCIS	United States Citizenship and Immigration Service

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14. ABSTRACT

Over the past decade, the number of unaccompanied children (UACs) arriving at U.S. borders has risen dramatically to an average annual level of 50,000 during fiscal years 2014–2018. An important issue that has been the subject of much debate is whether these children should be provided with legal representation in immigration court at the government's expense. The John D. and Catherine T. MacArthur Foundation funded the Institute for Defense Analyses (IDA) to develop objective, rigorous estimates of the impacts of UACs having access to counsel on their case outcomes and immigration processes and capacities, and to estimate the monetary cost of an expansion of access to counsel. We find that having representation in immigration court substantially increases the chance of a UAC obtaining a successful court outcome and participating in the court process, and marginally lowers the total number of immigration court hearings associated with these cases. The monetary cost of what it would have cost to expand representation to 100 percent of all UACs whose cases began during the period FY 2008–2016 is estimated at $157 million.

15. SUBJECT TERMS

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