

# CAUGHT IN THE CLOCK

Time and Justice in  
Immigration Cases  
of Unaccompanied  
Children



**ACACIA**  
CENTER FOR JUSTICE

**Cisneros Hispanic  
Leadership Institute**

THE GEORGE WASHINGTON UNIVERSITY

Fátima Khayar-Cámara, Alyssa Snider, Thomas J. Rachko, Jr., and Karla Madera Tejada

The Acacia Center for Justice is a nonprofit organization which builds, strengthens, and expands a network of immigrant legal defense programs through partnerships with immigrant legal services organizations across the country.

The Cisneros Hispanic Leadership Institute draws on the intellectual strength of the George Washington University and the resources of the nation's capital to cultivate citizen scholars and innovative research focused on the Latino community. Research produced by the Institute examines current issues facing our country to encourage diverse perspectives in national dialogue and decision-making, while the Institute's robust curriculum in leadership and professional development prepares scholars to make a difference as leaders for their communities.

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## Introduction

The United States is facing a crisis of legal representation for immigrants, including vulnerable populations like children migrating alone or without an adult legal guardian. Though the U.S. immigration court system recognizes the right to counsel, there is no right to a court-appointed attorney in immigration courts for those who do not have the means to pay – even for children. Access to legal representation for this population of children is vital, as it is for everyone navigating the immigration court system. These children and youth face mental health and well-being challenges associated with the difficulties of migrating alone at young ages in addition to other traumas that might have led to their migration journey in the first place. As the Vera Institute for Justice finds, just 64 percent of unaccompanied children in immigration proceedings between FY 2005 to FY 2017 obtained counsel at some point during their cases in immigration court (Snider and DiBennardo, 2021).<sup>1</sup> The representation rate for this population has declined considerably since 2017 with the most recent numbers from 2024 published by the Executive Office for Immigration Review (EOIR) showing a representation rate of 57 percent for children with pending cases before immigration court (EOIR 2024).<sup>2</sup>

The crisis of access to legal representation has been broadly documented and studied by leading immigration scholars and community-based organizations. Conceptually, access to legal services has been described through the metaphorical spatial lens of legal deserts – geographic areas with a shortage of attorneys and legal resources, typically rural areas. Beyond geography and a scarcity of resources, there is another crucial component of access to legal representation: immigrants' time. Time plays a pivotal role in the U.S. immigration system, especially for children migrating alone who risk aging out of eligibility for legal protections and relief options explicitly tied to their status as minors, all while navigating a labyrinth of legal procedures and complex social dynamics. The timeline imposed on these cases can determine the difference between a child gaining protection and security or being sent back to a dangerous and uncertain future. Yet the very notion of time is multifaceted. While children need ample time to build trusting relationships with sponsors and legal advocates, state institutions often impose an unpredictable pace that complicates efforts to provide proper representation. Yet time and time constraints for children immigrating at a young age can directly influence both their ability to obtain relief and their well-being and mental health.

In the context of unaccompanied children's immigration cases, time functions as both a necessity and a burden; there is often too little when it is needed most and too much when it only prolongs uncertainty. On the one hand, time is essential for building the trust that is so often lacking when

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1 In US immigration law, the term “unaccompanied children” refers to those without lawful immigration status in the U.S., who are under the age of 18, and who do not have an adult parent or legal guardian present in the country or available to provide care or custody. All this makes them particularly vulnerable to trauma, exploitation, trafficking, and other dangers. When using the terms “children” and “youth” in this text, we are referring to “unaccompanied children” as defined above, unless otherwise noted.

2 The Transactional Research Access Clearinghouse (TRAC) at Syracuse University, which receives EOIR data under the Freedom of Information Act, contends that EOIR data beyond 2017 are deficient and that all statistics reported based on this data should, in turn, be viewed with a level of skepticism (<https://trac.syr.edu/immigration/reports/669/>). We include this estimate here recognizing the flaws in the data alongside the reality that this is the best available current statistic on legal representation for unaccompanied children.

children arrive in a foreign country, alone and vulnerable. This trust is critical in the relationship between children and their legal representatives, and the bonds formed with their sponsors and other professionals involved in their cases. Children often struggle with trauma, fear, and cultural dissonance, all of which take time to understand and overcome. Legal teams, in turn, need adequate time to investigate and strategize each case based on the unique circumstances and evidence available. The coordination of an interprofessional team — including social workers and legal experts — demands further time, ensuring that each aspect of the child’s welfare is addressed in a comprehensive manner. In this way, time is a resource that allows for the thoughtful, compassionate handling of the legal cases of children who migrate alone, ultimately contributing to more just outcomes. Yet, time is often insufficient, especially at the outset of a legal case.

The vital need for having more time when there is not enough contrasts sharply with the erratic tempo of legal proceedings set by the U.S. immigration courts, where accelerations and delays coexist. The government frequently imposes rigid timelines that are ill-suited to the needs of vulnerable children. Sometimes, cases may be rushed through the system with little regard for the complexities involved, leaving legal teams scrambling to gather evidence and prepare a coherent defense. In other cases, children may be left waiting for months or even years for a court date, with the uncertainty further exacerbating their emotional and psychological distress. Social anthropologist Melanie Griffiths (2014) argues that making immigrants wait is a form of bureaucratic domination, in which time is weaponized to create inefficiencies that make it difficult for immigrants to access legal protections. This “temporal violence,” as Catherine L. Crooke (2024) terms it, is a specific iteration of what Cecilia Menjivar and Leisy Abrego (2012) call “legal violence”, where the law itself becomes a tool for inflicting harm and perpetuating inequality. If legal violence refers to how laws and legal processes create and sustain systems of oppression, then temporal violence operates within this framework by using time-related legal mechanisms — such as expedited proceedings, delays, deadlines, and waiting periods — to impose suffering and restrict access to justice. In the U.S. immigration court system, temporal violence takes the form of “weaponized delays” leaving children migrating alone stuck in the muck of “legal quagmires” or rapid procedures rendering justice too swiftly like a “legal guillotine.” Like other forms of legal violence, temporal violence disproportionately impacts vulnerable populations, such as children migrating alone, by weaponizing bureaucratic timelines against them, pushing their legal cases through a system designed to create both speeds and delay at its convenience.

This concept summary, supported by the [Acacia Center for Justice](#), the [Cisneros Hispanic Leadership Institute](#), and the [Im/migrant Well-Being Scholar Collaborative](#), explores how the pace and temporality imposed by the immigration system complicates the representation of unaccompanied children. The first section, “Time, Trust, and Tactics When There is Not Enough Time,” examines how time is crucial for building trust, preparing a strong legal strategy, and addressing the child’s overall welfare. The second section, “The Uneven Tempo of Legal Procedures” analyzes how the state uses time as a control tool, creating efficiencies and inefficiencies that hinder the proper representation of children facing deportation. Together, these sections will illustrate the profound role that time plays in the immigration process, both as a necessary resource and as an instrument of state power.

## I. Time, Trust, and Tactics When There Is Not Enough Time

The handling of unaccompanied children’s immigration cases is complex, and time is a critical factor. Success depends first on securing legal representation, and then on the legal strategy and the relationships established throughout the process. Building trust between children and their sponsors and between children and their legal representatives is critical to ensure a complete understanding of the challenges involved. In addition to these relationships, the legal team must also invest time in developing a solid strategic narrative that integrates each child’s unique circumstances with the evidence and the legal principles that help support their case. Furthermore, creating effective interprofessional teams involving experts from different disciplines requires time and coordination to address every aspect of the child’s welfare. Lastly, bridging cultural differences between children and the systems they encounter demands sensitivity to cultural nuances and the patience to build mutual understanding. In short, having enough time is essential to securing just outcomes for unaccompanied children.

### *Children and Their Sponsors*

A good relationship between children who migrate alone, and their sponsors helps ensure that legal procedures are followed, that the child receives emotional and practical support, and that they have access to the legal resources needed to build a strong case for remaining in the U.S. Ultimately, a positive and stable relationship between the child and the sponsor indicates the sponsor’s commitment to the child’s care. Yet lengthy separations often strain the relationship between children migrating alone and their sponsors, leaving them to reestablish trust and effective communication once reunited (Patel et al. 2021).

In a study of 30 youth aged 12 to 17 who traveled to the U.S. without a parent or guardian, significant changes in emotional connections and a loss of trust in their parents were observed after years of separation (Barros-Lane et al. 2022). Another study noted that these youth may experience prolonged grief and discomfort – for months or even years – because of the loss of relationships in their home country and the introduction of new and sometimes fraught relationships in the U.S. (Suarez-Orozco et al. 2002). Parents often feel bewildered by the resentment they face from their children, perceiving their time apart as an act of love and sacrifice (Barros-Lane et al. 2022). Many sponsors are also overwhelmed by financial burdens and work commitments, reducing the time available to bond with the children in their care (Suarez-Orozco et al. 2011).

### *Children and Representatives*

Securing legal representation and building rapport with social and legal representatives is another significant hurdle for unaccompanied migrant children. The process of building rapport and trust is essential yet time-consuming, particularly for children (Cohen & Mandelbaum 2006). Lawyers working with children must implement trauma-informed strategies that ultimately increase the amount of time to build rapport, such as asking about non-legal topics, slowing to match the client’s pace, permitting breaks, and taking time to decompress (Matlow et al. 2023; Marzouk 2016; Hampton et al. 2021). According to the American Immigration Lawyers Association (AILA), building a trusting relationship with children who have survived trauma can add an average of 22 hours to case preparation (AILA 2023). This added time ensures the child feels safe and understood. More-



over, attorneys often meet with children multiple times before asking them to recount challenging experiences that would qualify children for relief and provide evidence of harm or persecution, significantly extending the time required to prepare a case. Forty-three percent of attorneys surveyed by AILA report meeting with asylum clients ten or more times over the course of the case to build the necessary trust and understanding for effective advocacy (AILA 2023). In one case study, a child required nine months of intensive psychological treatment before he had established enough rapport to feel comfortable sharing his traumatic history with his lawyer (Matlow et al. 2023).

### *Integrating Facts, Evidence, and Legal Principles*

While building rapport with clients is essential for understanding their experiences and fostering trust, it is distinct from the process of developing a compelling case theory, which requires time, strategic analysis, and a thorough examination of the legal and factual elements of the case. Legal storytelling, especially the sequencing of events, is essential for effective legal representation. A detailed client declaration explaining the harm suffered and situation feared is fundamental for Special Immigrant Juvenile Status (SIJS), asylum, U visa applications (for victims of crime), and T visa applications (for survivors of human trafficking) often serving as the case's centerpiece. Yet children's understanding of time is unique due to cognitive and developmental factors (Siegel 2001), making it difficult to create a coherent narrative from their testimonies. These cognitive constraints require specialized approaches in data gathering, often prolonging procedures and demanding additional patience from social service providers and legal professionals (Webb et al. 2022). Pediatric post-traumatic stress disorder (PTSD), caused by prior traumatic events, further complicates the legal representation process, as trauma distorts children's perceptions of time, hindering their ability to recall events accurately (Matlow et al. 2023; Webb et al. 2022). This makes it challenging to gather reliable data to construct a solid legal case and organize events into a compelling narrative.

Moreover, crafting this narrative requires multiple meetings and extensive hours working with the client, reviewing initial intake information, and filling in gaps. AILA survey respondents revealed that preparing an asylum case properly requires between 50 and 75 hours, encompassing various activities, including intake, completing the complex I-589 form (the application for asylum in the United States and for withholding of removal), writing a detailed client declaration, gathering and preparing supporting evidence, making revisions, conducting client meetings, preparing clients for testimony, and performing legal research. For cases involving significant trauma, a medical evaluation can add 18 to 24 hours to the preparation time (AILA 2023). What is more, due to the normalization of violence and trauma (Kids in Need of Defense 2016) and the challenges in obtaining thorough information from unaccompanied migrant children, legal representatives often need to gather details from the children's places of origin, including insights into local political climates, social interactions, and specific dangers the child may have encountered (Hlass & Harris 2023; Huynh 2021). Such information is crucial in supporting the child's assertions of persecution or fear of harm; yet gathering this information is time-consuming and often necessitates cultural mediation.

### *Bridging Gaps in Communication*

Exploring relief options for unaccompanied children often involves mediating between different cultures to facilitate understanding, communication and collaboration through the work of translators, interpreters, and country conditions experts. These cultural brokers serve as intermediaries, helping navigate cultural differences and enhancing communication between clients and legal

professionals. Mediating across cultures is time-intensive and requires a deep understanding of the client’s home country’s linguistic, cultural, social, and political context.

Cultural brokers are involved in all parts of the legal procedures for unaccompanied children. Translating supporting evidence can add nine hours to the case preparation, and if an interpreter is required, it adds about 11 hours to an asylum case (AILA 2023). Effective cultural brokerage provided by country conditions experts can significantly improve children’s case for relief by providing context and corroborative evidence to support clients’ claims. However, it requires coordination and time due to the specialized knowledge involved. Legal service providers need to find and hire capable brokers and coordinate their attendance at intakes, meetings, and court appearances.

### *Interprofessional Collaboration*

Effective interprofessional collaboration between legal representatives, interpreters, and social workers is essential for providing representation that not only addresses a child’s legal needs, but also their personal, emotional, and social circumstances to provide more effective advocacy. However, time constraints and professional tensions can hinder these collaborations. Scott and Aronson (2023) found that interprofessional tensions arise from different professional knowledge bases, unclear roles, varying professional attitudes, structural limitations, and communication barriers. Marzouk (2016) also notes that attorneys and social services professionals may have differing professional obligations around confidentiality, mandatory reporting, and whether to pursue the client’s expressed wishes or best interests. Yet, interprofessional education, defined as learning “from and about each other to improve collaboration and the quality of care” (Barr 2002: 6) can be effective at overcoming these challenges.

Scott and Aronson (2023) developed an interprofessional training series for social workers and attorneys to support immigrant clients. This specific training series includes sessions on practices and ethics when working with interpreters, psychosocial, and legal complexities of working with immigrants, and expert witnessing and managing interprofessional relationships. Although these programs foster a collaborative advocacy community, they also require a considerable time investment, totaling approximately 16 hours over at least two days.

## **II. The Uneven Tempo of Legal Procedures**

While unaccompanied children require substantial time to develop positive relationships with their sponsors and legal teams, the government moves legal cases along on its own schedule — alternating between going too fast and too slow — without regard to the needs of the children. Government bureaucracies use temporal rules — such as dated documents, filing deadlines, required waiting periods, eligibility clocks, and age limitations — to exercise power over immigrants, significantly affecting their ability to obtain relief (Crooke 2024; Griffiths 2014; Menjivar and Abrego 2012).

### *The Legal Quagmire*

Weaponized delays leave children stuck in the never-ending limbo of the immigration system. While it is essential to have sufficient time to prepare a case, once applications are submitted, a timely decision is desired — yet rare. There are several factors contributing to immigration case backlogs, including increased enforcement, pandemic-related court closures, and insufficient numbers of immigration judges and support staff (Straut-Eppsteiner 2022). The result is that unaccompanied

children, and all immigrants in the legal system, face incredible delays in receiving adjudications on their applications. SIJS, a form of legal relief for youth who have been abandoned, abused, or neglected, is plagued by backlogs and delays. Children submit SIJS petitions to United States Citizenship and Immigration Services (USCIS), taking an average of 337 days to receive a decision, well over the statutorily required 180 days (Davidson et al. 2023). Once approved, children must wait for a visa to apply for lawful permanent residency. The fact that the number of children eligible to apply far exceeds the number of visas available in a given year has created a large and growing backlog. For example, a child who filed their I-360 petition for SIJS in January 2021 is eligible to apply almost four years later in November 2024 (U.S. Department of State 2024, Acacia calculations).<sup>3</sup> However, given the growth of the backlog in recent years and in the absence of significant changes in the number of visas made available annually, these wait times are likely to increase in the future.<sup>4</sup>

Asylum, another form of relief for unaccompanied children, is also plagued by delays. Unaccompanied children first file their asylum application with USCIS; only if USCIS denies the claim is it referred to an immigration judge. Asylum delays at USCIS defy statutory requirements, with some clients waiting over six years for an interview. In the event that USCIS does not grant a child's claim, it is generally referred to immigration courts, where there is a backlog of over 1.1 million total asylum cases, with an average wait time of over four years from case filing to the asylum hearing (TRAC 2023). U and T visas are less common but still essential for children. However, these relief options also face significant delays. The current processing time for most T visas is 17.5 months, while U visas face a far worse situation with processing times of nearly five years for most applications, from receipt of the application to a "bona fide determination notice" — a notice from USCIS indicating that an applicant has met the basic eligibility requirements for a visa, allowing them to access certain benefits while their case is fully processed (USCIS 2024b).

The cumulative result of all these problems is an immigration system that is especially harmful for immigrant children and their guardians. Children who are seeking relief face added challenges, which can vary according to their age, country of origin, access to counsel or their cases' legal strategy. During the times when their cases are delayed, they may have limited access to employment or educational opportunities; and the severity of these problems can also depend on where they are in the relief process (Human Rights First 2016). Additionally, they may be ineligible for crucial social services such as healthcare and housing support, exacerbating their vulnerability and instability. One significant issue is their inability to reunite with family members still in their country of origin, as they are often unable to sponsor relatives who remain in dangerous conditions abroad, leading to prolonged family separation and emotional distress (Human Rights First 2016; Byrne and Drake 2017). The constant fear of deportation and uncertainty about their future contribute to significant mental health challenges, including anxiety, depression, and trauma, especially for those who have already experienced difficult journeys or violent conditions in their origin countries (Anderson et al.

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<sup>3</sup> Understanding the numbers published by the State Department's monthly Visa Bulletin can be difficult. The annual number of EB-4 visas available is set at 9,940, or 7.1% of the total allotment of 140,000 employment-based visas available worldwide. However, the actual number of available EB-4 visas can fluctuate. It is, therefore, difficult to predict the exact number of visas available in the future, and individuals can't know when their visas will be available (see National Immigration Project 2024).

<sup>4</sup> For reference, USCIS data show that as of December 2020 there were 45,476 individuals with approved petitions awaiting visas. As of June 2024, that number had more than tripled to reach 153,700, with an additional 15,887 with petitions still pending (USCIS 2024a).



2020). Ultimately, without legal protection, these children are at an increased risk of deportation to unsafe environments, further amplifying the risks they face (Griffiths 2014; Human Rights First 2016).

While zealous representation helps clients strategically navigate court timelines — expediting filings when necessary or securing more time to build a case — the sheer demand for legal services far exceeds the supply of immigration lawyers (Pistone 2022). This representation crisis is not just about a shortage of attorneys and geographic barriers — or legal deserts (Ryo and Humphrey 2023), nor is it just about social factors, like cultural, linguistic, and economic barriers that further limit the ability of lawyers to serve more clients efficiently (Roubenoff, Sloom, and Bloemraad 2023). Even in areas with numerous and highly competent providers, court backlogs strain the capacity of legal representatives to manage their caseloads. Court backlogs and legal delays force legal service providers into constant recalibration: Legal services providers must manage unpredictable court timelines and balance the need to gather evidence and provide emotional support for clients. Further, lawyers and clients must prepare a case when filing thoroughly and then face the challenge of updating and preparing for hearings or interviews years later. However, over time, evidence may become outdated, country conditions could change, and witnesses may become inaccessible, all of which can seriously weaken a case. This constant need for reassessment further burdens legal teams, posing a long-term sustainability issue. In short, the legal quagmire goes beyond a scheduling issue — it is a temporal burden that strains legal service providers' capacity to aptly serve their clients and take on more cases.

### *In-Absentia Orders: From Legal Quagmire to Legal Guillotine*

Children navigating the immigration system are frequently caught in a web of confusion and miscommunication caused by severe court backlogs and other delays. Although there is strong evidence that children are more likely to remain committed to attending court when adequately supported by a legal representative (Snider and DiBennardo 2021) the existence of these legal quagmires — where cases are stalled indefinitely — underscores the importance of legal representation. Without it, critical errors, such as missed court hearings, can occur, particularly for unrepresented children migrating alone, who, according to EOIR, amounted to 43% of all children migrating alone with pending cases in the third quarter of FY2024 (EOIR 2024). In some instances, children fail to appear in court not due to negligence but because of inadequate notice, misinformation, or procedural misunderstandings beyond their control (Borroto 2024). These weaponized delays and the resulting disorientation contribute significantly to in-absentia removal orders. However, once such an order is issued, the situation shifts dramatically from stagnation to rapid, often irreversible action. Reversing an in-absentia removal order is an exceedingly difficult task. Respondents may file a motion to reopen the case, requesting to rescind the order if they can demonstrate that the orders were issued with inadequate notice, or that clients' failure to appear was due to exceptional circumstances defined under the Immigration and Nationality Act, Section 240(e)(1). However, the bar for these “exceptional” circumstances is set extremely high, limited to situations involving “battery or extreme cruelty,” serious illness, or the death of a parent. Less compelling circumstances are not considered sufficient. Alternatively, respondents can argue they have yet to receive proper notice or were in custody at the time of the hearing, but even in these cases, the burden of proof is often heavy. For children who navigate this process without legal representation, reversing an in-absentia order is virtually impossible, further entrenching the punitive

effects of these swift, final decisions (Straut-Eppsteiner 2022). The in-absentia order operates like a “legal guillotine,” slicing through any remaining opportunity for the child to present their case. What begins as a delay quickly becomes a vehicle for “weaponized speed,” accelerating the child toward deportation without the chance to defend against removal. This transformation from quagmire to guillotine intensifies the already unjust outcomes faced by children who need to face the American immigration system.

### *The Legal Guillotine*

Cases are rapidly processed, bypassing procedural steps as if a blade were swiftly dropping. Weaponized efficiencies, as suggested by Crooke (2024), are legal guillotines whereby government agencies expedite case processing, prioritizing accelerated outcomes over immigrants’ rights and best interests. For example, the Obama and Trump administrations instituted expedited procedures, or rocket dockets, for unaccompanied children, forcing them to court soon after their arrival and requiring judges to complete their cases rapidly (Kids in Need of Defense 2021; Srikantiah and Weissman-Ward 2014). While some advocates hailed these expedited proceedings as a potential positive response to the growing immigration backlog — if handled correctly — others expressed concerns about their impact on due process.

Such “swift justice” could be beneficial in reducing the time a child spends in legal limbo, but it may inadvertently compromise the fairness and thoroughness of the legal process, undermining the very protections that children, as a vulnerable population, are entitled to receive. For instance, the rash nature of expedited proceedings speeds up the process of removals, increasing the likelihood that children will be returned to dangerous or unstable situations in their home countries without a fair chance to present evidence supporting their claims for asylum or other forms of legal relief.

Moreover, rocket dockets give children very little time to secure legal representation, and even when they do, legal service providers have very little time to adequately prepare children’s cases, especially given the need for time explored in the prior section. With the exception of Afghan youth seeking asylum, unaccompanied children are not currently prioritized for processing, though some immigration judges implement discretionary practices such as granting only short continuances for child migrants to secure representation or requiring that children respond to their charges and file applications for relief by their second or third hearing, which could be scheduled with only a few weeks to prepare the applications (Hausman and Srikantiah 2016; Byrne and Drake 2017). Together, rocket dockets and discretionary practices reduce the likelihood that child migrants will have sufficient time to secure legal representation or, even if they do, that they will be ready and able to disclose sensitive information relevant to their case in a timely manner.

### *Time’s Toll: The Impact of the Immigration System’s Temporality on Children Migrating Alone*

The uneven tempo of legal procedures in the immigration system parallels the geographic dimension of the legal representation crisis. Just as children in “legal deserts” (Ryo and Humphrey 2023) struggle to find attorneys due to socio-geographic barriers, children navigating the immigration system face temporal constraints, where the unpredictable ebb and flow of court schedules paired with a pendulum of scarcity and excess of time undermine children’s access to zealous legal rep-

resentation. In both geographic and temporal terms, the uneven distribution of resources and time creates significant barriers to justice. The inconsistent pace of legal procedures imposes temporal violence on children and their guardians by creating cycles of instability and emotional distress that make it harder to participate in the legal process. Delays worsen children’s mental and emotional distress, while rushed interactions with legal service providers and bureaucratic proceedings may stop them from getting the legal representation they need for a fair process (Hampton et al. 2021; Matlow et al. 2023).

Children who migrate alone should have access to a system that gives them enough time and resources to get legal representation and present their cases fairly. Programs like the Office of Refugee Resettlement’s Unaccompanied Children Program; the California Department for Social Services’ Children Holistic Immigration Representation Program; EOIR’s Legal Orientation Program for custodians of unaccompanied children; and the Counsel for Children Initiative aim to bridge these gaps. Yet, they cannot fully mitigate the harm caused by a system that remains blind to the temporal strains it imposes. An immigration system that fails to recognize that children’s relief options are time-sensitive and inherently bound by the passage of time (i.e., legal processes take place as children grow older, and potentially age-out of relief options and counsel) is a system that will continue to harm the very people it is attempting to protect.

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