



Immigrants and Extreme Poverty in South Florida¹

Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights in Preparation for his Official 2017 Visit to the United States

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I. Introduction

Founded in 1998, Catholic Legal Services, Archdiocese of Miami, Inc. (“CLS”) provides free or low-cost immigration lawyer services to South Florida’s indigent refugee and immigrant community. CLS focuses exclusively on helping poor immigrants obtain asylum, establish legal residency, become citizens, and reunite families. Services include filing documents as well as providing attorney representation before immigration authorities.

Throughout the years, CLS has served thousands of clients, of all races, religions, genders, ethnic groups, or other distinguishing characteristics, that neither have the means to get representation nor the resources and knowledge to access the system and represent themselves. Most services are provided free of charge for the most vulnerable immigrants in our community.

The Miami Law Human Rights Clinic works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies such as community organizing, political activism, and global networking to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on state and non-state actors.

This report examines specific immigration topics in Miami, such as “Temporary Protected Status” for Haitian migrants, unaccompanied minors, contemporary issues related to sanctuary cities, and Deferred Action for Childhood Arrivals (“DACA”). These issues are especially pressing in the current political environment, which immigration advocates characterize as perhaps the most hostile toward immigrants in recent memory.

II. Background Information

Miami–Dade has a diverse population of approximately 2.6 million, comprised of 14% White

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non-Hispanic, 66.8% Hispanic or Latino, and 17% Black or African American.² About 52% of the population, 1.4 million, are foreign-born.³ On the economic spectrum, Florida is the fifth highest state in income inequality.⁴

III. Haitian Temporary Protected Status (TPS)

Temporary Protected Status (“TPS”) is a Homeland Security program that grants short-term work permits and stays of deportation to immigrants from nations affected by disaster, epidemics, or war. In 2010, in the wake of the devastating earthquake that killed hundreds of thousands of people, the Department of Homeland Security (DHS) allowed Haitians residing in the U.S. before January 13, 2011, the first anniversary of the earthquake, to apply for TPS. TPS was granted to Haitians for seven years, and has afforded over 50,000 Haitians important federal protections, including remaining in the U.S. and obtaining work authorization documents.⁵

On May 24, 2017, the United States Citizenship and Immigration Services (USCIS) announced the extension of the designation of Haiti for TPS for six months. This extension allows eligible Haitians (and people without nationality who last habitually resided in Haiti) to re-register for TPS. During this six month extension, USCIS encouraged beneficiaries “to prepare for their return to Haiti in the event Haiti’s designation is not extended again”⁶ At least 60 days before January 22, 2018, the Secretary of Homeland Security “will re-evaluate the designation for Haiti and will determine whether another extension, a re-designation, or a termination is warranted, in full compliance of the Immigration and Nationality Act.”⁷

A decision to cancel Haitian TPS will have dire consequences because post-earthquake Haiti continues to experience a humanitarian crisis. Only a small percent of the population in Haiti has access to a protected water source; the sanitation infrastructure is very weak; and the country does not have sewage networks. Public education is of poor quality and a significant number of people are unemployed and do not have access to healthcare. Many Haitians in Miami are nervous about the potential end of the TPS program.⁸ While Haitians are the poorest ethnic group in Miami-Dade County, they have even more to lose if they are sent back to Haiti.

² *Miami-Dade County Summary Profiles*, Department of Regulatory & Economic Resources Planning Research & Economic Analysis Section 9 (September 2016), <http://www.miamidade.gov/business/library/reports/2011-2015-acs-multi-year-profile.pdf>.

³ *Id.* at 5.

⁴ Jeff Harrington, *Study: Florida Has the Fifth-Highest Income Inequality in the Country*, Tampa Bay (June 20, 2016), <http://www.tampabay.com/news/business/study-florida-has-the-fifth-highest-income-inequality-in-the-country/2282395>.

⁵ Jacqueline Charles, “Miami immigrant advocates urge Trump not to separate TPS families” *The Miami Herald*, (October 27, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article181330896.html>.

⁶ Temporary Protected Status Designated Country: Haiti, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti>.

⁷ *Id.*

⁸ Jacqueline Charles, “Haitians worried about deportation should start planning now, lawyers say,” *The Miami Herald* (May 19, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article151613992.html>.

IV. Unaccompanied minors

Over the past several years, Unaccompanied Children (UACs) have arrived in the U.S. in record numbers. In 2014, almost 70,000 minors, primarily from the Northern Triangle of Central America (Honduras, El Salvador, and Guatemala), presented themselves or attempted to cross the United States' southern border.⁹ Most are apprehended by DHS immediately. Under 6 U.S.C. § 279(g)(2), a child is designated an unaccompanied alien child (UAC) who (1) has no lawful immigration status in the U.S.; (2) has not attained eighteen years of age; and (3) has no parent or legal guardian physically present in the U.S., or no parent or legal guardian in the U.S. available to provide care and physical custody.¹⁰

UACs leave their home countries for many reasons: to escape abuse, persecution, or exploitation in the home country; to escape extreme poverty; to reunite with their families; to seek employment or educational opportunities in the U.S.; and/or to escape discrimination, gender-based violence, poverty, trafficking, or other desperate situations.¹¹ Additionally, many children are trying to escape forcible gang recruitment and gang violence.¹² For example, Honduras was deemed the “murder capital of the world” in 2014 and 2015, with El Salvador a close second place.¹³

Once they are released in the U.S. and await adjudication of their immigration cases, UACs are often denied access to education, health services, housing services, until, or many times after, they achieve lawful status.

Lack of access to education

Despite the Supreme Court's decision in *Plyler v. Doe*,¹⁴ many immigrant children are denied a free public education or are faced with additional barriers to enrollment in U.S. schools. *The Associated Press* has found that in at least fourteen states, UACs have been discouraged from enrolling in schools or pressured into unequal alternative programs.¹⁵ Around the country, high schools are intentionally delaying enrollment by requiring families to submit burdensome proof of residency.¹⁶ Additionally, schools will annex undocumented minors to a high school apart from the main school.¹⁷ Some kids said they are told to just sign in and then go home, while others are told the district does not have the space or resources to accommodate them.¹⁸ High

⁹ *About Unaccompanied Children*, Unaccompanied Children Resource Center, https://www.uacresources.org/unaccompanied_children/.

¹⁰ 6 U.S.C. § 279(g)(2) (2017).

¹¹ P.J. Tobia, *No Country for Lost Kids*, PBS News (June 20, 2014), <https://www.pbs.org/newshour/nation/country-lost-kids>.

¹² Jay Root, *Central Americans Fleeing Poverty Gang Wars Driven to U.S. Border*, The Texas Tribune (Oct. 10, 2016), <https://www.texastribune.org/2016/10/10/central-america-passes-mexico-migration-us/>.

¹³ *Id.*

¹⁴ *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that states cannot constitutionally deny students a free public education on account of their immigration status).

¹⁵ Garance Burke and Adrian Sainz, *Migrant Children Kept from Enrolling in U.S. Schools*, Associate Press (May 2, 2016).

¹⁶ Emily Deruy, *Across the Border and Into School*, The Atlantic (Aug. 20, 2016), <https://www.theatlantic.com/education/archive/2016/08/across-the-border-and-into-school/496652/>.

¹⁷ *Id.*

¹⁸ *Id.*

schools are also denying undocumented minors' enrollment, arguing that the teens lack transcripts or are too old to graduate on time.¹⁹

This national trend is reflected in Florida. Recently, the Southern Poverty Law Center filed a lawsuit against a high school in Collier County for effectively barring immigrant children from enrolling in high school and pushing them into an adult English program that offered no opportunity to earn credit toward a high school diploma.²⁰ The County School Board adopted a policy that lowered the maximum age at which a student could enroll if the student was not on track to graduate within two years.²¹

We have observed a similar system in place in Miami-Dade County, where UACs 16 or older are placed in "special" adult-education programs focusing on English and the GED exam. In our experience, many are segregated from the normal population and do not participate in state-wide testing. These programs are reported by our clients as largely ineffective, as they do not learn English well with only other Spanish-speaking students. Without a chance to get a high school diploma, they are less likely to be able to seek employment opportunities, even if and when their immigration status is normalized.

Moreover, most of our clients at CLS would love to go to school instead of working, but many are stuck working cleaning houses, or at restaurants, or as farm hands six days a week to send money to their families back home. These children often do not have sponsors that support them, and many of them have to pay rent to live with the sponsors.

Additionally, many children, especially from rural areas in Guatemala, speak indigenous languages, and some are illiterate, so they need extra attention and help learning Spanish and English. Their access to services is further limited by the places they settle in South Florida, such as Homestead and Immokalee, which are rural farming areas with less access to education. Often they are placed with relatives or sponsors that are similarly uneducated and do not have access to services or know how to navigate the educational system.

Poverty and education are inextricably linked. UACs who are refused an education are left without the literacy and numeracy skills necessary to further their careers. The effects of poverty on children are wide-reaching and can lead to lifelong struggles.

Lack of access to health services

UACs suffer profound mental and physical stress from their dangerous journey to the U.S.²² Additionally, the time they spend in a detention facility or a shelter can negatively affect their mental and physical health, causing profound trauma and stress.²³ Given these experiences, many UACs suffer from post-traumatic stress disorder (PTSD), depression, and other

¹⁹ Burke, *supra*.

²⁰ *Lesly Methelus, et al. v. The District School Board of Collier Country Florida, et al.*, Southern Poverty Law Center, <https://www.splcenter.org/seeking-justice/case-docket/lesly-methelus-et-al-v-district-school-board-collier-county-florida-et>.

²¹ *Id.*

²² *Unaccompanied Children and Health Care*, National Immigration Law Center (Aug. 18, 2014), <https://www.nilc.org/issues/health-care/unaccompanied-children-health-care/>.

²³ *Id.*

psychological and psychosocial issues.²⁴ However, many encounter hurdles when attempting to receive health and mental health services. UACs are ineligible to access health care coverage such as Refugee Medical Assistance or the Children’s Health Insurance Program.²⁵ They also are ineligible to purchase health care coverage under the Affordable Care Act unless they are granted immigration status, such as asylum or special immigrant juvenile status.²⁶ Access to health care services depends on each child’s particular immigration circumstance and the health care eligibility rules for programs that are available where the child is released.²⁷

Even in states where health coverage is expansive, many UACs may still not qualify because the federal government is contemplating removing them from the country.²⁸ For example, a UAC that worked with CLS was able to get life-saving heart surgery, but is not able to get follow-up services easily. He has no legal status because his immigration case was administratively closed due to prosecutorial discretion. He suffers from seizures that make it impossible for him to work or maintain a normal lifestyle, and he often falls and gets hurt as a result. This affects his possibility to further his education and live a healthy life.

Poverty and health are undistinguishably linked. The causes of poor health are rooted in political, social and economic injustices.²⁹ Poverty is both a cause and a consequence of poor health. Poverty increases the chances of poor health, which in turn traps communities in poverty.³⁰

V. Legal solutions to undocumented migrant “problem” in the United States

In recent years, local governments in the U.S. have sought to take independent action regarding undocumented migrants in response to federal legislation or action. Some localities have decided local law enforcement will not enforce immigration law and will leave immigration enforcement to federal agents; others have decided that local law enforcement will confirm an arrestee’s immigration status to ensure that dangerous immigrants get returned to their home country. This is colloquially known as the “sanctuary city” debate.

Conversely, the President can choose the best enforcement of federal legislation and prioritize removal enforcement for specific classes of immigrants. Deferred Action for Childhood Arrivals—DACA—was one such policy. President Obama, instead of granting legal status, allowed eligible childhood arrivals to get employment authorization and deferred action (indicating that they would not be targeted for removal) because the government prioritized pursuing individuals with criminal backgrounds.

Both responses to the same “problem” highlight the issues facing undocumented migrants within the United States. Sanctuary city policies create incentives for immigrants to cooperate with or to distrust police depending on the policies in effect. Similarly, DACA incorporates certain undocumented migrants into the community on the promise that they will not be deported.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *The Cycle of Poverty and Poor Health*, Health Poverty Action, <https://www.healthpovertyaction.org/info-and-resources/the-cycle-of-poverty-and-poor-health/>.

³⁰ *Id.*

Sanctuary cities and counties

“Sanctuary city” or “sanctuary county” is not a legal term indicating that the locality is a haven for immigrants; rather it is a political term showing that local politicians welcome immigrants.³¹ Nevertheless, there is no requirement that local and state governments must enforce immigration law.³² U.S. statute 8 U.S.C. § 1373 prohibits localities from preventing federal agents from obtaining information about individuals’ citizenship or immigration status, but it does not require localities to actively provide information to federal agents or take steps to gather immigration information from their residents.³³

The “sanctuary” debate centered around cities’ willingness to enforce federal detainer requests. Detainer requests are federal requests to local jails to hold an individual for 48 hours after the criminal sentence ended to give federal agents time to decide whether to deport the person and obtain federal custody. No removal order, warrant or even immigration case need be pending against the individual for a detainer to be filed. The constitutionality of Immigration and Customs Enforcement detainer requests continues to be challenged throughout the U.S. Honoring such detainer requests, without a judicial warrant authorizing the extended detention of an individual, is unconstitutional because there is no judicial check on the use of executive power to extend an individual’s criminal sentence.³⁴ However, that has not stopped some localities from announcing that they will fully cooperate with immigration officials to remove dangerous criminals from their midst. Such policies are fueled by the belief that illegal immigration is necessarily tied to an increase in crime and threatens the right to a peaceful life for native citizens.³⁵

Such rhetoric is not supported by the data.³⁶ However, that did not stop Miami-Dade County from choosing to give up its sanctuary county policy in order to avoid losing federal funding.³⁷ As Miami-Dade Mayor Gimenez’s stated, the county “could not risk losing any of the \$355 million dollars that the county received in 2017.”³⁸ As of Fiscal Year 2017, Miami-Dade was allocated \$455,880³⁹ specifically in law enforcement grants after ending its sanctuary county policy.⁴⁰

³¹ *The Current State of Sanctuary Law*, Southern Poverty Law Center (May 15, 2017), <https://www.splcenter.org/20170515/current-state-sanctuary-law>.

³² *Id.*

³³ *Id.*

³⁴ *The Current State of Sanctuary Law*, *supra*.

³⁵ Rubén G. Rumbaut, *Undocumented Immigration and Rates of Crime and Imprisonment: Popular Myths and Empirical Realities*, Appendix D, 120. The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties. https://www.policefoundation.org/wp-content/uploads/2015/06/Appending-D_0.pdf.

³⁶ *The Current State of Sanctuary Law*, *supra*.

³⁷ Alan Gomez, *Attorney General Jeff Sessions finds ally in Miami in fight against sanctuary cities*, USA Today (Aug. 16, 2017), <https://www.usatoday.com/story/news/politics/2017/08/16/attorney-general-jeff-sessions-finds-ally-miami-fight-against-sanctuary-cities/573333001/>.

³⁸ *Id.*

³⁹ BGA’s Edward Byrne Memorial Justice Assistance Grant (JAG) Program, *2017 Florida Local JAG Allocations*. <https://www.bja.gov/Programs/JAG/jag17/17FL.pdf>.

⁴⁰ Douglas Hanks, *Miami-Dade complied with Trump to change its ‘sanctuary’ status. It worked*. Miami Herald (August 07, 2017). <http://www.miamiherald.com/news/local/community/miami-dade/article165837497.html>.

Therein lies the next complicated issue: Can the federal government strong-arm compliance from local authorities by threatening to defund them? According to the U.S. Supreme Court: no. In a binding decision in *South Dakota v. Dole*, the Supreme Court wrote that conditions can be attached to funds so long as they are not coercive.⁴¹ As the Supreme Court noted, an unconstitutional use of federal authority is the point where pressure turns into compulsion.⁴² Miami-Dade County gave in to the coercion and changed county policy because President Trump threatened to withhold hundreds of millions of dollars.⁴³ In a county where 1.4 million residents are foreign-born,⁴⁴ deputizing local law enforcement to enforce immigration law creates wide latitude for abuse and racial profiling under the guise of fulfilling a legally-mandated role. It has reached a point where racial profiling has led to U.S. citizens being detained and scheduled for deportation because of nationality and ethnic background.⁴⁵

DACA

The Deferred Action for Childhood Arrivals (“DACA”) program was terminated by President Trump in early September 2017, with an effective date of March 5, 2018. The repeal of DACA affects 800,000 individuals nationwide, 23,000 of whom are located within Miami-Dade County alone.⁴⁶ Florida has the fourth largest DACA population in the country and Miami has the highest concentration of DACA recipients in the entire state.⁴⁷ In addition to ending the DACA program without a clear mandate, President Trump exacerbated the problem by announcing the end of DACA following Hurricane Harvey’s devastation in Texas and Hurricane Irma’s threat to Florida.⁴⁸ Not only were DACA recipients impacted by a total inability to access basic services following the hurricanes, they were also worried about seeking shelter during the hurricane as fears mounted that local officials would be performing background checks on individuals before allowing access to emergency shelters. Many DACA recipients worried that they would be taken into immigration custody if they sought to enter an emergency shelter, given Miami’s commitment to enforcing federal immigration law.⁴⁹

The one-month deadline to renew DACA benefits was too short and failed to take into account the amount of individuals affected by the natural disasters in Florida and Texas, two states with the highest amount of DACA beneficiaries in the country.⁵⁰ Lawmakers urged President Trump to either extend the renewal deadline or provide case-by-case considerations for late applications

⁴¹ *South Dakota v. Dole*, 483 U.S. 203 (1987).

⁴² *Id.*

⁴³ Gomez, *supra*.

⁴⁴ *Id.*

⁴⁵ Douglas Hanks, *Miami-Dade jail wrongly held U.S. citizen for deportation, ACLU says in suit*, Miami Herald (July 05, 2017), <http://www.miamiherald.com/news/local/community/miami-dade/article159752209.html>

⁴⁶ Jerry Iannelli, *Trump’s DACA would harm 23,000 Miamians and 103,000 Floridians brought here as kids*, Miami New Times (Sept. 1, 2017), <http://www.miaminewtimes.com/news/trump-daca-repeal-would-harm-23000-miami-and-103000-florida-immigrants-9631804>.

⁴⁷ *Id.*

⁴⁸ Edwidge Danticat, *DACA, Hurricane Irma, and Young Americans’ Dream Deferred*, The New Yorker (Sept. 6, 2017), <https://www.newyorker.com/culture/cultural-comment/daca-hurricane-irma-and-young-americans-dreams-deferred>.

⁴⁹ *Id.*

⁵⁰ Iannelli, *supra*.

on account of the hurricanes.⁵¹ Two reasons for the request was the massive disturbance that the hurricanes caused on the day-to-day lives of millions of individuals and the fact that DACA renewals required a \$495 fee.⁵² For individuals that lost all their possessions and/or had to evacuate suddenly because of the hurricanes, being able to take the time to fill out a DACA renewal application and spare \$495 as they were rebuilding their lives placed an undue burden on their situation.

Unfortunately, President Trump provided no leniency and on the DACA renewal deadline date, 23% of the eligible recipients had not filed any sort of application to extend their DACA benefits.⁵³ As a result, at least 36,000 DACA recipients in the entire country lost benefits because of their inability to submit the required documentation or pay the required fee. In Florida, however, the number is much more extraordinary; 2,000 individuals, or 35% of eligible individuals did not submit their applications by President Trump's deadline.⁵⁴ They are now at risk of deportation to a country that many of them do not know.⁵⁵

Additionally, participation in DACA is a double-edged sword, as undocumented immigrants had to provide the federal government their full names, addresses, photographs, and employers, information which could be used to effect mass deportation when the program ends. As of October 2017, proposals made by the White House indicated that a long-term solution for DACA recipients would only come with legal provisions for building a border wall and restrictions on the definition of Unaccompanied Children.

VI. International Human Rights Law Analysis

The following United Nations treaties define basic human rights that are of significance to immigrants: (1) Convention on the Rights of the Child (CRC), (2) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (3) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (4) International Covenant on Civil and Political Rights, and (6) the Universal Declaration of Human Rights (UDHR). These conventions specify, *inter alia*, the following rights:

- Protection from being expelled, returned or extradited to another State where there are substantial grounds for believing that a person would be in danger of being subjected to torture.
- Right to liberty and security of person, and protection from arbitrary arrest or detention.
- Right to a free primary education
- Right to be free from arbitrary or unlawful interference with one's privacy

Although the United States has not signed or ratified all of these conventions, these treaties

⁵¹ Emilee Speck, *Lawmakers seek DACA renewal extension due to Hurricanes*, Clickorlando.com (Sept. 25, 2017), <https://www.clickorlando.com/news/nelson-lawmakers-see-dreamer-renewal-extension-due-to-hurricanes>.

⁵² *Id.*

⁵³ Esther Yu Hsi Lee, *On DACA Renewal deadline day, tens of thousands of DREAMers lost deportation relief*, Think Progress (Oct. 5, 2017), <https://thinkprogress.org/42000-daca-recipients-miss-deadline-7b203d4772cf/>.

⁵⁴ Tal Kopan, *One-quarter of DACA renewals not in by deadline, 23% of 154,000 people eligible fail to submit*, CNN (October 5, 2017), <http://www.cnn.com/2017/10/05/politics/daca-renewal-deadline-immigration/index.html>.

⁵⁵ *Id.*

provide critical guidance that we should be following.

VII. Recommendations

Temporary Protected Status (TPS) for Haitians

- Continue to extend TPS for the foreseeable future, while Haiti continues to experience a humanitarian crisis.
- Create a path to family reunification and/or Legal Permanent Residency for TPS beneficiaries from Haiti as well as El Salvador and Honduras.

UACs

- Enforce and expand *Plyler v. Doe* to prevent states from circumventing their duties by providing unequal alternatives to education.
- Appoint an unaccompanied minor support services specialist at schools to help connect the children to appropriate services.
- Provide certain basic public benefits and services, such as medical examinations, to UACs living with sponsors.

DACA/Sanctuary Cities

- Stop the use of detainer requests without a judicial warrant authorizing the detention.
- Follow *South Dakota v. Dole* and stop coercing municipalities into enforcing immigration law by threatening to withhold unrelated funds.

VIII. Questions

1. How does the principle of non-refoulement apply to DACA and TPS recipients that may face persecution upon return to their home country because perceived status or wealth for having lived in the United States?
2. Why is the federal government relying so much on municipalities to enforce immigration laws instead of promoting cooperation with law enforcement among all communities?