

Washington University Law Review

Volume 93 | Issue 1

2015

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Recommended Citation

Melissa Weiss, *Protection for the Vulnerable: How Unaccompanied Minors From El Salvador, Guatemala, and Honduras Can Qualify for Asylum in the United States*, 93 WASH. U. L. REV. 205 (2015).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol93/iss1/10

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PROTECTION FOR THE VULNERABLE: HOW UNACCOMPANIED MINORS FROM EL SALVADOR, GUATEMALA, AND HONDURAS CAN QUALIFY FOR ASYLUM IN THE UNITED STATES

Jorge,¹ an eleven-year-old boy, is sitting in a classroom in an impoverished El Salvadorian town. The teacher is talking about activities that will be done during the day when, all of a sudden, a group of young men appears at the door and begins dragging Jorge's classmates outside. The teacher tries to stop them, but they shoot her in the head. Before Jorge has a chance to run away, one of them grabs him and takes him outside. They tell him they are part of a gang and that he will be joining them. He tells them no, and they say he has no choice. Jorge tells them no again. While holding a gun to his head, the gang members point to a pile containing the corpses of some of his former classmates. They explain that Jorge will join his classmates if he refuses to join their gang. Jorge says nothing. They lead him away from the school, along with a couple of other young boys.

Along the road, a rival gang appears, and fighting immediately ensues. During the fighting, Jorge manages to escape. He runs home and tells his mother what happened. His mother knows the danger of these gangs because Jorge's father and older brother were killed a year earlier when they both refused to join a gang. His father and older brother received death threats from the gang, but they ignored them until the day the gang members murdered them. Jorge's mother makes him hide inside the home that night while she scavenges up a substantial amount of money. The next day, she sends Jorge off with a stranger who will take him to the United States to start a new, safer life. She promises that she will join him in the United States when she saves enough money to make the trip.

Jorge makes the journey to the United States through Mexico with the stranger. The stranger is very mean and often does not let him eat or sleep. Once Jorge makes it across the border, the stranger leaves him stranded in the desert. Jorge has no idea where he is or where he is supposed to go. He is also lacking food and water. He manages to find a home where a family

1. Jorge's story is based on accounts reported by children who have arrived in the United States. See Moni Basu, *Daniel's Journey: How Thousands of Children Are Creating a Crisis in America*, CNN (June 19, 2014, 5:42 PM), <http://www.cnn.com/2014/06/13/us/immigration-undocumented-children-explainer/index.html>.

feeds him. Unbeknownst to Jorge, they also call Border Patrol, which sends agents to the home. They take Jorge from the home to another location full of other children. There are not enough beds, bathrooms, or food in this new location to accommodate all of the children being held there. Consequently, Jorge spends his nights sleeping on a mat on the floor, waiting for someone to tell him whether he can stay in the United States or if he will be sent back to the dangerous life he was trying to escape in El Salvador.

Jorge's story is similar to that of thousands of children fleeing violence in their home countries of El Salvador, Guatemala, and Honduras. These children make long, often dangerous journeys from their home countries, either alone or with smugglers, in hopes of reuniting with family members who already live in the United States or living in safety in the United States. Recently, there has been a surge of these unaccompanied children arriving in the United States.² There has been pressure on the federal government to respond to the increasing numbers of unaccompanied children arriving and much discussion about what should be done with the children.³ Some argue that these children should be sent back to their home countries, returning them to the violence and poverty that forced them to leave.⁴ Others argue that they would qualify for asylum status and that the US government should allow them to stay and spend valuable resources educating and caring for them.⁵

This Note focuses on the latter argument—that these children could qualify for asylum status. Specifically, it focuses on whether unaccompanied minors who flee their home countries of El Salvador, Guatemala, and Honduras due to poverty and violence should be granted protection under the “particular social group” category.⁶ Part I focuses on

2. Jens Manuel Krogstad et al., *Children 12 and Under Are Fastest Growing Group of Unaccompanied Minors at U.S. Border*, PEW RESEARCH CTR. (July 22, 2014), www.pewresearch.org/fact-tank/2014/07/22/children-12-and-under-are-fastest-growing-group-of-unaccompanied-minors-at-u-s-border/.

3. Karen Tumulty & David Nakamura, *Border Crisis Scrambling the Politics of Immigration Policy*, WASH. POST (July 12, 2014), http://www.washingtonpost.com/politics/border-crisis-scrambling-the-politics-of-immigration-policy/2014/07/12/78b6ab16-0920-11e4-8a6a-19355c7e870a_story.html.

4. *See id.*

5. *See* Halimah Abdullah, *Immigrants or Refugees? A Difference with Political Consequences*, CNN (July 17, 2014, 2:31 PM), <http://www.cnn.com/2014/07/17/politics/immigration-border-crisis-refugee-politics/>.

6. Although the particular social group category will be discussed in more detail in Part I, it is important to mention that, as well as meeting other requirements, an individual must have experienced persecution based on one of five categories set out in the Refugee Act of 1980 in order to qualify for refugee status. The categories include persecution based on race, nationality, political opinion, religion, and particular social group. 8 U.S.C. § 1101(a)(42)(A) (2014).

the particular social group category of the refugee definition. It considers the Board of Immigration Appeals (“BIA”) definition of particular social group and looks at recent BIA decisions relating to gang violence, as well as domestic violence, as a way of further defining particular social group. Part II discusses the current situation of unaccompanied minor children arriving in the United States. It considers the factors fueling the increase in the number of these children arriving in the United States. Part III provides a proposal for how these children could be afforded protection as asylees by falling into the particular social group category and analyzes the proposed particular social group. I argue that children from these countries could fall under the particular social group category if they claim asylum under the proposed particular social group of “impoverished children under fourteen years of age who have been threatened with recruitment and attacked by gangs.”⁷ Although I argue these unaccompanied minors could receive asylum protection, Part IV considers alternative options for protecting the unaccompanied minors who have fled, or are likely to flee, their home countries. Specifically, it considers the in-country processing program recently announced by President Obama, as well as the possibility of broadening the definition of refugee without changing the particular social group definition. This second solution will look to international conventions that have been adopted in other parts of the world, such as Africa and Latin America.

Before further discussing the options for protecting these children, it is important to mention that, in order to be eligible for asylum in the United States, a person must be a refugee.⁸ The term “refugee” is defined as:

[A]ny person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁹

7. Although this group may seem overly specific, it is necessary to frame it in such specific terms as the BIA requires a high degree specificity when determining whether or not to grant asylum status to an individual claiming to be part of a particular social group. *See* Matter of E-A-G-, 24 I. & N. Dec. 591, 591 (B.I.A. 2008); Matter of S-E-G-, 24 I. & N. Dec. 579, 579 (B.I.A. 2008).

8. *See* 8 U.S.C. § 1158(b)(1)(A) (2014).

9. *Id.* § 1101(a)(42). It is important to mention that the US statutory definition of “refugee” largely tracks the definition contained in the 1951 Refugee Convention, as amended by the 1967 Protocol. REFUGEE, ASYLUM, AND INT’L OPERATIONS DIRECTORATE, U.S. CITIZENSHIP AND IMMIGRATION SERVS., RAO COMBINED TRAINING COURSE: REFUGEE DEFINITION TRAINING MODULE 10 (2012).

The definition explicitly excludes individuals who “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion,” even if they suffered persecution as well.¹⁰ This Note focuses specifically on the particular social group ground for asylum status.

I. HISTORY OF THE PARTICULAR SOCIAL GROUP CATEGORY IN THE UNITED STATES

The particular social group category is the most vague and ambiguous of the asylum categories.¹¹ For an individual to be afforded protection as a member of a particular social group, he must “demonstrat[e] the existence of a cognizable particular social group, his membership in that particular social group, and a risk of persecution *on account of* his membership in the specified particular social group.”¹² Some examples of social groups that have been recognized include: “Filipino[s] of mixed Filipino-Chinese ancestry”;¹³ “young women of the Tchamba-Kunsuntu Tribe who have not had FGM [female genital mutilation], as practiced by that tribe, and who oppose the practice”;¹⁴ membership in “the Marehan subclan” in Somalia”;¹⁵ “former member[s] of the national police”;¹⁶ and “homosexuals in Cuba.”¹⁷ The particular social group category was first defined in *Matter of Acosta*.¹⁸ The definition has been refined over time, and two recent cases, *Matter of W-G-R*¹⁹ and *Matter of M-E-V-G*,²⁰ have helped to clarify the definition.²¹

10. 8 U.S.C. § 1101(a)(42).

11. See *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013).

12. *Matter of W-G-R*, 26 I. & N. Dec. 208, 223 (B.I.A. 2014).

13. *In re V-T-S*, 21 I. & N. Dec. 792, 798 (B.I.A. 1997).

14. *In re Kasinga*, 21 I. & N. Dec. 357, 365 (B.I.A. 1996).

15. *In re H*, 21 I. & N. Dec. 337, 343 (B.I.A. 1996).

16. *Matter of Fuentes*, 19 I. & N. Dec. 658, 662 (B.I.A. 1988).

17. *Matter of M-E-V-G*, 26 I. & N. Dec. 227, 238-39 (B.I.A. 2014) (discussing *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822-23 (B.I.A. 1990)).

18. See *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

19. See *Matter of W-G-R*, 26 I. & N. Dec. 208, 210 (B.I.A. 2014) (citing *Orellana-Monson v. Holder*, 685 F.3d 511, 521 (5th Cir. 2012)).

20. See *M-E-V-G*, 26 I. & N. Dec. at 227.

21. It is important to mention that the definition of particular social group has changed over time. The BIA “may make adjustments to its definition of ‘particular social group’ and often does so in response to the changing claims of applicants.” *W-G-R*, 26 I. & N. Dec. at 210 (citing *Orellana-Monson*, 685 F.3d at 521).

A. Matter of Acosta

Beginning with *Matter of Acosta*,²² courts have been trying to provide a clear definition of the particular social group category. In that case, the respondent claimed asylum under the particular social group category and argued that his particular social group was a cooperative organization of taxi drivers and persons engaged in the transportation industry of El Salvador.²³ The court found the particular social group was not based on an immutable characteristic and, therefore, rejected the respondent's claim.²⁴ In explaining the decision, the BIA stated that to be afforded protection, an individual must be part of a group that shares a "common, immutable characteristic."²⁵ A common, immutable characteristic is defined as "a characteristic that either is beyond the power of [the] individual [members of the group] to change or is so fundamental to [their individual identities] or conscience[s] that it ought not be required to be changed."²⁶ In terms of the persecution, the BIA stated that it is not necessary that the government is the persecutor, but if the persecution is not by the government, it must be "by persons or an organization that the government was unable or unwilling to control."²⁷ While *Matter of Acosta* set out the importance of having a common, immutable characteristic, the BIA still sought greater definition of and limitations on the particular social group category.

B. Matter of E-A-G- and Matter of S-E-G-

Following *Matter of Acosta*'s common, immutable characteristic requirement for the particular social group category, the gang-related cases

22. *Acosta*, 19 I. & N. Dec. 211. This case occurred five years after the passage of the Refugee Act of 1980.

23. *Id.* at 232.

24. The respondent defined the characteristics as "being a taxi driver in San Salvador and refusing to participate in guerrilla-sponsored work stoppages." *Id.* at 234. The court emphasized: "Neither of these characteristics is immutable because the members of the group could avoid the threats of the guerrillas either by changing jobs or by cooperating in work stoppages. . . . [T]he internationally accepted concept of a refugee simply does not guarantee an individual a right to work in the job of his choice." *Id.* at 234.

25. *Id.* at 233.

26. *Id.*

27. *Id.* at 222. Along these lines, the BIA clarified: "It is not enough to simply identify the common characteristics of a statistical grouping of a portion of the population at risk. . . . [T]here must be a showing that the claimed persecution is on account of [one's] identifying characteristics." *Matter of Sanchez*, 19 I. & N. Dec. 276, 285-86 (B.I.A. 1985), *aff'd sub nom. Sanchez-Trujillo v. INS*, 801 F.2d 1571 (9th Cir. 1986).

of *Matter of E-A-G*²⁸ and *Matter of S-E-G*²⁹ set out the requirements of “particularity” and “social visibility.”³⁰ In *Matter of E-A-G*, the Immigration Judge found the respondent was being persecuted by gang members due to his “youth and affiliation or perceived affiliation with gangs” and therefore should be granted asylum.³¹ In *Matter of S-E-G*, the respondents sought asylum by claiming they were “Salvadoran youth who have been subjected to recruitment efforts by the MS-13 gang and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang’s values and activities.”³² Respondents were denied protection in both of these cases because both groups lacked “particularity” and “social visibility.”³³ The

28. 24 I. & N. Dec. 591, 594-95 (B.I.A. 2008).

29. 24 I. & N. Dec. 579, 584-88 (B.I.A. 2008).

30. The BIA had referenced these requirements in other cases, but first stated they were actually necessary components in these decisions. NAT’L IMMIGRANT JUSTICE CTR., PARTICULAR SOCIAL GROUP PRACTICE ADVISORY: APPLYING FOR ASYLUM AFTER *MATTER OF M-E-V-G* AND *MATTER OF W-G-R* 1-2 (2014), available at https://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20PSG%20Practice%20Advisory_Final_3.4.14.pdf. It is important to note that the approach the United States has taken differs from the UNHCR approach: although the United States requires particularity and social visibility, “[t]he UNHCR advocates a disjunctive test, finding a social group where the characteristic forming the group is either immutable or the group is perceived as a group by society.” *Id.* at 6.

31. *E-A-G*, 24 I. & N. Dec. at 592-93. Respondent claimed his brother had been part of the Mara Salvatrucha gang in Honduras. *Id.* at 591-92. His brother was fatally shot by a member of a rival gang, “The 18,” three months after joining the Mara Salvatrucha gang. *Id.* at 592. Respondent believed his mother filed a police report, and “The Spy,” a member of the rival gang and the name of the person Respondent believed shot his brother, was subsequently arrested. *Id.* Respondent was unable to conclude whether the arrest was based on the filing of the police report or on other crimes “The Spy” had committed. *Id.*

Respondent had another brother who later joined the Mara Salvatrucha gang. *Id.* This brother decided to become Christian and left the gang five or six months after joining. *Id.* He was killed by Mara Salvatrucha gang members for leaving the gang. *Id.* Respondent’s grandparents subsequently filed a police report. *Id.* Respondent was also questioned by his cousin, a member of the Mara Salvatrucha gang, regarding whether he would like to join the gang. *Id.* Respondent responded that he did not want to join, but did not experience any difficulties when he rejected recruitment. *Id.* His mother received various oral and written threats ordering his family to vacate their house. *Id.* These threats began after the deaths of his brothers. *Id.* Eventually, all the members of his family moved to another town except respondent, who stayed in his home town. *Id.* He did not experience any persecution after his family left. *Id.* His family eventually returned, claiming the other town was just as violent. *Id.* His mother received more threats ordering them to vacate their home. *Id.* The last threat was in 2005. *Id.* She did not leave their home and faced no persecution. *Id.*

32. *S-E-G*, 24 I. & N. Dec. at 579. Respondents included a nineteen-year-old female and her two sixteen-year-old brothers. *Id.* The brothers sought protection after being beaten by members of the gang and threatened with death if they did not join. *Id.* at 579-80. The female sought protection because the gang threatened to rape and harm her. *Id.* at 580. Respondents never went to the police to report what had happened because they “fear[ed] retaliation and believ[ed] the police would not help them.” *Id.*

33. *E-A-G*, 24 I. & N. Dec. at 594 (rejecting one of the specified particular social groups identified by the Immigration Judge as “lack[ing] social visibility”); *S-E-G*, 24 I. & N. Dec. at 584-

BIA stated that particularity means the social group “can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons. . . . [T]he key question is whether the proposed description is sufficiently particular, or is too amorphous . . . to create a benchmark for determining group membership.”³⁴ The requirement of social visibility is that “the shared characteristic of the group should generally be recognizable by others in the community,”³⁵ and members of the group should be “perceived as a group by society.”³⁶

The *E-A-G-* and *S-E-G-* decisions have been highly criticized. Opponents of the terms believe that these decisions “call upon the BIA and immigration judges (IJs) to not merely decide the facts and the law before them, but to opine on sociological matters in foreign societies.”³⁷ They also argue that the decisions create more requirements for the particular social group category than for the other asylum categories.³⁸ The Third Circuit has rejected the additional requirements because “the BIA [has] not given a ‘principled reason’” for adopting them.³⁹ Additionally, the BIA has given various definitions of what the terms could mean, making them difficult to apply.⁴⁰

C. Matter of M-E-V-G-

The respondent in *Matter of M-E-V-G-* was a citizen of Honduras who claimed asylum based on belonging to the particular social group of “Honduran youth[s] who have been actively recruited by gangs but who

88, 590 (rejecting specified particular social group as lacking social visibility and particularity). In discussing social visibility in *Matter of E-A-G-*, the BIA stated, “Persons who resist joining gangs have not been shown to be part of a socially visible group within Honduran society, and the respondent does not allege that he possesses any characteristics that would cause others in Honduran society to recognize him as one who has refused gang recruitment.” *E-A-G-*, 24 I. & N. Dec. at 594.

34. *S-E-G-*, 24 I. & N. Dec. at 584 (internal quotation marks omitted).

35. *Id.* at 586.

36. *In re C-A-*, 23 I. & N. Dec. 951, 956 (B.I.A. 2006) (quoting UNHCR, *Guidelines on International Protection: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/GIP/02/02 (May 7, 2002)).

37. NAT’L IMMIGRANT JUSTICE CTR., *supra* note 30, at 6.

38. “According to the BIA, where a proposed group doesn’t have precise boundaries, it is not cognizable; no such rule applies to political groups or religious groups.” *Id.* at 7.

39. STEPHEN H. LEGOMSKY & CRISTINA M. RODRÍGUEZ, *IMMIGRATION AND REFUGEE LAW AND POLICY* 974 (6th ed. 2015) (internal quotation marks omitted).

40. *Id.* at 971–77.

have refused to join because they oppose the gangs.”⁴¹ In this decision, the BIA took the opportunity to rename and more clearly define the term “social visibility” that had been set out in previous decisions.⁴² The BIA explained, “[T]he ‘social visibility’ test was never intended to, and does not require, literal or ‘ocular’ visibility.”⁴³ Because of the confusion over the term, the BIA decided to rename it “social distinction” and elucidated, “A viable particular social group should be perceived within the given society as a sufficiently distinct group. The members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society.”⁴⁴ The BIA also discussed the question of whose perception the determination is based on, stating that “a group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.”⁴⁵

After clarifying the requirements to receive asylum protection for persecution due to membership in a particular social group, the BIA remanded the case to the Immigration Judge.⁴⁶ Because of the clarification, the BIA instructed the Immigration Judge to “engage in any fact-finding that may be necessary to resolve the issues in [the] case.”⁴⁷

D. Matter of W-G-R-

Matter of W-G-R- was decided the same day as *Matter of M-E-V-G-*. The respondent in *Matter of W-G-R-* was a citizen from El Salvador.⁴⁸ He claimed asylum based on his membership in the particular social group of “former members of the Mara 18 gang in El Salvador who have renounced their gang membership.”⁴⁹ While the court found him credible, it did not

41. *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 228 (B.I.A. 2014). The respondent was attacked on multiple occasions by members of the Mara Salvatrucha gang. *Id.* The gang “beat him, kidnapped and assaulted him and his family while they were traveling in Guatemala, and threatened to kill him if he did not join the gang.” *Id.* They would also “shoot at him and throw rocks and spears at him about two to three times per week.” *Id.*

42. *Id.* at 236.

43. *Id.* at 234.

44. *Id.* at 238.

45. *Id.* at 242.

46. *Id.* at 252–53.

47. *Id.*

48. *Matter of W-G-R-*, 26 I. & N. Dec. 208, 209 (B.I.A. 2014).

49. *Id.* The man was a member of the Mara 18 gang, but left after less than one year. *Id.* After he left the Mara 18 gang, members confronted him on two different occasions, shooting him in the leg during one of the encounters. *Id.* He was then targeted for retribution. *Id.* It was at this point that he decided to flee to the United States to seek protection. *Id.*

grant him asylum because the particular social group to which he claimed membership was not particular and socially distinct.⁵⁰ Additionally, the BIA found that the persecution he experienced was not “*on account of his membership in the specified particular social group.*”⁵¹

In considering the respondent’s claim, the BIA declared that the group was not particular. The BIA stated that the group “lack[ed] particularity because it is too diffuse, as well as being too broad and subjective.”⁵² In further explanation, the BIA stated that it “could include persons of any age, sex, or background.”⁵³ The BIA also found that the group did not meet the social distinction requirement.⁵⁴ Therefore, the BIA concluded that the individual would not be granted asylum because he did not fit into a cognizable particular social group.

E. Matter of A-R-C-G-

If the persecution is coming from a private actor, for protection to be granted, the government of the country from which the individual has fled must be unwilling or unable to protect the individual from persecution. Therefore, asylum protection has not often been afforded to individuals who have experienced domestic violence. However, in the recent case of *Matter of A-R-C-G-*, the respondent, a Guatemalan woman who claimed asylum as belonging to the particular social group of “married women in Guatemala who are unable to leave their relationship,” was granted protection in the United States as an asylee.⁵⁵ The BIA recognized: “[D]epending on the facts and evidence in an individual case, ‘married women in Guatemala who are unable to leave their relationship’ can constitute a cognizable particular social group that forms the basis of a claim for asylum.”⁵⁶ The finding that “married women in Guatemala who

50. *Id.* at 221–23.

51. *Id.* at 223. “Because the respondent has not shown membership in a cognizable social group, neither the harm he suffered nor the future harm he fears from gang members or the police on account of his status as a former gang member provides a basis for withholding of removal.” *Id.* at 222–23.

52. *Id.* at 221. The definition of the group cannot be “too broad and subjective” because the court has stated that “loose descriptive phrases that are open-ended and that invite subjective interpretation are not sufficiently particular.” *Mayorga-Vidal v. Holder*, 675 F.3d 9, 15 (1st Cir. 2012).

53. *W-G-R-*, 26 I. & N. Dec. at 221.

54. *Id.* at 222. The BIA stated: “The record contains documentary evidence describing gangs, gang violence, and the treatment of gang members but very little documentation discussing the treatment or status of former gang members.” *Id.*

55. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 388–89 (B.I.A. 2014).

56. *Id.* at 388. The woman had experienced “repugnant abuse by her husband,” who beat her weekly after she gave birth to their first child. *Id.* at 389. Specific instances throughout this abuse included his breaking her nose, burning her by throwing paint thinner on her chest, and raping her. *Id.*

are unable to leave their relationship” can be a particular social group under certain circumstances may open the door for other previously rejected particular social group claims.

In recognizing the particular social group, the BIA stated that it met the requirement of the members sharing a “common immutable characteristic.”⁵⁷ Specifically, they shared the characteristics of gender and marital status.⁵⁸ It also held that the group was “defined with particularity,” as “[t]he terms used to describe the group—‘married,’ ‘women,’ and ‘unable to leave the relationship’—have commonly accepted definitions within Guatemalan society based on the facts in this case, including the respondent’s experience with the police.”⁵⁹ The BIA found the group was socially distinct because “the record in this case includes un rebutted evidence that Guatemala has a culture of ‘machismo and family violence.’”⁶⁰ Finally, the BIA emphasized that “it is significant that the respondent sought protection from her spouse’s abuse and that the police refused to assist her because they would not interfere in a marital relationship.”⁶¹ The BIA did not give much further analysis to the woman’s asylum claim and instead deferred to the Department of Homeland Security’s concession that the “mistreatment was, for at least one central reason, on account of her membership in a cognizable particular social group.”⁶²

Although domestic violence claims may seem unrelated to gang resisters and defectors, this decision was extremely important. It was the first time the BIA had granted protection to women who have experienced

She tried to leave by living at her father’s house and moved to Guatemala City for about three months; however, both times her husband convinced her to return and continued beating her. *Id.* The woman contacted the police on multiple occasions, but she was told “they would not interfere in a marital relationship.” *Id.* On one occasion, they did appear at her home after her husband had been beating her on the head, but they did not arrest him. *Id.* The court specified: “[A] married woman’s inability to leave the relationship may be informed by societal expectations about gender and subordination, as well as legal constraints regarding divorce and separation.” *Id.* at 393.

57. *Id.* at 392–93.

58. *Id.* at 392.

59. *Id.* at 393.

60. *Id.* at 394 (quoting *Guatemala Failing Its Murdered Women: Report*, CBC NEWS (Jul. 18, 2006, 11:22 AM), <http://www.cbc.ca/news/world/guatemala-failing-its-murdered-women-report-1.627240>).

61. *Id.* at 393.

62. *Id.* at 395. Analysis is not always given by the US Department of Homeland Security (“DHS”). In cases where the DHS does not provide analysis or concessions, “the issue of nexus will depend on the facts and circumstances of an individual claim.” *Id.*

domestic violence.⁶³ Although “[the American asylum program] has rarely taken giant, irreversible leaps,”⁶⁴ after this decision, it seems possible that gang resisters and defectors with certain characteristics could be deemed a cognizable particular social group worthy of protection. *Matter of A-R-C-G-* is also important because it provides insight into how the BIA interprets particularity and social distinction. Knowing the BIA interpretation is important for gang-defector and gang-resister cases because the BIA could ultimately end up adjudicating the case and determining whether this group fits within its definition of particular social group.

F. Current Definition of Particular Social Group

Since *Matter of Acosta*, the BIA has continued to shape the definition of particular social group. After the recent decisions of *Matter of W-G-R-*, *Matter of M-E-V-G-*, and *Matter of A-R-C-G-*, the BIA has clarified the particular social group category. There is now a three-part test individuals must pass to establish a particular social group.⁶⁵ For a group to be recognized, it must be “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.”⁶⁶ *Matter of Acosta* is still the authority on the common, immutable characteristic.⁶⁷ Regarding the particularity of the social group, “[a] particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group.”⁶⁸ In considering whether a group is socially distinct, “[the court] look[s] to the evidence to determine whether a society . . . makes meaningful distinctions based on the common immutable characteristic[.]”⁶⁹

63. Rebecca Hamlin, *A Recent Shift in Immigration Law Will Change Less Than You Think*, WASH. POST (Nov. 7, 2014), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/11/07/a-recent-shift-in-immigration-law-will-change-less-than-you-think/>.

64. *Id.*

65. *A-R-C-G-*, 26 I. & N. at 392.

66. *Id.*

67. Although the particular social group definition has been expanded, “the common immutable characteristic set forth [in *Matter of Acosta*] has been, and continues to be, an essential component of the analysis.” *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 232 (B.I.A. 2014).

68. *Matter of W-G-R-*, 26 I. & N. Dec. 208, 214 (B.I.A. 2014) (citing *In re A-M-E- & J-G-U-*, 24 I. & N. Dec. 69, 76 (B.I.A. 2007)). “‘Particularity’ chiefly addresses the question of delineation, or as earlier court decisions described it, the need to put ‘outer limits’ on the definition of ‘particular social group.’” *Id.* (citing *Castellano-Chacon v. INS*, 341 F.3d 533, 549 (6th Cir. 2003); *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986)).

69. *A-R-C-G-*, 26 I. & N. Dec. at 394.

II. REASONS FOR UNACCOMPANIED MINORS SEEKING REFUGE IN THE UNITED STATES

Between October 31, 2013, and August 31, 2014, US Customs and Border Patrol agents apprehended 66,127 unaccompanied minors on the southern border of the United States.⁷⁰ Of those minors, 10,622 were apprehended in June 2014.⁷¹ The majority of these children originated from the “Northern Triangle,”⁷² which includes El Salvador, Guatemala, and Honduras.⁷³ The reasons these children leave home influence how they will be treated in the United States when they seek asylum. Many of these children fled due to “push factors,”⁷⁴ such as violence and poverty.⁷⁵ According to the United Nations Office on Drugs and Crime, “Honduras, El Salvador, and Guatemala suffer the world’s first, fourth, and fifth highest homicide rates, respectively.”⁷⁶ Much of this violence is due to the large amount of Mexican gang activity, which has been escalating since

70. Muzaffar Chishti & Faye Hipsman, *Unaccompanied Minors Crisis Has Receded from Headlines but Major Issues Remain*, MIGRATION POLICY INST. (Sept. 25, 2014), <http://www.Migrationpolicy.org/article/unaccompanied-minors-crisis-has-receded-headlines-major-issues-remain>. Studies suggest there has been a drastic change in the age of the children who are arriving; specifically, there has been a 117 percent increase in the number of children arriving who are under the age of twelve. Krogstad et al., *supra* note 2. In contrast, there has been a 12 percent increase in the number of children arriving who are between thirteen and seventeen. *Id.* Notably, this study was only able to account for the number of children arriving in the United States who have been apprehended by US authorities. *See id.* It does not account for the number of children who are arriving undetected. *See id.* It has also been reported the number of unaccompanied girls is increasing at a faster rate than the number of unaccompanied boys, with the number of girls increasing by 77 percent and the number of boys increasing by 8 percent. Molly Hennessy-Fiske, *Report: 117% Increase in Children 12 and Younger Crossing Border Alone*, L.A. TIMES (July 25, 2014, 7:00 AM), <http://www.latimes.com/nation/nationnow/la-na-illegal-immigration-unaccompanied-minors-20140724-story.html#page=1>.

71. Chishti & Hipsman, *supra* note 70.

72. DAN RESTREPO & ANN GARCIA, CTR. FOR AM. PROGRESS, *THE SURGE OF UNACCOMPANIED CHILDREN FROM CENTRAL AMERICA: ROOT CAUSES AND POLICY SOLUTIONS 1* (2014), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/07/CentAmerChildren3.pdf>.

73. *See id.* at 1-2. The Pew Institute reports that the top three cities of origin of the unaccompanied minor children are San Pedro Sula, Tegucigalpa, and Juticalpa, all of which are located in Honduras. Ana Gonzalez-Barrera et al., *DHS: Violence, Poverty, Is Driving Children to Flee Central America to U.S.*, PEW RESEARCH CTR. (July 1, 2014), <http://www.pewresearch.org/fact-tank/2014/07/01/dhs-violence-poverty-is-driving-children-to-flee-central-america-to-u-s/>.

74. A “push factor” is something in the country of origin that causes an individual to leave. Dina Francesca Haynes, *Exploitation Nation: The Thin and Grey Legal Lines Between Trafficked Persons and Abused Migrant Laborers*, 23 NOTRE DAME J.L. ETHICS & PUB. POL’Y 1, 9–10 (2009). Examples include poverty, violence, famine, and outbreak of diseases. *See id.*

75. *See* P.J. Tobia, *No Country for Lost Kids*, PBS NEWSHOUR (June 20, 2014, 2:18 PM), <http://www.pbs.org/newshour/updates/country-lost-kids/>.

76. Danielle Renwick, *The U.S. Child Migrant Influx*, COUNCIL ON FOREIGN RELATIONS (Sept. 1, 2014), <http://www.cfr.org/immigration/us-child-migrant-influx/p33380>. In 2013, San Pedro Sula, the top city of origin of the unaccompanied children, had a homicide rate of 187 per 100,000 inhabitants, which makes it the murder capital of the world. Gonzalez-Barrera et al., *supra* note 73.

Mexico began its war on the cartels in 2006.⁷⁷ The war against the cartels displaced many of the smaller cartels, which then established gangs in these other countries.⁷⁸

The large influence of the drug cartels is dangerous for children, as they are often targeted by these groups.⁷⁹ Many times they are targeted as mules, assassins, or victims of sexual violence,⁸⁰ and they are often asked to take part in “robberies, rape, drug trafficking and arms sales.”⁸¹ In a study conducted by the United Nations High Commissioner for Refugees (“UNHCR”), 66 percent of the children interviewed from El Salvador cited “violence by organized armed criminal actors as a primary motivator for leaving.”⁸² In the same study, 44 percent of children from Honduras and 20 percent from Guatemala cited “violence in society” as the primary motivating factor for leaving.⁸³ The situation has been compared to the child-soldier situation in Africa.⁸⁴ In addition to facing organized criminal violence by gangs, children in these countries are excluded by society.⁸⁵ For simply being homeless, wearing particular clothing, or associating with other children or teens, some individuals consider these children to be criminals.⁸⁶ In addition to violence by organized gangs and the belief some hold that they are criminals, children also often flee because of violence in the home.⁸⁷

Another push factor causing these children to leave is poverty. There is extreme poverty in El Salvador, Guatemala, and Honduras, with 42.7 percent, 53.5 percent, and 52 percent of their populations living on less than four dollars per day, respectively.⁸⁸ Some children are leaving to

77. Tobia, *supra* note 75.

78. *Id.*

79. *Id.*

80. *Id.*

81. José Meléndez, *Minors Flee Violence and Social Exclusion in Honduras*, EL PAÍS (July 25, 2014, 4:50 PM), http://elpais.com/elpais/2014/07/25/inenglish/1406298254_275164.html.

82. U.N. HIGH COMM’R FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION 9 (2014), available at <http://www.refworld.org/docid/532180c24.html> [hereinafter CHILDREN ON THE RUN].

83. *Id.* at 9–10.

84. See, e.g., Tobia, *supra* note 75 (quoting a senior program officer at the Women’s Refugee Commission in Washington who stated that the crisis is “very similar to the child soldier phenomenon in certain countries in Africa”).

85. Meléndez, *supra* note 81.

86. *Id.*

87. A study conducted by the UNHCR found that 21 percent of the participants had fled “abuse and violence in their homes by their caretakers.” CHILDREN ON THE RUN, *supra* note 82, at 6.

88. Renwick, *supra* note 76.

escape this poverty.⁸⁹ A UNHCR report found that 7 percent of children from El Salvador, 29 percent of children from Guatemala, and 21 percent of children from Honduras cited deprivation as a major reason for leaving their home countries.⁹⁰ Although poverty is a significant push factor, many experts believe it is more likely the children are fleeing because of violence.⁹¹

Some individuals argue there are also “pull factors” that entice the children to come to the United States.⁹² These “pull factors” include the misinformation that has spread throughout Latin America about the Deferred Action for Childhood Arrivals (“DACA”) program.⁹³ The

89. CHILDREN ON THE RUN, *supra* note 82, at 24.

90. *Id.* at 9–10.

91. Experts believe they are fleeing because of violence rather than poverty because (among other factors) Nicaragua, which has a higher percentage of individuals living below four dollars per day (70 percent), is receiving asylum seekers from El Salvador, Guatemala, and Honduras. Renwick, *supra* note 76. If the unaccompanied minors were fleeing because of poverty, they would not go to a country that is also poverty-stricken. *See id.* Additionally, because Honduras is the country of origin with the highest percentage of arriving children, some experts believe it is evident that the violence is causing the children to flee. *See, e.g.,* Hennessy-Fiske, *supra* note 70 (quoting Susan Terrio, an anthropology professor at Georgetown University, as stating that “[t]he fact that Hondurans represent the highest percentage [of unaccompanied child migrants], followed by Salvadorans, makes clear that the major push factors are violence”).

92. *See, e.g.,* Muzaffar Chishti & Faye Hipsman, *Dramatic Surge in the Arrival of Unaccompanied Children Has Deep Roots and No Simple Solutions*, MIGRATION POLICY INST. (June 13, 2014), <http://www.migrationpolicy.org/article/dramatic-surge-arrival-unaccompanied-children-has-deep-roots-and-no-simple-solutions>.

93. The DACA program began on June 15, 2012, when the US Secretary of Homeland Security announced the creation of the program through executive action. *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca> (last updated Aug. 3, 2015) [hereinafter *Deferred Action*]. Originally, the program allowed for individuals who met certain requirements to be eligible to remain in the United States for two years, with the possibility of renewing the deferment. *Id.* The individual was also eligible to receive work authorization. 8 C.F.R. § 274a.12(c)(14) (2015). An individual was eligible for deferral if he or she:

1. [Was] under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching [his or her] 16th birthday;
3. [Had] continuously resided in the United States since June 15, 2007, up to the present time;
4. [Was] physically present in the United States on June 15, 2012, and at the time of making [his or her] request for consideration of deferred action with [the US Citizenship and Immigration Services];
5. Had no lawful status on June 15, 2012;
6. [Was] in school, [had] graduated or obtained a certificate of completion from high school, [had] obtained a general education development (GED) certificate, or [was] an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. [Had] not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and [did] not otherwise pose a threat to national security or public safety.

Deferred Action, supra. The individual had to meet all of these requirements in order to be eligible for the program. *Id.*

information these individuals hear is specifically misinformation, because to qualify for DACA, an individual must have lived in the United States since 2010.⁹⁴ Therefore, none of the recent or future children arriving will qualify for DACA.⁹⁵ Another misperception is that the government of the United States has been especially lenient toward children arriving in the country.⁹⁶ Others claim the children come because of misinformation from traffickers and the desire to be reunited with their families.⁹⁷ The First Lady of Honduras, who heads a program to address trafficking, reported that traffickers tell the population that the United States has created a sort of “migratory amnesty.”⁹⁸ Many times the parents of these children are already in the United States, because it is common for parents to make the journey to the United States first, establish themselves in a community, and then have their children join them.⁹⁹ The parents who are already in the United States hear this misinformation and pay the traffickers as much as \$5,000 to bring their children to the United States.¹⁰⁰

Many of the unaccompanied children who arrive in the United States illegally are searching for a better life.¹⁰¹ Some argue the children should be deported back to their home countries, while others argue they have valid asylum claims and should be afforded protection.¹⁰² The following section proposes a particular social group under which some of the children could be granted asylum and analyzes the group based on recent BIA decisions.

“On November 20, 2014, [President Obama] announced a series of executive actions” that changed some aspects of the DACA program. *Executive Actions on Immigration*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/immigrationaction> (last updated Apr. 15, 2015) [hereinafter *Executive Actions*]. Under these initiatives, an individual was now eligible for deferral and work authorization for three years, instead of the two previously allowed. *Id.* Additionally, an individual could be of any age at the time of application, as long as he or she had entered the United States before reaching the age of 16 and had lived in the United States continuously since January 1, 2010, instead of June 15, 2007. *Id.* The individual must have met all of the other DACA requirements laid out previously in order to be eligible for deferral and work authorization. *See id.*

94. *See Deferred Action*, *supra* note 93.

95. *See Executive Actions*, *supra* note 93.

96. *See Chishti & Hipsman*, *supra* note 92.

97. *See Meléndez*, *supra* note 81.

98. *Id.*

99. *See Hennessy-Fiske*, *supra* note 70.

100. Meléndez, *supra* note 81.

101. Chishti & Hipsman, *supra* note 92.

102. *See Tumulty & Nakamura*, *supra* note 3.

III. UNACCOMPANIED MINOR PARTICULAR SOCIAL GROUP ANALYSIS

The United States could grant protection to the unaccompanied minors arriving from El Salvador, Guatemala, and Honduras in various ways. Some of these options include Special Immigrant Juvenile Status,¹⁰³ Temporary Protected Status,¹⁰⁴ T visas,¹⁰⁵ U visas,¹⁰⁶ and asylum status. Some argue these children could qualify for asylum status because of their

103. Special Immigrant Juvenile Status (“SIJ”) aims to “to help foreign children in the United States who have been abused, abandoned, or neglected.” *Special Immigrant Juveniles (SIJ) Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status> (last updated June 15, 2015) [hereinafter *SIJ Status*]. For a child to qualify for SIJ, he must establish that “it is not in [his] best interests to return to [his] home country and [the child] cannot be reunited with a parent because of ANY of the following: abuse; abandonment; neglect; [or a] similar reason under state law.” *Eligibility Status for SIJ*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last updated July 12, 2011). The child must also be under twenty-one years of age. *Id.* If a child is granted SIJ status, she will be able to apply for lawful permanent residence and stay in the United States permanently. *SIJ Status, supra*.

104. Temporary Protected Status (“TPS”) provides for protection of individuals who do not qualify for protection as refugees “but are nonetheless fleeing—or reluctant to return to—potentially dangerous situations.” LISA SEGHEIT ET AL., CONG. RESEARCH SERV., RS20844, TEMPORARY PROTECTED STATUS: CURRENT IMMIGRATION POLICY AND ISSUES 2 (2015), available at <https://www.fas.org/sgp/crs/homsec/RS20844.pdf>. Some situations in which individuals receive temporary protected status include when:

[T]here is ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning, provided that granting TPS is consistent with U.S. national interests.

Id. The granting of TPS is temporary and does not permit an individual to become a lawful permanent resident. *Id.* In other words, after a certain period of time determined by the government, the individual must return to her home country. *See id.* TPS is normally granted for six to eighteen months; however, the period can be extended by the US Secretary of Homeland Security and the US Secretary of State. *Id.*

105. T visas are for individuals who have experienced “a severe form of trafficking in persons.” LEGOMSKY & RODRÍGUEZ, *supra* note 39, at 1164 (internal quotation marks omitted). This trafficking has been defined to mean sex trafficking or labor trafficking. 22 U.S.C. § 7102(9) (2013); LEGOMSKY & RODRÍGUEZ, *supra* note 39, at 1164. The requirements for T visas are explained in §1101(a)(15)(T) of the Immigration and Nationality Act. 8 U.S.C. § 1101(a)(15)(T) (2013). If an individual receives a T visa, it is normally valid for up to four years, with the possibility of extensions. LEGOMSKY & RODRÍGUEZ, *supra* note 39, at 1165. Additionally, if other requirements are met, an individual who has a T visa can be eligible for adjustment of status. *Id.* at 1164.

106. The U visa is available to individuals who have been victims of one of a various number of crimes, have suffered physical or mental abuse, and are willing to assist the government in prosecuting the individuals who have committed the criminal activity. 8 U.S.C. § 1101(a)(15)(U); *see also* LEGOMSKY & RODRÍGUEZ, *supra* note 39, at 1164. The basic requirements for the U visa are listed in § 1101(a)(15)(U) of the Immigration and Nationality Act. 8 U.S.C. § 1101(a)(15)(U). Like the T visa, the U visa is valid for up to four years, and if the recipient meets other requirements, she can be eligible for adjustment of status. LEGOMSKY & RODRÍGUEZ, *supra* note 39, at 1164–65.

past experiences and reasons for arriving in the United States.¹⁰⁷ These children would likely only qualify if they could establish they were persecuted on account of belonging to a particular social group.¹⁰⁸ Although each child has a different story and reason for arriving in the United States, there are many similarities in the experiences shared by these children. Because asylum status is determined on a case-by-case basis, not all children will fit in the particular social group of “impoverished children under fourteen years of age who have been threatened with recruitment and attacked by gangs.” This section will analyze whether those children who do fit into this category would likely receive asylum due to persecution based on a particular social group.

A. *Particular Social Group Category*¹⁰⁹

As noted earlier, the BIA has rejected particular social group claims that are based solely on defection from gangs or resistance to gang recruitment.¹¹⁰ The BIA has held those groups fail to satisfy its particularity and social distinction requirements.¹¹¹ This Note argues those obstacles can be overcome if the particular social group category definition is narrowed in two specific ways. It should be limited to children below a specific age (I suggest fourteen, which I describe in detail later¹¹²), and further limited to those children who are impoverished. I therefore propose framing the particular social group as “impoverished

107. See Abdullah, *supra* note 5.

108. Although it is possible the children could qualify for asylum status as being persecuted on account of their religious beliefs, political beliefs, nationality, or race depending on their individual experiences, the previously discussed push factors indicate it is most probable they would have to apply for asylum status because of persecution on account of belonging to a particular social group. See *supra* notes 74–75 and accompanying text.

109. It should be pointed out that any determination of whether an individual is part of a particular social group is based on her specific case: the courts have declared that “any claim regarding the existence of a particular social group in a country must be evaluated in the context of the evidence presented regarding the particular circumstances in the country in question.” *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 392 (B.I.A. 2014). Therefore, although it is hard to generalize, some individuals may fall under this category. Some considerations in each individual case would be how many times the person was persecuted, how long it lasted, how she was targeted, what the persecution entailed, and whether she could flee to another part of the country. See U.S. CITIZENSHIP AND IMMIGRATION SERVS., RAIIO ASYLUM OFFICER BASIC TRAINING, ASYLUM ELIGIBILITY PART II: WELL-FOUNDED FEAR 31–34 (2009), available at <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Well-Founded-Fear-31aug10.pdf>.

110. See *supra* notes 28–36 and accompanying text.

111. See *supra* notes 28–36 and accompanying text.

112. See *infra* Part III.A.

children under fourteen years of age who have been threatened with recruitment and attacked by gangs.”

Although it may be difficult for children fleeing solely from poverty to claim asylum, children fleeing for other reasons deserve protection as asylees. Children fleeing El Salvador, Guatemala, and Honduras could claim asylum based on belonging to the particular social group category of “impoverished children under fourteen years of age who have been threatened with recruitment and attacked by gangs.” This social group would not include all of the children fleeing El Salvador, Guatemala, and Honduras, but would encapsulate many, as the children who are currently arriving in the United States are younger than those who arrived in previous years and are fleeing violence, poverty, and persecution in their home countries.¹¹³ I have chosen this particular social group because many children who are arriving are impoverished and have experienced gang recruitment or been attacked by gangs. Additionally, the average age for recruitment by some of these gangs is twelve,¹¹⁴ and more children under twelve are arriving in the United States than in previous years.¹¹⁵ Limiting the age to fourteen allows for children who would be above the average age to qualify. Additionally, in El Salvador, Guatemala, and Honduras, children under fourteen are not allowed to work.¹¹⁶ The combination of these factors may provide for a cognizable particular social group and afford protection to children who fit into this category.

In considering whether children falling into this particular social group would be recognized by the BIA, it is important first to consider whether the particular social group would be a valid social group. Under this analysis, the group must (1) have a common, immutable characteristic, (2) have an element of particularity, and (3) be socially distinct.¹¹⁷ It is also necessary to consider whether the children are facing persecution because they belong to this particular social group.¹¹⁸

113. Poverty alone would not allow an individual to be granted asylum status; there must be an element of persecution as well. *See Escobar v. Gonzales*, 417 F.3d 363, 363–68 (3d Cir. 2005).

114. *Matter of S-E-G-*, 24 I. & N. Dec. 579, 580 (B.I.A. 2008).

115. *See Krogstad et al.*, *supra* note 2.

116. *See infra* note 122 and accompanying text.

117. *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 392 (B.I.A. 2014).

118. In each individual case, courts also inquire into whether the individual was credible, whether the fear was well founded, and whether the individual was unwilling or unable to return to the country of origin. LEGOMSKY & RODRÍGUEZ, *supra* note 39, at 924. This analysis is outside the scope of this Note.

1. *Immutable Characteristic*

The first issue that needs to be addressed regarding this proposed particular social group is whether it has a common, immutable characteristic. In this particular social group, one common, immutable characteristic is age. Even though age changes over time, it could be considered an immutable characteristic for purposes of asylum. In *Matter of S-E-G-*, the court recognized that “the mutability of age is not within one’s control . . . [and] if an individual has been persecuted in the past on account of an age-described particular social group, or faces such persecution at a time when that individual’s age places him within the group, a claim for asylum may still be cognizable.”¹¹⁹ While many of the children arriving unaccompanied from El Salvador, Guatemala, and Honduras are between the ages of thirteen and seventeen, there has been a dramatic increase in the number of children arriving who are under twelve.¹²⁰ Since older children may transition into adulthood by the time their claims are heard, it is more difficult for Immigration Judges to consider them children.¹²¹

In the case of these children, poverty may also be considered a common, immutable characteristic. Although it could be argued that an individual could change his situation so as to be no longer impoverished, these individuals are children. It would be nearly impossible for a young, impoverished child to change her economic situation, as she is dependent on her family. One could argue the child could find ways to help improve the family’s economic situation. However, El Salvador, Guatemala, and Honduras have all ratified the Convention Concerning Minimum Age for Admission to Employment.¹²² Because these countries have ratified the Convention, it is illegal for children under the age of fourteen to work.¹²³ Therefore, children cannot change the fact that they are impoverished, and they would be partaking in illegal activities if they tried. Although impoverishment alone would not be considered an immutable characteristic, the combination of being impoverished and being a child

119. *S-E-G-*, 24 I. & N. Dec. at 583–84. The court stated the respondents were “no longer considered ‘children,’ as that term is commonly understood,” because the female respondent was twenty-one and the two males were eighteen. *Id.* at 583. It would seem, however, that if an individual is still considered a child, or is under eighteen, her age could be considered an immutable characteristic.

120. Krogstad et al., *supra* note 2.

121. *See, e.g., S-E-G-*, 24 I. & N. Dec. at 583.

122. INT’L LABOUR CONFERENCE, 99TH SESSION, REPORT III (PART 2): INFORMATION DOCUMENT ON RATIFICATIONS AND STANDARDS-RELATED ACTIVITIES 101 (2010).

123. *See id.*

would be an immutable characteristic, as there is no way for the child on her own to change her situation, especially if she is a young child.

There are many asylum cases that focus specifically on gangs and gang activity. Some find that youth “who are recruited by gangs but refuse to join (or their family members)” are not a protected social group.¹²⁴ Others find that past gang involvement would exclude an individual from receiving protection.¹²⁵ These asylum claims are rejected because of the presumption that if the subjects were in a gang, they participated in criminal activity, and participation in criminal activity precludes them from receiving asylum protection.¹²⁶ Neither the BIA nor the courts, however, have put forth “a blanket rejection of all factual scenarios involving gangs.”¹²⁷ Instead, based on a case-by-case analysis, there may be certain situations where an individual who has been persecuted by a gang can receive protection.¹²⁸ In *Matter of M-E-V-G-*, the BIA provided an example in which “gangs are targeting homosexuals” and stated that the targeted homosexuals may be afforded protection.¹²⁹ Based on the statement made in *Matter of M-E-V-G-*, it seems the court would grant protection to the homosexuals targeted by gangs because they share the common, immutable characteristic of homosexuality and are socially distinct. In light of this possibility, gang-related asylum claims might lead to protection depending on the individual’s experience. Therefore, it could be argued that impoverished children under fourteen who have been threatened with recruitment and attacked by gangs could share a common, immutable characteristic. It could also be argued the group would share the immutable characteristic of being impoverished children and would be seen by society as a distinct social group. Consequently, individuals falling into this group may receive protection.

2. Particularity

This particular social group may also satisfy the particularity requirement. For a group to be considered particular, it “must be defined

124. See, e.g., *S-E-G-*, 24 I. & N. Dec. at 587; see also *supra* note 32 and accompanying text.

125. See, e.g., *Arteaga v. Mukasey*, 511 F.3d 940, 945-46 (9th Cir. 2007) (“We cannot conclude that Congress, in offering refugee protection for individuals facing potential persecution through social group status, intended to include violent street gangs who assault people and who traffic in drugs and commit theft.”).

126. See *id.*

127. *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 251 (B.I.A. 2014).

128. See *id.*

129. *Id.*

by characteristics that provide a clear benchmark for determining who falls within the group.”¹³⁰ Additionally, “the terms used to describe the group [must] have commonly accepted definitions in the society of which the group is a part.”¹³¹

The characteristics of age, impoverishment, and being threatened or beaten for not joining gangs could be specific enough to be considered particular. Although the social group with the main elements of poverty, homelessness, and youth was rejected in *Escobar v. Gonzalez* for being “too vague and all encompassing” with a “lack of an outer limit,”¹³² it could be argued that this particular social group is not actually vague and all-encompassing. The particular social group proposed in this Note would not have such problems, as each of the characteristics is either quantifiable or provable. First, whether an individual is under the age of fourteen is quantifiable. Although most children would probably not have their birth certificates with them when they arrive in the United States, they would presumably know their age, and it would be clear whether they fit into the group. At any rate, the applicant would have the burden of proof as to her specific age. Second, whether or not the child is impoverished is also quantifiable. One could look at the average income of the child’s family to determine whether the family is living below the country’s poverty line.¹³³ Again, the applicant would need to provide evidence of her family’s financial status to enable the court to make this determination. Finally, whether the child had been threatened or beaten for not joining a gang is provable. One would simply have to listen to the child’s past experience, seeking corroboration when possible, to determine whether or not this threatening occurred. As each characteristic is specific and can be proven, this particular social group would not be considered vague and may constitute a cognizable particular social group.

3. *Social Distinction*

For the children to be granted protection, it is necessary that the particular social group be recognized within each child’s home country as being a social group. The distinction would be made by society as a whole,

130. Matter of W-G-R-, 26 I. & N. Dec. 208, 214 (B.I.A. 2014) (citing *In re A-M-E- & J-G-U-*, 24 I. & N. Dec. 69, 76 (B.I.A. 2007)); see also *supra* Part I.

131. *M-E-V-G-*, 26 I. & N. Dec. at 239.

132. *Escobar v. Gonzales*, 417 F.3d 363, 368 (3d Cir. 2005).

133. See *infra* notes 140–41 and accompanying text.

not by the persecutor.¹³⁴ To better understand whether the social group would be recognized, it is important to look at country information and societal contexts.¹³⁵ The age of majority¹³⁶ is eighteen in El Salvador,¹³⁷ eighteen in Guatemala,¹³⁸ and twenty-one in Honduras.¹³⁹ Although each country has a different age of majority, it would be clear that a child under fourteen would be considered a child regardless of her country of origin. With respect to the characteristic of impoverishment, each country has a different poverty line.¹⁴⁰ Therefore, individuals in each country would be able to recognize whether or not a child has lived below the poverty line in her home country, making this aspect socially distinct.¹⁴¹ Although

134. *M-E-V-G-*, 26 I. & N. Dec. at 242 (“[A] group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.”).

135. *See* *Matter of A-R-C-G-*, 26 I. & N. Dec. 388, 388-94 (B.I.A. 2014).

136. The age of majority is the legal age at which an individual becomes an adult. *See generally* HUMAN RESEARCH REVIEW COMM., GRAND VALLEY STATE UNIV., G-9: HRRC GUIDANCE ON AGE OF MAJORITY/ADULTHOOD IN USA & OTHER COUNTRIES (2012), available at https://www.gvsu.edu/cms3/assets/E122C984-F34A-F437-8340DB5CD900C177/procedures/g-9._guidance_on_age_of_majority_in_us_and_foreign_countries_0725.2012.pdf [hereinafter AGE OF MAJORITY]. Most countries set the age of majority at eighteen. *See id.* However, the age of majority ranges from fifteen, for females in countries such as Indonesia, to twenty-one, in countries such as Egypt, Honduras, and Singapore. *Id.*

137. *Id.* at 2; BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, EL SALVADOR: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2000), available at <http://www.state.gov/j/drl/rls/hrrpt/1999/386.htm>. El Salvador, specifically, groups children into different age ranges when it conducts studies. For example, in one study conducted specifically about youth, it grouped them into age ranges of ten to fourteen, fifteen to nineteen, and twenty to twenty-four. MIGUEL ARTURO AGUIRRE ZALDAÑA, MINISTERIO DE TRABAJO Y PREVISIÓN SOCIAL, ESTUDIO SOBRE FORMAS DE VIDA DE LOS JÓVENES DE EL SALVADOR DESDE LA PERSPECTIVA DE: LA EDUCACIÓN, TRABAJO, SALUD, Y VIVIENDA 6 (2002), available at <http://www.oei.es/edytrabajo2/MININTRAB.pdf>.

138. AGE OF MAJORITY, *supra* note 136, at 2.

139. *Id.*

140. In Honduras, as well as in the other countries, the poverty level typically changes annually, with the country establishing the poverty line based on household income and the amount of money required to purchase basic necessities. *See* INSTITUTO NACIONAL DE ESTADÍSTICA, GOBIERNO DE HONDURAS, CIFRAS DE PAÍS 1–2 (2013). In 2008 in El Salvador, for example, a family was considered to be living below the poverty line if it earned less than \$89.62 per person, per month. MINISTERIO DE ECONOMÍA, GOBIERNO DE EL SALVADOR, MIDIENDO LA POBREZA EN EL SALVADOR: VALORACIONES CONCEPTUALES Y DESAFÍOS METODOLÓGICOS 13 (2009). The family was considered to be living in extreme poverty if it earned less than \$44.81 per person, per month. *Id.* In Guatemala in 2006, for example, if the individual earned less than 6,574 Quetzales per year, equivalent to about \$857, the individual was considered to be living below the poverty line. DEPARTAMENTO AMÉRICA CENTRAL, GUATEMALA: EVALUACIÓN DE LA POBREZA 8 (2009), available at <http://www.segeplan.gob.gt/downloads/GuatemalaPovertyAssessmentSpanish.pdf>. A family was considered to be living in extreme poverty if it earned less than 3,206 Quetzales per year. *Id.*

141. Previous decisions have considered “wealth” to be too subjective, holding that an individual claiming this characteristic as part of the particular social group would not qualify for protection as an asylee for this reason. *See, e.g.,* *Matter of S-E-G-*, 24 I. & N. Dec. 579, 585 (B.I.A. 2008) (citing *Ucelo-Gomez v. Mukasey*, 509 F.3d 70, 73 (2d Cir. 2007)). The BIA explained: “[A] determination

individuals may not be able to tell whether the child has lived above or below the poverty line, they could still tell whether the child was living in poverty based on other measures, such as the neighborhood in which the child lived, educational attainment, and health. Additionally, in some countries “living on the streets, dressing in a specific way, sporting a tattoo or sitting on a street corner with a group of people is enough for children and youngsters to be classified as bums and criminals.”¹⁴² Therefore, it could be argued this group is socially distinct.

B. Persecution Nexus

The Immigration and Nationality Act expressly requires that “one central reason” for the persecution must be the protected ground, which in this case is belonging to a particular social group.¹⁴³ Therefore, with respect to the particular social group of impoverished children under fourteen years of age who have been threatened with recruitment and been attacked by local gangs, it is important that the persecution is based on the fact that they are of that age, from that social class, and refused to join the gang.¹⁴⁴ The fact that these children have been threatened by gangs in general would not be enough for them to qualify as members of a particular social group. Instead, they must have been persecuted for a specific reason relating to the particular social group. It is sometimes difficult to know with certainty the reason an individual is being targeted and persecuted; however, the BIA could consider the general age of recruitment by the specific gang members, which for some gangs is twelve,¹⁴⁵ as well as the economic status of the children they are

about whether any petitioner fit into the group (or might be perceived as a member of the group) would necessitate a sociological analysis as to how persons with various assets would have been viewed by others in their country.” *Id.* at 585 (quoting *Ucelo-Gomez*, 509 F.3d at 73). Although wealth is too subjective, poverty is not, as each country has an established poverty line. *See supra* note 140 and accompanying text. Therefore, it would arguably be clear whether or not an individual could be considered as belonging to this particular social group.

142. Meléndez, *supra* note 81.

143. 8 U.S.C. § 1158(b)(1)(B)(i) (2014); *see also* *Matter of W-G-R-*, 26 I. & N. Dec. 208, 224 (B.I.A. 2014).

144. Although the BIA has held that recruitment of youth would not necessarily count, as the gang could simply be harming and threatening the children in order to recruit and increase the size of the gang, and not necessarily because it is trying to punish them for not joining, it is possible the children could establish their experiences of persecution were on account of their belonging to this particular social group, especially if in their individual circumstances they could demonstrate they suffered harm on multiple occasions after refusing to join. *See S-E-G-*, 24 I. & N. Dec. at 581 (“[B]eatings and threats against the respondents were based on the gang’s desire to recruit new members and fill their ranks, rather than to punish the respondents for their membership in a particular social group . . .”).

145. *See id.* at 580.

threatening to recruit.¹⁴⁶ If these children are being persecuted because of their young age and their economic status, under current US asylum law they should be afforded protection as asylees.

IV. OTHER OPTIONS FOR OFFERING ASYLUM PROTECTION TO UNACCOMPANIED MINORS

Although one option for offering asylum protection to unaccompanied minors would be to claim asylum based on a particular social group, there are other methods that the United States has employed—and could employ in the future—to expand the protection afforded to these children.¹⁴⁷ The United States has recently implemented an in-country processing program to try to assist children in El Salvador, Guatemala, and Honduras and reach them before they arrive in the United States unaccompanied. The United States could also expand the definition of refugee by incorporating language found in certain international conventions.

A. *In-Country Refugee Processing and Parole Program*

In November 2014, the United States established an in-country refugee and parole program in El Salvador, Guatemala, and Honduras.¹⁴⁸ The program's goal is to prevent children from taking the dangerous journey from their home countries to the United States alone to reunite with their parents.¹⁴⁹ To begin the in-country refugee process, a parent lawfully present and living in the United States must submit an application that requests the child be able to come to the United States and serves as an

146. "Research suggests children are most vulnerable to peer pressure between the ages of [ten] and [fourteen]." Alex Lickerman, *How to Inoculate Children Against Peer Pressure*, PSYCHOLOGY TODAY (July 2, 2012), <https://www.psychologytoday.com/blog/happiness-in-world/201207/how-inoculate-children-against-peer-pressure-1>. Additionally, poverty is one risk factor for children joining gangs. JAMES C. HOWELL, U.S. DEP'T OF JUSTICE, GANG PREVENTION: AN OVERVIEW OF RESEARCH AND PROGRAMS 7 (2010) (noting that poverty is a "potent risk factor[']"). These heightened risks make this group particularly susceptible to gang recruitment tactics.

147. Some of the other options include Special Immigrant Juvenile Status, Temporary Protected Status, T visas, and U visas. See *supra* notes 103–06 and accompanying text.

148. U.S. DEP'T OF STATE, IN-COUNTRY REFUGEE/PAROLE PROGRAM FOR MINORS IN EL SALVADOR, GUATEMALA, AND HONDURAS WITH PARENTS LAWFULLY PRESENT IN THE UNITED STATES (2014), available at <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm> [hereinafter IN-COUNTRY REFUGEE/PAROLE PROGRAM]. The United States has previously implemented in-country processing programs for specific countries and regions, such as Iraq and Haiti. See Eleanor Acer, *In-Country Refugee Processing for At-Risk Children in Central America: Potential Benefits and Risks*, HUMAN RIGHTS FIRST (Oct. 3, 2014), <http://www.humanrightsfirst.org/blog/country-refugee-processing-risk-children-central-america-potential-benefits-and-risks>.

149. See IN-COUNTRY REFUGEE/PAROLE PROGRAM, *supra* note 148.

affidavit that the child is the biological child of the parent.¹⁵⁰ The parent can obtain this application from a Refugee Resettlement Agency and must return it to that agency.¹⁵¹ After receiving the application, the International Organization for Migration (“IOM”) assists the child in his home country and conducts a pre-screening interview.¹⁵² Both the child and parent must submit DNA samples to ensure the child is the biological child of the adult, which is meant to help eliminate fraudulent applications.¹⁵³ DHS then conducts a refugee status determination hearing to determine whether or not the child is eligible for refugee status.¹⁵⁴

The parole program differs from the in-country processing program. Under the parole program, the child is able to remain in her country of origin instead of making the dangerous journey to the United States to apply for parole. The child first applies to the in-country refugee program, as described above.¹⁵⁵ If the child is rejected by DHS for refugee status, she will then be considered for parole.¹⁵⁶ Parole “is a mechanism to allow someone who is otherwise inadmissible to come to the United States for urgent humanitarian reasons or significant public benefit.”¹⁵⁷ Although the parolee is lawfully physically present in the United States, “[p]arole is temporary and does not confer any permanent legal immigration status or path to permanent legal immigration status in the United States.”¹⁵⁸ Children arriving as parolees will generally be granted parole for two years and can attend school and apply for work authorization.¹⁵⁹ They will not, however, be able to receive medical or other benefits that are awarded to refugees, including a path toward legal permanent residence status.¹⁶⁰ Therefore, the parolees may come to the United States temporarily, but will ultimately have to return to potentially dangerous environments.

150. See Amy Grenier, *State Department Launches In-Country Refugee Program to Reunite Central American Families*, AM. IMMIGRATION COUNCIL (Dec. 9, 2014), <http://immigrationimpact.com/2014/12/09/state-department-launches-in-country-refugee-program-to-reunite-central-american-families/>; *In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors—CAM)*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/CAM> (last updated June 1, 2015) [hereinafter *In-Country Refugee/Parole Processing*].

151. *In-Country Refugee/Parole Processing*, *supra* note 150.

152. Grenier, *supra* note 150.

153. *Id.*

154. *Id.*

155. IN-COUNTRY REFUGEE/PAROLE PROGRAM, *supra* note 148.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

While some believe these programs will be successful, others are skeptical.¹⁶¹ There is concern the programs may not only take a long time to implement, but may also experience processing-time delays.¹⁶² While the children are awaiting decisions about their applications, they are still at risk in their home countries.¹⁶³ Additionally, the children would count against the current refugee limit for the Caribbean and Latin America, which is currently four thousand.¹⁶⁴ Another concern is which children will be eligible, because the parent must not only already be living in the United States, but must also have the finances to submit an application and DNA sample.¹⁶⁵

B. Expanding the Refugee Definition

Although some children could receive protection as members of the particular social group, if the United States wants to provide protection to the unaccompanied minors, it can also look to international conventions. These conventions provide other options for broadening the refugee definition without altering the particular social group category. If adopted, they would afford most, if not all, children arriving from El Salvador, Guatemala, and Honduras protection as asylees.

1. Organization of African Unity (“OAU”) Convention Governing the Specific Aspects of Refugee Problems in Africa

On September 10, 1969, African heads of state gathered in Addis Ababa, Ethiopia, to address the needs of the increased numbers of individuals fleeing their home countries throughout Africa. They adopted the 1951 Convention definition of refugee, but expanded it to include anyone who, “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside

161. See, e.g., Grenier, *supra* note 150.

162. See Acer, *supra* note 148.

163. *Id.* This concern is based on the experiences of applicants in the previous in-country processing programs. *Id.* For example, it was reported that “some [Iraqi applicants] have been killed and threatened while waiting,” and “Haitian applicants were beaten and arrested by Haitian police and paramilitary forces while waiting in line for U.S. processing.” *Id.*

164. Grenier, *supra* note 150.

165. See *id.*

his country of origin or nationality.”¹⁶⁶ For example, an individual claiming asylum based on internal conflict, such as a civil war or uprising, would theoretically be granted asylum in a country that has adopted the OAU Convention language.¹⁶⁷ However, that individual would not receive protection in the United States under its current policy.¹⁶⁸ Although the OAU Convention was nonbinding on its signatories, forty-five countries have incorporated its expanded definition of refugee into their laws.¹⁶⁹

2. *Cartagena Declaration*

In November 1984, representatives from countries that are part of the Organization of American States met at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama in Cartagena de Indias, Colombia.¹⁷⁰ They recognized an increase in violence in Central America, which was causing an increase in individuals forced to flee their homes.¹⁷¹ They met to address the situation and determine what could be done to assist these individuals.¹⁷² During the Colloquium, the representatives called for a broadening of the definition of refugee and recommended that, along with the 1951 Convention definition, the states define refugees as “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence . . . [or] massive violation of human rights or other circumstances which have seriously disturbed public order.”¹⁷³ Although this Declaration was nonbinding, fourteen countries have incorporated its

166. Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa art. 1, ¶ 2, Sept. 10, 1969, 1001 U.N.T.S. 45, available at <http://www.unhcr.org/45dc1a682.html> [hereinafter OAU Convention].

167. See U.N. High Comm’r for Refugees, *Persons Covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees*, ¶ I.B.6, U.N. Doc. EC/1992/SCP/CRP.6 (Apr. 6, 1992).

168. See *supra* Part I.

169. *List of Countries Which Have Signed, Ratified/Acceded to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, AFRICAN UNION (July 13, 2012), http://www.au.int/en/sites/default/files/refugee%20Problems%20in%20Africa_0.pdf; OAU Convention, *supra* note 166.

170. See Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Nov. 22, 1984, available at <http://www.unhcr.org/45dc19084.html> [hereinafter Cartagena Declaration].

171. *Id.* art. III, ¶ 3.

172. See *id.* art. I.

173. *Id.* art. III, ¶ 3.

expanded definition into their laws.¹⁷⁴ The expanded definition allows for individuals who would not have been considered refugees under the 1951 Convention to be afforded protection. For example, Colombian nationals fleeing internal violence due to the activities of non-governmental groups, such as the Fuerzas Armadas Revolucionarias de Colombia (“FARC”) or other paramilitary groups, could be given protection by countries that have adopted the language of the Cartagena Declaration.¹⁷⁵ In contrast, countries that have not adopted the expanded definition, such as the United States, would not afford these individuals protection if their only basis for claiming refugee status is that they were fleeing internal conflict.

3. *Options for the United States to Broaden the Definition*

As the situations in El Salvador, Guatemala, and Honduras remain volatile and individuals continue to arrive in the United States seeking protection, it is important for the United States to engage in conversations with the heads of state of these countries to determine ways to solve the crisis. If the United States desires to offer protection to the unaccompanied minors without having to hear claims of the children belonging to a particular social group, it could adopt language similar to that of Article I.2 of the OAU Convention and Article III.3 of the Cartagena Declaration.¹⁷⁶ Children fleeing El Salvador, Guatemala, and Honduras would qualify as refugees under the language of the OAU convention, as the events there could be characterized as “seriously disturbing” the “public order.”¹⁷⁷ Additionally, they could qualify under the language of the Cartagena Declaration, as the situations would qualify as “generalized violence.”¹⁷⁸ Therefore, adopting language from either of these conventions would provide another avenue for the children to receive protection.

Although adopting the language from these conventions would be similar to the Temporary Protected Status that could be provided by the executive branch, adopting this language would guarantee protection for

174. *Cartagena +30*, NEWSLETTER NO. 1 (U.N. High Comm’r for Refugees, Geneva, Switz.), Feb. 2014, at 1, available at http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Proteccion/Cartagena30/Cartagena30_Newsletter_Feb_2014.

175. U.N. High Comm’r for Refugees, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees* (Sept. 2002), available at <http://www.refworld.org/pdfid/3d92d4204.pdf>.

176. See Cartagena Declaration, *supra* note 170; OAU Convention, *supra* note 166.

177. See OAU Convention, *supra* note 166, art. I, ¶ 2.

178. See Cartagena Declaration, *supra* note 170, art. III, ¶ 3.

these children. Additionally, instead of receiving temporary status, they could become legal permanent residents and, eventually, citizens. The idea of permanency is extremely important for young children who are still developing. Therefore, adopting this language may be quite advantageous.

Adopting such language may be advantageous for protecting these minors, but it would likely require an increase in the refugee quota and may raise concerns that other individuals whom the United States did not intend to protect, such as those affected by famine or natural disasters, would be drawn to the United States to seek refugee protection. Additionally, the time it would take for Congress to pass a law expanding the definition may not afford protection to the children currently arriving. Despite these concerns, the current Congress is trying to cut back the existing mechanisms for affording relief to children who are currently arriving, making it very unlikely it will expand the definition. Therefore, while adopting the language in these conventions is an option to keep in mind for the future, it may not be the best option to address the current situation in the United States.

CONCLUSION

The particular social group category is ever expanding. While *Matter of Acosta* provided the important aspect of the common, immutable characteristic, later decisions such as *Matter of E-A-G-* and *Matter of S-E-G-* complicated the requirements of a claim based on the particular social group category. The recent decisions of *Matter of M-E-V-G-* and *Matter of W-G-R-* were meant to clarify the particularity and social visibility requirements, but they have only further complicated them by redefining social visibility as social distinction. Recent decisions, such as *Matter of A-R-C-G-*, have provided little guidance, as courts have begun to recognize claims in situations where they previously denied claims. Although not all children arriving from El Salvador, Guatemala, and Honduras have legitimate asylum claims, construing the particular social group category as “impoverished children under fourteen years of age who have been threatened with recruitment and attacked by gangs” could allow some of these children to receive protection. One current solution to provide protection to these children seems to be the in-country processing program. Although this program seems to be a step in the right direction, there are hesitations, and it may not be as successful as many hope. Therefore, it is important to keep an open mind about options for expanding protection. Although it is unlikely the United States will participate in conversations about expanding the definition of refugee,

agreements such as those that were reached during the OAU Convention and in the Cartagena Declaration could provide these children with another avenue of being afforded documentation. As these children continue to immigrate to the United States, it is important to look for a solution that adequately protects this vulnerable population. Otherwise, many children may be sent back to face continued gang persecution because of their age and social class.

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* J.D., M.S.W. Candidate (2016), Washington University School of Law and George Warren Brown School of Social Work; B.A. (2012), Providence College. I would like to thank the *Washington University Law Review* editors, specifically Kamil Ammari, Gwenn Barney, Dan O'Brien, and Austin Elder, for all their time and hard work in providing comments and edits. I would also like to thank Professor Stephen Legomsky for providing me with guidance and feedback in writing this piece. Finally, thank you to my family for their encouragement and support.