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Core Principles: Child Refugees in the United States

Today the country's attention is riveted on immigrant children who have made arduous journeys to the southern border of the United States. The country is asking what systems we have in place and what systems could be put in place to address their needs. People are debating why these children are arriving here, where they should go, and what our laws require. Some have proposed expediting deportations by implementing a non-judicial removal process for Central American children, circumventing protections afforded under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).¹

Many organizations are weighing in on these issues from a variety of perspectives, and Appleseed would like to add to the discussion by pulling back the lens and examining the fundamental status of children in the United States, as a matter of law and morality. We find that the concepts central to the body of law dealing with children recognize that children are independent individuals endowed with moral and legal rights, who are given special recognition in many circumstances based on the developmental traits that distinguish them from adults. We do not send children into harm's way; we protect and nurture children in our country; and we treat them as individuals who command our attention. In short, there are three core concepts that have, and must continue to, govern this country's response to these children.

Core Principle 1: *Placing children in danger is inconsistent with U.S. law and policy; indeed, we protect children.*

Core Principle 2: *U.S. law and policy acknowledge children are developmentally different than adults.*

Core Principle 3: *Children are individuals and have the right to be treated as such.*

¹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044.

Appleseed is a network of public interest justice centers in the United States and Mexico, with a national office in Washington, DC. Many Appleseed Centers are deeply engaged in research and advocacy relating to education and the protection of vulnerable children, immigrant justice and the efficient and fair administration of justice. Some of our relevant publications include:

[Children at the Border](#)

The Screening, Protection and Repatriation of
Unaccompanied Mexican Minors

[A DREAM Deferred](#)

From DACA to Citizenship

[Reimagining the Immigration Court Assembly Line](#)

Transformative Change for the Immigration Justice System

[Justice for Immigration's Hidden Population](#)

Protecting the Rights of Persons with Mental Disabilities in the
Immigration Court and Detention System

Core Principle 1: Placing children in danger is inconsistent with U.S. law and policy; indeed, we protect children.

The United States recognizes both a moral and legal obligation to avoid placing children in danger. As a nation, we have long been committed to protecting the safety of children, not only because they, like all people, are endowed with human rights, but also because they, unlike adults, have not yet completed their cognitive, emotional, and physical development. Accordingly, the tools children possess to direct the outcome of circumstances that befall them are limited. As a result, protecting children from danger, while in the first instance a moral and legal obligation of the parents, is also an obligation that we, as Americans, have chosen to place on ourselves by making it clear that where needed, both the state and federal government have an obligation to protect children.

At the most fundamental level, the U.S. government simply does not intentionally place children in harm's way. We don't draft children for the military and we don't conduct risky medical experiments on them that aren't intended to benefit them.² Indeed, when this principle is violated and government entities fail to protect children in their custody from abuse or neglect or directly place children in harm's way, lawsuits and ethical controversy ensue.³

Beyond the basic norm of not placing children in harm's way, Congress has for generations recognized this moral and legal obligation to affirmatively protect children in the United States through a variety of laws, including those preventing child labor, abuse and neglect, exploitation, and trafficking.⁴ For example, in 1997 President Clinton signed into law the Adoption and Safe Families Act (ASFA), which made it clear that despite policies in favor of

² See 45 C.F.R. pt. 46 subpt. D; FDA, *Should Your Child Be in a Clinical Trial?* (Jan. 13, 2010), <http://www.fda.gov/forconsumers/consumerupdates/ucm048699.htm>; <http://psychroaches.blogspot.com/2011/12/monster-study.html>

³ For example, the Civil Rights Division of the Department of Justice investigates and prosecutes abuse and neglect of children confined in state juvenile facilities. See U.S. Dep't of Justice, Civil Rights Division, *Special Litigation Section Cases and Matters*, <http://www.justice.gov/crt/about/spl/findsettle.php#juv>. Public interest organizations often file suits alleging civil rights violations when the government fails to appropriately protect foster care children from abuse and neglect. See Children's Rights, *Class Actions*, <http://www.childrensrights.org/reform-campaigns/legal-cases> (describing suits filed by the organization on behalf of foster children nationwide). The federal "protection and advocacy" network, created by the federal government to reign in abuses and discrimination against people who have disabilities, often initiates suits against government entities that fail to appropriately protect children with disabilities, or that subject children to abuse or neglect in a government setting. See Center for Public Representation, *Children and Adolescents*, <http://www.centerforpublicrep.org/litigation-and-major-cases/children-and-adolescents> (describing litigation and advocacy on behalf of children and adolescents with disabilities). Attorneys have also successfully sued schools and school districts for abusive practices involving restraint and seclusion of students. See Wrightslaw, *Abuse, Restraints, and Seclusion in School*, <http://www.wrightslaw.com/info/abuse.index.htm>.

⁴ See U.S. Dep't of Health & Human Servs., *Major Federal Legislation Concerned With Child Protection, Child Welfare, and Adoption* (Apr. 2012), <https://www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm> (citing more than 60 laws that the Federal government has in place to protect children).

family reunification⁵ “in determining the reasonable efforts to be made with respect to a child...the child’s health and safety shall be of paramount concern.”⁶ Congress recognized that certain circumstances, such as abuse of the child, outweigh even strong policy preferences like maintaining the family.⁷ The United States has also long protected girls from sexual victimization.⁸

One of the pivotal developments of American legal history and social welfare was the progressive legislation regulating the wages and working hours of children who toiled in mills, mines, and factories. At the outset, the Supreme Court struck down this legislation, over a furious and articulate dissent by Oliver Wendell Holmes.⁹ “[I]f there is any matter upon which civilized countries have agreed . . . it is the evil of premature and excessive child labor.”¹⁰ The progressive anti-child labor view ultimately prevailed, in legislatures and in the courts.¹¹

States have followed the lead of Congress, adopting child welfare and other laws governing abuse, neglect, abandonment, and dependency that likewise focus on protecting and nurturing children as a fundamental priority of American life. These laws give local courts and administrative bodies the power to direct resources for shelter, food, school, physical development, and other areas of life we know are critical to the healthy development of a child to becoming a successful and productive adult.¹² Laws provide homeless youth access to critical services, such as education, to assure their educational development is not disrupted by circumstances beyond their control.¹³

Our response to the children arriving in the United States must be grounded in our core values of not placing children in harm’s way, and providing children who are here appropriate protections from danger.

⁵ See, e.g., Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended at 42 U.S.C. §§ 620-628 and 670-679a).

⁶ ASFA § 101(a)(15)(A), § 42 U.S.C. 671(a)(15)).

⁷ H.R. Rep. No. 105-77, at 11 (1997), available at <https://beta.congress.gov/105/crpt/hrpt77/CRPT-105hrpt77.pdf>.

⁸ Mann Act, 18 U.S.C.A. § 2421 et seq.

⁹ *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

¹⁰ *Id.* at 280.

¹¹ *United States v. Darby Lumber Co.*, 312 U.S. 100, 115 (1941).

¹² For a full list of state child welfare statutes kept by the Child Welfare League of America, see Child Welfare Information Gateway, Determining the Best Interests of the Child (Nov. 2012), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf.

¹³ See generally McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq.; see also Cal. Welf. & Inst. Code § 16000 et seq.; Mo. Ann. Stat. § 210.001(1) (enumerating goals of state Department of Social Services to address the needs of homeless children and to ensure that homeless youth maintain stable school placements).

Even youth who are adjudicated delinquent and committed to a juvenile facility are protected by a strong body of law providing for their safety and for services to help redirect their emotional, mental and physical development in state-run facilities.¹⁴

Our judicial system recognizes the need for states to protect children, while still respecting their autonomy. Children's delinquency and child protection cases are typically heard in family or juvenile court, with some protections for their privacy not accorded to adult offenders. Courts have gone to great lengths to carefully ensure that children have the protections they need while continuing to maintain each child's status as a rights-bearing individual.¹⁵

Action to protect children has not been limited to American kids, but has extended to minors who arrive at our borders from other countries. Through Operation Pedro Pan, from 1960 to 1962, the United States government, charities and families welcomed more than 14,000 children whose parents sent them here from Cuba during the early Castro years. Those parents did not know whether they would ever see their children again, but believed that the risks of having them stay were too high.¹⁶ In 1997, Congress created "Special Immigrant Juvenile Status" (SIJS), which provides that aliens *under the age of 21* who have been abused, abandoned or neglected should receive protection in the United States and permanent residency if declared dependent by a state court.¹⁷ The TVPRA, of course, established a range of protections for unaccompanied alien children under 18 in 2008: appropriate "safe and secure placements," a review of their potential claims for relief (either by an immigration judge, an asylum officer, or, in the case of Mexican or Canadian children, by a border patrol officer), and legal representation.¹⁸

¹⁴ The Eighth and Fourteenth amendments have been applied to conditions in juvenile facilities, with courts across the country finding that children committed to juvenile facilities are not only entitled to be kept safe from abuse and neglect, but also that the state is required to provide them with education and rehabilitative services during their confinement. See *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431-32 (9th Cir. 1987); *H.C. by Hewett v. Jarrard*, 786 F.2d 1080, 1084-85 (11th Cir. 1986); *Santana v. Collazo*, 714 F.2d 1172, 1179 (1st Cir. 1983); *Milonas v. Williams*, 691 F.2d 931, 942-43 (10th Cir. 1982); *Morales v. Turman*, 562 F.2d 993, 997-99 (5th Cir. 1977); *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974). Similarly, when a minor is involuntarily committed for mental health treatment, the state has an affirmative obligation not just to keep the youth safe during the course of the commitment, but also to provide treatment. *Youngberg v. Romeo*, 457 U.S. 307 (1982).

¹⁵ See, e.g., *In re Gault*, 387 U.S. 1, 14-15 (1967); *McKeiver v. Pennsylvania*, 403 U.S. 528, 545-47 (1971); *In re Winship*, 397 U.S. 358 (1970); *Schall v. Martin*, 467 U.S. 253, 263 (1984).

¹⁶ <http://www.pedropan.org/category/history>; see also, Christina Diaz Gonzalez, *The Red Umbrella* (2010).

¹⁷ See 8 U.S.C. § 1101(a)(27)(J) (as amended by Act of Nov. 26, 1997, PL 105-119, 111 Stat. 2440).

¹⁸ TVPRA, Pub. L. No. 110-457, 122 Stat. 5044. The TVPRA was enacted to augment existing law prohibiting human trafficking, Congress having found that "[a]t least 700,000 persons annually, primarily women and children, are trafficked within or across international borders," and that roughly 50,000 of them were imported into the United States a year." Section 102(b)(1), Pub. L. No. 106-386, 114 Stat. 1464, 1466 (2000). In 2008, the provisions relating to unaccompanied children were enacted "in order to enhance the efforts of the United States to prevent trafficking in persons." Section 235(a)(1), Pub. L. No. 110-457, 122 Stat. 5044.

Core Principle 2: U.S. law and policy acknowledge children are developmentally different than adults.

The state and federal laws and policies enacted to protect children have been developed with the express understanding that developmental differences require children to be treated differently than adults. That understanding has also given rise to laws that limit the rights of children: they cannot enter into contracts, cannot vote, and are not allowed to obtain a driver's license until they attain a certain age. The law restricts them from buying alcohol before they reach an age of sufficient maturity. We prohibit younger children from paid labor. Every state establishes a minimum age for marriage without parental or judicial consent. Individuals less than 18 years old cannot enlist in the military without parental consent.¹⁹ Minors remain subject to curfew laws across the country and cannot unilaterally consent to most medical procedures. Compulsory education laws require children to go to school so that adults may help prepare them for productive adult lives.²⁰

This understanding of childhood is also reflected in the body of U.S. Supreme Court jurisprudence examining children's issues.²¹ Supreme Court cases limiting children's rights do so based on an understanding of the need to protect children in ways that might violate the autonomy of an adult. Similarly, cases limiting children's first amendment and other rights in schools view those settings as protective and distinct from other settings, in part because of their special role in formation of children's character.²²

Court systems in the United States have long recognized differences between adults and juveniles and have created specialized processes for children appearing in court. Juvenile

¹⁹ 10 U. S. C. § 505(a).

²⁰ In *Plyler v. Doe*, the Supreme Court held that under the Equal Protection Clause of the Fourteenth Amendment, children could not be required to provide proof of immigration status in order to attend school. 457 U.S. 202 (1982).

²¹ See, e.g., *Haley v. Ohio*, 332 U.S. 596, 600 (1948) (holding that a child's age should be considered in determining whether confession was voluntary, noting "[t]hat which would leave a man cold and unimpressed can overwhelm a lad in his early teens. This is a period of great instability which the crisis of adolescence produces."); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (confession of 14 year old held in juvenile detention for five days without access to his parent found involuntary, finding a teen "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions."); *Ginsberg v. State of N.Y.*, 390 U.S. 629, 640-41 (1968) (upholding state law prohibiting sale of lewd magazines to minors, finding "the State has an interest to protect the welfare of children and to see that they are safeguarded from abuses which might prevent their growth into free and independent well-developed men and citizens."); *Parham v. J.R.*, 442 U.S. 584, 603 (1979) (upholding Georgia's procedures for admitting a child for treatment to a state mental hospital, noting "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment.").

²² See, e.g., *Bethel Sch. Dist. #403 v. Fraser*, 478 U.S. 675, 685, 683 (1986) (holding that suspension of a student who used profanity in a speech at a school assembly did not violate the first amendment, and noting that "'inculcation of...values" was one of the objectives of public education).

courts were created as a separate civil system – more protective and less punitive – out of recognition of the unique capacity for children to be rehabilitated as cognizant of the developmental process.²³ Today, family and juvenile courts use procedures and specialized dockets that recognize both the developmental differences between children and adults and the traumatic circumstances that likely brought them into the court setting.²⁴

Research now shows that there are strong scientific underpinnings to these policies and judicial decisions; the brains of youth exhibit profound structural and functional differences from those of adults.²⁵ Significantly, the regions of the brain associated with self-regulation and planning continue to develop into young adulthood and become “more fine-tuned with age and experience.”²⁶ As a matter of neurological development, adolescents are more susceptible to peer pressure and immediate incentives and have less ability than adults to make decisions that require future orientation.²⁷ This research also shows that the brain development so critical to adult decision-making extends well into young adulthood.²⁸ This understanding of the developmental process has informed decisions to raise the age of juvenile court jurisdiction in both delinquency and child protection cases in some states, as well as decisions to extend the provision of foster care services beyond the age of 18.²⁹

Just in the last decade, the Supreme Court has embraced this emerging brain research in a series of opinions recognizing a need for special protections for juvenile defendants. In *Roper v. Simmons*, the Supreme Court case striking down the death penalty for juveniles as a categorical violation of the Eighth Amendment’s prohibition against cruel and unusual punishment, the Court specifically cites such research as the basis for its finding that the death penalty was inappropriate. The Court noted, “youth is more than a chronological fact. It is a time and

²³ U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice: A Century of Change* (1999), available at <http://www.ncjrs.gov/pdffiles1/ojdp/178995.pdf>.

²⁴ See Texas Appleseed, *Improving the Lives of Children in Long-Term Foster Care: the Role of Texas’ Courts & Legal System*, available at http://www.texasappleseed.net/images/stories/reports/FosterCare-rev_press.pdf (appendix includes references to states that have undertaken changes to ensure more “child friendly” court processes).

²⁵ National Research Council, *Reforming Juvenile Justice: A Developmental Approach* (2013) (study commissioned by the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice to review recent advances in behavioral and neuroscience research and draw out the implications of this knowledge for juvenile justice reform.).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Nat’l Inst. of Mental Health, *The Teen Brain: Still Under Construction* (2011), available at <http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml#pub1> (“In key ways, the brain doesn’t look like that of an adult until the early 20’s.”).

²⁹ See Jeffrey A. Butts & John K. Roman, *Line Drawing: Raising the Minimum Age of Criminal Court Jurisdiction in New York* (2014) (only 10 states set the minimum age of criminal court jurisdiction under age 18); Jim Casey Youth Opportunities Initiative, *Success Beyond 18*, available at <http://jimcaseyyouth.org/success-beyond-18>.

condition of life when a person may be most susceptible to influence and to psychological damage.”³⁰

The concepts central to the *Roper* decision were again acknowledged by the Court in its 2010 decision in *Graham v. Florida*, which categorically banned life sentences without parole for youth who commit non-homicide offenses.³¹ In its decision, the Court cited a child’s limited capacity to assist with a case and to engage in a complex legal process. In 2011, the Court held that a child’s age is a relevant factor in determining whether that child is in custody and therefore entitled to receive *Miranda* rights.³² Yet again in 2012, the Court recognized these developmental differences when it banned mandatory life without parole sentencing schemes for juveniles convicted of homicide in *Miller v. Alabama*.³³ The Court held that its “decisions rested not only on common sense – on what ‘any parent knows’ – but on science and social science as well.”³⁴

What these decisions teach is that because of their vulnerability and stage of development, children – regardless of their immigration status – require a heightened level of protection, including child-sensitive interview techniques (including by asylum officers and immigration judges), individual concern, and counsel or representation.

Immigration law also recognizes children as developmentally different. As early as 1998, the INS recognized that children encounter fear differently than adults, and thus may qualify for asylum with a lesser degree of past harm or fear of future persecution.³⁵ Similarly, as a matter of substantive asylum law, the one-year filing deadline does not apply to applicants who are unaccompanied minors.³⁶ The Immigration Courts recognize that “[i]ssues of age, development, experience and self-determination impact how a court deals with a child respondent.”³⁷ In all of these cases, U.S. laws equate being a child with a need for protection

³⁰ *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005).

³¹ 560 U.S. 48 (2010).

³² *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011) (“It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child’s age properly informs the *Miranda* custody analysis.”).

³³ 132 S. Ct. 2455 (2012).

³⁴ *Id.* at 2464.

³⁵ Immigration and Naturalization Service, Office of International Affairs, Guidelines for Children’s Asylum Claims (Dec. 10, 1998), reproduced in 76 Interpreter Releases 1 and Appendix I (Jan. 4, 1999), available at http://www.nlada.org/Training/Train_Civil/Equal_Justice/2007_Materials/109_2007_Kerwin_handout7.

³⁶ See 8 U.S.C. § 1158(a)(2)(E).

³⁷ U.S. Dep’t of Justice, Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children (May 22, 2007), available at <http://www.justice.gov/eoir/efoia/ocij/oppm07/07-01.pdf>.

and development, in recognition of the fact that immaturity, vulnerability and poor decision-making are hallmarks of childhood.

Of course, these decisions and the recognition of developmental differences between children and adults should not be construed as providing insight into the causes of the current humanitarian challenge posed by thousands of children who have fled their home countries in Central America. The root cause of this urgent situation can be traced to the insecurity created by serious, life-threatening gang and cartel violence in El Salvador, Guatemala, and Honduras.³⁸

Experts and policy makers also increasingly recognize that trauma deeply affects children's development, decision-making and behavioral responses.³⁹ Trauma translates into an even greater need to provide children time to deliberate courses of action. Many of the children arriving at our border are traumatized, either fleeing violence or suffering rape and other crimes en route. These children have an even greater need than most children for support in understanding their circumstances and making important decisions. They may need more help in understanding the implications of various types of disclosures and statements. Interviews using words like "home," "court," "danger," "abuse," "asylum," "return," and "refugee," for example, need sensitive explanation for all kids, especially ones who have left towns recently that have reached a tipping point of violence. Where children are involved, we err on the side of more protections – not fewer.

Our understanding of a child's ability to protect him or herself, of developmental differences, and the effects of childhood trauma on decision-making has increasingly informed legislative, administrative and judicial decisions and should continue to guide decisions about how *all* children are treated in law enforcement and judicial settings, whether those children were born inside or outside the borders of the United States. Lacking many of the life experiences adults have and because their understanding of the future and consequences is less developed than that of adults, children have a greater need for counsel and representation in making important decisions. We simply cannot treat the children arriving here as perfectly rational decision-makers, who are fully and independently responsible for their decisions to come here and calculatingly responsive to U.S. laws, policies and potential legal consequences.

They are children.

³⁸ See American Immigration Council, *Children in Danger: A Guide to the Humanitarian Challenge at the Border* (Jul. 10, 2014), available at http://www.immigrationpolicy.org/sites/default/files/docs/children_in_danger_a_guide_to_the_humanitarian_challenge_at_the_border.pdf; U.N. Pushes for Migrants Fleeing to U.S. to be Called Refugees, CBSNews.com, Jul. 8, 2014, <http://www.cbsnews.com/news/u-n-pushes-for-migrants-fleeing-to-u-s-to-be-called-refugees>.

³⁹ U.S. Dep't of Health & Human Servs., Administration for Children and Families, *Understanding the Effects of Maltreatment on Brain Development* (2009), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm07/index.htm>.

Core Principle 3: Children are individuals and have the right to be treated as such.

The recognition of the special needs of children does not come at the expense of their humanity and the rights that accompany that humanity in the United States. At the same time that we acknowledge children's limitations and need for additional protection, U.S. law and policy also recognize that children are people who have individual rights.⁴⁰ Their rights are separate from those of their parents and/or guardians.⁴¹ At the most obvious level, this principle is embodied in territorial birthright citizenship under the Fourteenth Amendment to the Constitution: whether or not parents are here legally, children born in the U.S. are full citizens.

Courts have consistently held that “[m]inors, as well as adults, are protected by the Constitution and possess constitutional rights.”⁴² In numerous areas of the law, courts have recognized the constitutional rights of children. As defendants/respondents, children have independent rights under the Bill of Rights and the mechanisms necessary to exercise those rights.⁴³ For example, minors have a right to privacy.⁴⁴ Minors are also protected under the Fourth Amendment,⁴⁵ and have a right to counsel.⁴⁶

The rights of children are acknowledged in many venues, including in the federal government's funding of legal orientation and representation programs for unaccompanied immigrant children.⁴⁷ These programs acknowledge that children should understand their individual rights in immigration court proceedings. Additionally, the TVPRA mandates that all

⁴⁰ See, e.g., *In re Roger S.*, 19 Cal. 3d 921, 927–28 (1977) (noting that it is “well established . . . that the liberty interest of a minor is not coextensive with that of an adult”); *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969) (holding that children are “persons” under the Constitution and thus possess “fundamental rights”).

⁴¹ See, e.g., *Sanchez v. R.G.L.*, No. 12-50783, 2014 WL 2532434 (5th Cir. Jun. 5, 2014) (recognizing the rights of three minors as separate and individual from the rights of their parent); *In re Roger S.*, 19 Cal. 3d at 931 (“[N]o interest of the state or of a parent sufficiently outweighs the liberty interest of a minor old enough to independently exercise his right to due process to permit the parent to deprive him of that right.”).

⁴² *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) (“Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority.”).

⁴³ See, e.g., *In re Gault*, 387 U.S. 1, 14–15 (1967); *McKeiver v. Pennsylvania*, 403 U.S. 528, 545–47 (1971); *In re Winship*, 397 U.S. 358 (1970); *Schall v. Martin*, 467 U.S. 253, 263 (1984).

⁴⁴ See, e.g., *Danforth*, 428 U.S. at 75 (recognizing and considering the rights of privacy of minors); *Am. Academy of Pediatrics v. Lungren*, 940 P.2d 797, 814 (Cal. 1997) (“[T]he constitutional right of privacy widely has been recognized as applying to minors as well as adults.”).

⁴⁵ *New Jersey v. T.L.O.*, 469 U.S. 325, 334 (1985) (allowing search and seizure of belongings at school but noting that children have their own Fourth Amendment rights).

⁴⁶ See *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1357 (N.D. Ga. 2005) (concluding that children have a statutory and constitutional right to counsel in deprivation proceedings).

⁴⁷ See Kids in Need of Defense (KIND), *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* 74-5 (2014) (describing TVPRA mandate regarding pro bono programs and providing funding for know your rights presentations and legal screenings).

unaccompanied children under the age of 18 be given the opportunity to have their claims for asylum heard by an asylum officer, where they can more fully participate in this non-adversarial interview process.⁴⁸

Children do not inherit their parents' debts when the estate is insufficient to cover debts. Children of persons convicted of crimes are not branded themselves as criminals – we do not believe in “blood taint.” Much attention is currently being directed to the legal status of the parents of children arriving here. We urge that no legal shortcuts be taken with the children arriving here; while they may be coming in large numbers, they are individuals. They deserve our protection, and they should not be saddled with a presumption of culpability based on actions or inactions of some of their parents.⁴⁹ The Supreme Court clearly articulated this core value in *Plyler v. Doe*: “‘Obviously, no child is responsible for his birth and penalizing the . . . child is an ineffectual – as well as unjust – way of deterring the parent.’”⁵⁰

These same principles have informed the development of the body of immigration law relating to unaccompanied children, including the Flores Settlement Agreement,⁵¹ the Homeland Security Act of 2002,⁵² and the TVPRA. These principles should continue to guide our treatment of children in the United States, regardless of their immigration status and regardless of how many children seek protection in this country.

The structure and values of U.S. law demand that children's claims to be protected or perhaps stay in the United States must be considered individually, for each child, with the care, respect, support and counsel children need.

⁴⁸ TVPRA § 235(d)(7), 8 U.S.C. § 1158; *see also* U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Servs., Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Children (March 25, 2009), *available at* http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/uac_filing_5f25mar09.pdf.

⁴⁹ *See Plyler v. Doe*, 457 U.S. 202 (1982).

⁵⁰ *Id.* at 220 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)).

⁵¹ *Flores v. Meese* - Stipulated Settlement Agreement (U.S. District Court, Central District of California, 1997), *available at* <https://www.aclu.org/immigrants-rights/flores-v-meese-stipulated-settlement-agreement>.

⁵² HSA, Pub. L. No. 107-296, 116 Stat. 2135.

Conclusion

Removing children through a non-judicial process before anyone has had a chance to evaluate whether they have a claim to stay legally in the United States would not only run contrary to immigration laws like the TVPRA, it would violate the core principles that guide numerous other U.S. laws and policies. Because of their special developmental needs, the children who have come to our country have special need for counsel and representation, and child-sensitive interviews. Our nation cannot now, when children are most in need of protection, compromise on these fundamental principles.

Respectfully Submitted,



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