YOUNG, ALONE, AND FLEEING TERROR: THE HUMAN RIGHTS EMERGENCY OF UNACCOMPANIED IMMIGRANT CHILDREN SEEKING ASYLUM IN THE UNITED STATES

I. INTRODUCTION

"Imagine being forced to abandon your home, your belongings, your everyday life. Imagine being separated from... your family... [and] herded into a camp alongside thousands of others... as a massive purge sweeps your country."

Meena awoke to the sound of gunfire. The sounds of violence and destruction were not new or surprising, yet an intense fear ran through her body like a sudden surge of electricity. She trembled with anxiousness as the sounds became closer and more frequent. The Taliban forces were surrounding her small Afghan village. As she stood up off the dirt floor of the small camp that she called home, Meena peered with her dark brown eyes out the corner of the cloth that separated her from the harsh reality. She saw bodies lying on the street—limp, cold, and helpless. The shrill of babies’ cries echoed in her ears - babies who were not fed and whose mothers were nowhere to be found. She bravely stepped outside the thin papery wall and reached for her father lying on the ground as his blood trickled through her fingers. These images seeped into her a six-year old mind.

Meena is now twelve and determined to find another life. She remains hopeful, even though her mind is plagued with images of death. She used to dream of people smiling, children playing, and the peaceful comfort of her mother’s touch. Now, reoccurring nightmares in sharp flashes of red

portray images of her father and his last breath, as it slithered from him like a snake.

A glimmer of hope, however, remained for Meena. Although her mother is too sick to travel, Meena followed a group of other Afghan children and adults to the United States. After hearing stories of the opportunities available to her, such as the freedom to attend school, Meena was scared but determined to travel. Since the late 1970's, Afghanistan has suffered mass destruction from civil war and the domination of the Taliban forces, creating an oppressive and unstable society. Meena immigrated to the United States, and the Immigration and Naturalization Service (hereinafter INS) apprehended her after she entered the country.

The INS has broad powers to detain non-citizens who have been seized by the government after entering the United States. Unaccompanied minors attempting to immigrate pose a difficult problem for the INS because "the INS cannot simply send [juveniles] off into the night on bond or recognizance." There is no one to take care of them. If detained in a juvenile prison, it is possible that Meena will not be informed of her rights, given an explanation as to why she was placed in a prison, or appointed legal counsel to explain her rights and options. It is probable that Meena will eventually be deported to Afghanistan and forced back into the world of violence and terror that she had to endure throughout her young life. Unfortunately, there are many stories such as Meena’s involving unaccompanied immigrant children seeking refuge in the United States.


There are approximately twenty million refugees in the world, and around half of them are children. Recent statistics show that the number of unaccompanied children who entered the United States and were subsequently detained by the INS is alarmingly high: the numbers rose from 2,770 in 1997 to 4,607 in 1999. In response to this shocking number
and the growing concern for children like Meena, the United Nations Office of the High Commissioner for Human Rights and other U.N. organizations have formulated general international rules for the global welfare of children in the Convention on the Rights of the Child. As of 1999, the Convention has been ratified by every country except the United States and Somalia.

Powerful language from the Convention on the Rights of the Child includes:

- recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world...
- the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection...
- the best interests of the child shall be a primary consideration...
- states parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
- no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time...
- states parties undertake to respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim...

The Convention on the Rights of the Child, however strong its position appears to be for the well-being of all children, does not adequately address...
the plight of unaccompanied refugee children. It does not illuminate the distinction between children who experience traumatic childhoods and the uniquely vulnerable situation faced by unaccompanied children. Although many unaccompanied children "confront additional risks of murder, torture, rape... imprisonment, abduction, enslavement, robbery, and starvation," the loss of family care and protection is perhaps the greatest loss... of all.

The Convention for the Rights of the Child contains fundamental provisions to protect children that should be adhered to worldwide. Unfortunately, although the United States has vast wealth and resources to protect refugee children, it has failed to ratify the Convention for the Rights of the Child. A possible reason for this failure is that the United States has executed more juvenile offenders this decade than any other nation in the world. Is the United States hesitant to ratify because of fear that adolescent refugees will bring more crime? Is it fair to deny protection to refugee children for this reason?

B. Historical Analysis on the Formulation of the Children's Convention

The Convention on the Rights of the Child was not the first global attempt to address the need to protect vulnerable children. The initial international document was the Declaration of Geneva adopted in 1924. Its purpose was to "aid in time of war or national disaster, education or training, and recognition of a child's place and responsibility in the human family." However, while the Declaration of Geneva was considered a great advancement in the area of children's rights at the time, three limitations hindered its effectiveness:

First, rather than addressing civil and political rights, [it was] almost entirely devoted to economic, social, and cultural interests. Second, it viewed children as recipients of treatment and not as holders of specific rights. Lastly, 'the Declaration lacked enforcement mechanisms because its drafters never intended to create an instrument which bound States.'

In 1959, the Declaration of the Rights of the Child (hereinafter DROC) was passed in an effort to improve and expand upon the Geneva

14. See Gates, supra note 1, at 300.
15. Id.
16. Id. at 301.
17. Id.
18. Id.
19. Gates, supra note 1, at 301.
20. Id. at 302 (alterations in original) (citation omitted).
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Declaration and in response to the abuses and murder of children during World War II. 21 "[T]he DROC was 'progressive in its conceptual thinking about children's rights,'" but failed to create a change in the international protection of children. 22

After ten more years of studying the rights of children and international law, the United Nations adopted the 1989 Convention on the Rights of the Child, which intended to include unaccompanied children within the document's protections. 23 Article 22 (1) states:

Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which said States are Parties. 24

Section 2 of Article 22 also demands that states cooperate with the United Nations to protect children seeking asylum and refugees by finding their parents or assigning legal guardians. 25 Also, this section states "the [unaccompanied] child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason . . . ." 26 The Children's Convention is considered a "critical milestone" in children's rights. However, a significant weakness still exists, because of "the absence of a duty on States to provide asylum for unaccompanied child refugees." 27 The duty to enforce Article 22 is within the power of the member state. However, states often lacks the financial resources to implement the provision. 28 This frequently occurs in underdeveloped countries. 29

Other practical reasons also impede the enforcement of the provisions in the Children's Convention, such as lack of stability within the member state due to crisis. 30 A fallback measure, which is implemented when States are unable to comply with the provisions, is the aid of international

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21. Id. at 302-303.
22. Id. at 302 (citation omitted).
23. Id. at 303.
24. Convention, supra note 7, at art. 22(1).
25. Id. at art. 21(2).
26. Id.
27. Gates, supra note 1, at 320.
28. See id. at 321.
29. Id. at 322.
30. Id. at 321.
organizations. These organizations, however, are limited in helping unaccompanied children, unless the organizations’ charter authorize otherwise. The Committee on the Rights of the Child also attempts to assure provision enforcement by evaluating how well States comply with the Children’s Convention. States must submit regular reports to a committee, composed of eighteen experts who assure measures are put into practice after ratification.

This Note now shifts to an analysis on how refugee children are affected from their traumatic childhoods and journeys to the United States. Part II focuses on the psychological effects and case studies of unaccompanied children. Part III delves into the legal problems associated with this issue. More specifically, it focuses on due process of law issues arising when the INS detains unaccompanied children, such as the lack of effective legal counsel and other constitutional issues. Finally, Part IV examines efforts that are currently underway to aid and protect the rights of children, including a discussion on the success or failures of these attempts.

II. PSYCHOLOGICAL IMPLICATIONS ON IMMIGRANT CHILDREN

"Psychological trauma is an affliction of the powerless. At the moment of trauma, the victim is rendered helpless by overwhelming force.”

A. Post Traumatic Stress Disorder

Post Traumatic Stress Disorder (hereinafter PTSD) is a conglomerate of symptoms that occur in an individual after a traumatic event. It is considered a type of anxiety disorder. Many child refugees suffer from this disorder because they are fleeing from traumatic events such as war and political violence. A child with PTSD often exhibits symptoms such as confusion and difficulty remembering events, repetitive play themes associated with trauma, a change in personality, imitation of violent behavior, and a pessimistic outlook on life, specifically of their own

31. Id. at 322.
32. Id.
34. Id.
35. JUDITH LEWIS HERMAN, M.D., TRAUMA AND RECOVERY 33 (Basic Books 1997).
37. Id.
38. Id.
survival. At the preschool age, children often withdraw in social situations and suffer from elevated anxiety. As refugee children get older, symptoms may include flashbacks to the traumatic events, sleep disturbance, nightmares, and poor concentration.

A case study conducted by Macksoud & Aber in 1996, researched war traumas experienced by 224 Lebanese children between the ages of ten and sixteen. In the study, researchers used elements such as “war trauma, mental health, and PTSD adaptation to measure the relationship between traumatic exposure and PTSD.” As expected, there was a positive relationship between these two factors. In addition, the study found greater symptoms of PTSD in children exposed to many different types of traumas and who witnessed violent acts.

Surprisingly, there are few studies examining the psychological effects on unaccompanied refugee children. However, researchers consistently argue that these children are at a higher risk for psychological problems than accompanied children. One study “compared three groups of Vietnamese refugees encamped in the Philippines:” the first contained adolescents, the second was comprised of young adults, and the third was composed of unaccompanied children. The findings of psychological distress and anxiety were higher in those who were without relatives and family members. Researchers concluded that the distinguishing factor among the three groups was not the amount or type of trauma experienced by the individuals, or the child’s sex or gender; rather, it was whether family members were present. These findings were confirmed by a similar research experiment that surveyed PTSD in Cambodian refugees. “Although these refugees had lost an average of three family members, those who had been able to re-establish contact with at least one family member reported fewer adjustment problems than those without family contact.”

39. Id.
40. Id.
41. Thomas & Lau, supra note 36.
42. Id.
43. Id.
44. Id.
45. Id.
46. Thomas & Lau, supra note 36.
47. Id.
48. See id.
49. Id.
50. Id.
51. Trang Thomas & Winnie Lau, supra note 36.
B. Post-Migration and Other Risk Factors

Studies have shown that children and adolescents experienced high levels of stress, physical pain, skepticism about the future, and suicidal thoughts while awaiting asylum. One study was conducted on forty asylum seekers awaiting residency status while attending a community resource center in Sydney, Australia. "Of the 79% of the sample who had experienced a traumatic event, 37% obtained a PTSD diagnosis." This was greatly attributed to an increased "exposure to pre-migration trauma, delays in application processing, dealing with immigration officials... racism, loneliness, and boredom.

Several predominant risks elicit PTSD in unaccompanied children. While seeking asylum, these children are exposed to additional psychological risks and increased stress during their supervision by government officials and/or placement in communal living centers with strangers who were often of a different culture and origin. Furthermore, the relationship between the child's traumatic experiences and multiple past separations from loved ones influences escalated stress. Studies have shown that as their autonomy increased, children tended to relive the events of these past separations, which further complicated pre-existing adjustment problems. "Research also indicates that the best approach to combat this problem is to place the child in foster families of the same ethnic group in order to "promote continuity with the past and balance the demands of the external reality."

C. The Relationship of Psychological Problems to the Scholastic Achievement of Adolescent Refugees

Researchers interviewed one hundred and fifty-two Central American and Cambodian students who had migrated to Canada as refugees. The research indicated that most of the refugees had been "seriously disrupted by the trauma of war and cultural uprooting." A high risk of mental

52. Id.
53. Id.
54. Id.
55. Id.
56. Trang Thomas & Winnie Lau, supra note 36.
57. Id.
58. Id.
59. Id.
61. Id. at 243.
health problems leads to a likely conclusion that the child will also experience serious academic problems. A research study on North American children has indicated a correlation between emotional problems and poor scholastic performance. 62

During the beginning investigations, research supported the above conclusion in finding that “problems at school were among the main reasons for psychiatric consultation.”63 The consultations resulted in finding signs of serious emotional disturbance.64 Later studies, however, were more uncertain because no differences were found in school performance between adolescent Khmer refugees, with or without PTSD or a psychiatric diagnosis.65

Researchers hypothesized that cultural ways of dealing with stress and psychological disturbances can influence the studies. For example, Asian refugee children are taught to internalize their symptoms.66 The variables used in the study, in addition to the basic demographic elements, were the measures of trauma related to war and violence experienced before migration, trauma and violence witnessed by the individual while in a refugee camp, and measures of separation from parents or family members.67 Researchers termed the relationship between psychological problems and scholastic achievement in child and adolescent refugees as “tenuous.”68

No significant relationship was found between poor performance in school and internalized or externalized psychological symptoms.69 The researchers suggested that there might be limitations in their study, such as the fact that the small sample cannot speak for the refugees on a global perspective, and both pre-migration and post-migration factors may have more of an effect on certain cultures than others.70

An interesting finding in the study was that some of the children had an extraordinary motivation to succeed. For example, in Cambodia it is a social norm for females to have strong emotional bonds with their families. Researchers attributed these bonds as a motivational factor to succeed in school.71 Another example is illustrated by the massacres committed by

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62. Id.
63. Id.
64. Id.
65. Rousseau & Drapeau, supra note 60, at 243-244.
66. Id. at 244.
67. Id. at 246
68. Id. at 243
69. Id. at 254
70. Rousseau & Drapeau, supra note 60, at 255.
71. Id. at 254.
the Pol Pot regime, where the child survivors often felt a duty to be very successful in order to make up for the lost lives of their parents or others in their community.\textsuperscript{72}

Therefore, the researchers pointed out in their conclusion that it can be dangerous to assume that child refugees are going to perform poorly in school. The study indicated that trauma could play a very complex role. It can either hinder the child from adapting mentally and succeeding in school or it can serve as a protective factor in motivating the child to make great achievements.\textsuperscript{73}

D. Conclusion on the Psychological Effects of Trauma

Children, by their inherently vulnerable character, need special protection. No child should have to experience the trauma of war and violent death. Not only is it horrible that young children are subjected to such terror, but the suffering is furthered when they are forced to flee their country in a uniquely fragile state. Pre-existing psychological problems are exacerbated by the stress of being alone and caught up in a system where their needs are easily overlooked. Is there a lack of resources and knowledge to care for the psychological well-being of these children, or does the government just not know how to adequately address this problem? Do we as a country feel as though these children are not our responsibility?

Severe traumatic events cause an individual to feel that part of them has died or a great desire to die.\textsuperscript{74} The probability of harm increases when the individual witnesses violent death.\textsuperscript{75} A human’s sense of security is established early in life with the child’s first caretaker, and this feeling of safety and comfort can last a lifetime.\textsuperscript{76} When children are left unaccompanied to face their future after witnessing war and death, they lose that sense of security. Because trauma can also cause a child to lose their “basic sense of self,” how are they able to survive?\textsuperscript{77}

Not only is the basic sense of self lost, but self-defense mechanisms are severely weakened and the senses can stop functioning.\textsuperscript{78} This is a human rights concern and a problem that must be addressed on a global scale. Specialized mental health services, which conform to the unique needs of traumatized immigrant children, should be available to promote and

\textsuperscript{72} \textit{Id.} at 254.
\textsuperscript{73} \textit{Id.} at 256.
\textsuperscript{74} See \textit{HERMAN}, supra note 35, at 49.
\textsuperscript{75} \textit{Id.} at 34.
\textsuperscript{76} \textit{Id.} at 51.
\textsuperscript{77} \textit{Id.} at 52.
\textsuperscript{78} \textit{Id.} at 34-35.
emphasize self-worth and dignity. According to the American Bar Association’s Center on Children and the Law:

Respect for human dignity requires treating children in a manner that will maximize their ultimate autonomy as persons. Therefore, society owes its children not only a period of protection in which their development is largely unfettered by adult responsibilities but also an entitlement to those services that will permit their healthy socialization. Otherwise, the period of protection is oppressive rather than enabling and, therefore, disrespectful of children’s dignity. Such a theory is especially applicable to a right to mental health services, because such services may be critical to development and preservation of the self . . . 79

III. LEGAL IMPLICATIONS AND CONSTITUTIONAL ISSUES AFFECTING IMMIGRANT CHILDREN

Eleanor Roosevelt once said:

Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Yet, they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity. . . 80

In the 1990’s, the number of refugees worldwide more than doubled, and the number continues to grow. 81 “At least half of the world’s refugees are estimated to be children below the age of eighteen.” 82 “In the United States, the INS arrests thousands of immigrant minors each year. “ 83 In 1990, the INS detained over 8,500 minors and 70 percent of them were unaccompanied. 84 Most of these minors are teenaged boys and about 15 percent are girls aged fourteen years or younger. 85


80. Id. at 109.


82. Id.

83. Id.

84. Id.

85. Id.
A. History: The United States’ Response to Unaccompanied Immigrant Children Prior to 1980

Before the enactment of the Refugee Act in 1980, which greatly impacted the treatment of unaccompanied immigrant children in the United States by setting legislative standards for admittance, the only statutory laws governing this issue were provisions dealing with the adoption of foreign children.\textsuperscript{86} Many of these children were living in areas of crisis.\textsuperscript{87} The government tackled the issue of unaccompanied immigrant children in case-specific situations, rather than relying on specific laws.\textsuperscript{88} This implied that the United States had little organization or structure to deal with this problem. Until recently, there were no programs to account for the custody of these children or any kind of support system to assure that there was guidance.\textsuperscript{89}

Statutes enacted prior to 1980 permitted the entry of orphans who were adopted abroad, in 1953, 1957, and 1960.\textsuperscript{90} For example, Americans adopted many Korean children after the Korean War. Many of these children were illegitimate and faced danger from a Korean society that looked unfavorably upon them.\textsuperscript{91} A permanent amendment to the Immigration and Nationality Act (hereinafter INA) was created by Congress in 1961 to allow for the adoption of children under the age of fourteen who were parentless or given up for adoption.\textsuperscript{92}

Therefore, the laws that were in place to address the plight of unaccompanied immigrant children before the enactment of the Refugee Act were scattered, unorganized, and ill prepared to deal with the growing number of children escaping crises and entering the United States.


There are four significant ways that the Refugee Act encompasses the legal aspects and treatment of immigrant children.\textsuperscript{93} First, this Act (which

\begin{itemize}
\item \textsuperscript{86} Daniel J. Steinbock, \textit{The Admission of Unaccompanied Children Into the United States}, \textbf{7 YALE L. \\ & POL’Y REV.}, 137, 142 (1989).
\item \textsuperscript{87} \textit{Id.}
\item \textsuperscript{88} \textit{Id.}
\item \textsuperscript{89} \textit{Id.} at 154.
\item \textsuperscript{90} \textit{Id.} at 144.
\item \textsuperscript{91} Steinbock, supra note 86, at 144.
\item \textsuperscript{92} \textit{Id.}
\item \textsuperscript{93} \textit{Id.} at 154.
\end{itemize}
became Public Law in 1999), created a standard procedure to admit refugee children; second, it authorized federal funding for services such as foster care and health care; third, it clarified the government’s responsibilities; and fourth, it established an Office of Refugee Resettlement in the Department of Health and Human Services.  

One of the most significant reasons for the enactment of the Refugee Act was the admission of over 400,000 Indochinese refugees between 1975 and 1976. This wave of immigration to the United States was due to the fall of South Vietnam and Cambodia in 1975. The Refugee Act also redefines the term “refugee” to coincide with the language used by the United Nations Protocol and Convention Relating to the Status of Refugees. The current definition of “refugee” is “a person who is unwilling or unable to return to his country of nationality or habitual residence 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.”

Chapter 2, Title IV of the Immigration and Naturalization Act (INA) contains provisions from the Refugee Act entitled “Resettlement and Assistance to Refugees.” The provisions include:

(A) submit to the Director a plan which provides-

(i) a description of how the State intends to encourage effective refugee resettlement and to promote economic self-sufficiency as quickly as possible,

(ii) a description of how the state will insure that language training and employment services are made available to refugees receiving cash assistance,

(iii) for the designation of an individual, employed by the state, who will be responsible for insuring coordination of public and private resources in refugee resettlement,

(iv) for the care and supervision of and legal responsibility for unaccompanied refugee children in the State and

94. Id.
96. Id.
97. Id.
(v) for the identification of refugees who at the time of resettlement in the State are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation and such monitoring of such treatment or observation as may be necessary. 99

The most important language in this portion of the Refugee Act affecting refugee children is a state’s “legal responsibility” for unaccompanied refugee children and the “identification of refugees . . . determined to have medical conditions requiring . . . treatment or observation.” 100 It can be inferred that “legal responsibility” is a duty imposed on the states to make sure that the legal rights of refugee children, indicating fair and humane treatment to aid in their resettlement and constitutional guarantees are protected. Has this law been adhered to when there exist many refugee children placed in harsh conditions, juvenile jails, and often denied due process of law? In addition, it appears that the drafters made the language vague and unimposing on the states to assure that refugees in general did not receive the proper medical and psychological treatment because the language merely states the duty to “identify” refugees with medical ailments.

The Refugee Act, however, provides for “total reimbursement to states and nonprofit agencies for child welfare programs, which eliminated a previous problem hindering the effectiveness of programs for children.” 101 Prior laws required, “private assurances that the children would not become public charges.” Before the child enters the United States, support from the federal government is available for unaccompanied immigrant children “until the child is reunited with a parent, is ‘united’ with another adult to whom custody or guardianship has formally been given, or reaches 18, unless the state uses a higher age for child welfare services in general.” 102

This Note will now discuss how unaccompanied immigrant children are selected by the United States government to remain in the United States. The Refugee Act of 1980 established a specific program “for the selection of refugees of ‘special humanitarian concern.’” 103

First, the child must conform to the refugee definition discussed above,

100. Id.
101. Id.
102. Steinbock, supra note 86, at 154-156.
103. Id. at 161.
which includes:

(1) The minor's own articulation of persecution... (2) objective evidence known to the United States government that there is a reasonable possibility that the minor would be persecuted in his country of origin, including evidence that that other family members were persecuted; or (3) evidence that... the minor's parents or nearest guardians sent the minor out of his country to protect the minor from persecution. 104

Each year there is a declaration of those who are considered "of special humanitarian concern to the United States." 105 Therefore, a refugee child must fit into this category to be eligible. It is then left to the President's discretion, after meeting with Congress, to determine the number of refugees to be admitted from certain regions of the world, depending on a number of factors, such as national security and economic stability. 106 Frequently, the number of refugees within the specified regions is much greater than the number for which the government had planned, so further process for admission is conducted by the Department of State. 107 The State Department evaluates applications, but the ultimate decision rests with the INS. 108

In evaluating the entire process, it is apparent that the President has considerable control over which refugee children are admitted into the country, because he determines the geographical areas. 109 Also central to the selection of unaccompanied immigrant children are world issues most pressing at the time of determining refugee selection. 110

C. Due Process Issues

The Convention on the Rights of the Child states that unaccompanied refugee children are "accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason." 111 Also, constitutional guarantees such as the Fourteenth Amendment presumably apply to unaccompanied refugee children because due process is granted to "persons" rather than just "citizens" of the United States. 112 Despite this protection, refugee children frequently do not
receive due process because technical requirements provided by the United States "entry doctrine" often create loopholes that deny refugee children these protections.\textsuperscript{113} For example, if the INS finds that a refugee has not "entered" the United States under the strict language of the regulations, the refugee may be detained and subjected to exclusion proceedings where due process guarantees are not recognized.\textsuperscript{114}

The "entry detainee" language pertains to refugees who initially cross the border into the United States without the government's knowledge.\textsuperscript{115} Article 30 of the Convention of the Rights of the Child provides that immigrant children have the right to "challenge deprivations of liberty before appropriate tribunals."\textsuperscript{116} This right is violated if immigrant children do not formally "enter" the U.S.\textsuperscript{117} Furthermore, The U.S. Supreme Court found that children in general must be afforded more protection than the basic constitutional guarantees.\textsuperscript{118}

D. Perez v. Funez

"The situation faced by unaccompanied minors is inherently coercive."\textsuperscript{119} This quote comes from a United States District Court's conclusion in the landmark case for the rights of refugee children, Perez-Funez v. INS.\textsuperscript{120} In Perez-Funez, the court held that INS procedures, which coerced unaccompanied minors to accept voluntary departure from the United States, thereby denying their right to a hearing, violated their due process rights.\textsuperscript{121}

The plaintiff and class representative in this case was an unaccompanied minor from El Salvador.\textsuperscript{122} Officials did not discuss the meaning of the form and did not explain the plaintiff's rights to him.\textsuperscript{123} Perez stated that although he wanted to remain in the United States, "he signed the [voluntary departure] form because (1) an INS agent told him he might

\begin{itemize}
\item \textsuperscript{113} Id. at 125-126.
\item \textsuperscript{114} Id. at 126.
\item \textsuperscript{115} See id.
\item \textsuperscript{116} CENTER ON CHILDREN AND THE LAW, supra note 79, at 126.
\item \textsuperscript{117} See id.
\item \textsuperscript{118} HUMAN RIGHTS WATCH, supra note 3 at sect. II, U.S. Legal Standards for Minors in INS Detention-Rights of Children in General (citing Bellotti v. Baird 443 U.S. 622, 634 (1979)).
\item \textsuperscript{119} Perez-Funez v. INS, 619 F. Supp. 656, 663 (D.C. Cal. 1985); HUMAN RIGHTS WATCH, supra note 3, at Sect. II, U.S. Legal Standards for Minors in INS Detention-Rights of Children in General, ¶ 2.
\item \textsuperscript{120} 619 F. Supp. 656 (D.C. Cal. 1985).
\item \textsuperscript{121} Id. at 669.
\item \textsuperscript{122} Id. at 657.
\item \textsuperscript{123} Id.
\end{itemize}
otherwise have a lengthy detention period and (2) an agent informed him that he could not afford bail."\textsuperscript{124}

Perez also testified that he did not comprehend the procedural form.\textsuperscript{125} He alleged that the INS procedure pertaining to voluntary departure was a deprivation of his Fifth Amendment due process rights. The court noted that "[u]naccompanied alien children possess substantial constitutional ... rights. These rights exist in spite of the minors' illegal entry into the country."\textsuperscript{126} A significant right that was denied to unaccompanied minors was the right to a hearing, which the court stated involved rights "‘basic to human liberty and happiness and, in the present upheavals in lands to which aliens may be returned, perhaps to life itself.’"\textsuperscript{128}

The court further stated that by signing the voluntary departure form, complete control was given to the INS to determine whether the minor will ultimately be deported.\textsuperscript{129} A significant statement noted by a Federal District Court in California was that an interrogation atmosphere is "inherently coercive... and impaired decision-making ability [is] universally present."\textsuperscript{130} An important point noted in Orantes-Hernandez v. Smith was that an INS official "pointed out that the interrogative atmosphere is so coercive that any notices [of rights to any aliens] may have little effect."\textsuperscript{131} Therefore, the coerciveness to children must clearly be unfair and a deprivation of basic human rights.

As of January 24, 1984, the court ordered an injunction and permanent changes to the INS procedures.\textsuperscript{132} The following modifications were made to the INS procedures after the decision in Perez-Funez:

1. The language "employ threats, misrepresentations, subterfuge, or other forms of coercion or..." shall be stricken as no longer necessary.
2. [Parties are required to compose a:] simplified rights advisal consistent with the current law of this circuit... 3. With respect to class members apprehended in the immediate vicinity of the border and who reside permanently in Mexico or Canada, the INS shall inform the class member that he or she may make a telephone call to a parent, close relative, or friend, or to an organization found on the free legal services list. The INS shall so inform the class member of this

\textsuperscript{124} Id.
\textsuperscript{125} Perez-Funez, 619 F. Supp. at 657.
\textsuperscript{126} Id. at 659.
\textsuperscript{127} Id.
\textsuperscript{128} Id. at 659-60 (quoting Wong Yang Sung v. McGrath, 339 U.S. 33, 50 (1950)).
\textsuperscript{129} See id. at 660.
\textsuperscript{130} Perez-Funez, 619 F. Supp. at 669.
\textsuperscript{132} Perez-Funez, 619 F. Supp. at 669-670.
opportunity prior to presentation of the voluntary departure form. 4. With respect to all other class members, the INS shall provide access to telephones . . . [t]he INS shall provide such access and ensure communication prior to presentation of the voluntary departure form. 5. The INS shall obtain a signed acknowledgment . . . showing that the INS has provided all notices and required information . . . 6. The district director shall update and maintain the free legal services list compiled pursuant to 8 C.F.R. § 292a.1.\(^\text{133}\)

While few courts have spoken on this issue, some federal courts, such as the one in the Perez-Funez case, have proved to be important in establishing the rights and vulnerability of children who are detained by the government.\(^\text{134}\) Perez-Funez was a district court case that appears to benefit mostly unaccompanied minors found near the Mexican or Canadian borders. Significantly, the case also presented a major finding that the voluntary consent procedure of the INS did not conform to due process in the Constitution.\(^\text{135}\) However, other procedures, such as deportation hearings, create many complex issues for young children to the point that it is "virtually impossible" for immigrant children to succeed in court hearings without an attorney.\(^\text{136}\)

Defenses are time consuming and expensive and require a great deal of investigation to establish "persuasive evidence of a well-founded fear of persecution," which is part of the definition of "refugee status."\(^\text{137}\) If such fear is proven, permission is given for the child to legally stay in the United States.\(^\text{138}\) Frequently, unaccompanied children do not have the resources to successfully navigate the legal process.\(^\text{139}\) Foreign children have a special disadvantage because culture and language create incomprehensible barriers.\(^\text{140}\) At the very least, foreign children who face these difficult obstacles deserve to be appointed a guardian who is able to communicate with them in their language. In addition, the appointed guardians should be sensitive to the trauma and confusion from which the immigrant child is fleeing. As stated earlier, When a child is without legal representation, there is very little chance that he or she will prevail.\(^\text{141}\)


\(^{134}\) HUMAN RIGHTS WATCH, supra note 3, at sect. II, United States Legal Standards for Minors in INS Detention-Rights of Children in General, ¶ 3.

\(^{135}\) Id.

\(^{136}\) HUMAN RIGHTS WATCH, supra note 3, at sect. II, United States Legal Standards for Minors in INS Detention-Rights of Children in General, ¶ 3.

\(^{137}\) Id.

\(^{138}\) Id.

\(^{139}\) Id.

\(^{140}\) Id.

\(^{141}\) HUMAN RIGHTS WATCH, supra note 3, at sect. II, United States Legal Standards for Minors
E. Unaccompanied Immigrant Children's Right to Counsel

The INS is largely responsible for the lack of legal representation and information given to immigrant children.\textsuperscript{142} Despite a lack of a statutory requirement to appoint counsel, one federal court concluded that, "Detention officials must not only refrain from placing obstacles in the way of communication between detainees and their attorneys, but they are obligated to affirmatively provide detainees with legal assistance."\textsuperscript{143}

There is no case law in the United States that has directly addressed this issue. What little case law there is provides support for the view that detained children who cannot afford a lawyer have a constitutional right to government-appointed counsel. A Supreme Court case addressed due process issues, holding that the government must provide lawyers for indigent children facing juvenile delinquency proceedings, despite the fact that these types of cases are civil as opposed to criminal, where counsel is legally provided to these type of defendants, because the juveniles held a strong due process and liberty interest in their right to have an attorney.\textsuperscript{144}

Like juvenile delinquency proceedings, deportation and exclusion proceedings are civil in nature, not criminal. Several courts have noted, however, that the consequences of a deportation proceeding are as grave as the consequences of many criminal proceedings, and a liberty interest is similarly at stake. Thus, in \textit{Brancato v. Lehmann},\textsuperscript{145} the Sixth Circuit Court of Appeals observed, "although it is not penal in character, deportation is a drastic measure, at times the equivalent of banishment or exile. . . ."\textsuperscript{146} More recently, a Fifth Circuit case, \textit{Johns v. Department of Justice},\textsuperscript{147} noted, "deportation is not a criminal action, but the consequences may more seriously affect the deportee than a jail sentence. The liberty of the individual is at stake and 'meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standard of fairness.'"\textsuperscript{148} The court identified a strong liberty

\textit{in INS Detention-Rights of Children in General, ¶ 3.}

\textsuperscript{142} \textit{Id.} at sect. III, \textit{Access to Legal Information and to Representation, ¶s 1 \& 2.}


\textsuperscript{144} \textit{HUMAN RIGHTS WATCH, supra note 3, at sect. II, \textit{United States Legal Standards for Minors in INS Detention-Right to Counsel, ¶ 4; see also In re Gault, 387 U.S. 335 (1963); see also Gideon v. Wainwright, 372 U.S. 335 (1963).}

\textsuperscript{145} 239 F.2d 663 (6th Cir. 1956).

\textsuperscript{146} \textit{HUMAN RIGHTS WATCH, supra note 3, at sect. II, \textit{United States Legal Standards for Minors in INS Detention-Rights of Children in General, ¶ 5} (quoting Brancato, 239 F.2d at 666).

\textsuperscript{147} 624 F.2d 522 (5th Cir. 1980).

\textsuperscript{148} \textit{Id.} at 524.
interest that must be protected.\textsuperscript{149}

It is imperative that refugee children are given access to counsel. Measures must be taken to assure that minors are properly informed of their rights by an attorney who can communicate in their native language, treat the children with respect, and have an understanding of their vulnerable state. If an unaccompanied child is indigent, it should then be the responsibility of the government to appoint counsel for the child.

Human Rights Watch believes that an attorney appointed to represent an unaccompanied child must be given a proper time frame in which to prepare for the hearing, and must be willing to dedicate his or her entire time to the process of legal proceedings in the child's case.\textsuperscript{150} Human Rights Watch also recommends the following actions that should be taken by the INS to ensure that unaccompanied children are given fair legal representation:

1) The INS should promptly and regularly provide children with information about their legal rights in a language they can understand.

2) The INS should promptly inform children of their court dates verbally and in writing in a language they can understand.

3) The INS should inform children verbally and in writing of their right to contact a local office of the United Nations High Commissioner for Refugees.

4) The INS should ensure that all written rights advisory forms are translated into
   the language spoken by each child and provided to each child.

5) The INS should provide a sufficient number of trained interpreters at facilities housing unaccompanied immigrant children.\textsuperscript{151}

While these standards appear to secure some rights for refugee children pertaining to adequate legal representation, the government and the INS must go further. Admittedly, it is difficult to ensure that young children

\textsuperscript{149} Human Rights Watch, \textit{supra} note 3, at sect. II, \textit{United States Legal Standards for Minors in INS Detention-Rights of Children in General}, ¶ 5 (quoting Johns v. U.S. Dept. of Justice, 624 F.2d 522, 524 (5th Cir. 1980)).


\textsuperscript{151} See id. at sec. I, Summary and Recommendations, ¶¶ 4-9.
understand their rights in the complicated legal process used by the INS. There are many factors complicating the situation, namely the child’s fear, language barriers, psychological trauma, and loss of parental support. There must be more assistance available to the child, especially by individuals who have experience working with children, to make the environment less intimidating. For example, to ensure understanding and to emotionally support the child, in addition to the list above from Human Rights Watch, a child psychologist should be available throughout the process, including the times when the child is being informed by counsel.

To illustrate the current problem of inadequate legal rights for refugee children, Human Rights Watch discussed the problems at the Berks County Youth Center (hereinafter the Center). The purpose of the Center is to detain juvenile delinquents and to shelter children in the custody of the welfare authorities. The Center also provides shelter for children that are in the custody of the INS. “Very few of the children that [we] interviewed reported receiving any information about legal services from either INS or BCYC staff.”

One of the children staying at the center said, “when I came here, they gave us a paper and told us to read it. They told us about the rules here . . . but no, they didn’t give me a list of lawyers, or anything about court or a judge.” “A local immigration judge told Human Rights Watch that while some children appearing in his court indicate that they have been given a list of legal services, ‘I always presume they have not.’”

Several local immigration attorneys reported difficulty in learning about children needing representation. One commented that local INS and the Center’s staff “don’t care about representation” and another said that she felt as though there were an “unstated policy to make legal representation as difficult as possible.” The article went on to state: “Attorneys handling juvenile cases reported that while they were sometimes called by [Center] counselors who believed a child needed representation, they were more often approached directly by judges.”

In order to overcome this problem, a legal services center set up a juvenile program consisting of volunteers and law students who conducted

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152. See generally id. at sect. IV, Findings at Berks County Youth Center.
153. Id. at ¶ 1.
154. Id.
155. Detained and Deprived of Rights, supra note 150, at sect. IV, Findings at Berks County Youth Center, ¶ 1.
156. Id. at sect. IV, Findings at Berks County Youth Center, ¶ 1.
157. Id. at ¶ 2.
158. Id. at ¶ 3.
159. Id. at ¶ 3.
initial interviews with children, provided them with legal information, and found attorneys to take on particular cases. Providing this opportunity for law students is a valuable experience for both the student and the child. It would be beneficial if more programs of this nature were implemented. Such programs do not have to involve a burdensome time commitment for the volunteers and they have the potential to make a significant difference in the lives of these children. This type of program is likely to assure that children are not forgotten in the INS process by affording the information and representation to best serve their interests.

IV. PURPOSE OF THE LAWS AND CURRENT EFFORTS TO PROTECT UNACCOMPANIED REFUGEE CHILDREN


On February 28, 2002, Stuart Anderson, Executive Associate Commissioner for Policy and Planning at the INS, testified before Congress regarding the “Unaccompanied Alien Child Protection Act of 2001” (hereinafter the Act of 2001). Two of the overall goals of the Act of 2001 were to improve custody conditions for minors and to promote the principle that it is usually in the best interests of children to be reunited with their parents.

In order to fulfill these goals, the INS sought to accomplish certain tasks through the Act. The following is a list of these goals:

[The INS plans] to establish an Office of Juvenile Affairs that reports directly to the Commissioner. The director of the Office of Juvenile Affairs will have the authority necessary to guide placement decisions and will continue to seek alternatives to custody. The INS will review and develop field guidance that identifies ways in which parole and withdraws, in appropriate cases, may be used as alternatives to placing unaccompanied juveniles in proceedings. The INS will work with Congress, other agencies, and the public to develop comprehensive and

160. See Detained and Deprived of Rights, supra note 150, at sect. IV, Findings at Berks County Youth Center, ¶ 8.
162. Id.
163. Id.
creative strategies for addressing the wide range of juvenile issues in immigration policy. The Office of Juvenile Affairs will hold regular meetings with the public on the new initiatives the INS is undertaking.\textsuperscript{164}

The overall purpose, stated in the Act is, "[t]o establish an Office of Children's Services within the Department of Justice to coordinate and implement Government actions involving unaccompanied alien children, and for other purposes."\textsuperscript{165} The major provisions of the act address not only the establishment of the Office of Children's Services, within the federal government as opposed to the INS, but also the establishment of an "Interagency Task Force on Unaccompanied Alien Children."\textsuperscript{166}

Then, on November 25, 2002, Congress enacted the Homeland Security Act of 2002.\textsuperscript{167} The Homeland Security Act provided some significant advances for the rights of immigrant children in the United States, the most important being the establishment of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services.\textsuperscript{168} The enactment of the Homeland Security Act established the ORR as a separate office from the INS to handle cases of immigrant children, an important part of what the Act of 2001 sought as an overall goal.\textsuperscript{169}

The Homeland Security Act also took into consideration national security concerns by including a provision which states that if any immigrant children have been convicted of a felony or are considered a risk to the security of the United States, they will continue to stay in the custody of the Department of Homeland Security.\textsuperscript{170} While this was a critical step towards ensuring the protection of childrens' rights, many provisions from the Act of 2001 were pushed aside with the passage of the Homeland Security Act.\textsuperscript{171} Then, on May 21, 2003, Senator Dianne Feinstein (D-CA) introduced S1129, The Unaccompanied Alien Child Protection Act of 2003 (the Act of 2003) and the House Bill was introduced on October 21, 2003.\textsuperscript{172} The overall goals of the Act of 2003 include the establishment of a

\begin{thebibliography}{9}
\bibitem{164} \textit{Id.}
\bibitem{166} \textit{Id.}
\bibitem{169} \textit{Id.}
\bibitem{171} Lutheran Immigration and Refugee Service, \textit{supra} note 168.
\bibitem{172} \textit{Id.}
\end{thebibliography}
system to provide pro-bono counsel for children to represent them and inform them of their legal rights, the appointment of guardians ad litem to ensure that the best interest of the child is provided for in court, and to make sure that unaccompanied children are placed in shelters or foster care and that detention is a last resort. Where detention of a child is necessary, the Act of 2003 establishes “minimum standards of care” that must be followed.

On October 21, 2003, Hon. Zoe Lofgren spoke to the House of Representatives about the importance of the Act of 2003. An important statement from her speech was that while the Department of Health and Human Services has now been given the responsibility for the care of unaccompanied children, the Department “has inherited a system that relies upon a variety of detention facilities to house children and was given little legislative direction . . .” therefore, the Act of 2003 is essential to continue the progress of ensuring that the rights of unaccompanied immigrant children are protected and not lost in a complex legal system. The passage of the Act of 2003 is vital to assure adequate support for detained unaccompanied children.

B. Purpose of the Laws: The Reality of the Treatment of Children in Foreign Countries

The United States should be more concerned with the welfare of refugee children because every child has a basic human right to live free from terror and abuse. When children seek refuge in the U.S., the government owes them the protection of these basic rights.

However, on a global scale, the reality is that children are sexually abused, exploited, abandoned, forced to be soldiers in violent wars, and often forced into prostitution in many different countries. In addition to being raped, beaten, and even murdered, children are often trafficked to other countries where they are treated as criminals rather than victims of abuse. If unaccompanied children come to the United States to escape this abuse, there is no question that they are particularly vulnerable and

173. Id.
174. Id.
176. Id.
178. Id.
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deserve compassionate treatment rather than exposure to harsh jail conditions with little or no access to counselors, psychologists, and lawyers.

Despite numerous international efforts to combat this problem, many children are still unable to escape sexual abuse and exploitation. Unaccompanied children are especially at risk for sexual abuse and exploitation because of their age, vulnerability, and the strong correlation between abuse and situations of forced population movement. The United Nations High Commissioner for Refugees (hereinafter UNHCR) reported that young girls are more susceptible to this type of abuse and are at a higher risk of contracting an STD, such as AIDS, compared to young boys. In response to the problem of sexual abuse and exploitation of refugee children, the UNHCR published a guidebook to promote "prevention and response" initiatives. It also created programs to discuss and implement prevention techniques pertaining to sexual violence with a focus on refugee children.

UNHCR has also held conferences with human rights organizations, the United Nations, and government representatives, as well as obtained a grant from the United Nations Foundation to implement a program that will focus on the health of children in refugee communities. While programs continue to develop, it is crucial that the United States government be aware of this problem. Furthermore, trained professionals skilled in dealing with this type of abuse must be available to counsel children and provide support while detained and awaiting legal proceedings if they remain in the United States. UNHCR admits that the needs of refugee children are not being met despite the programs that have been created because of a lack of financial and personnel resources.

Another serious global problem is the use of children in armed conflict. Unaccompanied children are particularly vulnerable to military recruitment. It is alarming that many adolescents are forced to be

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179. Id. ("Articles 34 and 35 of the Convention on the Rights of the Child forbid sexual exploitation or trafficking of children . . . [and] other international instruments in human rights, humanitarian law, refugee law, and labor standards protect children against sexual exploitation.").

180. Id.


182. Id.

183. Id. at 7.

184. See id.

185. Id. at 9.

186. Report of the Secretary-General, supra note 181, at 6.
soldiers, but even more shocking is the reality that children can be recruited in some countries when they are under the age of ten.\textsuperscript{187}

A global survey conducted by the Coalition to Stop the Use of Child Soldiers reported that "more than half a million children were subject to recruitment into national armed forces, paramilitaries, or non-state armed groups in a total of eighty-seven countries, and at least 300,000 of these children were actively participating in armed conflicts in forty-one countries."\textsuperscript{188}

The Democratic Republic of Congo presents one place where children are coerced into the military. The governments of Uganda and Rwanda support rebel groups, and the United Nations reported that between fifteen to thirty percent of new military recruits were under the age of eighteen, and many were under the age of twelve.\textsuperscript{189} During the Congolese Rally for Democracy-Goma, children were coerced in large numbers to join the military.\textsuperscript{190} Children were taken from schools, markets, and their homes. Eventually, the problem caused so much fear that in some areas, schools were closed and children slept outside on the streets in order to prevent recruitment.\textsuperscript{191}

Other countries in which children have been heavily recruited include Columbia and Sri Lanka. In Columbia, the army announced that children under the age of seventeen were among the soldiers captured during wartime, and a third of them were female.\textsuperscript{192} In Sri Lanka, increasing numbers of children, many under the age of twelve, were recruited into the military from schools despite assurances to the United Nations that the recruitment of children would cease.\textsuperscript{193} Even though organizations as UNHCR continue to advocate against the use of child soldiers by creating programs such as "children as zones of peace," the problem is still prevalent on a global scale.\textsuperscript{194}

It is important that the United States government implement programs to protect children who are able to escape this type of terror by seeking asylum in the United States. Although it is not realistic for the United States to solve all the problems that face children abroad, it is possible to ensure the protection of some children by extending appropriate resources.

\textsuperscript{187} Id.
\textsuperscript{188} Id.
\textsuperscript{190} Id.
\textsuperscript{191} Id.
\textsuperscript{192} Id.
\textsuperscript{193} Id.
\textsuperscript{194} Report of the Secretary-General, supra note 181, at 6-7.
This could be accomplished by creating programs within the INS or within other government agencies, thereby adequately assessing the best interests of children, thus providing them with options for beginning a new life.

C. Programs Implemented to Ensure the Rights and Protection of Unaccompanied Refugee Children

In October of 2000, a one-year program was created in Phoenix, Arizona, to confront the due process problem of unaccompanied immigrant children being denied access to legal representation, and thus a life in the United States, because of their inability to comprehend INS immigration procedures. This program was implemented by several organizations along with the INS and the Justice Department's Executive Office for Immigration Review.

One purpose of the program was to serve as a model for other cities to aid children in INS custody across the country. Advocates of the program discussed the inherent problem of the INS detaining children, which stemmed from the fact that "[the] INS is first and foremost a law enforcement agency, not a child welfare agency." Therefore, a contradiction exists in the fact that "the same agency that is charged with caring for the child is seeking to remove the child from the country."

The main objective of the program was for child-welfare professionals to train pro bono attorneys so that they could adequately act as advocates for unaccompanied immigrant children. More specifically, the attorneys were trained in child development, children's rights and immigration proceedings, and the promotion of differing cultural understanding.

Hopefully, Arizona's example will encourage other cities throughout the United States to adopt similar programs.

Another program designed to protect the rights of unaccompanied refugee children and other children separated from their families was the Separated Children in Europe Program (hereinafter SCEP). SCEP seeks to use "research, policy analysis and advocacy" to improve the conditions

196. Id.
197. Id.
198. Id.
199. Id.
201. Id.
for unaccompanied immigrant children in Europe. The countries involved in this program create Country Assessment Reports on the "policies, practices, and laws that are in force relevant to separated children in their territories." SCEP developed a Statement of Good Practice, which sets out a "comprehensive set of principles giving a common standard for work across all countries."

Furthermore, SCEP established the European Program Network, which provides contact persons for every country involved. The European Program Network has proven to be very successful by enabling countries to conveniently exchange information through lobbying experiences, and includes a link for people who give support to individual children.

A program similar to SCEP should be organized in the United States in order to create uniform standards to be applicable to all states. A select number of government representatives could act as the contact persons for each state and organize one head agency to gather information on immigrant children and training procedures, which could be shared with the country through a common website.

**IV. CONCLUSION**

For six months, Xiao Ling lived in a small concrete cell, completely bare except for bedding and a Bible in a language she could not read. Locked up in prison-like conditions with juveniles accused of murder, rape, and drug trafficking, Xiao Ling told Human Rights Watch in June 1998, that she was kept under constant supervision, not allowed to speak her own language, told not to laugh, and even forced to ask permission to scratch her nose. Bewildered, miserable, and unable to communicate with anyone around her, she cried everyday.

Each year, stories similar to Xiao Ling's occur in the United States when unaccompanied refugee children are apprehended by the INS. Although most of the time children like Xiao Ling are either forced to return to their home country immediately or forced to go through removal proceedings, some unaccompanied children are detained in juvenile offender detention centers while they await government action on this case.

While progress is being made in the area of children's rights, such as the

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203. Id.
204. Id.
205. Id.
206. Id.
207. See Detained and Deprived of Rights, supra note 150 at sect.1, Summary and Recommendations, ¶ 1.
208. Id. at ¶ 2.
209. Id.
establishment of the Convention on the Rights of the Child, the U.S. government has been hesitant to take action and ratify this treaty. The United States is “one of only two states that have failed to ratify the Convention on the Rights of the Child” and has declared opposition to a “rights-oriented plan” proposed by the Human Rights Watch, which sought to protect children from abuse and violence.

Next, it is essential that the U.S. government enact the Unaccompanied Alien Child Protection Act of 2003. A possible reason for the United States’ hesitation to announce that it will take affirmative action to protect the rights of immigrant children is the country’s general fear of terrorism in the aftermath of September 11, 2001. When officials from the Department of Justice and State, including Secretary of State Colin Powell, discussed plans for refugee admissions for the 2003 Fiscal Year, President Bush declared to the committee that the estimated ceiling of refugees allowed to be admitted to the United States would only be 70,000. Since this number is very low, many advocates emphasized the need to increase the number admitted because of the extreme low (28,000) in Fiscal Year 2002. The reason for the drastically low numbers of refugees admitted to the United States has been described by the administration as a reflection of “current realities.”

With the Homeland Security legislation creating significant changes to immigration procedures in the United States, many critics believe that the change is very troublesome to immigrants in that it “provides little or no coordination between immigration enforcement and services, and fails to adequately protect the important role of our immigration courts.” The change to the number of immigrants admitted and the instability of the immigration procedures in the United States could likely increase the problem of refugee children slipping through the cracks of our legal system, thus forcing them to return to a homeland of terror and abuse. While the United States is justified in reducing the number of immigrants allowed to remain in the United States in light of the present circumstances, it is imperative that the government make at least three strides in the

210. See Report of the Secretary-General, supra note 181, at 9.
213. Id.
214. Id.
promotion of children's rights.
First, the United States must ratify the Convention on the Rights of the Child. Second, there must be more pressure to make the Act of 2003 a law, in order to ensure that a guardian ad litem is appointed to ensure that the best interest of the child is promoted at all times during legal proceedings. The last major action taken on the Act of 2003 was on December 10, 2003 when the Act was referred to the House Subcommittee on Immigration, Border Security, and Claims.216 Lastly, it is important to ensure that refugee children are only detained as a last resort, kept in humane conditions, afforded counsel, and where possible, reunited with their families or provided adoptive services, so they can experience a life free from terror and violence.

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