

**TRUMP’S POLICY OF PUTTING KIDS IN CAGES: SIX DEAD,
THOUSANDS SEPARATED FROM PARENTS, MAKING
AMERICA GREAT AGAIN?**

*David R. Katner**

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The administration's policy of separating children from their families as they attempt to cross into the United States without documentation is not only needless and cruel, it threatens the mental and physical health of both the children and their caregivers. Psychological research shows that immigrants experience unique stressors related to the conditions that led them to flee their home countries in the first place. The longer that children and parents are separated, the greater the repeated symptoms of anxiety and depression for the children. Negative outcomes for children include psychological distress, academic difficulties and disruptions in their development.

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INTRODUCTION

Innovations in foreign policy are not uncommon when administrations change after presidential elections. The Trump administration's innovations in immigration policies, however, while designed to “make America great again,” raise a novel question: to what level of depravity and inhumanity will the United States choose to sink? Evidently, the answer includes, and indeed surpasses, locking children in cages after separating them from their families. Although historically, some nations have used children in cruel fashion to accomplish specific goals—the Nazis' medical experiments on young children provide one perverse example²—five years ago the notion that the most powerful country on

¹ Press Release, Statement of APA President Regarding the Traumatic Effects of Separating Immigrant Families (May 29, 2018), <https://www.apa.org/news/press/releases/2018/05/separating-immigrant-families> [hereinafter “Statement of APA President Regarding Traumatic Effects”] (the APA is the largest scientific and professional organization representing psychology in the United States with a membership of 115,700 researchers, educators, clinicians, consultant and students, and it provides divisions in 54 subfields of psychology with affiliations with 60 state, territorial and Canadian provincial associations).

² See ROBERT JAY LIFTON, THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE 30—35, 56, 77, 143, 363 (1986) (describing the gradual politicization of the medical profession during Hitler's Third Reich in support of Nazi “biomedic vision” of racial superiority seeking to eliminate “undesirables” while strengthening the Aryan genetic strain. Lifton further describes the systematic murder of thousands of children in hospital and clinical settings after they had been separated from their parents and families, as well as

the planet would stoop to making impoverished children hostages in an effort to send a warning to other families seeking asylum seemed unthinkable. Apparently a new day has dawned in America, albeit one devoid of compliance with the law³ or any semblance of morality.⁴ This article examines the Trump administration's innovative immigration policies involving separating children from their parents and families, and considers the medical, emotional, and psychological consequences impacting these children. Further, it will discuss the traumatic impact on children separated from their families under the Trump policy, and will consider what legal recourse these children might have in response to their familial separation and detention.

Before beginning a detailed examination of these inhumane policies, we must credit Stephen Miller as the mastermind⁵ behind the Trump administration's approach to immigration policy.⁶ Dubious credit indeed – one author has asserted that

the “medical experiments” performed upon them including removing genitalia and determining the quickest way to cause their death, as gruesome components of the Nazi development of the “Final Solution”).

³ “The separation of children of any age from their parents raises important ethical and legal issues. According to the United Nations Convention on the rights of the child (United Nations, 1989), the child shall have the right to know and be cared for by their parents and to preserve their identity, including nationality, name, and family relations.” Veneita Sofia Velonaki et al., *Separation of Children from Undocumented Parents: From USA to Greece*, 37 PUB. HEALTH NURSING (2020).

⁴ Migrant detention centers can be traced to the Reagan administration in 1981 following the 1972-1980 influx of 40,000 Haitians arriving to south Florida in boats after flight from political persecution and economic deprivation by the repressive regime of Jean-Claude “Baby Doc” Duvalier and the arrival of more than 100,000 Cubans from Mariel Harbor, Cuba, fleeing President Fidel Castro's regime. Smita Ghosh, *How Migrant Detention Became American Policy*, WASH. POST (July 19, 2019), <https://www.washingtonpost.com/outlook/2019/07/19/how-migrant-detention-became-american-policy/>.

⁵ Michael Kranz et al., *Meet 34-Year-Old Stephen Miller, Trump's Longest-Serving Senior Advisor and Mastermind of His Most Inhumane Policies*, BUSINESS INSIDER (Feb. 21, 2020), <https://www.businessinsider.com/who-is-stephen-miller-trump-speechwriter-immigration-adviser-2018-1> (asserting that Miller played a key role in many of Trump's immigration policies especially as the “driving force” behind Trump's “zero tolerance” policy that separated migrant children from their families).

⁶ Immigration and Customs Enforcement now falls within the umbrella of the Department of Homeland Security, a bipartisan Cabinet-level department established after 9/11 to consolidate control of entry into the U.S. It is the third largest federal department, with a fifty-billion-dollar budget and a staff of over two hundred thousand employees, including the Federal Emergency Management Agency and Immigration and Customs Enforcement. Jonathan Blitzer, *How*

Miller's obsession with restricting immigration and punishing immigrants has become the defining characteristic of the Trump White House . . . In the past three and a half years, the Trump Administration has dismantled immigration policies and precedents that took shape in the course of decades, using current laws to intensify enforcement against illegal immigration and pursuing new ones to reduce legal immigration. Trump has slashed the refugee program; virtually ended asylum at the southern border, and written a rule denying green cards to families who might receive public benefits. Miller has choreographed these initiatives, convincing Trump that his political future depends on them—and ongoing even further.⁷

Some have disputed Stephen Miller's role behind the so-called "zero tolerance" immigration policy, instead attributing the policy to General John Kelly,⁸ Trump's former Chief of Staff.⁹ Kelly eventually tried to distance himself from the policy,¹⁰ however, and most observers today identify Stephen Miller as the prime mover of the Trump immigration policy that separated children from their parents as a painful deterrent against families coming to the U.S. southern border.¹¹

Stephen Miller Manipulates Donald Trump to Further His Immigration Obsession, NEW YORKER (Mar. 2, 2020), <https://www.newyorker.com/magazine/2020/03/02/how-stephen-miller-manipulates-donald-trump-to-further-his-immigration-obsession>.

⁷ *Id.*

⁸ Molly O'Toole, *Must Reads: John F. Kelly Says His Tenure as Trump's Chief of Staff Is Best Measured by What the President Did Not Do*, L.A. TIMES (Dec. 30, 2018), <https://www.latimes.com/poitics/la-na-pol-john-kelly-exit-interview-20181230-story.html> (reporting that John Kelly "aggressively advocated and implemented harsh immigration measures, including separating migrant children from their parents on the border").

⁹ James Langford, *Elizabeth Warren Says John Kelly's New Job is "Cashing In" on Trump's Policies to Lock Up Immigrants*, BUS. INSIDER (June 6, 2019), <https://www.businessinsider.com/elizabeth-warren-john-kelly-job-cashes-in-trump-immigration-policy-2019-6> (stating that Senator Elizabeth Warren claimed that John Kelly "was at the center of the inhumane and poorly planned immigration policies that put children in cages while separating thousands of families").

¹⁰ Sanjana Karanth, *John Kelly Tries to Distance Himself from Immigration Policies He Helped Implement*, HUFFPOST (Mar. 7, 2019), https://huffpost.com/entry/john-kelly-immigration-trump_n_5c8199e0e4b0ed0a00117df4 ("A March 2017 interview with CNN revealed that Kelly himself suggested separating families to deter unauthorized immigration.").

¹¹ Nick Miroff & Josh Dawsey, *The Advisor Who Scripts Trump's Immigration Policy*, WASH. POST (Aug. 17, 2019),

In 2017, the United States had more immigrants than any other country in the world;¹² more than 40 million people residing in the U.S. were born in another country, or roughly one-fifth of the world's migrants.¹³ By 2018, however, Canada had become the world's top country for resettling refugees, perhaps due in part to the Trump administration's actions.¹⁴ Despite this trend, there is no question that the numbers of both unaccompanied minors and children traveling with their parents and families across the U.S.-Mexico border has increased,¹⁵

<https://www.washingtonpost.com/graphics/2019/politics/Stephen-miller-trump-immigration/> (identifying Miller as “the singular force behind the Trump administration's immigrant agenda”). Such actions, if measured by the fourteenth century poet Dante, would easily place the members of the administration in the Seventh Circle of Hell, the boiling river of blood found in Canto XII of *The Inferno*, the first part of the Divine Comedy. DANTE ALIGHIERI, *THE INFERNO* 60—61 (Henry Wadsworth Longfellow trans., Barnes & Noble Books 1st ed. 2003) (although a convincing argument could be made for multiple placements of the administration's members, Dante was a thirteenth-fourteenth century thinker, and he tended to resolve problems in absolutist terms, so pick the most egregious behavior of each sinner for the most appropriate placement within the Nine Circles).

¹² Jynnah Radford, *Key Findings About U.S. Immigrants*, PEW RESEARCH CENTER (June 17, 2020), <https://www.pewresearch.org/fact-tank/2019/06/17/key-findings-about-u-s-immigrants/>. In 2018, Mexico produced 25% of all U.S. immigrants, followed by India (6%), China (including Hong Kong and Macao, but not Taiwan) (5%), the Philippines (5%), El Salvador (3%), Vietnam (3%), Cuba (3%), the Dominican Republic (3%), Korea (2%), and Guatemala (2%), with these ten countries accounting for 57% of all immigrants in the United States. Jeanne Batalova et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLICY INSTITUTE (Feb. 14, 2020), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2019>.

¹³ Radford, *supra* note 13.

¹⁴ *Id.* (as of 2018, more than 44.7 million immigrants lived in the U.S., the highest since census records started collecting the data in 1850. Accordingly, one in seven U.S. residents is foreign born).

¹⁵ Dan Restrepo et al., *Getting Migration in the Americas Right*, CTR. FOR AM. PROGRESS (June 24, 2019), <https://www.americanprogress.org/issues/security/reports/2019/06/24/471322/getting-migration-americas-right/> (“In terms of recipients, the United States has seen the largest influx of asylum-seekers—more than half a million cumulatively as of mid-2018, chiefly from El Salvador, Guatemala, Honduras, Venezuela, Mexico, and Haiti. It is not, however, alone in being a recipient of asylum-seekers across the Americas. The largest group of asylum-seekers in Brazil and Peru, for example, are Venezuelan nationals, while Mexico hosts substantial numbers of Central Americans and Venezuelans . . . In the Americas, the challenge of processing a growing asylum-seeker population has been compounded by the fact that many of those seeking refugee status travel in family units or as unaccompanied minors. Along the southern border of the United States, parents and children now comprise nearly two-thirds of Border Patrol apprehensions, up

though the numbers remain well below the all-time high set in 2000.¹⁶ In fact,

Immigration authorities apprehended a record-setting 76,020 unaccompanied minors at or near the U.S. - Mexico border during the 2019 fiscal year, an increase of 52 percent over 2018. At the same time, arrests of migrants traveling with family members—some of whom authorities later recategorized as unaccompanied children—more than quadrupled from the previous year, reaching a new peak of 473,682.¹⁷

Although three-quarters of unaccompanied children in U.S. detention facilities are fifteen years of age or older, toddlers and even infants have been detained. After ten years without a single child's death in federal custody,¹⁸ the Trump administration packed detention facilities with children, some running high fevers, vomiting, or displaying other flu-like symptoms, and one with pneumonia.¹⁹ Six of these children died: Darlyn Cristabel Cordova-Vall, a 10-year-old girl from El Salvador;²⁰ Jakelin

from 10 percent in 2012. These changing demographics have tested the response of an immigration system that was designed when the majority of foreign persons seeking to enter the United States without authorization were single adult males, most of whom sought to avoid contact with immigration authorities. The magnitude of the challenge—and the failure of the government's current response—is highlighted by the fact that multiple children have died in, or shortly after leaving, U.S. Customs and Border Protection's custody since December 2018, the first such deaths in a decade.”).

¹⁶ Amelia Cheatham, *U.S. Detention of Child Migrants*, COUNCIL ON FOREIGN REL. (Feb. 10, 2020), <https://www.cfr.org/backgrounder/us-detention-child-migrants>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Molly Hennessy-Fiske, Six Migrant Children Have Died in U.S. Custody. Here's What We Know About Them, *L.A. TIMES* (May 24, 2019), <https://www.latimes.com/nation/la-na-migrant-child-border-deaths-20190524-story.html>.

²⁰ After crossing the Mexico-Texas border by herself, Darlyn was caught by U.S. agents and taken to a welfare check where she complained of chest pains. In response, she was sent to Edinburg Children's Hospital. She was released one day later and placed in a shelter in San Antonio where she was designated as “medically fragile” due to a history of congenital heart defects. While at the facility in San Antonio, Darlyn underwent a surgical procedure which left her in a coma. In May, she was transported to a nursing facility in Phoenix for palliative care and in September, was sent to a nursing facility in Omaha, where her mother lived. On September 29, 2018, Darlyn died at the Children's Hospital in Omaha, due to fever and respiratory distress. *Id.*; Rosa Flores & Merlin Delcid, Nearly a Year After a 10-Year-Old Died in US Custody, Her Father Remembers the Last Time He Saw Her Alive, *CNN* (last updated May 27, 2019),

Caal Maquín, a 7-year-old girl from Guatemala;²¹ Felipe Gomez Alonzo, an 8-year-old boy from Guatemala;²² Juan de León Gutiérrez, a 16-year-old boy from Guatemala;²³ Wilmer Josué Ramírez Vásquez, a 2½-year-

<https://www.cnn.com/2019/05/27/us/darlyn-cristabel-cordova-valle-funeral-father-aunt/index.html>.

²¹ Jakelin and her father crossed the Mexico-New Mexico border on December 6 and were apprehended by U.S. CBP. About eight hours after being apprehended, Jakelin and her father were put on a bus for a CBP station (however, this was not the first bus to depart for the station). While on the bus, Jakelin began vomiting, and when the bus arrived approximately 90 minutes later, Jakelin's temperature was 105.7. At the station, an EMT successfully revived her, and she was flown to an El Paso hospital where she began having seizures, difficulty breathing, and blood abnormalities. The next day, on December 8, 2018, Jakelin died. According to her autopsy, "[t]here were traces of streptococcus bacteria in Jakelin's lungs, adrenal gland, liver and spleen ... [t]he infection led to sepsis and organ failures," the autopsy said. U.S. officials claimed that prior to her death, Jakelin "had not been given food or water for days before being detained"; however, her father denies these claims. Furthermore, physicians have come forward claiming that the bacteria infection that Jakelin died from was so advanced that she likely would have been visibly ill for hours before her death. One physician explained that this infection was so severe that it would have taken hours to progress, and that the eight hours spent waiting for a bus to take them to the CBP facility could have been responsible for Jakelin not getting the medical attention that she needed. Hennessy-Fiske, *supra* note 20; Sheri Fink, *Migrant Girl's Autopsy Shows She Would Have Been Visibly Sick for Hours, Doctors Say*, N.Y. TIMES (Mar. 29, 2019), <https://www.nytimes.com/2019/03/29/us/migrant-girl-death.html>.

²² Felipe and his father were caught by CBP in mid-December when they crossed the Mexico-America border. After being taken into custody, Felipe and his father were taken to multiple holding areas, all with poor living conditions. While in holding, Felipe began coughing, complaining of sore throat, congestion, and fever, and agents noticed he had "glassy eyes." This led him to be hospitalized, where he registered a fever of 103 and tested positive for the flu. The hospital kept him for observation for approximately 90 minutes and then released him with amoxicillin and ibuprofen prescriptions. A few hours later, Felipe became sick again and was readmitted to the hospital where he died. According to the autopsy, Felipe had developed a staph infection in his lungs. The bacteria then entered his bloodstream and caused sepsis, resulting in his death. Felipe died on December 24, 2018. Hennessy-Fiske, *supra* note 20.

²³ Juan crossed the Mexico-America border and was caught by CBP agents on April 19, 2019. He was subsequently taken to Casa Padre Shelter. While at the shelter, agents noticed that Juan was ill and on April 21, sent him to the hospital. Juan was released and hospitalized again the next day. While at the hospital, doctors discovered that Juan was suffering from an infection in his brain called Pott's Puffy Tumor, which can be caused by untreated sinus infections or head traumas. Juan suffered complications from the infection in his frontal lobe and as a result, died on April 30, 2019. It is unknown what caused Juan's infection. Hennessy-Fiske, *supra* note 20; Anna-Catherine Brigida, *"He Went Seeking Life but Found Death." How a Guatemalan Teen Fleeing Climate Change Ended Up*

old boy from Guatemala;²⁴ and Carlos Hernandez Vásquez, a 16-year-old boy from Guatemala.²⁵ These children died at least in part because of an immigration policy enacted and enforced by the federal government of the United States in an effort to frighten other migrants from crossing the border without proper authorization.²⁶ No matter the outcome—and

Dying in a U.S. Detention Center, TIME (May 13, 2019), <https://www.time.com/5587817/juan-de-leon-gutierrez-guatemala-migrant/>.

²⁴ On April 3, after Wilmer and his mother crossed the Mexico-America border, Wilmer was taken into custody by CBP agents. Three days after they were detained, Wilmer's mother informed agents that Wilmer was sick, and Wilmer was then taken to Providence Children's Hospital in El Paso, Texas. The physicians at Providence Children's Hospital found that Wilmar had a high temperature and respiratory issues and was diagnosed with pneumonia. Wilmar was hospitalized for approximately one month before he died on May 14, 2019. According to the medical examiner, Wilmar "died of complications related to multiple intestinal and respiratory infectious diseases." Hennessy-Fiske, *supra* note 20; Robert Moore & Maria Sacchetti, *Toddler Who Died After Being Taken into Custody at the Mexican Border Suffered Multiple Diseases*, WASH. POST (July 2, 2019), https://www.washingtonpost.com/immigration/toddler-who-died-after-being-taken-into-custody-at-the-mexican-border-suffered-multiple-diseases/2019/07/02/5fda6674-9d03-11e9-9ed4-c9089972ad5a_story.html.

²⁵ On May 13, 2019, Carlos crossed the Mexico-Texas border and was taken into custody with 70 other migrants who had made the journey. Carlos stayed at a processing center for six days before he was moved to a CBP station in Welaco, Texas. While there, he complained that he felt sick and was seen by a nurse practitioner who found that he had a fever of 103 and the flu. Although it was recommended that he be hospitalized, he was not and instead, was prescribed Tylenol and left in his cell. Carlos was not taken to the hospital or given additional medical attention, nor is it clear how many checks he received subsequent to his complaining of feeling ill. According to CBP, they did a wellness check one hour before Carlos was found unresponsive on the floor of his cell. According to reports, Carlos had been unresponsive "for four hours before his cellmate woke up and found him dead." According to CBP-camera-footage from the detention facility, during the time that he met with the nurse practitioner and when he died, Carlos vomited on the floor, "his body crumpling and squirming in apparent distress." It is unknown why Carlos was not transferred to Department of Health and Human Services ("HHS") within 72 hours, "as required by law for youths who arrive at the border without parents," however, it is possible that Carlos was not fit to travel, which HHS requires for transfer. Hennessy-Fiske, *supra* note 20; Caitlin Dickerson, *Migrant Teen Lay for Hours in His Cell Before He Was Found Dead*, N.Y. TIMES (Dec. 5, 2019), <https://www.nytimes.com/2019/12/05/us/border-migrant-death-carlos-vasquez.html>.

²⁶ See Zolan Kanno-Youngs & Maggie Haberman, *Trump Administration Moves to Solidify Restrictive Immigration Policies*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/us/politics/coronavirus-trump-immigration-policies.html> (attributing the existence of "squalid tent camps" to the policy).

indeed, Trump's policies do not appear to have stopped the flow of migrants as intended—these six children are dead.²⁷

Certainly, such policies are inhumane on several fronts. For instance, one Harvard psychiatrist commented that:

Forcibly removing a child from their parents is one of the most profound traumas a child can experience, since it undermines a pivotal foundation they require for self-regulation and resilience. Similarly, having your children forcibly taken, not knowing where they are, and not being allowed to contact them, is many parents' worst nightmare. Indeed, this is why members of the Trump administration advocated its use as a deterrent to immigration.²⁸

The U.S. immigration detention system includes more than 200 immigrant prisons, with over 70 percent of detainees held in privately-run immigration prisons.²⁹ These staggering numbers, along with the massive influx of children being brought into the U.S., require a unified policy between the federal government and the various states impacted. Rather than encouraging such coordination, the current federal administration's policy mandates the intentional separation of children from their parents and families and thus exposes an already vulnerable population to new forms of trauma which may have life-long consequences.³⁰

There are no indications that the Trump administration—like a tiger in the night—has taken into consideration any advisory opinions, comments, or suggestions from any scientific organizations or mental health experts in drafting its immigration policy, leaving the children to fend for themselves.³¹

²⁷ “Father, father, where are you going/ O do not walk so fast./ Speak father, speak to your little boy/ Or else I shall be lost,/ The night was dark no father was there/ The night was dark no father was there/ The child was wet with dew./ The mire was deep & the child did weep/ And away the vapour flew.” WILLIAM BLAKE, *The Little Boy Lost, Songs of Innocence*, in *THE POETRY AND PROSE OF WILLIAM BLAKE* 11, 11 (David V. Erdman ed., 4th printing with rev. 1970).

²⁸ Martin H. Teicher, *Childhood Trauma and the Enduring Consequences of Forcibly Separating Children from Parents at the United States Border*, 16 *BMC MED.* 146 (2018).

²⁹ *Detention by the Numbers*, FREEDOM FOR IMMIGRANTS (last visited Mar. 4, 2021), <https://www.freedomforimmigrants.org/detention-statistics> (“According to federal government data from April 2019 [the states holding] the largest number of people in immigration detention per day [are] Texas (14,481), Louisiana (4,415), Arizona (4,405), California (4,353), and Georgia (3,719)...”).

³⁰ See Joanna Dreby, *U.S. Immigration Policy and Family Separation: The Consequences for Children's Well-Being*, 132 *SOC. SCI. & MED.* 246 (2015).

³¹ William Blake poses the question germane to the Trump administration: “When the stars threw down their spears/ And water'd heaven with their tears:/

I. CONDITIONS OF CHILDREN'S DETENTIONS AT THE U.S. BORDER

Not only have the particulars of the Trump administration's policy of separating children from their parents and caretakers at the border have been widely condemned,³² the conditions themselves have also been relatively well documented. Physical beatings, sexual assaults,³³ intentional withholding of food,³⁴ chaining up children,³⁵ and joking about the killing of migrants on Facebook³⁶ have all been part of the colorful story of Trump-era immigration enforcement. All of this documentation makes it quite clear that not only were many of the detention facilities unsafe and unsanitary, but that some facilities ultimately proved deadly:

From the moment of apprehension, the conditions and treatment of children by the U.S. government has been

Did he smile his work to see?/ Did he who made the Lamb make thee?" WILLIAM BLAKE, *The Tyger, Songs of Experience*, in *THE POETRY AND PROSE OF WILLIAM BLAKE* 25, 25 (David V. Erdman ed., 4th printing with rev. 1970).

³² See Joanna Prisco, *World Political and Religious Leaders Condemn US Policy of Separating Migrant Kids*, GLOBAL CITIZEN (June 19, 2018), <https://www.globalcitizen.org/en/content/us-migrant-families-policy-world-leaders-condemn/>; Nick Cumming-Bruce, *U.N. Rights Chief Tells U.S. to Stop Taking Migrant Children From Parents*, N.Y. TIMES (June 18, 2018), <https://www.nytimes.com/2018/06/18/world/europe/trump-migrant-children-un.html>; Chico Harlan & William Branigin, *Trump's Family-Separation Policy Faces International Condemnation From Pope Francis, Theresa May and Others*, WASH. POST (June 20, 2018), <https://www.washingtonpost.com/world/pope-francis-criticizes-trumps-family-separation-po/>; Maher Chmaytelli & Lin Noueihed, *Global Backlash Grows Against Trump's Immigration Order*, REUTERS (Jan. 26, 2017), <https://www.reuters.com/article/us-usa-trump-immigration-reaction/global-backlash-grows-against-trumps-immigration-order-idUSKBN15D0QM>.

³³ Matthew Haag, *Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Centers, Report Says*, N.Y. TIMES (Feb. 27, 2019), <https://www.nytimes.com/2019/02/27/us/immigrant-children-sexual-abuse.html>.

³⁴ Michael E. Miller, *Separated Children Mistreated at Shelter for Migrant Kids, Lawsuit Alleges*, WASH. POST (May 28, 2020), https://www.washingtonpost.com/local/separated-children-mistreated-at-shelter-for-migrant-kids-lawsuit-alleges/2020/05/28/7234fc30-a07c-11ea-9590-1858a893bd59_story.html (after one child cried in detention, the staff allegedly withheld food from him long enough for the child to lose weight).

³⁵ Emily Stewart, *The Places the Government Sends Migrant Children Face Allegations of Abuse*, VOX (June 21, 2018), <https://www.vox.com/2018/6/21/17488130/family-separation-facilities-migrant-children-abuse>.

³⁶ Robert Moore et al., *Lawmakers Condemn "Vulgar" Posts in Secret Border Agent Facebook Group*, WASH. POST (July 1, 2019), https://www.washingtonpost.com/powerpost/house-members-visiting-migrant-detention-centers-amid-reports-of-deplorable-conditions/2019/07/01/1ac091bc-9c13-11e9-9ed4-c9089972ad5a_story.html.

traumatizing for many, and even deadly for some. As of May 24, 2019, six migrant children—ranging in age from two-and-a-half to sixteen years old—had died in U.S. custody since this crisis began. At least three of these six children died from the influenza virus, a typically non-fatal virus. These deaths in custody highlight the unsanitary and unsafe conditions to which detained children are subjected.³⁷

The American public's initial condemnation of the reported cases of child abuse and neglect, however, has become somewhat subdued over time and no tangible actions have taken place. Despite the efforts of the media to bring attention to the conditions of child detentions, no legislative initiatives have gained traction in Congress.³⁸ This may in part reflect societal attitudes toward daily acts of child abuse and neglect in our own country: if Americans do not respond with outrage and disbelief at the treatment of the children who are legal residents and citizens, how can we expect them to demonstrate any greater concerns over the plight of migrant children brought to the U.S.? Indeed, maltreatment statistics for non-migrant children in the U.S. are high. Among U.S. children:

Child maltreatment data show that in 2005, 3.6 million children experienced a child protective services (CPS) investigation; and children ages 0-3 had the highest rates of victimization (U.S. Department of Health and Human Services, 2007)...[T]he long-term effects of exposure [to trauma], Scheeringa, Zeanah, Myers, and Putnam (2005) found unremitting symptoms and functional impairment 2 years after an initial assessment revealed symptoms in trauma-exposed children ages 20 months to 6 years. Moreover, adverse childhood experiences (ACE), including child abuse and witnessing domestic violence,

³⁷ Jonathan Todres & Daniela Villamizar Fink, *The Trauma of Trump's Family Separation and Child Detention Actions: A Children's Rights Perspective*, 95 WASH. L. REV. 377, 387-88 (2020).

³⁸ Although no legislation has been passed to buffer the severe consequences of Trump's executive orders and continued non-compliance with recommendations from the Centers for Disease Control and Prevention, the federal court system has reviewed the failure of the Trump administration to honor the Flores class action settlement as children in detention and a total of 2,500 immigrants in ICE facilities have tested positive for coronavirus. See Miriam Jordan, *U.S. Must Release Children from Family Detention Centers, Judge Rules*, N.Y. TIMES (June 26, 2020), https://www.nytimes.com/2020/06/26/us/immigrant-children-detention-centers.html?campaign_id=60&emc=edit_na_20200626&instance_id=0&nl=bre (citing Judge Dolly M. Gee's order from the U.S. District Court for the Central District of California).

have been found to predict the leading causes of adult death and disability (Felitti et al., 1998) and have been found to be more prevalent in certain ethnic minority groups (Koss et al., 2003).³⁹

Despite such sobering figures, or perhaps because of them, “the subject is so unpleasant that many prefer to ignore it.”⁴⁰ While this is not a universal reaction, it contextualizes the public’s lack of reaction regarding abuse of immigrants. Especially during the global pandemic, it is difficult for many to focus their attention on the plight of a group of child refugees while the death toll for the nation continues to rise from COVID-19.⁴¹

This public acceptance, however, does not mean that the Trump administration faces no legal challenges whatsoever. For instance, the administration has obligations under the settlement agreement⁴² from the 1997 Flores case.⁴³ United States v. Cruz-Flores, a class action lawsuit

³⁹ Chandra Michiko & Ghosh Ippen, *The Sociocultural Context of Infant Mental Health, Toward Contextually Congruent Interventions*, in HANDBOOK OF INFANT MENTAL HEALTH 109 (Charles H. Zeanah, Jr. ed., 3d ed. 2009).

⁴⁰ Considering just one aspect of child abuse and neglect, child sexual abuse, John E.B. Myers wrote that the subject “is so unpleasant that many prefer to ignore it. Erna Olafson, David Corwin, and Roland Summit noted that ‘sexual abuse of children has repeatedly surfaced into public and professional awareness in the past . . . only to be resuppressed by the negative reaction it elicits.’ In a similar vein, Judith Herman and Lisa Hirschman wrote that incest ‘has been repeatedly unearthed in the past hundred years, and just as repeatedly buried.’” JOHN E.B. MYERS, A HISTORY OF CHILD PROTECTION IN AMERICA 364 (2004). It may be that the public’s reaction to the plight of children suffering from neglect or abuse continues to be defined by avoidance as the subject has not become any easier for many to consider, let alone to discuss.

⁴¹ Aurora Ellis, Reuters, *U.S. Coronavirus Death Toll Hits 170,000 Ahead of Fall Flu Season*, U.S. NEWS & WORLD REP. (Aug. 16, 2020), <https://www.usnews.com/news/top-news/articles/2020-08-16/us-coronavirus-death-toll-hits-170-000-ahead-of-fall-flu-season>.

⁴² See Fiona Chong, *President Trump’s Executive Order and the Flores Settlement Explained*, REFUGEES INTERNATIONAL (June 28, 2018), <https://www.refugeesinternational.org/reports/2018/6/28/trumps-executive-order-and-the-flores-settlement-explained-bswdt> (although the Flores Settlement Agreement was never codified into law, “the federal government agreed to be bound by certain minimum standards designed to ensure that all children in the custody of federal immigration authorities would be treated ‘with dignity, respect and special concern for their particular vulnerability as minors’”).

⁴³ See Jordan, *supra* note 39 (“Citing the severity of the coronavirus pandemic, a federal judge in Los Angeles on Friday ordered the release of migrant children held in the country’s three family detention centers . . . Judge Dolly M. Gee of the U.S. District Court for the Central District of California criticized the Trump administration for its spotty compliance with recommendations from the Centers for Disease Control and Prevention . . . The Trump administration has

filed on behalf of Ms. Alma Yanira Cruz (12 years old at the time) and Jenny Lisette Flores (15 years old at the time) and two other adolescent girls, prevented holding children “indefinitely in hard-core detention facilities: They had to be released quickly to a family member or guardian or, if that was not possible, transferred speedily to a licensed care facility that did not operate like a jail. A subsequent interpretation of the agreement limited the time most migrant children could spend in detention, generally to no more than 20 days.”⁴⁴ The settlement agreement is a binding contract and a consent decree which may not simply be ignored.⁴⁵ Despite this, the Trump administration has fought continuously to overturn the agreement in *Flores*, albeit unsuccessfully.⁴⁶

By July 2018, the Trump administration was detaining 2,800 children, some separated from their parents, some classified as “unaccompanied minors.”⁴⁷ The legal classification of children as “unaccompanied” is something of a curiosity for a casual observer, as it seems to suggest The term itself might suggest that preverbal children, toddlers, and other young children mysteriously appeared at the U.S. border all on their own—which, for the non-ambulatory children, would be quite an

been trying to terminate the settlement for the last two years, but those efforts have been blocked by Judge Gee and are currently being appealed to the U.S. Court of Appeals for the Ninth Circuit.”).

⁴⁴ Miriam Jordan, *The History of Migrant Children Protection in America Started with Two Girls in Los Angeles*, N.Y. TIMES (Aug. 20, 2019), <https://www.nytimes.com/2019/08/20/us/flores-migrant-children-detention.html?searchResultPosition=1>; see also Stipulated Settlement Agreement at 7–8, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (requiring that “[f]ollowing arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS’s concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor”).

⁴⁵ See *Documents Relating to Flores v. Reno Settlement Agreement on Minors in Immigration Custody*, AM. IMMIGR. LAW. ASS’N (Sept. 27, 2019), <https://www.aila.org/infonet/flores-v-reno-settlement-agreement> (“The proper procedure for seeking relief from a consent decree is a Rule 60(b) motion by which a party must demonstrate a change in law or facts that renders compliance either illegal, impossible or inequitable . . . Defendants cannot simply impose their will by promulgating regulations that abrogate the consent decree’s most basic tenants.”).

⁴⁶ See Caitlin Dickerson, *Trump Administration Moves to Sidestep Restrictions on Detaining Migrant Children*, N.Y. TIMES (Sept. 6, 2018), <https://www.nytimes.com/2018/09/06/us/trump-flores-settlement-regulations.html>.

⁴⁷ Dan Berry et al., *Cleaning Toilets, Following Rules: A Migrant Child’s Days in Detention*, N.Y. TIMES (July 14, 2018), <https://www.nytimes.com/2018/07/14/us/migrant-children-shelters.html>.

accomplishment. In reality, the term is often used when immigration authorities arrest the child's parents, at which point they designate the child "unaccompanied." More troubling, however, is the connotation that parents must have abandoned the children in order for them to have become "unaccompanied."⁴⁸ Although other parents in the U.S. fail to "accompany" their children for at least eight to nine hours—perhaps longer—each day, these children are not designated as legally "unaccompanied." We call that bringing children to school. Amazingly, we also permit children to travel across country on commercial airlines, and yet they are not designated as "unaccompanied minors." Legal terms of art sometimes have connotations that may be quite misleading.

As to the conditions in which children are being detained, to be fair, although these detentions packed immigration facilities, the actual number of deportations during the Trump era was lower than the number of deportations during the Obama era.⁴⁹ More than a few analysts called out the Obama administration for its failure to effectively reform immigration detention practices.⁵⁰

These conditions arose in May 2018 when then-President Trump had issued an executive order approving forcible removal of children from migrant parents who had entered the U.S. illegally, his so-called "zero-tolerance" policy.⁵¹ The order sent thousands of children—including 103 children under the age of 5—to "holding facilities, sometimes hundreds or thousands of miles from where their parents were being held for

⁴⁸ The language suggests that these minors—unable to care for themselves—have been subjected to acts of abandonment or severe neglect, behaviors for which parents may be held accountable in state court abuse and neglect proceedings. One must wonder whether the immigration code language was adopted in order to convey the suggestion that migrant parents have relinquished their legal duties and obligations toward their children by virtue of fleeing horrific conditions in their home country and bringing their families to the U.S. which must offer a better life than the ones they fled.

⁴⁹ Abigail Hauslohner, *The Trump Administration's Immigration Jails are Packed, but Deportations are Lower than in Obama Era*, WASH. POST (Nov. 17, 2019), https://www.washingtonpost.com/immigration/the-trump-administrations-immigration-jails-are-packed-but-deportations-are-lower-than-in-obama-era/2019/11/17/27ad0e44-f057-11e9-89eb-ec56cd414732_story.html.

⁵⁰ See Richard Gonzales, *Obama Immigration Detention Policies Under Fire*, NPR (June 12, 2015), <https://www.npr.org/sections/itsallpolitics/2015/06/12/414023967/obama-immigrant-detention-politices-under-fire>; Corey Dade, *Obama's Deportation Policies Have Failed, Immigration Advocates Say*, NPR (June 11, 2012), <https://www.npr.org/sections/itsallpolitics/2012/06/11/154782404/immigrant-advocates-obamas-deportation-policy-a-failure>; Reid J. Epstein, *NCLR Head: Obama "Deporter-in-Chief," POLITICO* (Mar. 4, 2014), <https://www.politico.com/story/2014/03/national-council-of-la-raza-janet-murguia-barack-obama-deporter-in-chief-immigration-104217>.

⁵¹ Dan Berry et al., *supra* note 48.

criminal prosecution.”⁵² Before the 2018 midterm Congressional elections, Trump “sought to motivate Republicans with dark warnings about caravans heading to the U.S. border” and he declared “‘extreme action’ was needed to stop the migrants.”⁵³ The “top leaders of the Department of Homeland Security, Customs and Border Protection...suggested deploying a microwave weapon—a ‘heat ray’ designed by the military to make people’s skin feel like it is burning when they get within range of its invisible beams,” a weapon that had been abandoned by the military previously “amid doubts over its effectiveness and morality.”⁵⁴ Trump himself suggested installation of flesh-piercing spikes on the border walls, building a moat filled with alligators, and shooting migrants in the legs.⁵⁵

An international outcry immediately followed, and “hundreds of scientific organizations, like the American Psychological Association and the American Medical Association, as well as the Pope, the Office of the United Nations High Commissioner for Human Rights and political leaders from all constituencies” denounced the separations.⁵⁶ Trump ultimately rescinded his executive order, but the more than 2,700 children remained in detention facilities.⁵⁷

Trump’s “zero-tolerance” policy appears to have originated with Stephen Miller in 2013, when he worked as a communications staff member for then-Senator Jeff Sessions of Alabama. As Republicans—including Marco Rubio, John McCain, and Lindsay Graham—worked on a bipartisan bill to reform immigration policy and provide a pathway to citizenship for millions of undocumented people, tens of thousands of

⁵² *Id.*

⁵³ Michael D. Shear, *Border Officials Weighed Deploying Migrant ‘Heat Ray’ Ahead of Midterms*, N.Y. Times (Aug. 26, 2020), https://www.nytimes.com/2020/08/26/us/politics/trump-campaign-immigration.html?campaign_id=60&emc=edit_na_20200826&instance_id=08&nl.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Velonaki, *supra* note 4; *see also* Statement of APA President Regarding Traumatic Effects, *supra* note 1 (“The American Psychological Association calls on the administration to rescind this policy and keep immigrant families intact. We support practical, humane immigration policies that consider the needs of immigrants, and particularly immigrant families. We must adopt policies that take into account what we know about the harmful, long-term psychological effects of separation on children and their families. This is not an acceptable policy to counter unlawful immigrations.”).

⁵⁷ Velonaki, *supra* note 4.

unaccompanied children⁵⁸ and families from Central America continued to arrive at the U.S. border.⁵⁹ To address the steady stream of immigrants,

[A]n official at ICE . . . suggested separating parents and children once they reached the border, in the hope of deterring other families from travelling north. The White House had dismissed the proposal as inhumane, but [Stephen] Miller took it up again. “He was obsessed with the idea of consequences,” a top D.H.S. official who worked with Miller [said]. “He’d always say to us, ‘They are breaking the law, and the only way we’ll change that is if there’s a consequence.’” The consequences were specific. The official said, “Miller made clear to us that, if you start to treat children badly enough, you’ll be able to convince other parents to stop trying to come with theirs.” Miller had already led a meeting at the White House to pressure DOJ officials to prosecute border crossers as criminals. (Doing so was the basis for separating families: while parents faced criminal charges, their children were treated as unaccompanied minors). In April, he . . . wrote a Presidential memorandum directing agencies to end catch and release; they also composed a letter, signed by Attorney General Sessions [Miller’s former boss], articulating a policy, called zero tolerance, for prosecuting all adults who were arrested by DHS for illegal entry.⁶⁰

Thus, “zero tolerance” was not a random policy imposed, without thought or planning, by Trump. Rather, it was a policy conceived by Trump’s immigration policy front man, Stephen Miller, evolved over a period of years and deployed to create maximum damage.

Yet in their mania for consequences, Miller and the Trump administration apparently failed to consider the impact that their policy would have on children.⁶¹ If they did consider it, they clearly dismissed

⁵⁸ Brian Bennett, *Bipartisan Group Introduces Immigration Reform Bill*, L.A. TIMES (Apr. 17, 2013), <https://www.latimes.com/politics/la-xpm-2013-apr-17-la-pn-bipartisan-immigration0reform-bill-20130417-story.html>; Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 COLUM. HUM. RTS. L. REV. 266, 274 (2014) (explaining that migrant children come to the U.S. for many reasons, including “fleeing domestic abuse, gang violence, extreme poverty, natural disaster and war; reunifying with a family member; or being trafficked”).

⁵⁹ Blitzer, *supra* note 7.

⁶⁰ *Id.*

⁶¹ Studies dating back to the 1990s examined the impact on children whose fathers left the family behind as they migrated for work to the U.S., and the perspective that resulted as communities outside of the U.S. came to look upon

the consequences as irrelevant towards accomplishing their objectives. Of course, the administration might also have simply been grossly ignorant of the damage they would inflict on children who had already endured severely traumatic conditions including food scarcity,⁶² climate change,⁶³ their parents' unemployment,⁶⁴ or gang warfare⁶⁵--gangs that in some

the U.S. as a "necessary evil" in the lives of migrating families. See Rosa María Aguilera-Guzmán et al., *Paternal Absence and International Migration: Stressors and Compensators Associated with the Mental Health of Mexican Teenagers of Rural Origin*, 39 *ADOLESCENCE* 711, 712 (2004).

⁶² "Alongside violence, poverty, and political dysfunction, climate disruption in Central America's Dry Corridor has also become a main factor driving migration from that region. A tropical dry forest region on the Pacific side of Central America that naturally experiences irregular rainfall, the Dry Corridor has become one of the most susceptible regions in the world to climate change-related weather variability since as early as 1960. More than 45 million people inhabit the region, many of whom are vulnerable indigenous people living in rural areas. Severe inclement weather has negatively impacted the resilience and economic growth of communities throughout the region and led to significant increases in malnutrition and other negative health outcomes." Restrepo et al., *supra* note 16.

⁶³ [Brian La Shier & James Stanish, *The National Security Impacts of Climate Change*, 10 *J. NAT'L SEC. L. & POL'Y* 27, 32-33 \(2019\)](#) (explaining that climate change has led to individuals fleeing their home countries without the beneficial categorization of "refugee," meaning they are fleeing without certain rights and legal protections that refugees are afforded. According to the International Organization for Migration, there are three categories of "environmental migrants": (1) emergency migrants, who migrate due to an environmental disaster; (2) forced migrants, who migrate due to being impacted by long-term environmental concerns; and (3) motivated migrants, who migrate to avoid environmental disasters or hazards).

⁶⁴ D'Vera Cohn et al., *Rise in U.S. Immigrants from El Salvador, Guatemala and Honduras Outpaces Growth from Elsewhere*, PEW RESEARCH CENTER (Dec. 7, 2017), <https://www.pewresearch.org/hispanic/2017/12/07/rise-in-u-s-immigrants-from-el-salvador-guatemala-and-honduras-outpaces-growth-from-elsewhere/> ("Surveys of recently deported Northern Triangle migrants (from Guatemala, Honduras and El Salvador) in their home countries . . . found that work was a top motivator for their journey, according to a Pew research Center analysis of 2016 data. Among Guatemalans deported from the U.S., 91% cited work as a main reason for coming [to the U.S.], as did 96% of Hondurans deported from the U.S. and 97% of deported El Salvadorans."); see also Michael A. Clemens, *Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions* 6 (Ctr. for Global Development, Working Paper No. 459).

⁶⁵ Cohn et al., *supra* note 65 ("At a conference on Northern Triangle [Guatemala, Honduras, El Salvador] issues this year, U.S. Vice President Mike Pence spoke of 'vicious gangs and vast criminal organizations that drive illegal immigration and carry illegal drugs northward on their journey to the United States.'").

instances, children were forced to join.⁶⁶ Some youth migrated to the U.S. after being forcibly displaced by post-war violence, familial violence,⁶⁷ sexual violence, forced marriages, child labor and sexual exploitation and trafficking.⁶⁸

Migrants face a harsh trip of hundreds or even thousands of miles, under perilous circumstances.⁶⁹ Parents depend upon complete strangers⁷⁰ and expose their families to the rigors of leaving everything they owned behind, all to pursue life in a country that showed so much potential and promise to open opportunities for a new life.⁷¹ It is worth noting that

⁶⁶ Frank Paz, *Children Seek Refuge from Gang-Forced Recruitment: How Asylum Law Can Protect the Defenseless*, 42 FORDHAM URB. L.J. 1063, 1066, 1071—72 (2015) (explaining that “the recent influx of immigrants from Honduras, El Salvador, and Guatemala” can be attributed to “children who flee gang violence in inner cities . . . [e]ven when children are not targeted for recruitment, they are nevertheless targets for violence. They are often the victims of gang violence as a form of subjecting their family members to the gang’s demands. For these reasons . . . children . . . flee their home country and make perilous trips to foreign countries”).

⁶⁷ Studies link higher rates of violence perpetrated by adolescents who themselves were exposed to adverse childhood experiences. See Naomi N. Duke et al., *Adolescent Violence Perpetration: Associations with Multiple Types of Adverse Childhood Experiences*, 125 PEDIATRICS e778 (2010); Clemens, *supra* note 65, at 20 n.13, n.14.

⁶⁸ Stacy Kowalski, *Niños, Niñas Y Adolescentes in Guatemala: Reflections on the Implementation of the Ley Pina*, 13 HASTINGS RACE & POVERTY L. J. 391, 399—418 (2016) (explaining that many Guatemalan youth who have migrated to the U.S. have been “forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection,” including post-war violence, cultural norms, familial violence, sexual violence, forced marriage, heightened violence due to status as an indigenous person, displaced children, child labor, violent crimes, gang violence, and sexual exploitation and trafficking).

⁶⁹ César Infante et al., *Violence Committed Against Migrants in Transit: Experiences on the Northern Mexican Border*, 14 J. IMMIGRANT & MINORITY HEALTH 449 (2012).

⁷⁰ The Rand Corporation’s Homeland Security Operational Analysis Center, a federally funded research and development center estimated that unlawful smuggling of migrants from Guatemala, Honduras, and El Salvador in 2017 alone generated funds ranging between \$200 million to about \$2.3 billion, as the U.S. Department of Homeland Security lacks evidence on the full extent and distribution of migrants’ expenditures and characteristics of the smugglers. In addition, the migrants are forced to pay taxes or pisos of between \$30 million to \$180 million in 2017 to pass through drug-trafficking territories on the routes to enter the United States. Victoria A. Greenfield et al., *Human Smuggling from Central America to the United States: What is Known or Knowable About Smugglers’ Operations and Revenues?* RAND CORP. RESEARCH BRIEF 1 (2020).

⁷¹ See Maria L. Santa-Maria & Thomas Cornille, *Traumatic Stress, Family Separations, and Attachment Among Latin American Immigrants*, 13 TRAUMATOLOGY 26 (2007).

children have no say in the decision to migrate to the U.S.; they remain virtually powerless in deciding where they will live, who will care for them, or how they will be raised.⁷² As John Locke once asserted in 1690:

[W]e are born free, as we are born rational; not that we have actually the exercise of either: age, that brings one, brings with it the other too....[M]ust not the child...be in subjection to his mother and nurse, to tutors and governors, till age and education brought him reason and ability to govern himself and others? The necessities of his life, the health of his body, and the information of his mind, would require him to be directed by the will of others, and not his own; and yet will any one think, that this restraint and subjection were inconsistent with, or spoiled him of that liberty or sovereignty he had a right to, or gave away his empire to those who had the government of his nonage?⁷³

Yet these children, who often have had no voice in their family's decision to travel to a foreign country to begin life anew, will face the most significant impact of the conditions created under the Trump administration's immigration policy. The Trump administration's failure to consider this alongside its failure to consider the impact of the separation on parents and children makes its actions even more reprehensible.⁷⁴

II. THE TRAUMATIC IMPACT OF SEPARATING CHILDREN FROM PARENTS AND LOCKING THEM UP

The impact of being forcibly separated from one's family differs depending upon the age of the child.⁷⁵ For very young children, toddlers

⁷² In her study, Dreby describes the attitudes of many of the migrant children who were forcibly separated from their parents where there is a poignant sense of resentment towards the parents for leaving the child behind (especially when the child is separated from their mother, more so than from their separation from their fathers). Dreby, *supra* note 31, at 248.

⁷³ John Locke, *Second Treatise of Government* (C.B. McPherson ed., 1980).

⁷⁴ "In 2018, the president's hard immigration policies may well have backfired when suburban women recoiled at the images of children separated from their families and migrants in cages. A Democratic wave that November driven by such voters swept Republicans from control of the House." Shear, *supra* note 54.

⁷⁵ See Isaac Chotiner, *How the Stress of Separation and Detention Changes the Lives of Children*, *NEW YORKER* (July 13, 2019), <https://www.newyorker.com/news/q-and-a/how-the-stress-of-separation-and-detention-changes-the-lives-of-children> (citing Dr. Jack P. Shonkoff, professor of pediatrics at Harvard Medical School).

and infants, the impact is most severe;⁷⁶ in older children, the impact is generally less severe in general as their brains have already built basic biological circuitry, allowing them to manage this kind of trauma differently.⁷⁷ Though these older children might not be as overwhelmed as younger children, they are still likely to experience a wide range of negative responses⁷⁸ including severe anxiety, depression, and aggressive behaviors.⁷⁹

Apart from this general knowledge, we lack empirical research on the impact of current separation practices on migrant children, and therefore must speculate as to how this will affect them for the rest of their lives.⁸⁰ A series of studies in China, focusing on the “Left Behind Children,” may provide some insight. The term “left behind children”⁸¹ refers to children who grew up in the midst of China’s 1978 Reform and Opening-Up, which resulted in unprecedented economic growth and caused millions of parents to move to cities for employment while leaving their children behind⁸²—as many as 61 million of them. Psychologists have studied the effects of these forced separations,⁸³ including the psychological stress the children exhibited,⁸⁴ as well as depression.⁸⁵ The parallels between these Chinese children forcibly separated from their parents⁸⁶ and the thousands of Central American children separated from families by the Trump administration policy could potentially help scientists identify behavioral,

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See American Academy of Child and Adolescent Psychiatry, Task Force on Research Diagnostic Criteria, *Research Diagnostic Criteria for Infants and Preschool Children: The Process and Empirical Support*, 42 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1504 (2003).

⁸¹ Qian Dai et al., *Anxiety, Happiness and Self-Esteem of Western Chinese Left-Behind Children*, 86 CHILD ABUSE & NEGLECT 403 (2018).

⁸² See Ming Wen et al., *Child Development in Rural China: Children Left Behind by Their Migrant Parents and Children of Nonmigrant Families*, 83 CHILD DEV. 120 (2012).

⁸³ See Yu-Jie Wen et al., *The Effect of Left-Behind Phenomenon and Physical Neglect on Behavioral Problems of Children*, 88 CHILD ABUSE & NEGLECT 144 (2019).

⁸⁴ Xiaou Man & Haijun Cao, *Prevalence and Protective Factors of Psychological Distress Among Left-Behind Children in Rural China: A Study Based on National Data*, 29 J. CHILD & FAM. STUD. 1274 (2020).

⁸⁵ Bingyan He et al., *Depression Risk of “Left-Behind Children” in Rural China*, 200 PSYCHIATRY RES. 306 (2012).

⁸⁶ Hui Ling et al., *Effects of Separation Age and Separation Duration Among Left-Behind Children in China*. 43 J. SOC. BEHAV. & PERSONALITY 241 (2013).

emotional⁸⁷ and physical responses to such separation in this vulnerable age group.⁸⁸

Further, current studies in the U.S. indicate evidence that childhood abuse and familial dysfunction can play a defining role in premature causes of death for adults victimized in their youth.⁸⁹ Exposure to severe adverse childhood experiences (“ACEs”) may result in childhood deaths as well.⁹⁰ Even “brief traumatic events, such as being raped or witnessing violence to a loved one, can have life-long consequences.”⁹¹ Nevertheless, there is much that we do not yet know about the specific human responses to forced separations from parents and caregivers.⁹²

We also have a large body of medical and scientific literature that can inform us about the exposure of children to general trauma early in life;⁹³ these events are generally referred to as “adverse childhood experiences” or ACEs.⁹⁴ The recognition of the impact of adverse childhood experiences resulted after the publication of

A landmark study conducted by the Centers for Disease Control and Kaiser Permanente...in 1998..[that] revealed striking connections between experience in childhood with abuse, neglect, violence, or substance abuse in the home, mental illness of family members, parental separation or divorce, or the incarceration of a family

⁸⁷ Qian, *supra* note 82.

⁸⁸ Ming, *supra* note 83.

⁸⁹ Vincent J. Felitti et al., Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults, 14 AM. J. PREVENTIVE MED. 245 (1998).

⁹⁰ Hannah R. Grey et al., Associations Between Childhood Deaths and Adverse Childhood Experiences: An Audit of Data from a Child Death Overview Panel, 90 CHILD ABUSE & NEGLECT 22 (2019).

⁹¹ Teicher, *supra* note 29, at 2.

⁹² Separations between children and parents may cause parents to develop lack of commitment in parenting tasks and lack of participation in therapeutic interventions. Further, such separations—including separations caused by child placements, custody changes, relocations, hospitalization, and imprisonment—prevent “a solid affective bond between parent and child.” SCOTT W. HENGGELER ET AL., SERIOUS EMOTIONAL DISTURBANCE IN CHILDREN AND ADOLESCENTS, MULTISYSTEMIC THERAPY 43 (2002).

⁹³ See John H. Gilmore et al., *Fetal and Neonatal Brain Development*, 163 AM. J. PSYCHIATRY 2046 (2006); Beth Van Schaack, *The Torture of Forcibly Separating Children from Their Parents*, JUST SECURITY (Oct. 18. 2018), <https://www.justsecurity.org/61138/torture-forcibly-separating-children-parents/>.

⁹⁴ See Vincent J. Felitti & Robert F. Anda, *The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders and Sexual Behavior: Implications for Healthcare*, in THE IMPACT OF EARLY LIFE TRAUMA ON HEALTH AND DISEASE: THE HIDDEN EPIDEMIC 77 (Ruth A. Lanius et al. eds., 2010).

member and health. The more ACEs one experiences, the more likely one is to suffer from a range of physical health consequences and behavioral issues. Having four ACEs means an increased likelihood of hepatitis by 230 percent; of chronic pulmonary disease, emphysema, or chronic bronchitis by around 400 percent; depression by 460 percent; and suicide by 1,220 percent.⁹⁵

We may anticipate that the younger children are the most vulnerable to such massive disruption,⁹⁶ toxic stress,⁹⁷ disruption to their brain circuits, their immune systems, and their metabolic systems, which can cause lifelong problems with their physical and mental health.⁹⁸ Particularly on the issue of “toxic stress,” we have considerable research documenting the importance of early experiences in developing children:

Although mild to moderate stress can be growth promoting, so-called *toxic stress* can impair the proper development of brain circuitry, which may be especially vulnerable during early childhood. If individuals develop a lower threshold for stress, thereby becoming overly reactive to adverse experiences throughout life, both physical and mental health can be compromised.⁹⁹

By forcibly separating children, especially toddlers and preschoolers, from their parents, “the abrupt separation is devastating, not only in terms of what it looks like from the outside but in terms of what is going on inside the body...The absence of responsive interaction [when a young child is separated from a parent or care provider] is, to a young child, potentially life threatening.”¹⁰⁰ Thus, for younger children, especially toddlers and preschool aged children, the stress can be severe.¹⁰¹ We know

⁹⁵ Noshene E. Ranjbar et al., *Psychiatric-Legal Partnerships Addressing Family Separation at the Border and the Long-Term Effects of Trauma*, 33 AM. J. FAM. L. 325, 329 (2019).

⁹⁶ See John V. Lavigne et al., *Psychiatric Disorders with Onset in the Preschool Years: I. Stability of Diagnoses*, 37 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1246 (1998).

⁹⁷ See Norman Garnezy et al., *The Study of Stress and Competence in Children: A Building Block for Developmental Psychopathology*, 55 CHILD DEV. 97 (1984).

⁹⁸ *Id.*

⁹⁹ Charles H. Zeanah, Jr. & Paula Doyle Zeanah, *The Scope of Infant Mental Health*, in HANDBOOK OF INFANT MENTAL HEALTH 5, 7 (Charles H. Zeanah, Jr. ed., 3d ed. 2009).

¹⁰⁰ Chotiner, *supra* note 76.

¹⁰¹ See Jennifer A. Campbell et al., *Associations Between Adverse Childhood Experiences, High-Risk Behaviors, and Morbidity in Adulthood*, 50 AM. J. PREVENTIVE MED. 344 (2016).

that this stress can cause observable changes in the brains of children;¹⁰² exposure to ACEs has generated a large body of literature among child and adolescent behavioralists, physicians, psychologists, and other mental health experts.¹⁰³ The consequences of ACEs extend throughout the person's lifespan¹⁰⁴—studies have even documented the connection between ACEs and premature mortality.¹⁰⁵

Although many of these children were exposed to trauma in their home countries, the act of forcibly separating them from their parents and caretakers would create new stress and further traumatize them. One clinician has concluded that:

Traumatic events are often betrayals of trust, or shatter our notions of safety and security. The impact of forced separation by the Trump administration will not end when children and parents are reunited. Many will live in fear that this will happen again, and this can have enduring epigenetic effects on the stress response system and attendant allostatic load—in turn increasing long-term risk for obesity, type 2 diabetes, chronic inflammation, and cardiovascular disease.¹⁰⁶

Aside from the scientific literature documenting the long-term consequences and impact of ACEs and early childhood exposure to trauma, however, simply visualize for a moment what reaction you might have experienced as a very young child seeing your mother or father removed from your immediate presence. You might cry, scream, or sob, but despite your fear you would be placed with a group of total strangers with no end in sight for this new reality. Now, try to imagine what this might do to a preverbal infant who is entirely dependent upon their mother's care and nurture. For toddlers who are just developing language skills, imagine the complete sense of powerlessness. Even for older children, still dependent upon their parents for food, clothing, shelter, education, there is no reason to think they would be any better equipped to cope with the separation. If you yourself are a parent, imagine how you would respond to having your child or children torn from your arms.¹⁰⁷

¹⁰² See Victor G. Carrion et al., *Stress Predicts Brain Changes in Children: A Pilot Longitudinal Study on Youth Stress, Posttraumatic Stress Disorder, and the Hippocampus*, 119 *PEDIATRICS* 509 (2007).

¹⁰³ See Felitti et al., *supra* note 90.

¹⁰⁴ Mercy Manyema et al., *Stress Begets Stress: The Association of Adverse Childhood Experiences with Psychological Distress in the Presence of Adult Life Stress*, 18 *BMC PUB. HEALTH* 835 (2018).

¹⁰⁵ David W. Brown et al., *Adverse Childhood Experiences and the Risk of Premature Mortality*, 37 *AM. J. PREVENTIVE MED.* 389 (2009).

¹⁰⁶ Teicher, *supra* note 29.

¹⁰⁷ The author is the director of the Juvenile Law Clinic at Tulane Law School and has litigated hundreds of cases where parents have been physically separated

These events are likely to haunt the children and their parents for the remainder of their lives.¹⁰⁸ This is the trauma the policy employed by the Trump administration has intentionally inflicted. Such practices reflect a complete regression—or perhaps just ignorance and callousness—of the recognition of the rights of children dating back centuries.¹⁰⁹

A. The Complications and Manipulations of Conditions of Poverty

Perhaps the most compelling reason motivating the mass migration of thousands of Central Americans with their children to the U.S. is poverty.¹¹⁰ Their home countries' conditions include levels of poverty hardly imagined by many U.S. residents,¹¹¹ yet, even in one of the richest

from their children at the conclusion of court hearings. This is an emotionally disruptive process for both parent and child, regardless of the legal justification for the removal. In the cases of migrants, this separation does not occur at the conclusion of legal proceedings following the presentation of admissible evidence, or after judicial deliberations, but after a family has been detained by border authorities, often with no warning or time to provide the children with any explanations.

¹⁰⁸ In fact, many psychiatric disorders for individuals exposed to severe childhood stress have “an earlier age of onset, more comorbidities, and a more severe course and poorer response to first line treatments than in unexposed individuals with the same primary psychiatric diagnosis. They also have an array of neurobiological alterations and signs of chronic inflammation not found in their unexposed counterparts . . . Hence, children separated from families seeking asylum may be further burdened with difficult-to-treat disorders that emerge years later, particularly as they pass through puberty.” Teicher, *supra* note 29.

¹⁰⁹ NANCY E. WALKER ET AL., CHILDREN’S RIGHTS IN THE UNITED STATES: IN SEARCH OF A NATIONAL POLICY 21 (1999) (“Until modern times, childhood was an almost universally grim experience. For hundreds of years, children were treated primarily as chattel. They were bought, sold, cared for, and abandoned in much the same way as a pair of shoes. Pappas noted that children commonly were ‘neglected, abandoned, abused (sexually and otherwise), sold into slavery, mutilated and even killed with impunity . . .’ According to deMause, ‘It took centuries of progress in parent-child relations before the West could begin to overcome its apparent need to abuse its children . . . After several centuries of painfully slow progress, during the last half of the 20th century children’s current status as persons finally emerged.”).

¹¹⁰ Dan Restrepo & Ann Garcia, *The Surge of Unaccompanied Children from Central America*, CTR. FOR AM. PROGRESS (July 24, 2014), <https://www.americanprogress.org/issues/immigration/reports/2014/07/24/94396/the-surge-of-unaccompanied-children-from-central-america-root-causes-and-policy-solutions/>.

¹¹¹ Marion Giraldo, *Number of Latin Americans in Extreme Poverty Highest Since 2008: U.N. Agency, World News*, REUTERS (Jan. 15, 2019), <https://www.reuters.com/article/us-latam-poverty/number-of-latin-americans-in-extreme-poverty-highest-since-2008-u-n-agency-idUSKCN1P92T0> (“The number of people living in extreme poverty in Latin America increased in 2017 to the highest level in almost a decade despite an improvement in government

countries on the planet, there exists an undeniable connection between poverty and child maltreatment.¹¹² John E.B. Myers has written of poverty that:

If child maltreatment is a piece of cloth, poverty is the thread that holds it together. Cut the thread and the cloth unravels. Although we will never rid ourselves entirely of maltreatment, we guarantee high rates of suffering as long as we tolerate widespread poverty. At the dawn of the twenty-first century, little progress has been made to rid America of the primary cause of physical abuse and neglect—Poverty.¹¹³

While it is true that impoverished children can be found anywhere in the world,¹¹⁴ the migrant children separated from their parents disproportionately come from such a background.¹¹⁵ In 2019, there were 25.6 million children in the U.S. living in low-income families--where family income was below 200 percent of the federal poverty threshold—with nearly 8 million (31 percent) of whom were children of immigrants.¹¹⁶

In addition to trying to escape poverty, Central Americans have headed north to the United States in record numbers for other reasons that would cause underlying stress:

social spending policies, a United Nations agency said . . . The Economic Commission for Latin America and the Caribbean (ECLAC) said the proportion of people in extreme poverty, which is characterized by lack of access to basic human necessities like food and shelter, rose to 10.2 percent of the population in 2017, or 62 million people, from 9.9 percent in 2016.”).

¹¹² See Lisa Butina et al., *The Association Between Child Maltreatment and Adult Poverty—A Systematic Review of Longitudinal Research*, 77 CHILD ABUSE & NEGLECT 121, 121 (2018) (“Numerous studies have also shown a strong association between poverty and child maltreatment...”).

¹¹³ Myers, *supra* note 41, at 444.

¹¹⁴ The U.S., for one, has its share of child poverty. It is estimated that each year 800,000 babies in the U.S. (of the 4 million each year) are born into “officially” poor families, and another 900,000 babies are born into families that struggle mightily to make ends meet. Altogether, 42% of infants and toddlers in the U.S.—over 5 million children—are growing up in low-income families with incomes under 200% of the official poverty level. Jane Knitzer & Deborah F. Perry, *Poverty and Infant and Toddler Development, Facing the Complex Challenge*, in HANDBOOK OF INFANT MENTAL HEALTH 135 (Charles H. Zeanah, Jr. ed., 3d ed. 2009).

¹¹⁵ Clemens, *supra* note 65, at 6 (“Northern Triangle nations [Guatemala, Honduras, El Salvador] also are among the poorest in Latin America. In 2014, some had relatively high shares of people living on less than \$2 a day—17% of Hondurans, 10% of Guatemalans and 3% of Salvadorans, according to World Bank data.”).

¹¹⁶ Batalova et al., *supra* note 13.

Individuals and families flee El Salvador, Guatemala and Honduras because these countries—and cities within these countries—rank among the world’s most violent. In addition, years of drought and crop failure have caused extreme food insecurity, forcing rural residents to abandon their homelands. Others leave looking for economic opportunity.¹¹⁷

The conditions in Central American countries are complicated, but much of the aid funded by the U.S.—approximately \$2 billion in recent years—has been spent on counter-narcotics programs rather than community-based projects focused on relieving food insecurity.¹¹⁸ Targeting U.S. foreign aid to decrease food insecurity and to slow the migration of thousands of impoverished people would conceivably help the situation,¹¹⁹ but the Trump administration chose instead to cut foreign aid to these countries¹²⁰ producing the largest numbers of migrants arriving at the U.S. southern border.¹²¹ Charitable organizations that provide economic and social development programs in El Salvador, Guatemala, and Honduras have indicated that aid cuts will not only “do little good, but will make matters worse.”¹²²

¹¹⁷ Sarah Bermeo, *Could Foreign Aid Help Stop Central Americans From Coming to the U.S.? Here’s What You Need to Know*, WASH. POST (June 18, 2019), <https://www.washingtonpost.com/politics/2019/06/18/trump-administration-threatened-cut-foreign-aid-if-central-american-countries-dont-stem-migration/>.

¹¹⁸ *Id.*

¹¹⁹ See SARAH BERMEO, *TARGETED DEVELOPMENT: INDUSTRIALIZED COUNTRY STRATEGY IN A GLOBALIZING WORLD* (2018).

¹²⁰ Even successful programs costing relatively small amounts have been cancelled by the Trump administration. “A U.S. Agency for International Development-financed pilot project known as the Climate, Nature, and Communities of Guatemala—which launched in 2014 and was canceled by the Trump administration in 2017—showed encouraging results in helping western highlands villagers respond to climate change through crop diversification, water conservation, and reforestation. Although the program represented only \$190,000 annually out of a total of \$200 million in assistance programming to regions with high migration levels, it showed that with adequate and well-targeted resources, migration can be managed responsibly at its source.” Restrepo et al., *supra* note 16.

¹²¹ See Renae Reints, *Why Cutting Aid to Guatemala, Honduras, and El Salvador Could Increase Migrant Influx*, FORTUNE (Apr. 1, 2019), <https://fortune.com/2019/04/01/foreign-aid-immigration/> (announcing the proposed cuts of foreign aid to Central American nations, Trump stated “[w]e’re giving them \$500 million, . . . claiming without evidence that the governments of these nations ‘set up’ immigrant caravans destined for the U.S.-Mexico border with their ‘worst people’”).

¹²² Anastasia Moloney, *U.S. Aid Cuts to Central America May Backfire, Fueling Migration North: Charities*, REUTERS (Apr. 2, 2019),

Of course, the U.S. has engaged in manipulative political interventions¹²³ and political coups¹²⁴ in Central America since the early 1900s—mostly through the United Fruit Company¹²⁵—so it has more than a few economic and political interests¹²⁶ in each of these countries. While these countries have rich histories dating back to the earliest civilizations in Mesoamerica,¹²⁷ the U.S. corporate interests in the region focused

<https://www.reuters.com/article/us-central-america-u-s-aid/u-s-aid-cuts-to-central-america-may-backfire-fueling-migration-north-charities-idUSKCN1RE2KU>.

¹²³ See Irma Alicia Velasquez Nimatuj, *Guatemala Suffered for U.S. Foreign Policy*, N.Y. TIMES (May 19, 2013), <https://www.nytimes.com/roomfordebate/2013/05/19/what-guilt-does-the-us-bear-in-guatemala/Guatemala-suffered-for-us-foreign-policy> (claiming the U.S. overthrew the Guatemalan government “in defense [of] corporate interests of the United Fruit Company...”).

¹²⁴ See Shahan Russel, *A Country for a Company—The 1954 U.S. Backed Guatemalan Coup to Support United Fruit Company*, WAR HISTORY ONLINE (Oct. 27, 2015), <https://www.warhistoryonline.com/war-articles/country-company-1954-guatemalan-coup-support-united-fruit.html> (“The United Fruit Company was once so powerful that the U.S. government destroyed democracy in a country for it.”).

¹²⁵ Emily Biuso, *Banana Kings*, NATION (Feb. 28, 2008), <https://www.thenation.com/article/archive/banana-kings> (“The [United Fruit Company] played a major role in fomenting political unrest in countries whose policies didn’t favor its bottom line. These included the 1910 coup in Honduras orchestrated by Sam Zemurray, future president of United Fruit, and the 1954 overthrow of the Guatemalan ruling government, encouraged by the corporation and carried out by the CIA.”); see also Elizabeth Malkin, *An Apology for a Guatemalan Coup, 57 Years Later*, N.Y. TIMES (Oct. 20, 2011), <https://www.nytimes.com/2011/10/21/world/americas/an-apology-for-a-guatemalan-coup-57-years-later.html> (noting the United Fruit Company’s dissatisfaction with the president of Guatemala confiscating company land seeking redistribution led to the U.S. operation of overthrowing the Guatemalan government, indicating the far reach and control of the United Fruit Company in this foreign sovereign).

¹²⁶ See STEPHEN SCHLESINGER ET AL., *BITTER FRUIT: THE STORY OF THE AMERICAN COUP IN GUATEMALA* (2d ed. 2005) (describing the CIA operation to overthrow the democratically elected government of Jacobo Arbenz in 1954); see also DANIEL WILKINSON, *SILENCE ON THE MOUNTAIN: STORIES OF TERROR, BETRAYAL, AND FORGETTING IN GUATEMALA* (2002) (providing the history of Guatemala’s 36-year civil war with 200,000 citizens killed at the hands of the U.S.-backed military government).

¹²⁷ See Laura Pattara, *History of Guatemala*, CHIMU BLOG (Mar. 21, 2018), <https://www.chimuadventures.com/blog/2018/03/history-of-guatemala> (indicating the Mayans were organized city planners, traders who developed trading routes extending from Central and northern South America); Oscar Acosta, *History of Honduras*, NATIONS ONLINE (last visited Aug. 26, 2020), https://www.nationsonline.org/oneworld/History/Honduras_history.html; *History*, CENTRALAMERICA.COM (last visited Aug. 26, 2020),

largely on inexpensive sources of fresh fruit, cheap labor costs, and access to easy shipping to U.S. markets.

The United States also played a defining role in training many of the military dictators and police forces accused of human rights violations throughout Latin America at the School of the Americas (SOA) at Fort Benning, Georgia. In its 54 years of operation, the SOA trained over 63,000 soldiers from 21 countries; its successor organization, the Western Hemisphere Institute for Security Cooperation (WHINSEC), is still in operation.¹²⁸ Since 1946 graduates of these schools have participated in torture, murder and political repression throughout Latin America.¹²⁹ In 1996, the Pentagon “released training manuals used at the school that advocated torture, extortion and execution.”¹³⁰

<https://www.centralamerica.com/Honduras/history> (noting the earliest signs of humans in Honduras are from 12,000 BC to 8,000 BC. Prior to Spanish colonization, Honduras was “inhabited by indigenous tribes of different ethnicities of a great linguistic and cultural diversity,” including the Mayans, responsible for building “ceremonial plazas, stelae decorated with figures and hieroglyphs, extraordinary staircases, and various sculptures”); *History*, CENTRALAMERICA.COM (last visited Aug. 25, 2020), <https://www.centralamerica.com/el-salvador/history>; A. Sutherland, *The Olmecs—Who They Were, Where They Came From Still Remains a Mystery*, ANCIENT PAGES (Feb. 19, 2015), <https://www.ancientpages.com/2015/02/19/the-olmecs-who-they-were-where-they-came-from-still-remains-a-mystery> (stating that in 2,000 B.C., the Olmecs, the first major civilization to control El Salvador and parts of Mexico, were credited with being skilled engineers, miners, artists, creating monuments, art, public buildings, introducing hieroglyphic writing to Mesoamerica. Subsequent civilizations followed and were supplanted by the Pipils in the eleventh century A.D., who created complex irrigation techniques and ruled El Salvador for 400 years prior to Spanish colonization).

¹²⁸ Barbara Starr, *Controversial ‘School of the Americas’ Closes*, ABC NEWS (Dec. 15, 2000), [https://abcnews.go.com/International/story?id=81917&page=1#C:-:text=\(graduates of the program included those who “cut a swath through El Salvador during its civil war, being involved in the 1980 assassination of Archbishop Oscar Romero, the El Mozote massacre in which 900 peasants were killed, and the 1989 murders of six Jesuit priests.”\)](https://abcnews.go.com/International/story?id=81917&page=1#C:-:text=(graduates%20of%20the%20program%20included%20those%20who%20%22cut%20a%20swath%20through%20El%20Salvador%20during%20its%20civil%20war,%20being%20involved%20in%20the%201980%20assassination%20of%20Archbishop%20Oscar%20Romero,%20the%20El%20Mozote%20massacre%20in%20which%20900%20peasants%20were%20killed,%20and%20the%201989%20murders%20of%20six%20Jesuit%20priests.22)).

¹²⁹ See LESLEY GILL, *THE SCHOOL OF THE AMERICAS, MILITARY TRAINING AND POLITICAL VIOLENCE IN THE AMERICAS* (2004). *But see* Starr, *supra* note 129 (“The Army has always maintained the School of the Americas is nothing more than an education facility. It says it cannot be responsible for those officers who may have attended the school briefly and then gone on to commit human rights abuses in their own countries.”).

¹³⁰ *About SOA Watch*, SCHOOL OF THE AMERICAS WATCH (last visited Mar. 6, 2021), <https://soaw.org/about/> (claiming that since its founding, “over 80,000 Latin American military and police officers have received training in the SOA/WHINSEC. Among the list of graduates are some of the worst violators of human rights in the continent, including nearly a dozen Latin American dictators.”).

Thus, U.S. involvement has played a crucial component in the link to the wave of migrants now fleeing the Northern Triangle countries, and given this structural poverty and violence,¹³¹ it is not surprising that many immigrant families were already struggling long before arriving in the U.S.¹³² Understanding the literature about complications in the lives of infants and toddlers living in poverty in the U.S.¹³³ can help us measure the impact of the government's familial separation policy on incoming migrants fleeing poverty in their home country.¹³⁴

Finally, there is evidence that the impact of poverty on younger children,¹³⁵ "depending upon its duration and depth, has more significant negative effects than poverty experienced by older children—a finding that has important policy implications."¹³⁶ The impoverished status of migrant children when they arrive in the U.S. makes it far less likely that they will present themselves to professionals offering medical and mental health services, as those services are often beyond the means of the migrant families. Additionally, the impact of the crushing poverty conditions in which migrant children grow up—including food insecurity, physical safety factors, educational inequality—places this population in an especially vulnerable position.¹³⁷

¹³¹ Restrepo et al., *supra* note 16 ("The countries of the Northern Triangle remain gripped by extreme levels of violent crime and crushing poverty driven in significant part by broken justice systems, rampant impunity and graft, and lack of economic opportunity . . . Levels of violence against women are among the highest in the world, and extortion and forced gang recruitment are facts of life for many residents.").

¹³² See Clemens, *supra* note 65.

¹³³ See Jeanne Brooks-Gunn et al., *Poor Families, Poor Outcomes: The Well-Being of Children and Youth*, in CONSEQUENCES OF GROWING UP POOR 1 (Greg J. Duncan & Jeanne Brooks-Gunn eds., 1997).

¹³⁴ Understanding the connection between poverty and child development is especially important. See J. Lawrence Aber et al., *Poverty and Child Development: New Perspectives on a Defining Issue*, in CHILD DEVELOPMENT AND SOCIAL POLICY: KNOWLEDGE FOR ACTION 149 (J. Lawrence Aber et al. eds., 2007).

¹³⁵ See Thomas J. Dishion et al., *The Family Check Up with High-Risk Indigent Families: Preventing Problem Behavior by Increasing Parents' Positive Behavior Support in Early Childhood*, 79 CHILD DEV. 1395 (2008).

¹³⁶ Knitzer & Perry, *supra* note 115, at 136.

¹³⁷ See DANIEL L. HATCHER, *THE POVERTY INDUSTRY, THE EXPLOITATION OF AMERICA'S MOST VULNERABLE CITIZENS* (2016) (discussing the many ways in which government policy ensures to the benefit of those in power rather than to those in need and the many ways in which the legal system—foster care, child support payments, Medicaid—utilizes children as financial resources that enrich all but the children).

B. Need for Therapeutic Interventions for Children and Adolescents Separated from Parents by the Trump Administration

For the thousands of children and young adults forcibly separated from their parents and families, the prospective need for therapeutic interventions is clearly foreseeable.¹³⁸ The results of early exposure to severe trauma in a child's life are not likely to resolve favorably on their own, but more likely will play defining roles in a child's life as she matures into young adulthood and beyond.¹³⁹ Assessing the specific needs of these children will require time and competency, as some of the children may have pre-existing severe disabilities¹⁴⁰ and some suffer from the trauma inflicted by sexual abuse and physical neglect while they were detained in federal facilities. Additionally, we must distinguish by age, because the therapeutic interventions more effective for young children might not succeed with adolescents.¹⁴¹

A large body of literature has developed indicating a variety of successful intervention models in the treatment of children who have experienced abuse and neglect.¹⁴² Utilizing such multisystemic therapy has resulted in positive outcomes for youth with mental health problems, who have exhibited criminal behavior, and who struggle with substance abuse¹⁴³—all conditions likely to present in children separated from their parents. While such interventions have some limitations, such as the duration of time they can be provided, professionals can supplement with

¹³⁸ See YOUNG CHILDREN AND TRAUMA: INTERVENTION AND TREATMENT (Joy D. Osofsky ed., 2004).

¹³⁹ For the girls who have been sexually abused while in detention, see B.A. Arnov et al., *Childhood Sexual Abuse, Psychological Distress, and Medical Use Among Women*, 61 *PSYCHOSOMATIC MED.* 762 (1999); Mitzi Baker, *Undoing the Harm of Childhood Trauma and Adversity*, UNIV. CAL. S.F. (Oct. 5, 2016), <https://www.ucsf.edu/news/2016/10/404446/undoing-harm-childhood-trauma-and-adversity>.

¹⁴⁰ See Pamela S. Wolfe & Richard Kubina, *How Can We Effectively Assess for Severe Disabilities?*, in *AUTHENTIC ASSESSMENT FOR EARLY CHILDHOOD INTERVENTION, BEST PRACTICES* 178 (Stephen J. Bagnato ed., 2007).

¹⁴¹ THOMAS J. DISHON & KATE KAVANAGH, *INTERVENING IN ADOLESCENT PROBLEM BEHAVIOR, A FAMILY-CENTERED APPROACH* 107 (2003) (“[B]y age 15, many adolescents are functionally autonomous. This means, simply, that there may not be an adult in their lives who is able or willing to take responsibility for guiding them . . . [Nevertheless] individualized work with an adolescent can benefit both the adolescent and family . . . We found that a cognitive-behavioral intervention with adolescents resulted in improved skills . . .”).

¹⁴² See B. J. Burns et al., *Effective Treatments for Mental Disorders in Children and Adolescents*, 2 *CLINICAL CHILD & FAM. PSYCHOL. REV.* 199 (1999).

¹⁴³ See Henggeler et al., *supra* note 93, at 205–06 (describing seven published randomized clinical trials conducted in field settings resulting in recommendation from the Surgeon General's National Action Agenda for Children's Mental Health (U.S. Public Health Service, 2000)).

community-based services.¹⁴⁴ Alternative treatment programs should also be explored, including cognitive-behavioral therapy.¹⁴⁵ Specific forms of trauma-focused cognitive behavioral therapy¹⁴⁶ for “childhood traumatic separation” has anecdotally demonstrated positive results, as well, though more research is needed to document its therapeutic effectiveness.¹⁴⁷

Several psychopharmacological interventions have also been studied for use in the treatment of recurring nightmares and other symptoms exhibited by many children diagnosed with PTSD.¹⁴⁸ Some studies involving children as young as 3 years old who exhibited acute PTSD were treated with medications including propranolol, carbamazepine, clonidine, guanfacine, imipramine, and citalopram.¹⁴⁹ Because these children often exhibited comorbid conditions, however—such as PTSD along with depression or anxiety—they required psychosocial treatment in conjunction with the psychopharmacological interventions.¹⁵⁰

As discussed in the preceding section, many of these children apprehended at the U.S.-Mexico border were forced to leave their home countries due to poverty,¹⁵¹ food insecurity,¹⁵² death threats,¹⁵³ torture,

¹⁴⁴ *Id.* at 140.

¹⁴⁵ See COGNITIVE THERAPY WITH CHILDREN AND ADOLESCENTS: A CASEBOOK FOR CLINICAL PRACTICE (Philip C. Kendall ed., 3d ed. 2018).

¹⁴⁶ See JUDITH S. BECK, COGNITIVE BEHAVIORAL THERAPY: BASICS AND BEYOND (2d ed. 2011).

¹⁴⁷ Judith A. Cohen & Anthony P. Mannarino, *Trauma-Focused Cognitive Behavioral Therapy for Childhood Traumatic Separation*, 92 CHILD ABUSE & NEGLECT 179 (2019).

¹⁴⁸ Elissa J. Brown et al., *Treatment of Children Exposed to Trauma*, in POSTTRAUMATIC STRESS DISORDERS IN CHILDREN & ADOLESCENTS 257, 272 (Raul R. Silva ed., 2004).

¹⁴⁹ *Id.* at 272—75.

¹⁵⁰ *Id.* at 281.

¹⁵¹ Stephen Lee, *Private Immigration Screening in the Workplace*, 61 STAN. L. REV. 1103, 1141 (2009) (claiming that at least one of the reasons people leave their countries and migrate without authorization is to “escape poverty in their sending countries”); *but see* Sofia Martínez, *Today's Migrant Flow is Different*, ATLANTIC (June 26, 2018), <https://www.theatlantic.com/international/archive/2018/06/central-america-border-immigration/563744/> (while migrants once came to the U.S. for economic reasons, “[t]oday’s migrant flow is very different.” While there are migrants still seeking economic stability, there are fewer males in their 20s and 30s fleeing Central American countries and more families “escaping life-or-death situations as much as poverty”).

¹⁵² See Bermeo, *supra* note 118.

¹⁵³ See Abel Aziz Mousa Thabet et al., *Trauma Exposure in Preschool Children in a War Zone*, 188 British J. Psych. 154 (2006); *Death Threats and Gang Violence Forcing More Families to Flee Northern Central America – UNHCR and UNICEF Survey*, UNICEF (Dec. 17, 2020), <https://www.unhcr.org/en->

gang violence,¹⁵⁴ exceedingly high homicide rates,¹⁵⁵ and even wars;¹⁵⁶ thus, their initial exposure to trauma predates the forced separation from their families in the U.S.¹⁵⁷ Most of these exposures on their own would be likely to result in these children suffering from post-traumatic stress disorders (PTSD).¹⁵⁸ Compounded by the traumas of separation, such ongoing exposures to various sources of trauma¹⁵⁹ will have to be incorporated into therapeutic interventions.¹⁶⁰ The pre-existing trauma exposure of many of these children must be incorporated into the treatments they receive as multiple exposures to adverse childhood experiences are cumulative.¹⁶¹

[us/news/press/2020/12/5fdb14ff4/death-threats-gang-violence-forcing-families-flee-northern-central-america.html](https://www.washingtonpost.com/news/press/2020/12/5fdb14ff4/death-threats-gang-violence-forcing-families-flee-northern-central-america.html).

¹⁵⁴ See Clemens, *supra* note 65, at 13; see also Tina Zedginidze, *Domestic Abuse and Gang Violence Against Women: Expanding the Particular Social Group Finding in Matter of A-R-C-G- to Grant Asylum to Women Persecuted by Gangs*, 34 LAW & INEQ. 221, 238 n.136 (2016) (stating that young girls flee Central America to escape the sexual violence that they suffer from gangs).

¹⁵⁵ Kevin Seiff, U.S. Official Said Aid to El Salvador Helped Slow Migration. Now Trump Is Canceling It., Wash. Post (Apr. 1, 2019), https://www.washingtonpost.com/world/the_americas/us-officials-said-aid-to-el-salvador-helped-slow-migration-now-trump-is-canceling-it/2019/04/01/5a8ca570-540a-11e9-aa83-504f086bf5d6_story.html (“In 2015, El Salvador recorded 103 homicides for every 100,000 residents, more than 20 times the rate in the United States.”).

¹⁵⁶ See Maureen A. Allwood et al., Children’s Trauma and Adjustment Reactions to Violent and Nonviolent War Experiences, 41 J. Am. Child & Adolescent Psychiatry 450 (2002); Hlass, *supra* note 59, at 269.

¹⁵⁷ See Mark Mather, Children in Immigrant Families Chart New Path, Reports on Am. (last visited Mar. 6, 2021), <https://www.prb.org/childreninimmigrantfamilies/>; Emilyn Ahmed, The Implications of Trauma on Immigrant Children’s Overall Well-Being 6 (Pepperdine University, Working Paper).

¹⁵⁸ P.T. Ackerman et al., Prevalence of Post Traumatic Stress Disorder and Other Psychiatric Diagnoses in Three Groups of Abused Children (sexual, physical, and both), 22 CHILD ABUSE & NEGLECT 759 (1998).

¹⁵⁹ Holly Yan, What are Migrants Fleeing from When They Cross the Mexico-US Border?, CNN (July 28, 2017), <https://www.cnn.com/2017/07/28/world/us-migrant-countries-snapshots/index.html> (showing that each Central American country has its own issues that result in illegal immigration, including political violence, poverty, malnutrition, infant mortality, natural disasters, and high risk for diseases).

¹⁶⁰ See generally, P.B. Cunningham & S.W. Henggeler, Engaging Multiproblem Families in Treatment: Lessons Learned Throughout the Development of Multisystemic Therapy, 38 FAM. PROC. 265 (1999).

¹⁶¹ See A.K. Goenjian et al., Outcome of Psychotherapy Among Early Adolescents After Trauma, 154 AM. J. PSYCHIATRY 536 (1997).

This long-term exposure to trauma in early childhood often manifests neurobiologically,¹⁶² physically,¹⁶³ and across all stages of development and into adulthood.¹⁶⁴

Studies have demonstrated that ACE survivors are more likely to experience depression, anxiety, cardiovascular disease, and report being in poorer health in adulthood. This negative relationship between ACE and health remains even after accounting for social determinants of health such as socioeconomic status and access to health care. When examining differences by race/ethnicity, compared to non-Hispanic whites, racial/ethnic minorities are more likely to experience ACEs.¹⁶⁵

It is thought that due to early life stressors' disruption of brain development¹⁶⁶ and neuroendocrine processes responsible for normal stress response,¹⁶⁷ even low levels of stress experienced by ACE survivors may trigger that person's stress response system; though none of the studies examining this relationship worked with Latino populations.¹⁶⁸ Fortunately, children may also be able to demonstrate resilience¹⁶⁹ and develop coping mechanisms¹⁷⁰ to deal with the adverse experiences.¹⁷¹

¹⁶² Martin H. Teicher et al., *The Neurobiological Consequences of Early Stress and Childhood Maltreatment*, 27 *NEUROSCIENCE & BIOBEHAVIORAL REVS.* 33, 34 (2003).

¹⁶³ See Judith A. Crowell et al., *Metabolic Pathways Link Childhood Adversity to Elevated Blood Pressure in Midlife Adults*, 10 *OBESITY RES. & CLINICAL PRAC.* 580 (2015).

¹⁶⁴ See Julie B. Kaplow et al., *The Long-term Consequences of Early Childhood Trauma: A Case Study and Discussion*, 69 *PSYCHIATRY* 362, 374 (2006).

¹⁶⁵ Carmen Alvarez et al., *Adverse Childhood Experiences Among Latina Women and Its Association with Mastery of Stress and Health*, 93 *CHILD ABUSE & NEGLECT* 139, 140 (2019).

¹⁶⁶ D. Cicchetti & S.L. Toth, *A Developmental Psychopathology Perspective on Child Abuse and Neglect*, 34 *J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY* 541, 546 (1995).

¹⁶⁷ Carmen Alvarez et al., *supra* note 166, at 140.

¹⁶⁸ *Id.*

¹⁶⁹ EMMY E. WERNER & RUTH S. SMITH, *JOURNEYS FROM CHILDHOOD TO MIDLIFE: RISK, RESILIENCE, AND RECOVERY* (2001).

¹⁷⁰ See Paula Thomson & S. Victoria Jaque, *Depersonalization, Adversity, Emotionality and Coping with Stressful Situations*, 19 *J. TRAUMA & DISSOCIATION* 143 (2018).

¹⁷¹ Ann S. Masten, *Regulatory Processes, Risk and Resilience in Adolescent Development*, 1021 *ANNALS N.Y. ACAD. SCI.* 310, 316 (2004).

These coping mechanisms may be strengthened¹⁷² through therapeutic interventions.¹⁷³ Coping strategies may offer the greatest benefits for children available from therapeutic regimen involvement.¹⁷⁴

Despite this resilience, however, the traumas inflicted upon children have still been widely condemned. The largest scientific and professional psychological organization in the country, the American Psychological Association, has repeatedly and vehemently protested the Trump administration's policies of separating children from their parents¹⁷⁵ citing these very concerns, including:

decades of psychological research [showing] that children and parents may experience toxic stress as a result of lengthy separations. Toxic stress can cause irreparable harm to children's cognitive development and can lead to a host of mental, social and physical health problems later in childhood and well into adulthood. These problems can include severe psychological distress, PTSD, sleep disturbances, social withdrawal, substance use, aggressive behavior and a decline in educational achievement.¹⁷⁶

The APA's unprecedented warnings identify the serious harm to the psychological well-being of immigrant children, their U.S.-born siblings, and other family members. Other child medical and developmental experts have been vocal in criticizing the separation and detention policies as well, and researchers continue to identify unforeseen consequences

¹⁷² Kylie G. Oliver et al., *Building Resilience in Young People Through Meaningful Participation*, 5 AUSTRALIAN E-J. FOR THE ADVANCEMENT MENTAL HEALTH 34 (2006).

¹⁷³ J. Knitzer & E. Cohen, *Promoting Resilience in Young Children and Families at the Highest Risk: Challenge for Early Childhood Mental Health*, in SOCIAL AND EMOTIONAL HEALTH IN EARLY CHILDHOOD: BUILDING BRIDGES BETWEEN SERVICES AND SYSTEMS 335 (D.F. Perry et al. eds., 2007).

¹⁷⁴ See Atle Dyregrov & Jeffrey T. Mitchell, *Work with Traumatized Children—Psychological Effects and Coping Strategies*, 5 J. TRAUMATIC STRESS no. 1, 1992, at 5.

¹⁷⁵ See Statement of APA President Regarding Traumatic Effects, *supra* note 1; *Statement of APA President Regarding Executive Order Rescinding Immigrant Family Separation Policy*, AM. PSYCHOL. ASS'N (June 20, 2018), <https://www.apa.org/news/press/releases/2018/06/family-separation-policy>; *APA Urges ICE to Comply with Court Order to Release Immigrant Children from Family Detention Centers*, AM. PSYCHOL. ASS'N (July 23, 2020), <https://www.apa.org/news/press/releases/2020/07/ice-immigrant-children>.

¹⁷⁶ APA Voices Concern at Continued Separation of Migrant Children and Parents, Longer Separation May Lead to Toxic Stress, AM. PSYCHOL. ASS'N (July 26, 2018), <https://www.apa.org/news/press/release/2018/07/separation-migrant-children>.

attached to ACEs.¹⁷⁷ Jack P. Shonkoff, professor of pediatrics at Harvard Medical School and professor of child health and development at Harvard T.H. Chan School of Public Health and Harvard Graduate School of Education, identified two major concerns arising from border facilities holding children:

One is the fact that forced and abrupt separation of children from their parents is a huge psychological trauma and assault. The magnitude of the nature of the crisis for a child's health and well-being cannot be overstated. Abrupt separation from primary caregivers or parents is a major psychological emergency. The second issue is the prolonged placement of children in institutional settings. [W]e are dealing with two very well-studied, serious assaults on the health and well-being of children.¹⁷⁸

So, scientists agree: the removal of the child's parent triggers a massive stress reaction leading to "toxic stress"¹⁷⁹ which adversely affects brain development, disrupts immune systems,¹⁸⁰ disrupts metabolic systems, and can "set the stage for lifelong problems with physical health and mental health."¹⁸¹ Younger children will likely suffer consequences of the forced separation throughout their developmental stages.¹⁸² The forced separation and the reported conditions of the detention facilities in which the Trump administration holds children qualify as early adverse

¹⁷⁷ See Afton M. Koball et al., *The Relationship Between Adverse Childhood Experiences, Healthcare Utilization, Cost of Care and Medical Comorbidities*, 90 *CHILD ABUSE & NEGLECT* 120 (2019) (finding that those patients with high ACEs had more medical comorbidities, medications, and needed care coordinator than those with moderate or no ACEs).

¹⁷⁸ Chotiner, *supra* note 76.

¹⁷⁹ See Laura Santhanam, *How the Toxic Stress of Family Separation Can Harm a Child*, PBS (June 18, 2018), <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>.

¹⁸⁰ See Shanta R. Dube et al., *Cumulative Childhood Stress and Autoimmune Diseases in Adults*, 71 *PSYCHOSOMATIC MED.* 243, 249 (2009).

¹⁸¹ Chotiner, *supra* note 76; *see also* Joseph R. Hageman, *The Separation of Children from Their Parents and Toxic Stress*, 47 *PEDIATRIC ANNALS* 339 (2018) (linking Trump's immigration policy of zero-tolerance to toxic stress and the negative life-long consequences on the physical, psychological, and emotional status of the children, concluding that "[i]t is our responsibility as pediatric providers to support the termination of this policy, and to do our best to recognize children who come to us for care who may have experienced the trauma of separation").

¹⁸² *See generally* Sibylle K. Escalona, *Patterns of Infantile Experience and the Developmental Process*, 18 *PSYCHOANALYTIC STUDY CHILD* 197 (1963).

childhood experiences,¹⁸³ and the need for therapeutic intervention for victims of Trump's separation and detention policies are clear.

III. LEGAL RECOURSE FOR CHILDREN SEPARATED FROM THEIR FAMILIES

The prospects for children to avail themselves of legal remedies for these separations and detentions seem limited at best.¹⁸⁴ The youngest children include preverbal infants and toddlers,¹⁸⁵ and the older children may be limited by language skills. Further, many of the children fled impoverished conditions and do not have the means to pay attorneys' fees; seeking legal representation in matters that neither promise contingent fees nor enjoy mandated legal fee awards makes it challenging at best for child migrants to secure legal representation in the U.S. Children in general often struggle to achieve representation:

An important contributory factor to the lack of indirect representation of children in democracy is their economic powerlessness. Children generally have far fewer financial resources than adults and are unlikely to be able to acquire more due to, amongst other things, legal limitations upon their ability to earn money.¹⁸⁶

Obviously, the plight of immigrant children is no better, and indeed is often worse.

Assuming litigants could overcome these threshold barriers, there may be three potential legal avenues available for children who have

¹⁸³ See Roy Wade, Jr. et al, *Adverse Childhood Experiences of Low-Income Urban Youth*, 134 PEDIATRICS 13 (2014); *The Trauma of Family Separation: An Interview with Dr. James A. Coan*, INSTITUTE FOR FAMILY STUDIES (June 21, 2018), <https://www.ifstudies.org/blog/the-trauma-of-family-separation-an-interview-with-professor-james-a-coan> (hereinafter "Coan").

¹⁸⁴ Howard A. Davidson, *Foreword* to ANN M. HARALAMBIE, *THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES* at xi (1993) (noting that "one would expect our nation to have settled the question of whether legal representation must be provided for children involved in judicial proceedings affecting the rest of their lives—cases in which their parents' interest may clearly be at odds with theirs. The question is far from settled. Without a consensus that court-affected children *must always* have independent and zealous legal representation, it should not be surprising that . . . children who do have court-appointed lawyers often lack aggressive, appropriately trained, *competent* lawyer advocacy").

¹⁸⁵ The impact of early negative life events on children in the earliest stages of life can be severe. See Diane Whitmore Schanzenbach, *Early Life Impacts on Later Life Health and Economic Outcomes*, 57 WASH. U. J. L. & POL'Y 103 (2018) ("Experiencing extreme malnutrition in early life has been shown to impact brain development, with brain growth diminished among children who were malnourished in infancy.").

¹⁸⁶ Aoife Nolan, *Children's Socio-Economic Rights, Democracy and the Courts* 83 (1st ed. 2011).

suffered from the Trump administration's separation and detention policy. These include (1) litigation in federal courts using the Federal Tort Claims Act ("FTCA");¹⁸⁷ (2) seeking a remedy under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;¹⁸⁸ and (3) Congressionally authorized reparations. Litigating an international convention such as the Convention Against Torture as the source of monetary relief seems somewhat farfetched, and the third potential remedy would require generating support among members of the U.S. Congress for approval of reparations.¹⁸⁹ Therefore, the FTCA route appears the most promising.

A. FTCA as a Remedy

The Federal Tort Claims Act ("FTCA") is a law which allows claimants to sue the federal government for negligence. In order to bring a FTCA claim, a claimant must first bring her claim to the appropriate administrative agency – that is, the office that employs the tortfeasor.¹⁹⁰ If the agency denies the complaint, the claimant may bring her case in the appropriate federal district court.¹⁹¹ A successful FTCA claim requires that the claimant show (1) the government owed the claimant a duty; (2) the government breached its duty; (3) the claimant suffered a harm as a result of the government's breach; and (4) damages.¹⁹²

The first element, duty, can easily be shown. Tort law deems that one of the many ways a person or entity can assume a legal duty is by "voluntarily tak[ing] custody of another under circumstances such as to deprive the other of his normal opportunities for protection."¹⁹³ A number of courts have already found that government daycares that had

¹⁸⁷ 28 U.S.C. § 1346 (2013).

¹⁸⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 26, 1987, 1465 U.N.T.S. 85.

¹⁸⁹ However unlikely it might appear to seriously consider reparations as a pragmatic political remedy given the 150 years of broken promises dating back to the 1865 order of Union General William T. Sherman calling for an award of 40 acres and a mule for former African American slaves following the Emancipation Proclamation, there are a number of recent politicians expressing interest in studying and considering the adoption of reparations. See Emma Goldberg, *How Reparations for Slavery Became a 2020 Campaign Issue*, N.Y. Times (June 18, 2020), <https://www.nytimes.com/2020/06/18/us/politics/reparations-slavery.html>.

¹⁹⁰ Kent A. Willever & Captain Richard W. Bagley, *Federal Tort Claims Act: The Sovereign Bows to Your Client*, 46-NOV R.I.B.J. 15, 15 (1997).

¹⁹¹ *Id.*

¹⁹² Andrea A. Curcio, Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses, 4 HASTINGS RACE & POVERTY L. J. 45, 87, 91, 95, 96 (2006).

¹⁹³ Restatement (Second) of Torts § 314A (1965).

voluntarily assumed the care of children owed those children a duty.¹⁹⁴ In this case, much in the same way that governmental daycares took military children into custody, the ORR has voluntarily taken control of migrant children and thus, owes them a duty.

Second, the children can very likely show that the government breached its duty of care. It is a well-accepted principle that “[t]he duty to protect clearly encompasses protecting children against physical and sexual abuse.”¹⁹⁵ Therefore, the well documented physical and sexual abuse the children suffered while in ORR custody constitute a breach of the government’s duty.

Third, the children must show that the government’s breach caused their injuries. This generally requires foreseeability, which may be easily met by the enormous body of literature that informed the government that its practices of withholding medical care, food, and parental care and affection would lead to both psychological and physical injuries.¹⁹⁶ Finally, the children will undoubtedly be successful in proving damages based on the documented physical and psychological injuries that resulted in ACEs.¹⁹⁷

In fact, the compelled Alternative Dispute Resolution process for handling FTCA claims¹⁹⁸ might actually work to the benefit of these migrant children as their claims might fly below the public radar, and the possibility of a different federal regime taking control of the executive branch of government might create legal remedies for these young victims of the Trump immigration era.

There are several hurdles that potential litigants would need to overcome, however. First, even assuming that preverbal infants, toddlers, and other young children with limited resources might obtain legal representation in a potential class action—a large assumption as it is—the

¹⁹⁴ *Doe v. Scott*, 652 F. Supp. 549, 551 (S.D.N.Y. 1987); *Doe v. United States*, 838 F.2d 220, 221, 223, 225 (7th Cir. 1988).

¹⁹⁵ Curcio, *supra* note 193, at 91.

¹⁹⁶ Statement from the American Medical Association, HOUSE COMMITTEE ON OVERSIGHT AND REFORM, (last visited Apr. 13, 2021), <https://www.oversight.house.gov/legislation/hearings/kids-in-cages-inhumane-treatment-at-the-border>; Statement from Amy Kahn, Psy.D., HOUSE COMMITTEE ON OVERSIGHT AND REFORM (last visited Apr. 13, 2021), <https://oversight.house.gov/legislation/hearings/kids-in-cages-inhumane-treatment-at-the-border>; Statement from National Association of Pediatric Nurse Practitioners, HOUSE COMMITTEE ON OVERSIGHT AND REFORM (last visited Apr. 13, 2021), <https://oversight.house.gov/legislation/hearings/kids-in-cages-inhumane-treatment-at-the-border>.

¹⁹⁷ Coan, *supra* note 184.

¹⁹⁸ Jeffrey Axelrad, *Federal Tort Claims Act Administrative Claims: Better Than Third-Party ADR for Resolving Federal Tort Claims*, 52 ADMIN. L. REV. 1331, 1344 (2000) (concluding that the FTCA administrative claim process is superior to other ADR techniques because the administrative claim process allows many claims to be resolved before the claim gets to court).

few recorded cases which have recognized children as legitimate plaintiffs under the Federal Tort Claims Act create several potential legal barriers. A few courts have held that children have standing to sue under the provisions of the FTCA,¹⁹⁹ but there are other significant procedural complications. For instance, claimants under the FTCA must first bring their complaints to an administrative agency before they are allowed to initiate litigation.²⁰⁰ Further, even when a case makes it to court, the vast majority of FTCA actions are settled prior to trial.²⁰¹ Thus, the blueprint for pursuing this potential remedy has not been well defined by the federal courts.²⁰²

While the remedy available to detained children may be limited to actions for damages based on negligence, this would not actually pose a substantial barrier.²⁰³ The potential actions would include negligence

¹⁹⁹ See *Marin v. United States*, 814 F. Supp. 1468 (E.D. Wash. 1992); see also Elizabeth Williams, § 8 Parental Consortium Claims Under Federal Law, Cause of Action By Child for Loss of Parent's Consortium (updated Nov. 2020) ("Where state law would allow a child's action for loss of parental consortium against a private party, the Federal Torts Claims Act may permit the child to maintain the claim against the federal government.").

²⁰⁰ See *Mader v. United States*, 654 F.3d 794, 797 (8th Cir. 2011) (explaining that initially, federal agencies had little ability to settle FTCA claims brought against them; however, in 1966, when Congress amended the FTCA and included the requirement that the plaintiff first bring a claim to the administrative agency, "Congress broadened the settlement authority of the agencies." This broadened power, codified under 28 U.S.C. § 2672, the agency head "may consider, ascertain, adjust, determine, compromise, and settle any [FTCA] claim.") (internal quotation mark omitted).

²⁰¹ KEVIN M. LEWIS, CONG. RES. SERV., THE FEDERAL TORT CLAIMS ACT (FTCA): A LEGAL OVERVIEW 33, n. 311 (2019) (explaining that "the settlement of claims within administrative agencies arguably not only benefits FTCA claimants by permitting them to forego the expense of full-blown litigation," but also "frees up limited [governmental] resources for more pressing matters." In 1996, Congress amended the FTCA to require claimants to first make an administrative claim with the hope that more cases would be settled during this process and therefore fail to go to court) (internal quotations omitted).

²⁰² George A. Bermann, *Federal Tort Claims at the Agency Level: The FTCA Administrative Process*, CASE W. RES. L. REV. 509, 535, 537-38, 539 (1985) (explaining that in 1966, "[s]tatistics provided by the Justice Department . . . suggested that roughly eighty percent of all meritorious FTCA claims in litigation were settled prior to trial." According to the author, "[t]he evidence suggests that the administrative process resolves an extremely high proportion of claims worth paying." According to a DOJ attorney, "seventy-five percent of all claimants achieve an agency-level settlement").

²⁰³ See *Doe v. United States*, 838 F.2d 220, 223 (7th Cir. 1988) (involving two children and their parents, who sued an Air Force daycare facility after the children had been sexually assaulted. The court held that when the government assumes a duty to protect someone, and the breach of that duty leads to an assault, the government is negligent and the case is not barred by the intentional act

claims for past, present and future physical and emotional suffering, and loss of wages caused by the harm (where applicable), and past, present, and future medical expenses caused by the harmful conduct.²⁰⁴ The federal government does have a fiduciary duty to the children, as they cared for all aspects of the detained children's lives and had "pervasive and comprehensive" control over these detainees;²⁰⁵ therefore, the government is obligated to ensure that basic safety practices are communicated and utilized.²⁰⁶

B. *The Convention Against Torture as a Remedy*

The United States is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").²⁰⁷ To succeed on a claim under CAT, a litigant must prove (1) she suffered pain or suffering; (2) that the defendant intentionally inflicted the pain or suffering; (3) that the defendant intended to inflict the pain for an illicit purpose; (4) that the defendant was a government official; and (5) that the pain was not suffered as part of a legal sanction.²⁰⁸

The first element, pain or suffering, can easily be satisfied. Many of the detained children have complained about the conditions at the detention facilities, including inadequate amounts of food,²⁰⁹ water and medical care, overcrowded detention cells, limited access to personal hygiene including bathing, and lack of clean clothes, including diapers for

exception of the FTCA); *Meunstermann by Muenstermann v. United States*, 787 F. Supp. 499, 521, 528 (D. Md. 1992) (holding the government liable for damages when a government physician breached the standard of care by failing to diagnose mother's placenta previa and perform a C-section, which resulted in the child suffering brain damage and a stroke); *Bennett v. United States*, 803 F.2d 1502 (9th Cir. 1986) (stating that the government's negligent hiring and employment of a Native American boarding school teacher who sexually assaulted students is most likely not subject to the intentional act exception under the FTCA and that the government could be found liable for negligence under the FTCA).

²⁰⁴ See *Curcio*, *supra* note 193, at 96.

²⁰⁵ If the government voluntarily assumed control of the children, then the government owes a duty of care to the migrant children. See *Doe*, 838 F.2d at 222.

²⁰⁶ See *Marlys Bear Medicine v. United States*, 241 F.3d 1208 (9th Cir. 2001) (holding that the plaintiffs were permitted to initiate claims using fiduciary status under the Federal Torts Claims Act).

²⁰⁷ Convention Against Torture ("CAT"), *supra* note 189.

²⁰⁸ See Brendan Lokka, *Trump's Torture Legacy: Isolating, Incarcerating, and Inflicting Harm Upon Migrant Children*, 35 AM. U. INT'L REV. 169, 174 (2019).

²⁰⁹ Schanzenbach, *supra* note 186, at 103 ("Scientists across a variety of fields have found that acute negative life events result in important later life harms. For example, childhood exposure to famine or food deprivation permanently scars those who survive, resulting in increased obesity, schizophrenia and disability rates in adulthood.").

the babies.²¹⁰ Several children have described guards handcuffing them, tying them to chairs, and placing restraints “over [their] face[s] with holes so [they] could breathe;”²¹¹ still others have described physical beatings by the guards.²¹² Most disturbing, perhaps, have been the disclosures by the Office of Refugee Resettlement (“ORR”), the department with custody over migrant children, that their office “received a total of 4,556 allegations of sexual abuse or sexual harassment” from children in the camps between October 2014 to July 2018.²¹³

Next, litigants must establish the defendant’s specific intent to inflict pain using either direct or circumstantial evidence.²¹⁴ Indeed, courts have not hesitated to hold that even in cases of substandard prison or detention conditions causing severe harm or punishment, such conditions do not rise to the level of torture without evidence documenting the prison guards or security forces²¹⁵ *intended* to use substandard detention conditions to inflict severe harm or punishment.²¹⁶ Here, litigants may be able to establish the requisite intent through the reports of physical violence perpetrated by guards against migrant children and thousands of reports

²¹⁰ Zolan Kanno-Youngs, Poor Conditions Persist for Migrant Children Detained at the Border, Democrats Say, N.Y. TIMES (Aug. 29, 2019), <https://www.nytimes.com/2019/08/29/us/politics/homeland-security-migrant-children.html>.

²¹¹ Blake Ellis et al., Handcuffs, Assaults, and Drugs Called ‘Vitamins’: Children Allege Grave Abuses at Migrant Detention Facilities, CNN (June 21, 2018), <https://www.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html>.

²¹² Emily Stewart, The Places the Government Sends Migrant Children Face Allegations of Abuse, VOX (June 21, 2018), <https://www.vox.com/2018/6/21/17488130/family-separation-facilities-migrantchildren-abuse>.

²¹³ Haag, *supra* note 34.

²¹⁴ *Pierre v. Gonzales*, 502 F.3d 109, 119 (2d Cir. 2007) (quoting *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992)) (holding that a claimant must provide evidence of specific intent of the authorities’ motive to prevail).

²¹⁵ In 2010, the United Nations established that prison officials and police officers qualify as “public official[s] or other [people] acting in an official capacity.” UNITED NATIONS: DRAFT CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT, 23 I.L.M. 1027 (1984); *see also* *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1060 (9th Cir. 2006) (holding that public officials who did not themselves commit torture, but acquiesced to it, also satisfied the treaty’s “public official” requirement for purposes of establishing liability).

²¹⁶ *Oxygene v. Lynch*, 813 F.3d 541, 547 (4th Cir. 2016) (finding that where despite deplorable prison conditions, “the practice of the Haitian government of indefinitely detaining deportees under horrific conditions” did not rise to the level of torture because the plaintiff produced no evidence as to the officials’ specific intent) (rev’d on other grounds).

of sexual abuse by the guards.²¹⁷ In addition, nearly 10,000 ORR guards belonged to a social media page where guards sent messages joking about killing migrants while using racial slurs.²¹⁸ The social media postings appear to be admissions against interest, so from an evidentiary perspective, it is likely that they would be deemed admissible in a legal action under the Treaty provisions.²¹⁹ The litigants could likely establish intent with this evidence, and it would likely also go a long way toward establishing the required “illicit purpose;” the guards’ joking about deaths of the migrants on Facebook is cruel and could not possible serve any legitimate purpose.²²⁰

Next, the federal government was aware of the treatment of migrant children, as many border agents filed numerous warnings to their superiors about overcrowded, uninhabitable living conditions, and yet, federal officials took no action.²²¹ This evidence would likely help establish that the proper defendant is a government official. Finally, the children must show that the treatment they endured at the hands of the federal government was not suffered as a result of legal punishment.²²² This hurdle can easily be overcome as the living conditions the children faced were direct violations of the Flores Agreement – a legal requirement for how the federal government must treat migrant children in its custody.²²³ Thus, this potential legal remedy may not be as unlikely as might otherwise appear.

²¹⁷ Haag, *supra* note 34.

²¹⁸ Jason Silverstein, *Customs and Border Protection Investigation Secret Facebook Page Where Agents Mocked Migrant Deaths*, CBS NEWS (July 2, 2019), <https://cbsnews.com/news/customs-and-border-protection-investigating-secret-facebook-page-where-agents-allegedly-mocked-migrant-deaths/>; A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joked About Migrant Deaths and Post Sexist Memes*, PROPUBLICA (July 1, 2019), <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes>.

²¹⁹ In consideration of litigation, such statements by guards on Facebook would likely qualify as Statements Against Interest hearsay exceptions under Federal Rules of Evidence 801(d)(2) and 804(b)(3)(B).

²²⁰ See DEBORAH E. ANKER, PROTECTION UNDER TITLE 3 OF THE CONVENTION AGAINST TORTURE, LAW OF ASYLUM IN THE UNITED STATES (2020).

²²¹ Simon Romero et al., *Hungry, Scared, and Sick: Inside the Migrant Detention Center in Clint, Tex.*, N.Y. TIMES (July 9, 2019), <https://www.nytimes.com/interactive/2019/07-06/us/migrants-border-patrol-clint.html>.

²²² Lokka, *supra* note 209.

²²³ Sarah L. Hamilton-Jiang, *Children of a Lesser God: Reconceptualizing Race in Immigration Law*, 15 NW J. L. & SOC. POL’Y 38, 44 (2019); Devon A. Corneal, *On the Way to Grandmother’s House: Is U.S. Immigration Policy More Dangerous than the Big Bad Wolf for Unaccompanied Juvenile Aliens?*, 109 PENN. ST. L. REV. 609, 652-54 (2004).

C. Reparations as a Remedy

A policy-based alternative to the FTCA and CAT is Congressional legislation adopting reparations for the victims of the Trump administration's separation and detention policy.²²⁴ Considering the 150 years of unsuccessful attempts to generate Congressional support for reparations for descendants of African American slaves,²²⁵ the prospect of garnering support for Congressional efforts to provide reparations for innocent children detained and separated from their parents does not generate a great deal of optimism, but it should not be completely discounted.²²⁶ There are a number of politicians currently expressing interest in studying and considering the adoption of reparations for slavery.²²⁷ This principle could, in theory, be applied in the cases of other atrocities: Germany, for instance, has paid over \$89 billion in compensation and reparations to mostly Jewish victims of Nazi-era crimes over six decades, and the country continues to honor the commitment made in the Luxembourg Agreement in 1952.²²⁸

1. Native American Children and Reparations

The United States' history provides a few precedents for such reparations as well. Some of the cases that may offer guidance include those litigated following the federal government's involvement in placing Native American children in "boarding schools."²²⁹ In March of 1819, Congress passed the Civilization Fund Act,²³⁰ legislation which sought to assimilate Native American children²³¹ by placing them in 357 Indian boarding schools, mostly run by Christian missionaries and other "persons of good moral character." The directors forced Native American children

²²⁴ Goldberg, *supra* note 190.

²²⁵ See WILLIAM A. DARITY & A. KIRSTEN MULLEN, *FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY* (2020) (presenting perhaps the most comprehensive case to date for economic reparations for U.S. descendants of slavery).

²²⁶ See ANDRE PERRY, *KNOW YOUR PRICE: VALUING BLACK LIVES AND PROPERTY IN AMERICA'S BLACK CITIES* (2020) (examining six Black-majority cities and arguing that the undervalued assets and strengths might be revised if residents demand such).

²²⁷ See Goldberg, *supra* note 190.

²²⁸ Melissa Eddy, *For 60th Year, Germany Honors Duty to Pay Holocaust Victims*, N.Y. TIMES (Nov. 17, 2012), <https://www.nytimes.com/2012/11/18/world/europe/for-60th-year-germany-honors-duty-to-pay-holocaust-victims.html>.

²²⁹ See David Wallace Adams, *Fundamental Considerations: The Deep Meaning of Native American Schooling, 1880-1900*, 58 HARV. ED. REV. 1 (Feb. 1988).

²³⁰ Civilization Fund Act of 1819, Pub. L. No. 15-85, 3 Stat. 516 (1819)

²³¹ See ROY HARVEY PEARCE, *SAVAGISM AND CIVILIZATION: A STUDY OF THE INDIAN AND THE AMERICAN MIND* (1967).

to reject their cultures and ceremonies and to adopt the lifestyle of white-European-Americans. Their long hair—a source of pride for many Native peoples—was cut short, the children were not permitted to speak in their native tongues or engage in tribal practices or religious ceremonies or they would face physical punishment, and contact with their families was discouraged or forbidden altogether.²³² Although the boarding schools initially were designed for parents seeking to voluntarily enroll their children, the government soon began forcing Native American parents to send their kids to the boarding schools.²³³

The acts of degradation and humiliation that these children were subjected to under color of the federal government's mandate has not been remedied by any legislative initiatives intended to restore the cultural heritage of Native American children. The notion that reparations that might benefit children for a policy initiative enacted by the United States government is by no means a sure thing.

2. Japanese American Children and Reparations

The Japanese American community worked for decades to obtain an apology and reparations for the internment of approximately 120,000 Japanese, about two thirds of whom were American citizens, two months after the December 7, 1941 attack on Pearl Harbor. President Franklin D. Roosevelt signed an executive order, Civilian Exclusion Order No. 34,²³⁴ relocating Japanese-descent and Japanese American citizens to barbed-wired-fenced barracks.²³⁵ The U.S. Supreme Court's 1944 decision in *Korematsu v. United States*²³⁶ upheld the legality of the internment of Japanese American citizens and permanent resident aliens in an opinion written by Justice Hugo Black.²³⁷

Decades later, President Ronald Reagan signed the Civil Liberties Act of 1988²³⁸ which formally apologized²³⁹ to the Japanese American

²³² See Curcio, *supra* note 193.

²³³ See Ann Murray Haag, *The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services*, 43 TULSA L. REV. 149, 153 (2007).

²³⁴ See GREG ROBINSON, *BY ORDER OF THE PRESIDENT: FDR AND THE INTERNMENT OF JAPANESE AMERICANS* (2001).

²³⁵ See JOHN TATEISHI, *REDRESS: THE INSIDE STORY OF THE SUCCESSFUL CAMPAIGN FOR JAPANESE AMERICAN REPARATIONS* (2020).

²³⁶ *Korematsu v. United States*, 323 U.S. 214 (1944); *see also* 323 U.S. § 214 (1944).

²³⁷ See Bruce Fein, *History Overrules Odious Supreme Court Precedent*, HUFFINGTON POST (Nov. 25, 2016), https://www.huffpost.com/entry/history-overrules-odious_b_13226296.

²³⁸ Pub. L. No. 100-383, 102 Stat. 904 (1989).

²³⁹ In the 1988 Civil Liberties Act, Congress recognized “that, as described by the Commission on Wartime Relocation and Commission, and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership

citizens' survivors of the internment order and authorized reparation payments of \$20,000 to each survivor.²⁴⁰ The Korematsu decision has not been expressly overruled, but was disparaged in an opinion by Chief Justice John Roberts, who wrote that the decision was “objectively unlawful and outside the scope of presidential authority,” and that “Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution.”²⁴¹

The appropriateness of considering a legislative solution such as the awarding of reparations to the victims of governmental actions or inactions can never be too late.²⁴² Statutes of limitation will preclude many children from initiating legal remedies as they mature into adulthood, and so the prospect of reparations—however unlikely that may appear—might be their best hope for some form of recovery.

The thousands of claims of sexual misconduct perpetrated against these migrant children²⁴³ alone should be compelling reason for the U.S. government to take the initiative to address the harms inflicted upon these children. The alternative would be for the government to simply wait until the child victims are able to identify legal representation and to initiate on their own lawsuits under the Federal Tort Claims Act or the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

CONCLUSION

In recognizing the pain imposed upon vulnerable children, providing therapy, and attempting to identify legal remedies, the U.S. legal system would take an important step towards correcting a horrific and

. . . For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.” 50 U.S.C. § 4202 (1988).

²⁴⁰ See William J. Aceves, *The Civil Redress and Historical Memory Act of 2029: A Legislative Proposal*, 51 U. MICH. J. L. REFORM 163, 197 (2017) (explaining the Civil Liberties Act of 1988 which set up the Civil Liberties Public Education Fund and allocated \$1.25 billion for reparations to Japanese Americans detained in camps during WWII).

²⁴¹ Charlie Savage, *Korematsu, Notorious Supreme Court Ruling on Japanese Internment, Is Finally Tossed Out*, N.Y. TIMES (June 26, 2018), <https://www.nytimes.com/2018/06/26/us/korematsu-supreme-court-ruling.html>.

²⁴² See Robert S. Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 19 B.C. THIRD WORLD L. J. 429 (1998) (calling for legal theorists concerned about racial subordination of African Americans to reconsider and revitalize the discussion of reparations as a critical legalism).

²⁴³ See M.G. Newman et al., *The Relationship of Childhood Sexual Abuse and Depression with Somatic Symptoms and Medical Utilization*, 30 PSYCHOL. MED. 1063 (2000) (stating that the consequences of childhood sexual abuse manifest in many often-unanticipated ways).

dehumanizing national policy.²⁴⁴ As one psychiatric clinician summed it up,

Leaders who advocated and advanced a policy tantamount to state sponsored child abuse should be held accountable. Anyone callous enough to treat children of refugees in this way can hardly be trusted to treat other people's children, even those of American citizens, in a wise and caring manner. Fortunately, recordings of inconsolable children crying released in the media touched enough hearts to show that there is a majority of Americans who care about children. Societies reap what they sow in terms of the way they treat children—as well as the children of brave and resourceful asylum seekers eager to become part of the American experience. A nation striving for greatness would do well to keep this in mind.²⁴⁵

These children are our future leaders, our future workforce,²⁴⁶ and our future teachers, and their success is our country's success.²⁴⁷ This effort would be an important step toward returning the U.S. to a leadership role in the Western world, one which we begin by admitting to our mistakes and doing everything possible to lessen the damage we've inflicted upon the most vulnerable of all people, underage minors.

The Trump Administration's policy of separating children from their parents and family members was not the result of consultation with child developmental, mental health or medical experts.²⁴⁸ The damage inflicted upon these children may be readily apparent, or it may manifest over the years as the children mature into adulthood.²⁴⁹ In any event, it would be unrealistic to assume that impoverished families will have the wherewithal to address the consequences of this immigration policy, let alone the resources to obtain therapeutic assistance for these children. Access to legal remedies may be daunting,²⁵⁰ and these children will

²⁴⁴ See Lokka, *supra* note 209.

²⁴⁵ Teicher, *supra* note 29, at 3.

²⁴⁶ Eric I. Knudsen et al., *Economic, Neurobiological, and Behavioral Perspectives on Building America's Future Workforce*, 103 PROC. NAT'L ACAD. SCI. 10155 (2006).

²⁴⁷ Michael Alison Chandler, *Children of immigrants experience more poverty, academic failure, report finds*, THE WASH. POST (Oct. 24, 2017), https://www.washingtonpost.com/local/social-issues/children-of-immigrants-experience-more-poverty-academic-failure/2017/10/24/5909aab2-b821-11e7-be94-fabb0f1e9ffb_story.html.

²⁴⁸ Cf. *A Science-Based Framework for Early Childhood Policy*, CENTER ON THE DEVELOPING CHILD (2007), <https://www.developingchild.harvard.edu>.

²⁴⁹ Jennifer S. Middlebrooks & Natalie C. Audage, *The Effects of Childhood Stress on Health Across the Lifespan*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (2008).

²⁵⁰ HARALAMBIE, *supra* note 185, at xi ("On November 20, 1989, the United Nations General Assembly approved the world's first international Convention on the Rights of the Child, which has been ratified by over 130 nations (sadly, the

require supportive interventions if they are to overcome the impact of familial separations imposed by the Trump administration's poorly vetted immigration policy.

Whether or not such short-term resolutions accomplished with legal remedies will be effective in providing children with therapeutic services, the long-term issues must yet be addressed. By coordinating foreign aid initiatives so as to promote food production and supply in the various Latin American countries currently suffering from drought and the destruction of their food supply, the results might help provide impoverished families an alternative to moving hundreds or thousands of miles from their homes to simply provide sufficient food for their children.²⁵¹ Creating an immigration policy that provides for the unmet needs of families who arrive at our border with nothing other than what they carry would be vastly more humane than the status quo.²⁵² This in turn would decrease the pressures of handling massive numbers of foreign families arriving at the U.S. southern border, allowing policymakers to address the immigration influx over a longer timeline.

Six children have died in federal detention, and thousands more have been forcibly separated from their parents, sexually abused, and physically victimized. Once we collectively acknowledge the harm that we inflicted on these vulnerable children, we must take corrective measures, whether that involves making reparations or funding resources to assist those in need. In reversing the course of the Trump

United States of America not yet among them). It is notable that this Convention includes, as part of Article 12, a provision speaking to the right of all children who are the subjects of judicial or administrative proceedings to be heard, directly as well as "through a representative." Thus, Article 12 begins to set a universal standard for court-involved children to have their voices heard, with the assistance of effective legal counsel. This is a concept that—as yet—has gained insufficient currency throughout the American system of jurisprudence." As of the date of publication of this article, the U.S. is still not a signatory to the Convention on the Rights of the Child. See Walker et al., *supra* note 110, at 238 ("[O]nly the United States and Somalia have failed to comply with the international consensus on ratification.").

²⁵¹ Francisco Goldman, *Biden Can Revive Latin America's Most Successful Anti-Corruption Project*, NEW YORKER (Mar. 4, 2021), <https://www.newyorker.com/news/daily-comment/biden-can-revive-latin-americas-most-successful-anti-corruption-project>.

²⁵² Shear, *supra* note 54 ("Because of the president's policies, Central American migrants fleeing persecution and violence in their home countries now must wait, often for months, in squalid camps on the Mexico side of the border while the United States considers their requests for asylum. For decades, asylum seekers were allowed to remain in the United States while their cases were decided . . . The president has used emergency powers designed for public health crises to turn away all asylum seekers, effectively ending the role of the United States as a place of refuge for those fleeing their homes. Those deeply rooted changes are a 'bell that can never be unring,' one senior aide said.").

administration's immigration policy, perhaps we might actually achieve something that makes America great again.²⁵³ At least we will accomplish something far better than simply wearing baseball caps made in foreign sweatshops with a political motto affixed.²⁵⁴ We measure the greatness of our society by the manner in which we treat our most vulnerable citizens, and that includes the children who arrive in our country in search of a better life.

²⁵³ Recognizing the personhood rights of children would represent a departure from the Trump administration's regressive perspective of the evolution of the rights of the child. See, e.g., S.N. Hart, *From Property to Person Status: Historical Perspective on Children's Rights*, 46 AM. PSYCHOL. 53 (1991).

²⁵⁴ See Jeff Horwitz, *Are Trump's 'Made in USA' hats really made in USA?*, ASSOCIATED PRESS (July 8, 2016), <https://www.pbs.org/newshour/politics/are-trumps-made-in-usa-hats-really-made-in-usa>; Jason Lemon, *Trump 2020 Campaign Launches 'Keep America Great' Hats, Proclaiming They're 'Proudly Made in USA'*, NEWSWEEK (Aug. 18, 2019), <https://newsweek.com/trump-keep-america-great-hats-1454921> (“[S]ome Trump merchandise—including MAGA caps, banners, and flags—were being made in Chinese factories.”).