America’s Second-Class Children: An Examination of President Trump’s Immigration Policies on Migrant Children and Inquiry on Justice Through the Catholic Perspective

Gabriel Sáenz

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AMERICA’S SECOND-CLASS CHILDREN: AN EXAMINATION OF PRESIDENT TRUMP’S IMMIGRATION POLICIES ON MIGRANT CHILDREN AND INQUIRY ON JUSTICE THROUGH THE CATHOLIC PERSPECTIVE

GABRIEL SÁENZ*

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I. JUST STANDARD VS. MALIGNANT STANDARD

It is not difficult to judge a nation—just look at how they treat their weak and vulnerable. Above all, children are in the most vulnerable class. In the United States, like in most developed nations, long gone are the days when children were legally allowed to be abused and exploited. As a global community, we praise those who value and protect children and condemn those who violate the standards we have set forth. We have rediscovered the objective truth that children are to be loved, protected, nurtured, encouraged to learn, and allowed to grow into healthy adults. This antiquated principle has been affirmed and


2. Accord G.A. Res. 14/1386, Declaration of the Rights of the Child (Nov. 20, 1959) (declaring children are entitled to special safeguards and care given their physical and mental immaturity); see OFF. OF THE HIGH COMMISSIONER FOR HUM. RIGHTS ET AL, MANUAL ON HUM. RIGHTS REPORTING UNDER SIX MAJOR INTERNATIONAL HUM. RIGHTS INSTRUMENTS, at 426, U.N. Sales No. GV.E.97.0.16 (1997) (“There is no cause which merits a higher priority than the protection and development of children, on whom the survival, stability[,] and advancement of all nations—and indeed of human civilization—depends.”); see also Letter from Colleen A. Kraft, President of Am. Acad. of Pediatrics, to Kirstjen M. Nielsen, U.S. Sec’y of Homeland Sec. (Mar. 1, 2018) (highlighting the vulnerability of children, especially when they are exposed to high levels of stress and harm).


5. C.f. The Bible and Children’s Rights, VIVA (Oct. 2014), https://stop-cwa.org/download/48 (stressing the role that Christianity and Christians like, Eglantyne Jebb, had on our modern child rights laws, like the United Nations Convention on the Rights of the Child (UNCRC) because of Christian Truths about children); Prashant Abhishek, 14 Quotes on Children by his Holiness Dalai Lama, MINDFULTIBET (Nov. 16,
expounded by world leaders and the majority of democratic nations. Likewise, modern medical and psychiatric professionals agree, children have special vulnerabilities and must be dealt with compassion and care. This common consensus manifests itself in our law. The most powerful legal voice comes from the Supreme Court of the United States. In *J.D.B. v. North Carolina*, for example, the Supreme Court held that children are not “miniature adults,” and that the behavior and perceptions of children differ from adults. The culmination of these truth statements provide us with a healthy and shared point of reference—what I call the “Just Standard”—on which we base our convictions, laws, policies, and actions relating to children.

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7. See Kraft, *supra* note 2 (stating that children are particularly vulnerable because negative impacts on a child’s life can have lifelong effects to their cognitive, emotional, and physical development).


9. See, e.g., Roper v. Simmons, 543 U.S. 551 (2005) (holding that minors ought to be held to a different standard in criminal cases because their undeveloped sense of responsibility, their vulnerability to negative influences, and their ongoing development of morality).

10. See 564 U.S. 261, 263 (2011) (finding certain kinds of interrogation illegal when used on children, even if otherwise legal, because of their young age and vulnerability).

As a nation, we find ourselves at a crossroad; do we afford migrant children with the same standards as our own? Due to violence and poverty, thousands of Central American children are fleeing their homes to seek refuge in the United States. Many are unaccompanied. Alone, these children will either try to cross without inspection, or seek asylum or other immigration protections in our overburdened and inept immigration system.

How do we respond? Especially when the root of many of their country’s problems were created by us, after years of exploitative American interference. I propose that at the macro-level, there are ultimately two competing responses to this crisis—each stemming from different ideologies that have battled each other since time immemorial. One stands on the solid, objective foundation of the Just Standard. The other stands firmly in mid-air—baseless subjective biases. I argue that we should build the structure of our legal and moral response on the objective foundation of the Just Standard. Alas, our current response


13. See Edwards, supra note 12 (stating refugees are seeking refuge from civil unrest which includes persecution and abuse from the government or private individuals); see also Jessica Jones & Jennifer Podkul, Forced From Home: The Lost Boys and Girls of Central America, WOMAN’S REFUGEE COMM’N, at 1 (Diana Quick & Fred Hammerman eds., 2012) (highlighting why children are being forced to flee from Central America).

14. See Edwards, supra note 12 (emphasizing a great number of children come alone to the United States); Jones & Podkul, supra note 13 at 3 (providing first-hand testimony of unaccompanied children through interviews conducted by the Women’s Refugee Commission).


16. See Mark Tseng-Putterman, A Century of U.S. Intervention Created the Immigration Crisis, MEDIUM (June 20, 2018) (reasoning the U.S. caused the contemporary Central American crisis due to the right to exercise an international police power in the region first introduced by Theodore Roosevelt in 1904).

17. See generally, C. S. LEWIS, THE ABOLITION OF MAN 23 (HarperCollins 1944) (discussing the issue of subjective morality and how it is mere “propaganda”).
towards immigrant children stands on the opposite. We have separated immigrant children from their families, confined them for undetermined amounts of time, left them unrepresented in our courts, and failed to keep them safe. We took funds from the few programs designed to help immigrant children and attacked the laws designed to protect them. Our actions have been unjust.

The figurehead and strongest voice for this opposing standard is the current President Donald Trump. I call this competing ideology the “Malignant Standard.”

In 2016, Donald Trump was elected as the forty-fifth president of the United States. His administration quickly manifested its xenophobic ideals through its immigration policies. These policies hurt immigrant children the most. They resulted in violations of children’s rights,

18. Accord Kraft, supra note 2 (condemning the Trump Administration’s family separation policy).
20. See Jennifer Podkul & Cory Shindel, Death by a Thousand Cuts, KIDS IN NEED OF DEF. (May 2018), https://supportkind.org/wp-content/uploads/2018/05/Death-by-a-Thousand-Cuts_May-2018.pdf [https://perma.cc/UU5C-U7GY] (describing how the Trump Administration terminated justice AmeriCorps, a “program aimed to improve court efficiency in a cost-effective manner and to identify children who had been victims of human trafficking or abuse and, as appropriate, refer them to others to assist in the investigation and prosecution of those who perpetrate such crimes and how “the Administration’s summary elimination of this program limits access to crucial legal assistance for very young children.”).
21. See Kraft, supra note 2 (establishing that it is injustice for children to deviate from providing higher protections and standards that adequately account for their age—which Trump’s administration has strayed away from and even attacked).
22. See generally Podkul & Shindel, supra note 20 (showing that the Trump Administration is spearheading anti-immigrant policies).
25. See Xenophobia, MERRIAM-WEBSTER (2018) (“fear and hatred of stranger or foreigners or of anything that is strange or foreign.”).
27. See Podkul & Shindel, supra note 20 (reporting the great damage done to immigrant children by President Trump’s policies); see also Amended Complaint for Declaratory and Injunctive Relief with Class Action Allegations at 1, Ms. L. and Ms. C. v. U.S. Immigration and Customs Enforcement, No. 18 cv-00428-DMS-MDD (S.D. Cal. March 9, 2018), https://www.aclu.org/legal-document/ms-l-v-ice-amended-complaint [https://perma.cc/VS43-TD
abuse, and deaths of immigrant children.\textsuperscript{28} Even in the face of such overwhelming agreement on the objective distinctiveness and vulnerabilities of all children, the Trump Administration refuses immigrant children the same rights and protection afforded to all children under our Just Standard and negligently and vehemently “continues to double down on its efforts to attack immigrant children.”\textsuperscript{29} The United States applies the Just Standard when a child is American and applies the Malignant Standard when the child is not.\textsuperscript{30} I argue that, unless we combat this double standard, we will witness the creation of a second-class of children—those who are refused children’s rights and protections based on where they were born.\textsuperscript{31}

An attack on one child is an attack on all.\textsuperscript{32} Therefore, it is our duty to address this unjust double-standard.\textsuperscript{33} In that spirit, I write this


\textsuperscript{29}. See G.A. Res. 14/1386, Declaration of the Rights of the Child (Nov. 20, 1959) (considering children’s rights so important that they felt the duty to create a universal standard for them); see also Kraft, supra note 2 (showing scientific facts that children merit more rights and protections due to their vulnerability); see generally Kang, supra note 19 (noting the Trump Administration’s attack on immigrant children despite international condemnation, public outrage, and rebuke from federal courts).


\textsuperscript{31}. See generally Second-Class Citizen, MERRIAM-WEBSTER (2019) (“someone who is not given the same rights as other people”).

\textsuperscript{32}. See generally Moskowitz, supra note 3 at 465, 471 (suggesting that specific transgression to a child anywhere in the world constitutes transgression to all children because children are voiceless).

\textsuperscript{33}. Cf. id. (arguing that America’s forsaken children are politically voiceless because they lack the powerful constituency to fight for their issues, leaving their protection in our hands).
comment. Here, I will carefully: (i) present and describe what I call the Malignant Standard, which is spearheading our current immigration policies; (ii) rebuke it with what I refer to as the Just Standard, which I mostly support with case law that alludes to a universal law or natural law that children are special, valued, merit our protection and above all are equal; (iii) and lastly, use the Catholic perspective and natural law to support the Just Standard. In short, this is an endeavor to bring to light the correct standard on which to base the edifice of our moral and legal response—the Just Standard. 34 I am the first to admit this is a lot to cover in such a short comment. Nevertheless, as the eldest son of a single immigrant mother,35 it is my duty to initiate the conversation, and I hope this humble attempt encourages a perhaps brighter mind to one day carry the baton of these ideas across the finish line.36

I critique my country because I love it.37 Though we need to take a hard look in the mirror regarding how we treat our most vulnerable and weak, the ground is ripe for good deeds and, with solidarity and hard work, great changes can come.38

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34. See Paul J. Cain, Doing the Right Thing: An Analytical Model Examining the Interplay between Ethical Professional Conduct, Morality, and Justice, 10 T.M. COOLEY J. PRAC. & CLINICAL L. 149, 150–51 (2007) (noting that the legal profession is “governed by a moral code” and that most lawyers and law students want to do the right thing).

35. Interesting note for the reader: I, myself, have “illegally” crossed the border. I say this tongue-in-cheek because I am a natural born American Citizen. My father and I crossed the Rio Grande River together when I was five years old to get to Laredo, Texas to meet my newly born brother. My father was undocumented and we swam the Bravo River because it was the only way we could cross together. The first time la Migra caught us. The officers gave me juice and some cookies before sending us back to Mexico. We simply waited until nightfall and tried again. I was proud of myself. I was the only boy that swam across alone—black trash bag full of clothes and all. This professional anecdotal reflection, as my Evidence professor calls it, demonstrates the hurdles people will overcome to keep families together.

36. See Transcript: Julian Castro’s DNC Keynote Address, NPR (Sept. 4, 2012), https://www.npr.org/2012/09/04/160574895/transcript-julian-castros-dnc-keynote-address [https://perma.cc/K2SY-FTF8] (“In the end, the American dream is not a sprint, or even a marathon, but a relay. Our families don’t always cross the finish line in the span of one generation. But each generation passes on to the next the fruits of their labor.”).

37. See James Baldwin, COLLECTED ESSAYS 9 (1998) (“I love America more than any other country in the world and, exactly for this reason, I insist on the right to criticize her perpetually.”).

38. See Anaïs Nin, GOODREADS, https://www.goodreads.com/quotes/876911-and-the-day-came-when-the-risk-to-remain-tight [https://perma.cc/RJ82-D9YX] (“And the day came when the risk to remain tight in a bud was more painful than the risk it took to blossom.”).
II. THE MALIGNANT STANDARD

I begin with the Malignant Standard. I define it as the culmination of all malicious, subjective, and baseless ideologies which thrive on ignorance and fear.\textsuperscript{39} The Malignant Standard is a sly creature and adopts to all societies: it rings of populism, nativism, subjectivism and hides under capitalism and socialism.\textsuperscript{40} Ultimately, it is not the idea that people are different; rather, it is the idea that some people are better—either intrinsically or extrinsically or means to an end.\textsuperscript{41} In the immigration context, the result of the Malignant Standard is either the lack of or the unequal application of child laws and protections on immigrant children because of where they come from.\textsuperscript{42} We fail to afford immigrant children the same laws and protections otherwise given to our children.\textsuperscript{43} With President Trump as the lead proponent, I fear the Malignant Standard may become legitimized. I hope exposure of the Malignant Standard lends to its elimination.

A. Brief Background on the Recent Wave of Immigrant Children Coming to the United States

The twenty-first century has seen great numbers of people flee their home countries.\textsuperscript{44} For example, according to a report by the United Nations (UN) Refugee Agency, an average of “24 people were forced to

\textsuperscript{40} See, e.g., Jay Katz, Human Experimentation and Human Rights, 38 ST. LOUIS U. L. J. 7–9 (1993) (comparing the Malignant Standard in fascist societies with the Nazi concentration camp experiments and in capitalist democratic societies like the United States Tuskegee Syphilis Study conducted by the Public Health Service physicians).
\textsuperscript{41} See George, supra note 11 at 55, 61–62 (reasoning when we no longer consider human rights objectively, “whole cultures or subcultures can be infected with moral failing that blind large numbers of people to truths about justice and human rights; and ideologies hostile to these truths will almost always be both causes and effects of these failings”).
\textsuperscript{42} See Kang, supra note 19 (stressing there is nothing that can fix “the harms created by the very act of confining children to detention centers”).
\textsuperscript{43} See id. (describing President Trump’s attacks on immigrant children and children’s rights).
\textsuperscript{44} See Edwards, supra note 12 (noting the great increase in refugees seeking asylum throughout the world due to violence and persecution in their homelands).
flee each minute in 2015.” That same year, 65.3 million people were displaced from their homes. Out of those 65.3 million refugees, a shocking fifty-one percent were children. Although many travel with their family, a large number of these children are unaccompanied. The United States does not remain untouched by this global crisis. In 2014, the United States saw a dramatic increase of immigrant and refugee children arrivals that continues to this day. Ninety-five percent of children seeking relief in the United States are from the Northern Triangle, comprised of Guatemala, El Salvador, and Honduras. From Central America, they make their long journey across Mexico to reach the United States. Interviews conducted with these children indicate that the majority flee their home countries because of violence, abuse, poverty and gangs. Many girls that flee escape the additional problem of gender-based violence and experience their own unique set of difficulties during their relocation.

B. Trump’s Administration Responded with Family Separation

As mentioned above, many children arrive with parents, family, or friends. Once in the United States, however, it does not matter because children are separated from their caregivers and classified as

45. See id. (noting the detailed study based on government data from governments, partner agencies, and the UNHCR’s own reporting).
46. Id.
47. See id. (emphasizing the alarming percentage of children refugees).
49. See Linton, Griffin & Shapiro, supra note 15 at 1 (“Communities nationwide have become homes to immigrant and refugee children . . . [h]owever . . . dramatic increase[s] . . . of these undocumented children cross into the United States”).
50. Id.
51. Id.; see Jones & Podkul, supra note 13 (reporting in 2012, children apprehended were from Guatemala (35%), El Salvador (27%), and Honduras (25%)).
52. Linton, Griffin & Shapiro, supra note 15 at 1.
53. Jones & Podkul, supra note 13 at 9; see Edwards, supra note 12 (noting children are fleeing violence and persecution more than “any time since UNHCR records began”).
54. See Jones & Podkul, supra note 13 at 8 (revealing that girls fleeing the Northern Triangle are often escaping persecution on account of their gender).
55. See Kates, supra note 48 (reporting that many families came together, and were subsequently separated at the border).
unaccompanied. This is due to President Trump’s “Family Separation Policy.” On April 6, 2018, Attorney General Jeff Sessions announced that each United States Attorney’s Office along the United States border would implement a zero-tolerance policy for criminal charges—regardless of the immigrant’s status as an asylum seeker, parent, or child. The result is that all immigrants apprehended will be criminally charged. Because children are not allowed in adult criminal detention centers, children are quickly separated from their family once detained by immigration officials. Thus, many children who are classified as “unaccompanied” are actually separated from their families against their will.

According to current procedures, “unaccompanied” children are then sent to immigrant child detention centers under the supervision of the Office of Refugee Resettlement (ORR). ORR detention centers must adhere to certain standards set by the Flores Agreement, though they often fail to meet those standards. For example, facilities shall be consistent with the government’s “concern for the vulnerability of children.”
minors.”

Facilities must 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.”

ORR prefers the term “shelters,” but to many of us who have been inside them, they are more like prisons.

Photos of separated children quickly surfaced and spread through social media outlets following implementation of the zero-tolerance policy. They depict children in cages, others in crowded rooms huddled on concrete floors with only aluminum sheets for warmth and comfort.

Those that support the ideology of the Malignant Standard applauded the government’s actions; most of us felt hurt and appalled by the conditions.

After a great national public outcry regarding family separations, President Trump was forced to put an end to his cruel policy.

In an attempt to alleviate the issues, President Trump issued an

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65. Id.

66. Accord id. at 7–8 (“The [Immigration and Naturalization Service] shall place each detained minor in the least restrictive setting appropriate to the minors’ age and special needs, provided that such setting is consistent with its interests to ensure the minor’s timely appearance before the [Immigration and Naturalization Service] and the immigration courts and to protect the minor’s well-being and that of others.”).

67. See Kates, supra note 48 (stating that children facilities are often referred to as “shelters”).

68. See Linton, Griffin & Shapiro, supra note 15 at 4 (“[R]eports by advocacy organizations, including interviews with detainees and the [Department of Homeland Security’s] Office of Inspector General, have cataloged egregious conditions in many of the centers, including lack of bedding [e.g., sleeping on cement floors], open toilets, no bathing facilities, constant light exposure, confiscation of belongings, insufficient food and water, and lack of access to legal counsel.”); see also Kates, supra note 48 (reporting the unsafe and unsuitable conditions of ORR facilities).


70. See id. (“One cage had [twenty] children inside. Scattered about are bottles of water, bags of chips and large foil sheets intended to serve as blankets.”).


72. See Ms. L. and Ms. C. Amended Complaint at 3 (describing the complaints in a class action, where individuals challenged the family separation policy and alleged due process,
executive order titled “Affording Congress an Opportunity to Address Family Separation.” However, President Trump’s actions have fallen short and his idea still lives. The executive order does nothing for the hundreds of children already separated, many of whom have been in custody for months. Moreover, the process to reunite parents with their children is slow and the government has done little thus far to speed up the process. Many will be stuck in limbo as the Trump Administration procrastinates and avoids correcting their wrong. President Trump recently announced his intention of bringing back the Flores policy—reigniting fears of future attacks on immigrant children and their families.

This wave of Central American children will not be the last. Until home country issues are addressed, children from the Northern Triangle, and throughout the world, will continue to come to the United States in

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administrative violations, and asylum statute violations); see also Order Granting Motion for Plaintiffs’ Motion of Classwide Preliminary Injunction at 22–23, Ms. L. et al. v. U.S. Immigration and Customs Enforcement, No. 18 cv-00428-DMS-MDD (S.D. Cal. June 26, 2018) (declaring the separation of children from their families as unlawful, preliminarily enjoining the Defendants from continuing to separate children, and ordering families to be reunited).


76. See Bump, supra note 12 (noting the apparent unreadiness of the government to readdress their actions).


79. See Sarah Bermeo, Violence Drives Immigration from Central America, BROOKINGS (June 26, 2018), https://www.brookings.edu/blog/future-development/2018/06/26/violence-drives-immigration-from-central-america/ [https://perma.cc/9SR9-NTCR] (reasoning United States immigration policy will not be a deterrent when the violent route through Mexico is not, and it will cause people fleeing to use traffickers, strengthening the resources of organized criminal groups).
search of help. Whatever is causing this worldwide phenomenon of displaced children, and however complex and daunting the issues may be, thousands of children find themselves here and how they are treated deserves and requires our undivided attention.

C. Trump’s Administration has Undermined and Attacked Programs Designed to Help Immigrant Children in Immigration Proceedings

After taking office, President Trump fired his first shot by quickly passing Executive Order Number 13767. This executive order set the precedent for how his administration would skeptically treat and ultimately process immigrant children. President Trump indicated his mistrust of immigrants, our immigration system, and its law; and as such, he has called for stricter scrutiny against immigrants, tougher policies to prevent immigrants from arriving, and promises more resources and manpower for the border. His attacks were broad and targeted toward immigrant children. This was the first step of many to come from the Trump Administration.

Following his first executive order, President Trump’s attacks continue to grow bolder and tend to be more direct. He controls the narrative by

80. See Edwards, supra note 12 (showing that children refugees are seeking help).
81. See Jones & Podkul, supra note 13 at 12 (Diana Quick & Fred Hammerman eds., 2012) (noting children are facing complex issues); see also Linton, Griffin & Shapiro, supra note 15 at 7–9 (recommending an action plan that requires the involvement of many people and organizations).
83. See Podkul & Shindel, supra note 20 (warning that Executive Order No. 13767 was the first step of many to come towards creating an environment of antipathy towards immigrant children seeking relief in the United States).
85. See id. (explaining the purpose of the order is to have agencies “deploy all lawful means to secure the nation’s southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly consistently, and humanly”).
86. See Podkul & Shindel, supra note 20 (reasoning the Trump Administration’s new stance toward immigrant children is a metaphorical slow death by a thousand cuts because it effectively terminates many protections for children seeking relief in the United States).
87. See id. (describing how President Trump’s attacks have increased over time).
painting a false picture of the situation.\textsuperscript{88} Consistent with the Malignant Standard of his political base, President Trump has painted immigrant Central American children as “gang members” and “animals,” saying, “they’re not innocent,” and that protections of their rights are mere loopholes in our system, which they proactively seek to take advantage of to infiltrate our nation.\textsuperscript{89} Here, President Trump, like many in the past, reverted to the old racist prejudice that Hispanic children and Anglo children are not the same and that Hispanic children are less intelligent and prone to violence.\textsuperscript{90} If we take this Malignant Standard to its logical conclusion, President Trump is saying that children of color are not worthy of education or compassion—unlike innocent Anglo children who have potential and are not violent.\textsuperscript{91}

Once President Trump controlled the narrative, he followed with devastating attacks on the legal protections of immigrant children.\textsuperscript{92} After Executive Order 13767, Trump’s Administration defunded the justice AmeriCorps (jAC) program that provided advocacy for

\textsuperscript{88} See generally Laura Munoz Lopez, Seven Top Immigration Lies from the Trump Administration, CTR. FOR AM. PROGRESS (Feb. 5, 2019), https://www.americanprogress.org/issues/immigration/news/2019/02/05/465825/7-top-immigration-lies-trump-administration/ [https://perma.cc/8BE4-U236] (showing the false but powerful narrative of President Trump).


\textsuperscript{90} Accord Naomi Priest, et al., Stereotyping across Intersections of Race and Age: Racial Stereotyping Among White Adults Working with Children, PLOS ONE (Sept. 12, 2018), https://doi.org/10.1371/journal.pone.0201696 [https://perma.cc/S4Z2-GF7V] (reporting that white adults perceive children of color as more prone to violence and less intelligent).

\textsuperscript{91} See id. (finding that white children are seen to be more intelligent than children of color).

\textsuperscript{92} See Podkul & Shindel, supra note 20 (listing President Trump’s attacks on children seeking protections under United States laws).
The jAC program was designed to identify the most affected children, those who had been victims of abuse or human trafficking, and connect them to adequate and much needed resources. Because immigration courts are administrative courts, children are not afforded the right to legal counsel, and therefore, this program sought to fill that void by acting as a connection between the child and legal relief. With jAC gone, children are again left to depend on pro bono legal service providers that are often underfunded and spread thin. Furthermore, many places already lack pro bono legal service providers, especially the more rural areas of our country. Without this crucial guidance, children are expected to navigate our immigration system alone. For example, absent a child advocate, a child of three years of age is expected to represent herself in court—to make their own legal arguments and present their evidence, to object to the government attorney, and fight for their rights through sometimes incompetent translators (translators are difficult to find for certain dialects).

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94. See Podkul & Shindel, supra note 20 (explaining how the termination of jAC not only hurt the children it represented but the courts themselves by increasing time and costs in children immigration cases).

95. See id. (connecting the Executive Office for Immigration Review and the Corporation for National and Community Service to provide free legal service for unaccompanied children who would not have any otherwise).

96. See id. (showing that elimination of the jAC program severely limits access to vital legal assistance).


98. See Linton, Griffin & Shapiro, supra note 15 at 8 (2017) (recommending that unaccompanied minors have free or pro bono legal counsel for all appearances before an immigration judge to mitigate trauma and protect the health and well-being of vulnerable immigrant children).


100. See Joseph Darius Jaafari, Immigration Courts Getting Lost in Translation, THE MARSHALL PROJECT (Mar. 21, 2019), https://www.themarshallproject.org/2019/03/20/immigration-courts-getting-lost-in-translation [https://perma.cc/257A-PE4H] (discussing the difficulty in finding competent translators for Mayan languages such as K’iche’ or Urdu from Pakistan, leading judges and lawyers to conclude many immigrants received “unfair deportation
The criminal and immigration system experience is very traumatizing to adults—imagine its effect on a child! The results can be devastating to a child’s development. Moreover, the benefit was not one-sided: jAC saved the government money and time by effectively detecting children with strong immigration cases and obtaining their respective relief according to their claim. This sped up often lengthy trials and lightened the load on immigration judges’ children dockets. Not to mention, jAC brought a sense of justice to the courts and the immigration system. But the Malignant Standard spares no victim.

D. Trump’s Administration Used Immigrant Children as Bait to Attack Families and Communities

In a successive blow, United States Immigration and Customs Enforcement (ICE)—the Department of Homeland Security’s (DHS) enforcement arm—began targeting potential sponsors who applied to get their child released. According to the Flores Agreement, the government should have a policy favoring release over detention for immigrant children.
A child can be released to a sponsor. A sponsor can be a parent, legal guardian, adult sibling or other family member, an adult individual or entity designated by parent or legal guardian, a licensed program, or adult individual or entity seeking custody when no other alternative seems likely. The sponsor has certain responsibilities, such as ensuring the child appears for all court proceedings and providing for the “minor’s physical, mental and financial well-being.” All sponsors must go through the application process, including financial and background checks, to demonstrate that they can indeed care for and provide for the child.

To no surprise, many of these sponsors are immigrants themselves, and not all have the legal status to be here in the United States—many hiding in the shadows or still in the process of obtaining legal status. They come out of the dark only to provide their child or family member with freedom. Now, ICE is targeting them, deporting many potential sponsors, hurting families and communities even more, and causing more distrust between the government and immigrant communities. The problem they face is: either leave the child in a detention center for an indefinite amount of time or risk putting other family members on ICE’s radar. Thus, by targeting sponsors, ICE has disrupted a major legal avenue for children to be released from custody, further clogging up the dockets and raising the bill for taxpayers.

These policies are leaving many children unnecessarily stuck in detention for long periods of time, ultimately prompting many to leave in a desperate attempt to get out of the shelters—even though leaving

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108.  See id. at 10 (listing the order of preference for available sponsors).
109.  Id.
110.  See id. (describing the custodian responsibilities).
111.  See id. (describing the process of releasing children from ORR custody).
112.  See Podkul & Shindel, supra note 20 (discussing the effects of targeting children sponsors on the child and the immigrant community as a whole).
113.  See id. (“Enforcement targeting parents and sponsors has only served to stoke fear in communities, destabilize families, and place children at an increased risk of trafficking.”).
114.  See id. (inferring that the government is actively seeking out family members in the community).
115.  See id. (describing the real and unfortunate consequences of ICE’s targeting of sponsors).
116.  See id. (noting that many potential sponsors are not stepping forward to care for the children as they go through the removal proceedings, thus leaving many children in custody when they would otherwise have been released to family members).
relinquishes their asylum or Special Immigrant Juvenile Status (SIJS).\footnote{117. See J.D.B., 564 U.S. 261, 272 (2011) (holding that a reasonable child will sometimes feel pressured to submit or admit to something they otherwise would not); see also Podkul & Shindel, supra note 20 (indicating that children will be more susceptible to accept voluntary departure as a way to get out of shelters).} This forces children to return to the same dangerous situations that prompted them to leave in the first place.\footnote{118. Podkul & Shindel, supra note 20.} Additionally, the ORR’s Director of Children’s Services is now required to personally approve or deny releases of children who are placed in or have ever been placed in a staff secure facility.\footnote{119. Id.} Not only is such a person unprepared and unqualified for this task, this process also slows down the pace in which children are released to sponsors.\footnote{120. See id. (describing how ORR already struggles to provide services for children who need their support and how the Trump Administration’s policy of locking up parents in immigration detention centers slows down the process of releasing children to sponsors).} President Trump is using children as bait to attack families and their communities.\footnote{121. See generally id. (condemning the Trump Administration for exploiting the process of reuniting children with their families to facilitate enforcement against undocumented parents and family members).}

E. Trump’s Administration Wants to Keep Families Separated and Incarcerated

President Trump’s attack on families does not stop there. He also terminated the successful Family Care Management Program which allowed families to be released together and fight their immigration case from the outside.\footnote{122. See Family Case Management Program, WOMEN’S REFUGEE COMM’N, https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf [https://perma.cc/26PR-SMZP].} Once processed, families in detention centers were released together to families or organizations waiting for them.\footnote{123. Id.} Kids would not miss school and parents could effectively seek help and resources.\footnote{124. See generally Kavitha Cardoza, How Schools are Responding to Migrant Children, EDUC. WEEK (Sept. 14, 2019), https://www.edweek.org/ew/articles/2019/04/10/how-schools-are-responding-to-migrant-children.html [perma.cc/2VJ4-EU6L] (discussing how children need to be in classrooms, not in detention centers).} The family would be assigned and monitored by a caseworker who was in charge of the family, ensuring that they attended...
all their court dates and followed all stipulations imposed on them. Part of the supervision may include ankle monitors and home visits. Despite contrary claims by President Trump and his supporters that families would not show up to court, the Family Case Management Program had a success rate of ninety-nine percent of families appearing at their respective court dates. Not only did this program keep families together, and, thus, avoid any further trauma to the children, it saved tax payers millions of dollars and lightened the heavy burden on immigration courts and judges. Instead of allowing this effective and moral program to spread and be adopted by all jurisdictions, President Trump closed the program’s doors. Though as a nation we claim to value the family and praise it as the heart of a productive and healthy community, immigrant children are not afforded that same right.

F. Trump’s Administration is Trying to Eliminate Nationwide Protections of Immigrant Children

The Trump Administration is now going for the kill, aiming its sights on the Flores Agreement. The Flores Agreement—the result of decades of litigation against inadequate and horrific condition in Immigration and Naturalization Service (INS) detention centers—sets the national standards concerning the “detention, release, and treatment” of


126. See Dickerson, supra note 89 (discussing the use of GPS ankle monitors used when families are released).

127. WOMEN’S REFUGEE COMM’N, supra note 122.

128. See id. (explaining how Family Case Management Program only costs $38 a day per family and ICE detention costs $320 a day per person).

129. LaCorte, supra note 125.

130. See Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) (holding the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition).

131. See Kang, supra note 19 (describing President Trump’s actions as “nothing less than a roadmap for keeping children and families locked up indefinitely,” and as seeking to “terminate a longstanding federal consent decree”—the Flores Settlement Agreement); see also Dickerson, supra note 89 (describing how the Trump Administration’s motion requests that the court end a twenty-year-old policy that placed a twenty day limit on detaining families in immigration detentions).
minors in immigration custody. This agreement, I will argue below, can provide the framework for all child immigration laws within the Immigration and Nationality Act if codified. Unsurprisingly, the White House has now falsely labeled the Flores Agreement as a “loophole” for immigrant children to exploit. Even more disheartening, in typical Trump fashion, he and his administration now blame the Flores Agreement for forcing the government to separate families. In this dishonest move, he hopes to shift the blame after receiving much public backlash on his family separation policy.

The Trump Administration also conveniently fails to disclose the fact that their own policies were solely responsible for the systematic separation of children from their families. By criminally prosecuting adult asylum seekers, children must necessarily be separated from their families, because the Flores Agreement—which is the immigrant child’s only protection from being jailed indefinitely in inadequate detention centers—mandates that a child must be released “without unnecessary delay.” Thus, all children must be separated from their family, without exception.

132. See Flores Settlement: Myth v. Fact, KIDS IN NEED OF DEF. (June 15, 2018), https://supportkind.org/resources/flores-settlement-myth-v-fact/ (dispelling common myths and President Trump’s false accusations on what the Flores Settlement states and mandates); see also Flores Settlement Agreement, supra note 60 at 3, 7–18 (holding the agreement to “set out national policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this agreement”).

133. See Flores Settlement Agreement, supra note 60 at 3, 7–18 (encouraging positive practices of releasing unaccompanied minors to the custody of their families).

134. See Kim, supra note 89 (quoting President Trump when he stated that children are exploiting immigration law loopholes to expose the United States to gang crime); see also Dickerson, supra note (asserting the Flores Settlement over the past twenty years has not influenced the influx of refugees).

135. See generally Dickerson, supra note 89 (explaining how President Trump believes that the Flores Agreement has encouraged [im]migrants to travel north and this has led to his new policies).

136. See id. (quoting Judge Dolly M. Gee criticizing President Trump’s new immigration policies).

137. See id. (explaining the zero-tolerance border policy jailed and prosecuted every adult who crossed the border without authorization).

138. See Flores Settlement Agreement, supra note 60 at 8 (describing the details of the agreement and how it requires INS to release class members children without unnecessary delay to certain adults or place them in a licensed program within five days of apprehension).

139. Id.
This anti-Flores rhetoric and sentiment is being echoed in the halls of Congress, with Trump allies introducing several bills seeking to eliminate Flores protections.\(^\text{140}\) The consequences of ripping apart the Flores Agreement include increasingly prolonged detention stays for children in inadequate facilities that do not properly serve children.\(^\text{141}\) This can also mean the removal of national provisions that require child detention centers to have adequate medical services and education for children.\(^\text{142}\) Without this safety net, the conditions in those facilities can and will deteriorate quickly.\(^\text{143}\) The Trump Administration can even change the emphasis of releasing children from ORR facilities to favoring detention for children during the entire removal proceeding.\(^\text{144}\) This can severely limit the amount of help and exposure to pro bono legal services immigrant children desperately need.\(^\text{145}\) Since immigration removal proceedings constitute civil matters held in administration courts, children are not afforded free legal services and must depend on

\(^{140}\) See Kang, supra note 19 (noting the rise of bills seeking to eliminate Flores protections by Republican and Trump-friendly politicians based on the false characterization that the Flores Settlement is a loophole in our immigration system).

\(^{141}\) See Dickerson, supra note 89 (noting if President Trump’s legal challenges to the Flores Settlement Agreement are accepted, it will terminate the little protections afforded to migrant children and leave them without any legal grounds to complaint); cf. Flores Settlement Agreement, supra note 60 at 7–8 (describing how all housing facilities for minors in custody must provide adequate facilities including “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”).

\(^{142}\) See Kang, supra note 19 (explaining DHS could be allowed to operate the detention centers under their standards and determine their compliance by auditors hired by DHS themselves, rather than comply with state licensing requirements).

\(^{143}\) See Flores Settlement Agreement, supra note 60 at 5, 7 (noting that inadequate and dangerous conditions prompted the claim against the former INS).

\(^{144}\) See id. at 12 (showing a preference for releasing the children over to family members instead of detainment which be undetermined); see also Dickerson, supra note 89 (presenting how President Trump’s Administration terminates protections to keep families and children out of the United States, rather than focusing on whether they have a viable claim for immigration relief).

\(^{145}\) See A Humanitarian Call to Action: Unaccompanied Children in Removal Proceedings Continue to Present a Critical Need for Legal Representation, A.B.A. COMM’N ON IMMIGRATION (May 2016) [https://www.americanbar.org/content/dam/aba/administrative/immigration/uacstatement.pdf [https://perma.cc/37W5-UP2T] (explaining that continuous governmental actions, such as expedited removals, severely limit the amount of legal services available to children during their detention).
the charity of pro bono legal service providers.\textsuperscript{146}

It is always easier to find counsel and have your immigration case prepared from the outside; it is also easier on the spirit.\textsuperscript{147} Months on end in custody can break anyone down.\textsuperscript{148} Now, consider a child in a foreign land who speaks a foreign tongue, stuck in a system they do not understand, for an undisclosed amount of time.\textsuperscript{149}

\textbf{G. Trump’s Administration is Attacking the Constitutional Rights of Immigrant Children}

These trespasses to the immigrant community are significant, but it is still not enough for the Trump Administration. Now, constitutional rights are at risk.\textsuperscript{150} The constitutional right to access education for immigrant children is now a target.\textsuperscript{151} United States Education Secretary Betsy DeVos incorrectly told the House Committee on Education and the Workforce that individual schools now maintain a right to report children and families to immigration authorities.\textsuperscript{152} These policies empower

\begin{itemize}
  \item \textsuperscript{146} See \textit{id.} (demonstrating a continued need for legal representation for unaccompanied children in immigration detention centers).
  \item \textsuperscript{147} See \textit{Dickerson, supra} note 89 (“The 1997 consent decree was reached after advocates successfully argued that federal detention was damaging, physically and emotionally, to children’s health and limited their access to legal counsel.”).
  \item \textsuperscript{148} See M. Von Werthern et al., \textit{The Impact of Immigration Detention on Mental Health: A Systematic Review}, \textit{BMC Psychiatry} (2018) (demonstrating mental health consequences amongst immigration detention centers).
  \item \textsuperscript{149} See, \textit{e.g.}, \textit{Plyler v. Doe}, 457 U.S. 202, 208–30 (1982) (examining the constitutional parameters of a child’s immigration status in the education context).
  \item \textsuperscript{150} See, \textit{e.g.}, \textit{id.} (examining the constitutional parameters of a child’s immigration status in the education context).
  \item \textsuperscript{151} See \textit{id.} (holding that all children regardless of legal status enjoy the same fundamental right to access public education and that staff and faculty at public schools cannot inquire into a student’s legal status nor enforce any federal immigration laws); see also Jose Luis Magana, \textit{Trumps Attack on Children}, \textit{ARIZ. DAILY STAR} (May 27, 2018), https://tucson.com/opinion/local/star-opinion-trump-s-attack-on-children/article_8c7c38ee-afbd-5bfa-ac6f-ab765057b2c7.html [https://perma.cc/Z5W5-M86E] (reporting that United States Education Secretary Betsy DeVos is encouraging schools to individually decide whether they wish to report undocumented students to federal immigration authorities, in violation of the Fourteenth amendment as held in \textit{Plyler v. Doe}).
  \item \textsuperscript{152} \textit{Compare} \textit{Plyler}, 457 U.S. at 208–30 (holding it is a violation of the Equal Protection Clause to treat undocumented students differently to determine residency or to engage in practices that discourage school attendance, because undocumented children are also required to attend school like their documented peers), with Magana, \textit{supra} note 151 (noting that United States Education Secretary Betsy DeVos stated schools can maintain the right to report student and families presumed to be undocumented to federal immigration authorities).
\end{itemize}
hostile communities and individuals to report children and their families to ICE—at schools, a place we value the most and profess to be a haven for children.\footnote{153} This opens Pandora’s box to false accusations against children based on the color of their skin or Spanish surname.\footnote{154} This occurs despite the Supreme Court’s ruling in \textit{Plyler v. Doe}.\footnote{155} This landmark case held that undocumented children have the same fundamental right to attend public primary and secondary schools as United States citizens and permanent residents.\footnote{156} They are similarly \textit{required} to attend school, just like their documented peers.\footnote{157} School districts may not engage in acts to discourage undocumented children from attending, nor inquire about their legal status or their family’s legal status.\footnote{158} Faculty and staff have no legal obligation to enforce immigration laws.\footnote{159} In \textit{Plyler v. Doe}, the Supreme Court clearly protected an undocumented student’s access to public school.\footnote{160} The Trump Administration, however, is seeking to violate that fundamental right.\footnote{161} If schools are no longer safe, where will these children find safety?\footnote{162} If teachers and principals become proxy ICE agents, who will be child advocates and mentors?\footnote{163} This is President Trump’s Malignant

\footnote{153} See Magana, \textit{supra} note 151 (stating that United States Education Secretary Betsy DeVos is encouraging public schools to decide for themselves whether they want to report students and families suspected of being here illegally to federal immigration authorities).

\footnote{154} See \textit{Plyler}, 457 U.S. at 237 (highlighting that discrimination based on skin and Spanish surnames that prompted the Mexican families to file suit against the school districts and the state of Texas).

\footnote{155} See \textit{id.} at 230 (noting that certain practices in the educational context—such as the ones that United States Education Secretary Betsy DeVos encouraged—are a violation of the Equal Protections Clause of the Fourteenth Amendment).

\footnote{156} \textit{id.} at 202.

\footnote{157} \textit{id.} (stating that the opportunity for education should be made available to all on equal terms).

\footnote{158} \textit{id.} at 223 (stating that undocumented aliens cannot be treated as a suspect class for educational purposes).

\footnote{159} See generally \textit{id.} at 228–30 (stating that the state has no direct interest in having educators and schools inquire about the legal status of children attending their schools).

\footnote{160} 457 U.S. at 223.

\footnote{161} See \textit{id.} at 230–31 (“an individual’s interest in education is fundamental” and denying undocumented children their fundamental rights is “utterly incompatible with the Equal Protection Clause of the Fourteenth Amendment.”). \textit{But see Magana, \textit{supra} note 151} (describing the ways in which President Trump allows public schools to violate migrant children’s fundamental rights).

\footnote{162} See Magana, \textit{supra} note 151 (stating the ways in which President Trump provides schools with the freedom to inquire into children’s’ immigration status).

\footnote{163} \textit{id.} (allowing teachers to report their students to ICE).
Standard. Despite the firm and reasonable ground that is provided as a safeguard for immigrant children, President Trump prefers to stand in the unsteady and murky mud of xenophobic fear mongering.\textsuperscript{164} No matter what he decides to build on this weak foundation—a castle, a giant, beautiful wall—it will come crumbling down.

\textit{H. Why President Trump’s Short-Sighted Policies Will Fail}

President Trump’s hard line policy stance on immigration is not new, past administrations have targeted other minorities as well.\textsuperscript{165} Any history book will show the various ways we have discriminated against the Chinese, southern and eastern Europeans, the Irish, Mexicans, and any other “undesirable.”\textsuperscript{166} However, these policies have been unsuccessful.\textsuperscript{167} One reason is because the policies fail to acknowledge and address the underlying problems that force people to leave their homes towards unknown and sometimes hostile lands in the first place.\textsuperscript{168} Let us look at a more recent example of a failed hard line policy, and one that mirrors President Trump’s family separation policy—Operation Streamline.\textsuperscript{169}

Operation Streamline was a zero-tolerance federal effort to discourage immigration by criminally prosecuting immigrants who crossed into the

\textsuperscript{164} \textit{See} David D. Sussman, \textit{Immigration, Trump, and Agenda-Setting in the 2016 Election}, \textit{41}(2) \textit{FLETCHER F. OF WORLD AFF.} 75–98 (2017) (describing President Trump’s immigration views and agenda-setting views in the 2016 elections—many of which include xenophobic and racial comments).

\textsuperscript{165} \textit{See} Michael Corradini et al., \textit{Operation Streamline: No Evidence that Criminal Prosecution Deters Migration}, \textit{VERA INST. OF JUST.} (June 2018), \url{https://www.vera.org/downloads/publications/operation_streamline-report.pdf} \footnote{https://perma.cc/4RB9-PT6E} (warning against the failures of many tough approaches on immigration and their inability to address the root causes of immigration to the United States).

\textsuperscript{166} \textit{See} Eli J. Kay-Oliphant, \textit{Considering Race in American Immigration Jurisprudence}, \textit{54 EMMORY L.J.} 681, 701 (2005) (writing that minorities have been discriminated against since the beginning of the plenary power area).

\textsuperscript{167} \textit{See} Kay-Oliphant, supra note 166 (outlining the many unsuccessful ways that minorities have been targeted throughout history).

\textsuperscript{168} \textit{See} Corradini et al., supra note 165 (describing the various complex reasons that may cause a person or child to leave their home country—for example lack of security, food, shelter, basic human rights, work and educational opportunities, violence, instability, gangs, cartels, abuse and corruption).

\textsuperscript{169} \textit{See id. at 7} (stating there is no evidence that prosecuting immigrants under Operation Streamline has had any statistical effect).
United States without documentation.\textsuperscript{170} Launched in Texas in 2005, the program quickly replicated throughout the Southwest, as a hard line response to an upsurge of immigrants crossing the southern border.\textsuperscript{171} Though the impact to the immigrant community was severe, it did little to curve immigration or follow through on its promises.\textsuperscript{172} Michael Corradini’s study sheds light on this problem.\textsuperscript{173} For the vast majority of immigrants, including children, the “pull factors,” or reasons that compel a person to make that dangerous and arduous journey to the United States—which include rejoining family, bringing family to a safer place, providing for family back home, escaping abuse or violence—far outweigh any supposed threats of legal consequences, even if it means incarceration.\textsuperscript{174} Operation Streamline failed to accomplish its goal.\textsuperscript{175} In fact, when its hard tactics were implemented, government enforcement agencies only succeeded in clogging courts and prisons with noncriminal, or low-risk, undocumented immigrants.\textsuperscript{176} Not only did enforcement agencies tear apart families, but they did not stop deported immigrants from coming back or prevent others from crossing the southern border.\textsuperscript{177} Corradini suggests that when the government focuses on legal punishment, jails and detention centers become overburdened with low-risk individuals; and communities are hurt and begin to resent the government—without producing results or dealing with the root problems.\textsuperscript{178}

\begin{itemize}
\item \textsuperscript{170} See id. (describing the federal operation).
\item \textsuperscript{171} See id. (showing the reach of the tough federal operation).
\item \textsuperscript{172} See id. (proposing that the stated goal of deterring future immigration will fail at the tremendous cost to immigrants, the court system, and due process).
\item \textsuperscript{173} See id. (concluding that Operation Streamline “did not deter migrants from reentering the country without authorization” after conducting a study).
\item \textsuperscript{174} See id. (emphasizing the importance of not focusing solely on legal consequences).
\item \textsuperscript{175} See id. at 1 (expressing that “there is no evidence to support the conclusion that Operation Streamline succeeded in deterring unauthorized border crossings, nor that it had any effect whatsoever on immigrants’ decisions to come to the United States”).
\item \textsuperscript{176} See id. at 5–6 (reporting the southwest border’s courts were clogged with thousands of immigrants, and diverted law enforcement and judicial attention from violent organized groups).
\item \textsuperscript{177} See id. at 7 (showing the negative consequences of Operation Streamline).
\item \textsuperscript{178} See id. at 5 (noting the lack of results when immigration laws and policies only focus on legal consequences instead of addressing the root issues of why the immigrants are here).
\end{itemize}
In sum, legal punishment is not the proper deterrent.\textsuperscript{179} It simply does not work.\textsuperscript{180} Separating families and attacking communities does not work.\textsuperscript{181} A wall will not work.\textsuperscript{182} People will continue to come in search of freedom and protection.\textsuperscript{183} What matters is how we treat them once here and whether they will be given a fair shot.\textsuperscript{184} Nevertheless, Trump’s Administration continues to promulgate policies that follow the same ill-footed punishment-based route.\textsuperscript{185} Poignantly put by Kids In Need of Defense (KIND), President Trump’s attacks are culminating to a “death by a thousand cuts.”\textsuperscript{186}

### III. The Just Standard

The Malignant Standard applied by the Trump Administration is invalidated when we look at the strong foundation and precedent for universal child rights.\textsuperscript{187} Child advocates have always fought for the recognition of a set of universal rights and protections for all children.\textsuperscript{188}

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\textsuperscript{179} See id. at 1 (stating that there is no evidence that Operation Streamline has succeeded in deterring illegal immigration).

\textsuperscript{180} See id. (providing the unsuccessful consequences of Operation Streamline).

\textsuperscript{181} See id. (proving the results of Operation Streamline were unsuccessful in deterring unauthorized entrance into the United States).

\textsuperscript{182} See id. at 3 (considering the strength of push and pull factors that compel determined immigrants to cross the border despite significant obstacles).

\textsuperscript{183} See id. at 7 (exhibiting fifty-five percent of the deportees interviewed for the study planned to return to the United States in the near future despite the likelihood of arrest, incarceration, and deportation”).

\textsuperscript{184} See id. at 6 (explaining that border control needs to meet the “clear requirements of international and United States law to allow immigrants who fear persecution to seek protection”).

\textsuperscript{185} See Kang, supra note 19 (noting the Trump Administration’s wishes to terminate the Flores Settlement Agreement—which is a commitment to children’s rights in immigration custody); see generally Podkul & Shindel, supra note 20 (describing the series of policies that are destroying opportunities of immigration relief for undocumented children, thus killing them “by a thousand cuts”).

\textsuperscript{186} See Podkul & Shindel, supra note 20 (creating a timeline of all the actions the Trump Administration has taken to roll back protections for children).

\textsuperscript{187} See G.A. Res. 14/1386, Declaration of the Rights of the Child (Nov. 20, 1959) (providing the specific protections of the right of a child); see also G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989) (outlining the conventions of a right of a child); see generally Flores Settlement Agreement, supra note 60 at 3, 7–18 (specifying protections for unaccompanied minors who are detained by INS).

After two terrible wars, we came together through the UN to expound our solidarity in this matter and to create impenetrable protections for children. The UN used universal moral principles to establish norms that everyone could agree on. These universal and fundamental principles are what we classically referred to as the Natural Law. The Just Standard is the light to the Malignant Standard’s darkness. Let its exposure be its elimination.

A. The Codification of the Flores Agreement Can Provide a Great Foundation on Which to Base Rights for Immigrant Children

After what the Government alleges to be “many years of litigation” against inappropriate confinement of children in immigration custody, the parties settled on what became known as the Flores Agreement. Since then, the Flores Agreement has provided the foundation and proper standards on how children in immigration proceedings ought to be treated. The Flores Agreement established a “nationwide policy for the detention, release, and treatment” of minors in custody of the former INS, while superseding previous policies inconsistent with its terms. The Flores Agreement has since spread and been adopted as the universal standard on immigrant children’s rights.

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189. See, e.g., G.A. Res. 14/1386, Declaration of the Rights of the Child (Nov. 20, 1959) (creating unique protections that must be afforded to children).
191. See, e.g., Roscoe Pound, *Natural Law and Positive Natural Law*, 5 NAT. L.F. 70 (1960) (describing the powerful influence Natural Law has had in our legal and traditional history).
192. See *Flores Settlement Agreement*, supra note 60 at 1, 3, 6; see *KIDS IN NEED OF DEFENSE*, supra note 132 (dispelling myths about the Flores Agreement, such as being the reasoning why children are separated from their parents at the border).
193. See *Flores Settlement Agreement*, supra note 60 (setting the national standard for the treatment of migrant youth); see also Dickerson, supra note 89 (noting President Trump’s Administration is trying to terminate the Flores Settlement Agreement protections).
194. See *Flores Settlement Agreement*, supra note 60 at 3, 6–18, 20 (noting that the rights to be exercised by children are predicated on the assumption that children are unique and deserve special treatment); see also *KIDS IN NEED OF DEFENSE*, supra note 132 (stating children must be released from custody without unnecessary delay, and if they cannot be released, they must be held in the least restrictive setting appropriate to age and needs).
195. See *Flores Settlement Agreement*, supra note 60 at 6, 7 (emphasizing the rights for migrant children that would be applied for many years to come as they are still being debated and
The Flores Agreement provides standard definitions, like what constitutes a “minor,” and establishes a special concern for the particular vulnerabilities of children. The Flores Agreement instructed INS that detained children are to be placed in the “least restrictive” setting, appropriate to the minor’s age and special needs. This is of great importance, as it mandates that facilities be as open as possible and appropriate to children’s needs. As evidence shows, the effects of incarceration on a child can be devastating. Among other rights held, a minor must be allowed access to clean and sanitary conditions, expeditious process, right to bond redetermination hearings, food and drink, medical services, and contact with family members who were arrested with the minor. Contact with family is uniquely imperative for maintaining a child’s healthy mental and physical condition, as prolonged deprivation of family contact can have disturbing and life-long effects on a child’s development. Moreover, minors are to be kept separate from delinquent offenders.

The Agreement also established a general policy favoring release over confinement. This is critical. In practice, immigration officials ought considered); cf. Dickerson, supra note 89 (reporting the uncertain future of the Flores Agreement because the White House is challenging it in an effort to dismantle any protections preventing the President from fulfilling his immigration agenda).

196. See Flores Settlement Agreement, supra note 60 at 4, 7 (defining a “minor” as any person under the age of eighteen who is detained in the legal custody of INS).
197. See id. at 7 (distinguishing children from common delinquents by mandating that they be placed in the least restrictive setting).
198. See id. at 7, 8 (mandating detention facilities to let the children have as much freedom as reasonably possible, and ensuring facilities have the appropriate resources, like medicine).
199. See Kraft, supra note 2 (stressing the many negative effects prolonged detention can have on a child mentally, emotionally, and physically).
200. See Flores Settlement Agreement, supra note 60 at 7 (requiring children be given adequate food and shelter for their physical development, expeditious process, and contact with family members who were arrested with the child to maintain healthy emotions and cognitive well-being).
201. See Linton, Griffin & Shapiro, supra note 15 at 6 (describing the life-long effects on a child’s development due to trauma incurred during their immigration proceeding); accord Kraft, supra note 2 (stating the severe consequences that removal of a child from his family can have, which can lead to many developmental problems).
202. See Flores Settlement Agreement, supra note 60 at 8 (contrasting delinquents from children and stressing it is critical to recognize that children are not criminals, but victims in need of protection).
203. See id. at 9, 10 (determining children should be released promptly if their detention is not required).
to be finding new ways to release children rather than finding new ways to confine them.\textsuperscript{204} This general policy favoring release expanded the definition of “sponsor,” opening the door for individuals other than parents and legal guardians to apply, including siblings, other family members, interested adult individuals, entities, and organizations.\textsuperscript{205} Contrary to the cynicism of the Trump Administration’s policies, the Flores Agreement sought to create more opportunities to release confined children.\textsuperscript{206} These rights are meant to be safeguards that protect children from arbitrary and discriminatory laws.\textsuperscript{207}

I argue that the Flores Agreement should be the standard not only considered when implementing new laws affecting immigrant children, but should be codified and made a pillar of immigration law alongside other official declarations for universal child laws, like the UN Declaration of the Rights of the Child.\textsuperscript{208} These are the cornerstones of a just and robust immigration system.\textsuperscript{209} Here, President Trump has not only failed to apply this standard, rather he is attacking it.\textsuperscript{210}

\textbf{B. Our Supreme Court Recognizes the Uniqueness of Children, Establishes Protections and Rights, and Provides Guidance on How Children Should be Treated}

There is direction from the Supreme Court of the United States that gives us guidance on how we should approach laws concerning

\textsuperscript{204} See id. (recognizing children should not be kept in confinement when a safe alternative is available, such as a parent, family member or organization willing to care and provide for the child).

\textsuperscript{205} See id. (listing the individuals and organizations other than parents or legal guardians that a child can be released to).

\textsuperscript{206} See id. (expanding on how the definition of “sponsor” allowed more opportunities for children to be released).

\textsuperscript{207} See id. at 1–3, 23 (highlighting how the Flores Agreement was the result of children and immigration advocacy groups seeking better conditions for children under INS custody).

\textsuperscript{208} See id. at 6 (providing a model settlement agreement that sets out “nationwide policy for the detention, release, and treatment of minors in the custody of the INS”); see also G.A. Res. 14/1386, Declaration of the Rights of the Child (Nov. 20, 1959) (providing a framework of children’s rights that others can build off of).

\textsuperscript{209} See e.g., G.A. Res. 14/1386, Declaration of the Rights of the Child (Nov. 20, 1959) (providing the minimum moral and ethical obligations that entities and individuals shall afford to children in all contexts, including immigration).

\textsuperscript{210} See Podkul & Shindel, \textit{supra} note 20 (comparing the Trump Administration’s new standard for immigrant children as a slow death by a thousand cuts since it effectively terminates many protections).
children. Namely, the Supreme Court sets clear and powerful boundaries that should not be crossed when it comes to children and sets a permanent framework on which to build our child-related jurisprudence. These laws are predicated on the fact that children are not little adults; therefore, they merit additional value and protection. This fact dictates the way we interact, govern, punish, analyze, and understand children.

C. Children and Adults are not to be Held on the Same Standard

In Roper v. Simmons, a seventeen-year-old boy was sentenced to death after a heinous crime (it is important to note his age as he is not a young child). In spite of the nature of the crime, the Supreme Court held that minors could not be given the death penalty based on three reasons: (1) the lack of maturity and an underdeveloped sense of responsibility is found in youths more so than in adults; (2) juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and (3) the character of a juvenile is not as well formed as that of an adult. This is obvious, the Court inferred, “as any parent knows.” Thus, from a legal and even moral standpoint, it is incorrect to parallel a minor with an adult.

211. See Roper, 543 U.S. at 561–8 (providing rules we ought to follow when children are involved).
212. See, e.g., Plyler, 457 U.S. at 215, 220 (holding that the Equal Protection clause applies to the children of undocumented immigrants because children cannot be held responsible for the acts of their parents).
213. See Roper, 543 U.S. at 570 (holding that children and adults are not the same and should not be held to similar standards).
214. See Plyler, 457 U.S. at 220 (noting that the transgression of adults should not be imputed to children).
215. See U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”); see also 543 U.S. at 556, 558, 560 (reasoning the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons by protecting even those convicted of heinous crimes).
216. See Roper, 543 U.S. at 569–70 (describing the Court’s reasoning for holding that children are fundamentally different from adults—including maturity, social standing, vulnerabilities and character).
217. See id. at 569 (suggesting that all parents understand the lack of responsibility in youth).
218. See id. at 570 (indicating that many of the reasons children ought to be treated differently come from and are grounded on moral arguments).
Children do not have the same control over their circumstances, meaning that they lack the ability of an adult to leave a “criminogenic setting.”219 We can deduce that children are not guilty of the context/environment they are raised in, nor the environmental reasons that cause them to act—in our case, a child fleeing to the United States or joining a gang in their home country.220 Roper reaffirms that children are to be treated and held to a different legal and moral standard than adults.221 This powerful stance supports a standard that—instead of insulting and punishing children for risking their lives to come to the United States—takes a child’s uniqueness and vulnerability into consideration.222

D. Children are Psychologically Different from Adults

The Supreme Court in J. D. B., capitalized, on ground laid by Roper, by holding that a child’s age is far more than a chronological fact; indeed, behavior and perceptions exhibited by children greatly differ from that of adults.223 Where adults would stay quiet or fight, children will talk and submit.224 Moreover, the Supreme Court reaffirmed that children are far more susceptible and vulnerable than adults, especially when it comes to authority, whether police officers in J. D. B. or Customs Border Patrol officers here.225 Children, then, will not be, and should not be, expected

219. See id. at 569 (justifying why children act differently in adult situations); see also Laurence Steinberg & Elizabeth S. Scott, Less Guilty by Reason of Adolescence Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 AM. PSYCHOLOGIST 1009, 1014 (Dec. 2003) (“[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting”).

220. See Roper, 543 U.S. at 553 (establishing that a child’s environment influences their behavior).

221. See id. at 570 (citing Thompson v. Oklahoma, 487 U.S. 815, 835 (1988)) (“The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’”)

222. See id. at 551 (declaring that children ought to be treated with careful consideration to their youth).

223. See 564 U.S. at 281 (holding certain kinds of interrogation illegal when used on children, even if otherwise legal, because of their young age and vulnerabilities); see also id. at 569–70 (holding that children are fundamentally different from adults, including maturity, social standing, vulnerabilities and character).

224. See J.D.B., 564 U.S. at 270 (noting that the differences between adults and children can be seen in different situations).

225. See id. at 278 (expressing the fear and respect children have towards authority figures and their tendency to submit to adults in uniform).
to defend themselves properly in criminal courts, immigration courts or any court of law, to deny and fight against false accusations, or to fight for their rights the way adults are required to. Immigration officials should likewise be more mindful of their interactions with immigrant children. Such conclusions naturally apply broadly to all children as a class of person, regardless of legal status.

This decision echoes Roper in that children do not think the same way adults do, and therefore, ought to be given the benefit of the doubt and not be treated with skepticism. This reasoning stands in complete contrast to our current immigration system which denies immigrant children an appointed attorney to advocate for them in court.

E. Protecting Children’s Rights Benefits the Entire Community

Prince v. Massachusetts is an important case that established significant precedent in child rights. Betty, a nine-year-old girl, sometimes distributed Jehovah Witness literature with her aunt and guardian, Sarah, on public streets. In doing so, Sarah violated three Massachusetts statutes: (1) failure to identify a child to a public officer, (2) providing a minor with items (magazines) to sell, and (3) permitting a minor to work—Sections 79, 80 and 81 of Chapter 149, General Laws of Massachusetts respectively.

See id. at 281 (reaffirming the fact that adults and children react differently to the same situations and we should not expect a child to react in the same way a reasonable adult does).

See id. at 278 (signifying the fear and inevitable reactions that children will have to authoritative figures).

See id. at 272 (noting that the lower court failed to distinguish between children and categorically applied its conclusion to all children).

See 543 U.S. at 570 (stating that a child must be treated with caution and trust).

See e.g., C.J.L.G. v. Sessions, 880 F.3d 1122, 1129 (9th Cir. 2018) (holding that immigrant children are not entitled to the right of a court appointed attorney).

See 321 U.S. 158, 168 (1944) (holding that laws affect adults and children differently and that ensuring the best interest of the child is in the best interest of the entire community).

See Prince v. Massachusetts, 158, 159–62 (1944) (stating that Sarah and Betty were Jehovah Witnesses that regularly practiced public preaching, or witnessing, as part of their religious duties, and they both sincerely believed that if they did not exercise that right, they would both face ultimate destruction in Armageddon).

See id. at 159–60 (analyzing whether Section 80 and 81 violate the Fourteenth Amendment); see also MASS. GEN. LAWS CH. 149 § 79 (2019) (stating one must allow an inspector to perform his duties); MASS. GEN. LAWS CH. 149 § 80 (2019) (providing that it is a violation of law to furnish a minor knowing minor intends to sell the item in violation of other sections); MASS. GEN. LAWS CH. 149 § 81 (2019) (describing how it is unlawful for any guardian to permit a child
First, *Prince* declared that it is in the “interest” of the community as a whole to ensure that children be “safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens.”

This general interest in the child’s well-being is so great that the state may restrict a parent’s control over their child—for example, when Child Protective Services takes a child away from his or her parents.

This precedent is monumental because it provides grounds to repudiate reckless arguments that laws protecting children hurt or hinder the interests of the country. Second, *Prince* states that although children share many commonalities with adults, such as rights, they “face different potential harms from similar activities.” This entails that our laws and actions must take a child’s age into consideration. Laws that fail to consider a child’s uniqueness are prone to hurt instead of help.

Laws that help children help the community.

**F. Due Process of Law Should Also Apply to Immigrant Children**

*In re Gault* is a fundamental case for children’s rights. The case considered the constitutionality of an Arizona Juvenile Code because of its “alleged denial of procedural due process rights to juveniles charged with being ‘delinquents.’”

Here, a fifteen-year-old boy was committed as a juvenile delinquent to a state school in Arizona without...
being given the opportunity to exercise his due process rights. The court held

the proceedings and order relating to Gerald constituted a denial of due process of law because: absence of adequate notice of the charge and the hearing; failure to notify appellants of certain constitutional rights, including the rights to counsel, to confrontation and the privilege against self-incrimination; the use of unsworn hearsay testimony; and the failure to make a record of the proceedings.

The Court held that children have a right to due process of law. The Court stated that due process rights do not conflict with provisions designed to protect juveniles, but, in fact, can improve provisions such as “confidentiality records of police contacts and court action relating to juveniles.” Therefore, juvenile delinquency proceedings must measure up to the “essentials of due process and fair treatment.” Here, the Supreme Court established that the Fourteenth Amendment applies to children, specifically in juvenile delinquency proceedings.

Immigration courts should not be dungeons where the light of fundamental fairness does not reach children. Immigrant children cannot be denied the same basic rights American citizen children are afforded. Denial would amount to discrimination against a group of children. The Supreme Court recognized, early reformers of child law believed that society’s role was not to ascertain whether a child was “guilty” or “innocent,” but instead, ask what led this child down this path

243. See id. at 7–8 (indicating that an appeal was not permitted by Arizona law in juvenile cases).
244. Id. at 9–10.
245. See, e.g., id. at 78 (holding that a juvenile was deprived of his liberty without due process of law).
246. Id. at 25.
247. Id. at 30–31.
248. See id. (listing the due process violations committed against Gault).
249. Cf. id. at 71–72 (comparing juvenile courts to immigration courts and explaining that court systems dealing with children ought to observe fundamental fairness).
250. See Plyler, 457 U.S. at 215 (acknowledging that you do not need to be a citizen to be afforded protections under the Fourteenth Amendment and to be subjected to laws of the state).
251. See id. at 220–22 (detailing that denial of an education to some groups of children will present unreasonable obstacles).
and what can we do in his best interest to save him? Here, I believe they were on to something we may have lost.

G. All Children are Equal—Despite Origin, Nationality or Legal Status—and Warrant the Same Basic Rights

Plyler v. Doe brings the notion of a child’s intrinsic worth to the context of immigration law. This landmark case established the right for undocumented children of illegal immigrants to attend public school after the Texas Legislature revised its education laws and instructed local public school districts in Texas to deny enrollment to undocumented children. The Court held that public schools may not deny admission to a student based on their legal status; staff and faculty could not act as proxy ICE agents and have zero obligation to enforce United States immigration laws; schools may not request a student’s social security number/card, nor their parents; schools must not mistreat children based on their legal status; and schools cannot partake in practices that discourage undocumented students from attending school.

The Supreme Court held that discrimination of children based on their immigrant status was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. Furthermore, it rejected the notion that undocumented immigrants were a suspect class. This contradicts Executive Order 13767 which claims that undocumented immigrants, including children, are suspect. The Supreme Court held that the Fourteenth Amendment extends to all persons, including minors that are under the laws of their respected

253. See id. (summarizing that early reformer children were “essentially good” and the “idea of crime and punishment was to be abandoned” when it came to children).
254. See 457 U.S. at 221–22 (dealing with immigrant children and their educational rights in the United States).
255. See id. at 208, 230 (affirming the lower court’s decision).
256. See id. at 230 (showing that teachers and school officials cannot take on the role of an immigrant officer nor inquire into a child’s legal status).
257. U.S. CONST. amend. XIV; see id. at 216–18, 230 (holding that denying immigrant children education was unconstitutional).
258. See Plyler, 457 U.S. at 219 (holding that immigrant children are not a suspect class and thus should not be treated as one).
The majority held that the state’s asserted interest in the preservation of its limited resources for the education of its lawful residents did not satisfy or establish a sufficient rational basis for such a discrimination.261 This case affirms the special nature of minors, regardless of their status in this country, and held that immigrant children are not a suspect class.262 We must treat immigrant children like American children and give them the same benefit of the doubt, the same rights, and the same protections.263 We cannot create a second-class of children.264

IV. THE CATHOLIC PERSPECTIVE

The court holdings I provide in support of the Just Standard cumulatively reach towards the same moral pillar—all children are special and ought to be valued and protected accordingly.265 This should not be confused with an opinion or social custom.266 Think of it more as a fact.267 A fact consisting of what C.S. Lewis calls the “Tao.”268 The Tao is the culmination of the world’s basic universal values.269 The Hindu Rta; the Jewish Law; the “Way” all exemplify the Tao.270 He calls it “the doctrine of objective value, the belief that certain thing attitudes are really true, and others really false, to the kind of thing the universe is and the kinds of things we are.”271 He continues, specifically referring to children, “[t]hose who know the Tao can hold that to call

260. See Plyler, 457 U.S. at 210 (establishing a constitutional right for immigrant children).
261. See id. at 209, 230 (holding the state did not fulfil its burden).
262. See id. at 219 (treating all children equally).
263. Cf. id. at 229 (“undocumented children are ‘basically indistinguishable’ from legally resident alien children.”).
264. See id. at 222 (discussing how lack of an education automatically puts children at a disadvantage with everyday life).
265. See id. at 229–30 (affirming that children who are undocumented cannot be treated differently for purposes of education).
267. See id. (expressing the idea that every child is special).
268. See LEWIS, supra note 17 at 18–19 (introducing the “Tao” concept).
269. See id. (showing values that we universally hold).
270. See id. at 17–19 (expressing the different ways the Tao is interpreted).
271. Id. at 18.
children delightful or old men venerable is not simply to record a psychological fact about our own parental or filial emotions at the moment, but to recognize a quality which demands a certain response from us whether we make it or not.272 Candidly critiquing himself, C.S. Lewis reflects, “I myself do not enjoy the society of small children: because I speak from within the Tao I recognize this as a defect in myself—just as a man may have to recognize he is tone deaf or colour blind.”273 Only when referencing an objective standard such as the Tao or Natural Law can we make meaningful universal statements such as: universal equality for all children.274 Otherwise, we are merely speaking of personal emotions and subjective cultural preferences.275 It then begs the question, why should society pick your answer/standard over the other? Frankly put, unless we presuppose Natural Law, the Just Standard crumbles on a weak foundation.276

Natural Law is the necessary element—the strong foundation—on which the Just Standard rests.277 Without Natural Law (which declares our inherent human worth, and thus a child’s inherent value),278 our ability to condemn a wrong done to a child, or anybody (Black, Asian, Female, LGBTQ+), is weakened (having lost any notions of objective good or evil), because the response towards a subjective wrong would be subjective as well.279 Thus, there is no real reason for condemning an

272. Id. at 18–19.
273. Id. at 19.
274. See id. (“because our approvals and disapprovals are thus recognitions of objective value or responses to an objective order, therefore emotional states can be in harmony with reason”).
275. See id. at 22–24 (claiming that subjective morality is disguised as mere “propaganda”).
276. Accord George, supra note 11 at 56 (supporting the Just Standard by defining natural law as theories that propose principles of right action, morals, and that one should choose to act in ways that work towards human fulfillment).
277. See id. (“Among these principles are respect for rights people possess simply by virtue of their humanity—rights which, as a matter of justice, others are bound to respect and governments are bound not only to respect but, to the extent possible, also to protect”).
278. See Genesis 1:27–28 (“God created man in his image; in the divine image he created him; male and female he created them. God blessed them...”).
279. See George, supra note 11 at 60-61 (“Natural law theorists hold that friendship, knowledge, virtue, aesthetic appreciation, and certain other ends or purposes are intrinsically valuable, which ‘are intelligibly choice worthy,’ because [i]they cannot be reduced to, nor can their intelligible appeal be accounted for exclusively in terms of, emotion, feeling, desire, or other subrational motivating factors.”).
action other than for cold pragmatism or preference.\textsuperscript{280} In that Darwinian world, the side with more wit, influence, and strength will usually be deemed the winner—not the weak and vulnerable, here, the immigrant child.\textsuperscript{281} One does not need to believe in the Law Giver to hold the Natural Law, for it is “written in their hearts.”\textsuperscript{282} The universal Just Standard is, therefore, necessarily deeply rooted in the objectivity of Natural Law—an evil act is evil whether the masses agree or disagree.\textsuperscript{283} This is the first step in the analysis in supporting the Just Standard with Natural Law, and here is where the Catholic perspective comes in.

The Catholic perspective in this context is a very influential one.\textsuperscript{284} There are around one billion Catholics in the world today.\textsuperscript{285} Most live in countries that produce or receive refugees.\textsuperscript{286} Catholics also make up a vast percentage of the populations of Mexico, Guatemala, Honduras, El Salvador, and the United States, especially the Southwest—the key countries in the recent wave of immigrant children coming to the United

\begin{itemize}
\item \textsuperscript{280} See id. at 61 (“[T]here are plenty of people today who embrace philosophical or ideological doctrines that deny the human capacities I maintain are at the core of human dignity. They adopt a purely instrumental and essentially noncognitivist view of practical reason[,] and argue that the human experience of deliberation, judgment, and choice is illusory [because it is based on] non-rational motivating factors, such as feeling, emotion, or desire.”)
\item \textsuperscript{281} See Darwin’s Theory Of Evolution, DISCOVER, https://www.darwins-theory-of-evolution.com [https://perma.cc/8NTW-PYFX] (comparing the unfair treatment to immigrant children living in the United States to a Darwinian world where only the “superior” (non-immigrants) survive).
\item \textsuperscript{282} See Romans 2:13–15 (“For it is not those who hear the law who are righteous in God’s sight, but it is those who obey the law who will be declared righteous. Indeed, when Gentiles (non-Jew), who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law. They show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts sometimes accusing them and at other times even defending them.”).
\item \textsuperscript{283} See George, Natural Law, supra note 11 at 56 (proposing that the Natural Law principles of humanity and morality justify the Just Standard).
\item \textsuperscript{286} See id. (showing the majority of Catholics are not from Europe but from the Americas, Africa, and Asia).
\end{itemize}
Catholics play a key role in this area’s politics and community services, including legal services and education. Catholic Charities, for example, is one of the key defenders of immigrant children in the United States and provide thousands with hope. Inevitably, Catholics, their beliefs, and their institutions affect all of whom do not share the faith as well.

The Catholic perspective is also a personal one. My mother is devoutly Catholic. She instilled it in her children. Though I have had some serious questions, this is still the religion or worldview I know best. It was indeed a Catholic institution of higher education that gave me the opportunity to study law, and their values of service, charity, and sacrifice have greatly influenced my application and contemplation of it. I would not be sincere to you if my convictions did not at least have some influence in my position.

Lastly, the Catholic Church claims to be the Church—God’s church or the Universal Church. In fact, Catholic means “universal.” So, when I speak of some of the basic (universal) beliefs of Christianity—what C.S. Lewis called “mere” Christianity—in an informal way, I am speaking of Catholicism (universal). Being the original Church, they are one of the earliest and strongest proponents and defenders of Natural Law. Therefore, I will use the Catholic (universal) Christian perspective as a natural base to explore the importance of Natural Law.

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287. See Linton, Griffin & Shapiro, supra note 15 at 1 (naming the key countries involved in the recent wave of Central American migrant children).


289. See id. (showing the services they offer and the number of people they have served).


292. Id.

293. See C. S. LEWIS, MERE CHRISTIANITY 6–8 (Macmillan Pub., 1943) (describing the common or core Christian beliefs).

and, thus, the Just Standard, in providing goals and limitations to our current immigration laws and debates.\(^{295}\)

**A. Natural Law**

In an article titled “Natural Law,” Robert P. George stated that “natural law theories propose to identify principles of right action—moral principles—specifying the first and most general principle of morality, namely, that one should choose and act in ways that are compatible with a will towards integral human fulfillment.”\(^{296}\) He states that among those principles stands “respect for the rights people possess simply by virtue of their humanity—rights which, as a matter of justice, others are bound to respect, and governments are bound not only to respect but, to the extent possible, also protect.”\(^{297}\)

Notice the specific words: “respect of human rights,” “virtue,” “humanity,” and “justice.”\(^{298}\) These are the words we use when making a meaningful statement, when we take a stand against a wrong.\(^{299}\) We call on governments and its people to respect the human rights of children, minorities, and women.\(^{300}\) We speak of the importance for our laws to be humane and inclusive.\(^{301}\) And when countries or people commit atrocious acts, we call for justice!\(^{302}\) On what grounds?

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\(^{295}\) See George, *supra* note 11 at 56 (reasoning that theories of natural law are reflective critical accounts of the constitutive aspects of the well-being and fulfillment of human persons and the communities they form).

\(^{296}\) Id.

\(^{297}\) Id.

\(^{298}\) Id.


\(^{301}\) See generally Legislation Affecting LGBT Rights Across the Country, AM. CIV. LIBR. UNION, [https://www.aclu.org/legislation-affecting-lgbt-rights-across-country](https://www.aclu.org/legislation-affecting-lgbt-rights-across-country) [https://perma.cc/R4B4-25XY] (explaining that individuals should be treated fairly and equally by the laws of their state, and should have the opportunity to earn a living, access housing and healthcare, and participate fully in society).

Genetically, we are not the same. We are not all able to be linemen in the National Football League; nor dunk and dribble the ball alongside the best of the National Basketball Association. Not all of us can box for the Heavy-Weight Championship of the world, nor run 100 meters in under ten seconds. We also have different mental dispositions. We cannot all write with the eloquence and wit of say a G. K. Chesterton; we cannot all understand our universe through the same mind of Albert Einstein, nor can we all compose like Johann Sebastian Bach or paint like Rafael. Some of us are born with disabilities. Many of us never had a chance.

Natural Justice is necessary to the Just Standard because it provides the underlying rules to the game. While many aspects of law and morality are debatable, Justice (a Natural Law), for example, is not. Without a universal standard, not only will we (individuals who partake and care in the world’s issues) be using different rules, but we will not even be playing the same game. They are not the pillars of our legal and moral

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303. See Francie Diep, Scientists Quantify How Different Humans Are From Each Other, Genetically, PAC STANDARD (June 14, 2017), https://psmag.com/environment/1000-genomes-variations [https://perma.cc/H2V8-9R2C] (describing the many ways that distinguish each individual from one another).

304. See generally Dean Malmgren & Mike Stringer, Height Differences Among Professional Athletes, DATA SCOPE (Nov. 23, 2009), https://datascopanalytics.com/blog/height-differences-among-professional-athletes/ [https://perma.cc/U3S7-R9AT] (showing the heights of NFL and NBA players).


309. See LEWIS, supra note 293 at 17–18 (analogizing the foundational importance of “Right and Wrong” and its underlying principles to the rules of football).

310. See id. at 19 (recognizing condemnation of selfishness as an example where some particularities of fundamental morals are debatable, but not the moral itself).

system—like our constitution—but the foundation on which the pillars stand.\textsuperscript{312} A weak foundation is a crumbling castle, and it seems that today our castle has surpassed the Tower of Pisa.\textsuperscript{313} Once on common ground, we can discuss ways to improve our immigration system. But I submit to you, we may argue about what we built or sown on that ground, but we must have a common ground.

\textbf{B. Jesus’s Perspective}

To truly speak of the “universal” perspective, we need the primary source itself—Jesus of Nazareth.\textsuperscript{314} His life is worth repeating (if only in summary) for it is the greatest story ever told.\textsuperscript{315} Jesus was born to Mary and Joseph.\textsuperscript{316} It was a miraculous birth for Mary, because she was still a virgin.\textsuperscript{317} Jesus was born in a stable, outside with the animals and shepherds, for Joseph and Mary were rejected everywhere else—humble beginnings for the King of Kings.\textsuperscript{318} Afterward, Joseph and his young family fled to Egypt to escape the wrath of King Herod, a puppet king for the Romans.\textsuperscript{319} Interestingly, the Jews had earlier fled Egypt to escape the wrath of the pharaoh.\textsuperscript{320}

When they returned to Israel, they went back to Galilee, where they...
were from (remember this).321 Jesus was a good faithful son.322 At the young age of about thirty, he began his ministry, tending to the poor, sick, and wretched, and spreading his message of repentance, forgiveness, justice, brotherhood, and everlasting life.323 Yet, those he came to save sent him to the cross.324 Dying on the cross, he made a final plea to His Father for his executioners—"forgive them for they know not what they do."325 He died for our sins and on the third day he resurrected, fulfilling God’s pact with humanity and bringing glory and hope to us all.326

Jesus was Galilean.327 His disciples were Galilean.328 Anyone who would have encountered them would have known they were Galilean.329 This is noteworthy because Galilee was not an important place.330 Far from being considered a religious or intellectual center like Jerusalem, Galilee was the unsophisticated backcountry.331 Being the victim of multiple invasions, Galilee was a heterogeneous society where Arabs, Greeks, Orientals, and Jews intermarried.332 Jews were looked down upon, considered impure and ignorant of the Law.333

This historical and spiritual rejection of Galileans is telling of many

321. See Matthew 2:19–22 (highlighting Joseph’s return to Galilee with his family).
322. See Luke 2:51–52 (emphasizing he was obedient to his mother and father).
323. See id. at 3:23 (“And Jesus himself, when he began his work, was about thirty years of age, being—as was supposed—the son of Joseph, the son of Heli…the son of Adam, who was of God”).
324. See id. at 23:3–21 (showing that we humans condemned Jesus to death).
325. See id. at 23:34 (“And Jesus said, ‘Father, forgive them, for they do not know what they are doing.’ Now in dividing his garments, they cast lots.”).
327. See VIRGILIO ELIZONDO, GALILEAN JOURNEY: THE MEXICAN AMERICAN PROMISE 49 (Orbis Books, 1983) (“Jesus was not simply a Jew, he was a Galilean Jew; throughout his life he and his disciples were identified as Galileans”).
328. See id. (“His apostles were Galileans and it was in Galilee that they were called to follow him”); see also Mark 3:13 (recalling how Jesus appointed his disciples).
329. See ELIZONDO, supra note 327 (“Throughout [Jesus’s] life he and his disciples were identified as Galileans”).
330. See id. at 50 (“If it had not been for Jesus of Nazareth, Galilee would have continued to be just another unknown region of the world”).
331. See id. at 51 (comparing Galilee to a more sophisticated Jerusalem).
332. Id.
333. Id.
things. First, it foretold Jesus’s own rejection. Second, it shines light on the people Jesus (and thus this followers) valued and sought to protect with his life. Mexican and Central American children, like the Galileans, are poor, victims of abuse, and are racially mixed. They are Mestizos, products of the cosmic encounter between the White invader and Indigenous women. The Golden Triangle, likewise, is far from being considered religious or intellectual centers. And many in the United States also consider them ignorant and backward. But they are also cut from the same cloth as Jesus. Rejected as babies and children, they too, like Jesus, are being left outside (metaphorically and literally).

What did Jesus personally say about children? From the Gospels we read, Jesus directly spoke about children several times during his ministry. I share two and a general teaching that summarizes Jesus’ position on humanity and our duty to it.

1. The Greatest in the Kingdom of Heaven

In a house in Capernaum, Jesus asked his disciples about their argument. Ashamed, they told him they were arguing about what was
the “greatest in the kingdom of heaven?” Jesus “called a small child to him and placed the child among them.” He said, “[t]ruly I tell you, unless you change and become like little children, you will never enter the kingdom of heaven.” Here, Jesus recognizes a child’s vulnerability and pays them the highest compliment—affirming their uniqueness. He continues, “and whoever welcomes one such child in my name welcomes me.” Here, Jesus equates children to Himself, stating that the way we treat children reflects the way we treat Him. Jesus, therefore, also affirms their value.

2. Let the Little Children Come to Me

People sought Jesus. At a house in Judea, “people were bringing little children to Jesus for him to place his hands on them.” However, his disciples rebuked the children. Jesus was indignant when He saw his disciples treat the children in that manner. Here, Jesus cautions us to be mindful of the way we treat children, regardless of the situation. Instead, Jesus said, “let the little children come to me, and do not hinder them, for the kingdom of heaven belongs to such as these.” Here, he showed a willingness to accept children. He, then, “took the children in his arms, placed his hands on them and blessed them.” By blessing them, Jesus is securing their best interests, as we should when considering children and the laws affecting them.

344. Id. at 18:2.
345. Id. at 18:3.
346. Id.
347. Id. at 18:5.
349. Id.
350. Id. at 10:13.
351. See id. at 10:14 (illustrating how Jesus is aggrieved by his disciples obstructing the children from entering the “kingdom of God”).
352. Id.
353. See id. (exhibiting Christ’s protection of all children).
354. See id. (depicting the importance to not impede others from coming to Christ).
355. See id. at 10:16 (acknowledging and blessing the children).
3. **Come, You Who are Blessed**

While teaching on the Mount of Olives, Jesus spoke about the day of his return and, thus, the day of ultimate Justice.\(^{356}\) The day when those that thirst for righteousness will be quenched.\(^{357}\) Instead of paraphrasing I want you to hear it come from our Lord himself.\(^{358}\)

When the Son of Man comes in his glory, and all the angels with him, he will sit on his glorious throne. All the nations will be gathered before him, and he will separate the people one from another as a shepherd separates the sheep from the goats. He will put the sheep on his right and the goats on his left.

Then the King will say to those on his right, ‘Come, you who are blessed by my Father; take your inheritance, the kingdom prepared for you since the creation of the world. For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.’

“Then the righteous will answer him, ‘Lord, when did we see you hungry and feed you, or thirsty and give you something to drink? When did we see you a stranger and invite you in, or needing clothes and clothe you? When did we see you sick or in prison and go to visit you?’

The King will reply, ‘Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.’

Then he will say to those on his left, ‘Depart from me, you who are cursed, into the eternal fire prepared for the devil and his angels. For I was hungry and you gave me nothing to eat, I was thirsty and you gave me nothing to drink, I was a stranger and you did not invite me in, I needed clothes and you did not clothe me, I was sick and in prison and you did not look after me.’

They also will answer, ‘Lord, when did we see you hungry or thirsty or a stranger or needing clothes or sick or in prison, and did not help you?’

He will reply, ‘Truly I tell you, whatever you did not do for one of the least of these, you did not do for me.’

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\(^{356}\) See Matthew 24, 25 (informing his disciplines of the signs leading up to the end).

\(^{357}\) See id. at 5:6 (expressing the rewards for those who do good for others).

\(^{358}\) Id. at 25:31–46 (detailing Jesus’s words to the masses).
Then they will go away to eternal punishment, but the righteous to eternal life.\textsuperscript{359}

This is as serious a statement as you can get. As a nation and as individuals, have we fed the hungry and given water to the thirsty, invited strangers in time of need, clothed the poor, treated our sick and imprisoned?\textsuperscript{360} At the end of the day, this may be what really matters.

V. CONCLUSION

How do we treat our most vulnerable?\textsuperscript{361} Currently, Trump’s Administration is creating a second-class of children.\textsuperscript{362} He continues to sow seeds of mistrust by continuing to set policy and laws that run counter to established truths.\textsuperscript{363} His administration weakens the use of child-accommodating and child-friendly practices, contrary to the guidance from the Supreme Court that holds that children are unique and vulnerable and must be treated accordingly.\textsuperscript{364} Memos from his administration tell immigration judges to be more skeptical of the children before them, to not treat all children alike and discredit findings

\textsuperscript{359} Id.


\textsuperscript{363} See generally Podkul & Shindel, supra note 20 at 1, 2 (discussing how President Trump’s administration has implemented new policy changes that mostly affect a vulnerable population).

\textsuperscript{364} See generally id. at 2–3 (explaining how the Trump Administration practices are contrary to what the Supreme Court has held).
of best interest for the children.\footnote{See generally id. at 6 (addressing the concern where children are told to lie and judges are consequently encouraged to discredit the best interest of a child).} That same memo from Marybeth Keller, the Chief Immigration Judge, warns immigration judges to beware of children who have been coached to lie and push for voluntary departure, even when not desired or understood by the child.\footnote{See OFF. OF THE CHIEF IMMIGR. JUDGE, EXEC. OFF. FOR IMMIGR. REV., U.S. DEPT. OF JUST., OPERATING AND POLICIES PROCEDURES MEMORANDUM 17-03: GUIDELINES FOR IMMIGRATION COURT CASES INVOLVING JUVENILES, INCLUDING UNACCOMPANIED ALIEN CHILDREN 1, 7 (Dec. 20, 2017), https://www.justice.gov/eoir/file/oppm17-03/download [https://perma.cc/XT83-Y6CR] (admonishing judges to be mindful of forced and dishonest testimony by children).} The Malignant Standard is in full force.\footnote{See generally id. at 1 (emphasizing Judge MaryBeth Keller’s commentary on the harsh reality concerning children in the courtrooms).}

However, we need not surrender. We already have the building blocks to establish and codify a universal Just Standard that will protect all children, regardless of immigration status, and is rooted in the strong foundation of Natural Law.\footnote{See Pound, supra note 191 at 74 (providing the general notion on how natural law guides society members in development as it progresses).} Together, we can ensure Justice for thousands of immigrant children. For we do not have an illegal immigration problem but a humanitarian crisis.\footnote{See C.K., Why Illegal Crossings on America’s Southern Border Have Hit an 11-Year High, THE ECON. (Mar. 8, 2019), https://www.economist.com/democracy-in-america/2019/03/08/why-illegal-crossings-on-americas-southern-border-have-hit-an-11-year-high [https://perma.cc/LL54-A43B] (reporting that the increase in illegal crossings has created more of a humanitarian crisis than an illegal alien issue).} I believe it is time for the greatest nation in the world—the United States of America—to become that beacon of light for the world again.

\footnote{365. See generally id. at 6 (addressing the concern where children are told to lie and judges are consequently encouraged to discredit the best interest of a child).}


\footnote{367. See generally id. at 1 (emphasizing Judge MaryBeth Keller’s commentary on the harsh reality concerning children in the courtrooms).}

\footnote{368. See Pound, supra note 191 at 74 (providing the general notion on how natural law guides society members in development as it progresses).}

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