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ARTICLES

ARE THEY HUMAN CHILDREN OR JUST BORDER RATS?

SUSAN M. AKRAM*

This collection of papers, presented during the Immigration Section program at the Association of American Law Schools' (AALS) annual conference in 2006, addresses important and deeply troubling issues concerning the treatment of undocumented children by immigration authorities in the United States. The discussion was facilitated by the launching of a four-part study coordinated by Jacqueline Bhabha of Harvard University and Mary Crock of the University of Sydney. This study consists of a report and three country studies comparing the treatment of unaccompanied and separated child asylum seekers in the United States, the United Kingdom, and Australia.¹ Although the entire work will not be published until the Spring/Summer 2006, Professor Bhabha circulated the draft of the U.S. report—entitled *Seeking Asylum Alone: US Report, Kafka's Kids: Children in the U.S. Asylum System*—to the panel participants prior to the AALS program.² The approximately 150-page report is one of the most comprehensive studies yet conducted on the legal framework, policies, conditions, and treatment of unaccompanied and separated children entering the United States to seek refuge.

The "Seeking Asylum Alone: U.S. Report," although focusing on children seeking refuge in the United States on their own, addresses a host of related issues about the treatment of undocumented children at the hands of federal authorities.³ This study, as do others, raises awareness of the fundamental issue that undocumented children are perceived almost exclusively as a *law enforcement problem*,

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¹ JACQUELINE BHABHA, ET AL., *SEEKING ASYLUM ALONE, UNACCOMPANIED AND SEPARATED CHILDREN AND REFUGEE PROTECTION* (forthcoming Summer 2006) (manuscript at 7, on file with Boston University Public Interest Law Journal). This study, funded by the John D. and Catherine T. MacArthur Foundation, compares policies and practices toward children seeking asylum alone in the United States, United Kingdom and Australia. A draft is also on file with author of this Introduction, and available by permission of co-authors Jacqueline Bhabha, Susan Schmidt and Lisa Frydman.

² JACQUELINE BHABHA ET AL., *SEEKING ASYLUM ALONE: UNACCOMPANIED AND SEPARATED CHILDREN AND REFUGEE PROTECTION IN THE U.S.* (forthcoming 2006) [hereinafter *SEEKING ASYLUM ALONE: U.S.*] (on file with Boston University Public Interest Law Journal).

³ *Id.*

rather than human children with the same special needs, requirements, and vulnerabilities of any other human child—but lacking the good fortune of a safe home in their country of nationality.⁴ The children of our Symposium are considered “border rats,” whose lives are routinely reduced to questions of available detention space. Such children are often viewed as a numbers on an immigration court docket, or just another one of the thousands of expedited removals from the border each year. In dealing with these children, authorities operate in what Professor Bhabha terms a “protection deficit,” as though the fundamental guarantees of other areas of law affecting children, such as criminal juvenile proceedings, family law, and international laws of the child, simply do not exist.⁵ This legal lacuna traps thousands of children in the United States each year in a “system that violates their human rights and ignores their best interests.”⁶

Professor Bhabha’s symposium paper summarizes key points from the larger study. Using a few of the wrenching stories from real children’s cases, Bhabha explores the “Kafkaesque labyrinth of administrative complexity, bureaucratic delay and official indecision” that marks these children’s exposure to the U.S. immigration system.⁷ Edgar Chocoy’s tragic story of seeking safety in the United States from gang violence in Guatemala at the age of fourteen—a story that ended in his deportation and death at the hands of the very gang he had fled—illustrates several key points. The first is that children cross borders primarily based on decisions of adults, whether these be family members who send the child away out of love and concern for his safety and future, or strangers who wish to harm or exploit him.⁸ As such, attributing criminal mentality or intentional lawbreaking to the child is inappropriate, punitive and harmful. The second is that, in stark contrast to other areas of law in which the fundamental principle guiding dealings with children is concern for what is in their “best interest,” immigration law uses what appears to be a “no interest” standard: children are invisible, “afterthought[s] or add-on[s].”⁹

With these important observations in mind, Professor Bhabha discusses the characteristics of U.S. law and policy towards children who seek refuge and get caught up in the immigration system. Clustering U.S. policies under the headings of “Protection Deficit”¹⁰ and “Adult-Centered Myopia”¹¹, Bhabha spells out the ways in which U.S. immigration authorities fail to provide special protection for children or guarantee their human rights. Some illustrations of such a “Protection Deficit” are that: there is no mechanism in immigration law to guarantee that children are appointed a guardian or other adult who must determine their best inter-

⁴ *Id.*

⁵ Jacqueline Bhabha, “*Not a Sack of Potatoes*”: Moving and Removing Children Across Borders, 15 B.U. PUB. INT. L.J. 205 (2006) (see *infra* this volume).

⁶ SEEKING ASYLUM ALONE: U.S., *supra* note 2, at 5.

⁷ Bhabha, *supra* note 5, at 200.

⁸ *Id.* at 199.

⁹ *Id.* at 203.

¹⁰ *Id.* at 205.

¹¹ *Id.* at 209.

ests; there is no requirement to provide children with legal representation for their immigration/asylum proceedings; there is no mechanism to flag, separate, or keep track of children's cases as they move through the system; there are a limited number of provisions in immigration law that give children special consideration; and there is no requirement that a child-centered standard such as "best interest" be applied to immigration proceedings when a child is involved.¹²

The "Adult-Centered Myopia" discussion illustrates the invisibility of children in the immigration system who are "alone." They are subjected to a legal system that is designed for adults, a system that fails dismally when it comes to children. The system fails to recognize both that children have equal rights to access and to be protected by the laws, *and* have a different set of rights because of their special status in society. Examples of this failure to recognize both the equality of and difference in children range from abusive asylum interviews, to punitive detention conditions, to the heightened "reasonable fear" standard employed in expedited removal proceedings. In all these ways, children are at a special disadvantage and suffer extreme discrimination in a system that virtually ignores who they truly are.¹³ They are not undersized adults, they are children.

Chris Nugent, one of the leading advocates for immigrant and refugee children's rights in the United States today, makes the argument that undocumented children are not exactly invisible in U.S. immigration law and policy, but rather are pawns in the system.¹⁴ Mr. Nugent's contribution to the symposium claims that in recent years Congress, policy wonks, the media, and the public have focused a great deal of attention on the "plight of over 8,000 unaccompanied refugee and immigrant children arriving on our shores without parents or guardians who find themselves facing arrest, detention and removal."¹⁵ All this attention notwithstanding, children's actual needs and perspectives have not been taken into account in crafting legislation or policy. The author argues that "[t]his . . . has led to unaccompanied children being treated as pawns often pitting different stakeholders (other than the children themselves) with competing interests such as law enforcement versus child welfare while failing to explicitly include the children's voices and perspectives in determining what is in their best interests."¹⁶

Who are the major players in this immigration tug-of-war? Nugent focuses on the two key agencies involved in determining how unaccompanied children are treated in the immigration system: the Department of Homeland Security (DHS), and the Office of Refugee Resettlement's Division of Unaccompanied Children's Services (ORR/DUCS).¹⁷ After passage of the Homeland Security Act in 2002, re-

¹² *Id.* at 205-209.

¹³ *Id.* at 209-217.

¹⁴ Christopher Nugent, *Whose Children are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*, 15 B.U. PUB. INT. L.J. 218 (2006) (see *infra* this volume).

¹⁵ *Id.*

¹⁶ *Id.* at 219.

¹⁷ *Id.* at 221. This is not the full picture of government players in this tug of war,

sponsibility for the care and custody of unaccompanied children was transferred from the former Immigration and Naturalization Service (INS) to ORR.¹⁸ Nugent praises the transfer of children's cases to ORR given the dismal record of the former INS' treatment of unaccompanied children; yet, the relationship between ORR and the current immigration agencies has caused new and different problems for children's cases. Before addressing the failings of the current configuration of agencies, it is important to note the benefits of ORR taking over care and custody of unaccompanied children. The goal of the former INS in dealing with children was to expedite and facilitate their removal from U.S. borders as quickly as possible, without consideration for the child's welfare or best interest. Hence, secure detention, punishment, and rapid movement through the removal process were INS priorities for dealing with kids.¹⁹

ORR has lengthy experience in caring for and resettling child refugees. In contrast to the INS, it prioritizes care and protection in as close to a family or community setting as is available and appropriate for each child.²⁰ The INS fought hard against instituting uniform standards of protection for children, even after the seminal case and settlement agreement of *Flores v. Reno*, which mandated certain rights and remedies that children and their advocates could enforce in court.²¹ ORR has now drafted regulations that incorporate the *Flores* standards, and provide for greater protections than *Flores* requires.²² Thus, although significant numbers of children continue to be held in overly restrictive immigration detention, conditions under which children are being detained for immigration purposes are improving, and there is optimism for further improvement.²³

Despite the fact that ORR is the agency now primarily responsible for the care and custody of unaccompanied alien children, the role of DHS in the immigration enforcement process has an overwhelming impact on the system through which such children's cases are resolved. Having inherited the INS perspective that unac-

however. See also Bhabha, SEEKING ASYLUM ALONE: U.S., *supra* note 2, at 35 (explaining that "four major government departments and sixteen different agencies share responsibility for unaccompanied or separated child migrants . . .").

¹⁸ Nugent, *supra* note 14 at 221. The Homeland Security Act dissolved INS and distributed its operations into three separate agencies: the Bureau of Citizenship and Immigration Services (CIS), the Bureau of Immigration and Customs Enforcement (ICE), and the Bureau of Customs and Border Protection (CBP). Homeland Security Act of 2002 Pub. L. No. 107-296, § 462(a), 116 Stat. 2135, 2202 (2002).

¹⁹ Nugent, *supra* note 14, at 221-2.

²⁰ *Id.* at 221.

²¹ *Reno v. Flores*, 507 U.S. 292 (1993). Among the conditions challenged in *Flores* were strip searching of children in detention facilities, commingling refugee/immigrant children with criminal prisoner populations, inability to get guardians appointed for unaccompanied children, lack of access to legal representation, punitive detention, and lack of phone privileges. *Id.*

²² Nugent, *supra* note 14, at 220 (citing Office of Refugee Resettlement Division of Unaccompanied Children's Service Fact Sheet (Nov. 10, 2005) (on file with author)).

²³ *Id.* at 223.

accompanied children are lawbreakers, or are being used as “bootstraps” for migrating other family members into the United States, DHS enforces excessively harsh policies in order to close the “floodgates” against children seeking refuge.²⁴ Government counsel take aggressive positions in children’s cases, opposing the interpretation of the grounds of asylum to include special types of persecution affecting children, such as fleeing gang violence, domestic violence, or street violence.²⁵ DHS routinely appeals grants of asylum to unaccompanied children to the Board of Immigration Appeals and the federal courts.²⁶

Mr. Nugent gives other specific examples of the “tug-of-war” between agencies over unaccompanied children’s cases. One of the ways that DHS remains a “gate-keeper” is its control over which children will receive protection and care under ORR’s auspices.²⁷ DHS decides whether children are “minors” (under 18), and whether they are “unaccompanied” by a parent or legal guardian.²⁸ DHS can also release children within 72 hours of arrest to sponsors.²⁹ Nugent notes that DHS’ standard use of dental and wrist bone forensics for age determinations has been challenged by medical experts who dispute the accuracy of these measures.³⁰ Concerning DHS practices in classifying children as “accompanied” or not, Nugent observes that there are no standards, and DHS engages in these determinations as a matter of convenience for enforcing removal: “DHS separates parents from their children, holding the parents in adult facilities and their children at ORR facilities pending removal. This presumably occurs because of a lack of DHS planning for expedited removal and a lack of family shelters.”³¹

In a similar theme to that found in Bhabha’s work, Nugent concludes that “[t]here are intractable and unresolved issues concerning unaccompanied children arising from particular DHS immigration enforcement policies, and activities...” and that “law enforcement interests may trump child welfare and protection concerns, possibly to the detriment of unaccompanied children.”³²

Other aspects of the disproportionate law enforcement effect of the role of DHS raised in Nugent’s paper are addressed in more detail in Professor Angela Lloyd’s symposium contribution.³³ Professor Lloyd takes an in-depth look at one particular problem affecting undocumented minors who are in the care and custody of state protective services: the authority of DHS to decide whether or not such children can

²⁴ *Id.* at 225.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 228.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 229.

³² *Id.* at 227-28.

³³ Angela Lloyd, *Regulating Consent: Protecting Undocumented Immigrant Children from their (Evil) Step-Uncle Sam or how to Ameliorate the Impact of the 1997 Amendments to the SIJ Law*, 15 B.U. PUB. INT. L.J. 235 (2006) (see *infra* this volume).

obtain permanent immigration status through the Special Immigrant Juvenile visa.³⁴ States provide for the care, custody and protection of abandoned, neglected or abused children. As a result, juvenile proceedings have long been considered to be almost exclusively within the purview of state law and policy.³⁵ Federal government policies have deferred to the state in such proceedings in many different contexts, and this deference has been codified in laws on child abuse, adoption and child welfare.³⁶

However, this traditional deference to state determinations ends when the children in protective services are undocumented. For undocumented juveniles in state protective services, the critical determinant is, once again, not their needs or vulnerabilities, but the simple fact that they do not have documented legal status in the United States.³⁷ Lacking such status, state decisions over their permanent care and protection are subordinated to immigration enforcement priorities concerning who is or should be eligible for the special visa status designed specifically for this category of children.³⁸

In partial recognition of the needs of undocumented children in state protective care, Congress created the Special Immigrant Juvenile (SIJ) visa category in 1990 to allow such children to obtain permanent residence status.³⁹ However, in both SIJ categories—minors in immigration detention, and those not in immigration custody—the Attorney General (AG) gave immigration authorities final say in who would qualify for such relief, despite initial state court classification of such children as juveniles dependent on state care.⁴⁰

Initially, the SIJ provisions appeared to be a welcome form of relief for dependent children caught in limbo in the immigration system, as the new relief promised to create a regularized process for moving these children into permanent status.⁴¹ In 1997, however, Congress amended the SIJ law in response to perceived fears that this would be a route for “abuse” of the system, allowing non-dependent minors to file petitions for their families to immigrate.⁴² Under the 1997 amendments, the AG must “expressly consent” to any dependency order that is the basis of an SIJ application, and must “specifically consent” to the jurisdiction of a state court over a juvenile who is undocumented and in the custody of the AG.⁴³ Professor Lloyd explores the ramifications of the “express consent” and “specific consent” prerequisites to grants of SIJ status, and the ways in which these requirements reverse the

³⁴ *Id.* at 238.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 242.

³⁸ *Id.*

³⁹ *Id.* at 239.

⁴⁰ *Id.* at 243-44.

⁴¹ *Id.* at 239.

⁴² *Id.* at 242.

⁴³ *Id.* at 242-43.

traditional state law/federal law relationship and deference policies, to the serious detriment of abused and neglected undocumented children.⁴⁴

Professor Lloyd makes compelling arguments that in the area of juvenile dependency, where state law has long preempted federal action, there must be a clearer congressional mandate and a much deeper discussion of consequences to the interests of the children involved before the SIJ "consent" provisions can be interpreted to substitute federal authority for that of the states. In the absence of regulations, Lloyd proposes that interpretation of these provisions under well-established law regarding children's rights and protection must begin with a clear presumption in favor of state court decisions on dependency.⁴⁵ Professor Lloyd's underlying theme is similar to the other contributions: she argues that when children's rights to care and protection intersect with immigration enforcement concerns, the former must trump the latter for reasons that include stronger moral and legal values.

It is important to understand that SIJ status is just one of several types of immigration status that some categories of undocumented or immigrant children can apply for in order to obtain permanent status in the United States.⁴⁶ However, most other statuses are limited by requirements that focus on adult applicants, particular national origin, collaboration with law enforcement, or other restrictions that the majority of children of concern to our discussion are unable to overcome.⁴⁷

Dr. Linda Piowarczyk's symposium paper approaches the treatment of unaccompanied and separated alien children in the United States from a completely different discipline—asking whether current immigration policies towards children who are "alone" when crossing our borders can be justified from a medical perspective.⁴⁸ Focusing primarily on the phenomenon of immigration detention and its impact on children, Dr. Piowarczyk draws on existing studies concerning the physical and mental health of adults and children detained in various circumstances in the United States and abroad. Dr. Piowarczyk sets out two main categories under which relevant studies have been conducted, and then draws her conclusions. She reviews the results of studies probing the effects of detention on the mental health of adults in the United States (the Bellevue/NYU Program for Survivors of

⁴⁴ See generally *id.*

⁴⁵ *Id.* at 246.

⁴⁶ Visa categories that are potentially available to undocumented unaccompanied children include cancellation of removal (8 U.S.C. § 1229b (2000)); Convention Against Torture relief (Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, Annex, Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984)); the Cuban Adjustment Act (8 U.S.C. 1255 (2000)); Temporary Protected Status (8 U.S.C. § 1254a (2000)); and the "S" (8 U.S.C. § 1101(a)(15)(S) (2000)) (person with information on criminal enterprise); "T" (8 U.S.C. § 1101(a)(15)(T)) (trafficking victim); and "U" (8 U.S.C. § 1101(a)(15)(U)) (victim of severe physical or mental abuse) visas.

⁴⁷ See statutory sections cited *supra* note 46.

⁴⁸ Linda A. Piowarczyk, *Our Responsibility to Unaccompanied and Separated Children in the United States: A Helping Hand*, 15 B.U. PUB. INT. L.J. 260 (2006) (see *infra* this volume).

Torture, conducted in 2003); in the Netherlands (Iraqi asylum seekers in the Netherlands, conducted in 2004); in Australia (Woomera Detention Centre, conducted between Sept. 2000-January 2002); and in the United Kingdom. Among the most significant findings of these studies were that overall, the mental health of adults worsened substantially during their detention, and that severe deterioration in mental health resulted from longer periods of detention.⁴⁹ In the NYU/Bellevue study: "70% [of subjects] reported their mental health worsened substantially while in detention. Of this sample, 86% had clinically significant depression, 77% anxiety, and 1/2 PTSD. Approximately one quarter (26%) had suicidal thoughts while detained, but only 3/18 told the detention officers. Two reported suicide attempts while in detention."⁵⁰ The mental illnesses reported in the patients in these studies included depression, PTSD, anxiety, panic, and a range of physical symptoms.⁵¹

The studies on children include Cuban refugee children in detention on Guantanamo Bay, Cuba (2002), unaccompanied minors in the Netherlands (2002-2003), unaccompanied asylum-seeker children in Finland, youth in detention in adolescent facilities in Tasmania, Australia, and children in immigration detention in the United Kingdom (2005).⁵² Among the important findings are those from the Australian study: "the rates of psychiatric morbidity among this group were five times the rates noted in the community, and equivalent to rates of children referred to mental health services."⁵³ Significantly, this study noted that although what children experienced before their arrival in the detention facility had a bearing on their mental health, these experiences did not account for the significant mental health problems the children were experiencing during their detention.⁵⁴ These studies draw some important conclusions for understanding the health consequences of immigration detention and related restrictions to children trapped in U.S. deportation/removal proceedings.

Dr. Piwowarczyk links child-specific medical considerations that she argues must be taken into account in situations where children are detained or processed for immigration enforcement: a child's developmental stage; exposure to trauma and trauma symptomatology; separation from family, particularly parents; medical and psychiatric evaluations; type of care or protection afforded the child; cultural and religious considerations; and availability of a competent adult acting in the child's best interests.⁵⁵ She contrasts children's medically-observed needs to the reality of the U.S. immigration system, and lists its failures,

⁴⁹ See generally *id.*

⁵⁰ *Id.* at 265. The paper describes this group further as follows: "74% were torture survivors, 67% were imprisoned in their native country, 59% had a family member or friend murdered, 26% experienced sexual assault and almost all (97%) thought that their lives would be in danger if they were forced to return to their own countries." *Id.*

⁵¹ *Id.*

⁵² *Id.* at 266-69.

⁵³ *Id.* at 267.

⁵⁴ *Id.* at 268.

⁵⁵ *Id.* at 273 *et seq.*

including detention of children for administrative reasons, prolonged periods in holding cells or juvenile jails, co-mingling with juvenile offenders, excessive discipline. In some cases, there was physical and emotional abuse, extended periods of isolation, the use of strip searches, the use of restraints in detention facilities, during transport, and in the courtroom. Additionally, these juveniles were subjected to chemical restraints, limited or lack of access to education, exercise, and recreation, lack of legal representation, and cross-state boundary transfers without lawyer notification.⁵⁶

Professor Berta Hernández-Truyol's paper rounds out the Symposium contributions by superimposing an international human rights law framework on the discourse.⁵⁷ Reminding us that immigrant children, documented or undocumented, are children first, with well-established and widely-recognized fundamental rights under international law, Professor Hernández-Truyol questions whether the immigration enforcement paradigm can be reconciled with the human rights notion of the social contract, i.e., that individuals only give up their autonomy to a state to the extent that the state provides basic benefits and protects fundamental rights.⁵⁸ If the state violates those rights, or fails to provide the benefits, the contract is breached, and the state no longer legitimately exercises authority.⁵⁹

Professor Hernández-Truyol argues that the most fundamental rights include those rights of the child incorporated in such universal instruments as the Convention on the Rights of the Child,⁶⁰ the International Covenant on Civil and Political Rights,⁶¹ and the International Covenant on Economic, Social and Cultural Rights.⁶² In examining these sources, she focuses on the centrality of the "best interests" of the child principle; the right to life; the right to the highest attainable health; the right to education; and the rights to nutrition, housing and clothing.⁶³ Professor Hernández-Truyol then examines U.S. legislation and case law addressing whether what are fundamental rights under international law are considered fundamental when it comes to immigrants and immigrant children in the United States. Such cases as *Memorial Hospital v. Maricopa County* (holding that basic preventive health care is a human necessity, not based on immigration status),⁶⁴ *Plyler v.*

⁵⁶ *Id.* at 264 (citing Amnesty International Report *Why Am I Here? United States of American Unaccompanied Children in Immigration Detention* (2003)).

⁵⁷ Berta Hernández-Truyol and Justin Luna, *Children and Immigration: International, Local and Social Responsibilities*, 15 B.U. PUB. INT. L.J. 294 (2006) (see *infra* this volume).

⁵⁸ *Id.* at 305.

⁵⁹ *Id.*

⁶⁰ *Id.* at 297 (citing Convention on the Rights of the Child, G.A. Res. 44/25, 28 I.L.M. 1148 (entered into force Sept. 2, 1990)).

⁶¹ *Id.* (citing International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976)).

⁶² *Id.* at 298 (citing International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976)).

⁶³ *Id.* at 299-302.

⁶⁴ 415 U.S. 250 (1974).

Doe (holding that a Texas statute denying undocumented students the right to enroll in public schools was a denial of equal protection),⁶⁵ and *Gregorio T. by and through Jose T. v. Wilson* (striking down California's Prop. 187 which would deny public education as well as health care to undocumented children),⁶⁶ suggest that there are fundamental rights under the U.S. Constitution that mirror the internationally-protected rights of children that cannot turn on notions of citizenship.⁶⁷ Concerning education in particular, Professor Hernández-Truyol finds the introduction of such legislation as the DREAM Act,⁶⁸ which has bipartisan support even in a heightened security and anti-immigrant environment, particularly encouraging.⁶⁹ The Act provides that high school graduates who have grown up in the United States may apply for a six-year conditional residence status that would become permanent if they either served in the military or went on to college.⁷⁰ In surveying the legal landscape, Professor Hernández-Truyol concludes that, despite the heated rhetoric challenging the rights of non-citizens to state and federal benefits and services, "legal developments in this country seem to reinforce the premise . . . that there is a societal obligation to provide certain services to assure basic human needs regardless of the legality of the documented status of a person."⁷¹

Beyond the research and experience each author brings to his or her paper, the significance of this set of Symposium papers is their employment of a cross-disciplinary approach towards children in immigration. The medical and legal professions operate too frequently in their own planetary systems. In addressing issues concerning immigrant and refugee children, it is fitting that these planetary systems be brought into a single orbit. Professor Bhabha's and Dr. Piwowarczyk's examination of empirical data presents exciting opportunities for understanding the needs and imperatives of dealing with this child population, and offers new ways of thinking about and advocating for the children. Such cross-disciplinary efforts, expanded and highlighted by Mr. Nugent, Professor Lloyd and Professor Hernandez-Truyol's approaches, raise new arguments that may persuade the concerned public, policy-makers, and litigators to substitute a care and protection paradigm for the prevalent enforcement model in addressing undocumented children in the U.S. immigration system. Such a paradigm shift is urgently needed to turn the so-called border rats back into living, breathing, human children.

⁶⁵ 458 U.S. 1131 (1982).

⁶⁶ 59 F.3d 1002 (9th Cir. 1995).

⁶⁷ Hernández-Truyol et al., *supra* note 57, at 309-10.

⁶⁸ Development, Relief, and Education for Alien Minors Act of 2003, S. 1545, 108th Cong. § 5 (2003).

⁶⁹ Hernández-Truyol et al., *supra* note 57, at 311-12.

⁷⁰ *Id.* at 312.

⁷¹ *Id.* at 307.