

No. 00-11424-D

IN THE

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ELIAN GONZALEZ, a minor, by and through LAZARO GONZALEZ, as next friend, or
alternatively as temporary legal custodian,

Appellant/Plaintiff,

v.

JANET RENO, Attorney General of the United States; DORIS MEISSNER, Commissioner,
Immigration and Naturalization Service; ROBERT WALLIS, District Director, Immigration and
Naturalization Service; UNITED STATES IMMIGRATION AND NATURALIZATION
SERVICE; and UNITED STATES DEPARTMENT OF JUSTICE,

Appellees/Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA

**BRIEF OF THE LAWYERS COMMITTEE FOR HUMAN RIGHTS,
THE WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, AND
THE FLORIDA IMMIGRANT ADVOCACY CENTER
AS AMICI CURIAE, IN SUPPORT OF NEITHER PARTY**

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**CERTIFICATE OF INTERESTED PERSONS
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Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, the Lawyers Committee for Human Rights, the Women's Commission for Refugee Women and Children, and the Florida Immigrant Advocacy Center (collectively, the "amici") submit this Certificate of Interested Persons and Corporate Disclosure Statement, which lists the trial judge, all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns ten percent or more of the party's stock, and other identifiable legal entities related to a party.

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STATEMENT OF INTEREST OF THE AMICI CURIAE

Since 1978, the Lawyers Committee for Human Rights (the "Lawyers Committee") has worked to protect and promote fundamental human rights and to ensure protection of the rights of refugees, including the right to seek and enjoy asylum. The Lawyers Committee grounds its work on refugee protection in the international standards of the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and other international human rights instruments, and advocates adherence to these standards in U.S. law and policy.

The Lawyers Committee operates one of the largest and most successful pro bono asylum representation programs in the country. With the assistance of volunteer attorneys, the Lawyers Committee provides legal representation, without charge, to hundreds of indigent asylum applicants each year. The Lawyers Committee and its volunteer attorneys currently represent some 900 clients, including many children, from more than 60 countries. The Lawyers Committee is committed to ensuring that the remedy of asylum remains available to victims of persecution. The Lawyers Committee is particularly concerned that all eligible aliens, including children, have the opportunity to apply for asylum and to have their claims adjudicated through a fair and humane process.

The Women's Commission for Refugee Women and Children (the "Women's Commission") is one of the leading advocacy and expert resource organizations speaking on behalf of refugee and displaced women, children and adolescents throughout the world. Of the more than 34 million refugees and internally displaced people worldwide, approximately 80 percent are women and children. The Women's Commission has recently worked to draw attention to the fact that children are often denied meaningful access to the asylum system and that women and children seeking asylum are often subjected to poor treatment and harsh conditions. The Commission is a prime advocate for open, fair and humane procedures in U.S. immigration and asylum policy that are sensitive to, and protect the rights of, women and children.

The Florida Immigrant Advocacy Center ("FIAC"), is a non-profit organization dedicated to protecting and promoting the basic human rights of refugees and immigrants of all nationalities. A central feature of FIAC's work is advocating on behalf of asylum seekers, including children. FIAC works to protect the rights of asylum seekers by providing free legal representation to low income asylum applicants and by advocating for the application of international human rights principles within the United States. FIAC is committed to ensuring that the right of asylum is broadly available to all aliens seeking refuge from persecution.

The Lawyers Committee, the Women's Commission, and the FIAC (collectively, the "amici") are concerned about the potential impact of the district court's decision on children seeking asylum.

STATEMENT OF ISSUES ADDRESSED BY THE AMICI CURIAE

- I. International Law Recognizes the Right of Children to Apply for Asylum.
- II. U.S. Law Recognizes the Right of Children to Apply for Asylum.
- III. The Special Considerations in Children's Asylum Cases.

SUMMARY OF ARGUMENT

Since the refugee Pilgrims first landed almost 400 years ago, the United States has served as a refuge for those fleeing persecution and oppression. After World War II, when the United States and so many other nations failed to protect many refugees from Nazi persecution, the United States led the effort to establish a structure of universally recognized human rights norms, beginning with the Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810 (1948). The Declaration of Human Rights provides that "everyone has the right to seek and enjoy asylum in other countries from persecution." Id. at 71, art. 14. Building on the recognition of this right as universal, the United States then worked to establish international standards of protection for refugees. More than 30 years ago, the United States formally bound itself to these standards by acceding to the Protocol of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, T.I.A.S. No. 6577 [hereinafter the Refugee Convention]. The central obligation undertaken by the United States and other States Parties to the treaty was to refrain from returning any refugee to a place where his life or freedom would be threatened. This obligation was codified into U.S. law by the 1980 Refugee Act, which also set out a framework for the independent and individualized adjudication of claims for refugee status, free from political considerations. Refugee Act of 1980, Pub. L. No. 96-212, § 101, 94 Stat. 102 [hereinafter 1980 Refugee Act].

Although not everyone who seeks protection is entitled to asylum, international legal obligations require states at a minimum to provide

fair and effective procedures to determine who is a refugee. The United States has repeatedly reaffirmed its commitment to this principle, although recent changes to U.S. asylum law, such as expedited removal and the asylum filing deadline, place the United States out of step with its tradition of fairness and compassion toward refugees. Fair legal procedures and access to legal remedies serve as the foundation for many international legal instruments to which the United States is a party, such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, as well as our own domestic jurisprudence. Moreover, for these rights to be effective, adequate procedures must be available to permit their enjoyment. The Refugee Act of 1980 reflected Congress' concern for providing access to a fair procedure by explicitly providing that any alien physically present in the United States may apply for asylum. 1980 Refugee Act, supra. This right to seek asylum has subsequently been subject to very limited and statutorily defined exceptions, such as requiring that applications be filed within a certain timeframe. But Congress has never deprived children of the right to seek asylum.

In this brief, the amici seek to inform the Court's decision by providing an overview of international law and U.S. law regarding the right to seek asylum, and their insights into the special concerns at issue in children's asylum claims. Their brief is motivated by a concern that the district court did not adequately consider these factors in reaching its determination. The district court incorrectly viewed U.S. law as silent on the right of children to apply for

asylum. As a result, the district court set forth a standard that affords an unduly broad sweep of discretion to the Attorney General. In so doing, the court endorsed an approach that does not provide sufficient protection for children. The concern of the amici relates to the broader issue of the right of children to apply for asylum, and the impact that decisions in this highly-publicized case could have on the ability of many other children to apply for asylum.

The amici address only the narrow issue of the right of children to apply for asylum. They do not address the individual circumstances or the underlying merits of the asylum claim in this particular case. The amici also recognize the critical importance of the parent-child relationship, and the general presumption in favor of reuniting a parent and child. They do not, however, address the specific custody issues raised in this case.

ARGUMENT

I. INTERNATIONAL LAW RECOGNIZES THE RIGHT OF CHILDREN TO APPLY FOR ASYLUM.

Among the most firmly-established principles of international law is the right to seek asylum. In the aftermath of World War II, the international community, shocked by the brutality inflicted upon entire populations of innocent victims, firmly acknowledged the universal responsibility of nations to protect people from persecution.

Our nation's commitment to the establishment of international norms for refugee protection first found expression through our

support of the 1948 Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810 at 71, art. 14 (1948) [hereinafter the Declaration of Human Rights]. The Declaration of Human Rights manifests a global consensus that everyone has the right to seek and enjoy asylum. Id., art. 14. Because the Declaration represents an authoritative statement of customary international law, U.S. courts have turned to its provisions in determining our own international legal commitments. See, e.g., Siderman de Blake v. Argentina, 965 F.2d 699, 719 (9th Cir. 1992); Filartiga v. Pena-Irala, 630 F.2d 876, 882-84 (2d Cir. 1980); Restatement (Third) of Foreign Relations Law of the United States, § 701, reporters' notes 2, 6 (1987).

The Refugee Convention transformed the declaratory nature of article 14 of the Declaration of Human Rights and firmly established the mandatory obligation on all state parties to ensure the universal application of the right to seek and enjoy protection. Under Article 33 of the Refugee Convention, state parties are prohibited from expelling or returning any refugee to any country where his or her "life or freedom would be threatened on account of" his or her "race, religion, nationality, membership in a particular social group, or political opinion." Refugee Convention, supra, art. 33.1. In 1967, the United Nations ratified for signature the Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. No. 6577 (1967) [hereinafter the 1967 Protocol]. The 1967 Protocol expanded refugee protection, affirming the consensus of the international community that anyone, regardless of country of origin, may seek and enjoy refuge from persecution. 1967 Protocol, art 1.3. In 1968, the United

States acceded to the 1967 Protocol, reaffirming its historical commitment to serve as a refuge for the persecuted and oppressed.

Although the United States ratified the 1967 Protocol in 1968, it was not until 1980 that Congress passed the Refugee Act, thereby implementing our international legal obligations by incorporating the 1967 Protocol into U.S. law. Passage of the 1980 Refugee Act was a critical moment defining our nation's commitment to refugee protection, by expressing Congress' goal of conforming United States law to the 1967 Protocol. I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 436-37, 107 S.Ct. 1207, 1215-16 (1987).

The United States has recommitted itself to these international norms for protection on numerous occasions, most notably under the 1967 United Nations Declaration on Territorial Asylum, G.A. Res. 2312, U.N. GAOR, 22d Sess., Supp. No. 16, at 81, U.N. Doc. A/6716, (1967) and the United Nations Convention on the Elimination of Torture and Other Cruel Inhuman and Degrading Treatment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984). The United Nations built further on the asylum provisions of the Declaration of Human Rights in the 1967 Declaration on Territorial Asylum, G.A. Res. 2312 (XXII), U.N. GAOR, 22d Sess., Supp. No. 16, at 81, U.N. Doc A/6716 (1967), in which it stated that "[a]sylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights . . . shall be respected by all other States." In light of this substantial international legal authority, the United Nations High Commissioner for Refugees ("UNHCR") has stated that non-refoulement - a state's

obligation not to return an alien to the country of persecution - is now a "peremptory norm of international law." U.N. GAOR, U.N.H.C.R., 40th Sess., Supp. No. 12, at 6, U.N. Doc. A/40/12 (1985).

Beyond the substantive rights provided asylum seekers under international law, international law requires that procedural rights be in place to effectuate and make meaningful the well-established right to seek and enjoy asylum. Although neither the Refugee Convention nor the 1967 Protocol expressly requires procedures as a prerequisite for implementation, the object and purpose of refugee protection demand the application of an effective adjudicatory process. See Guy S. Goodwin-Gill, The Refugee in International Law 326 (2d ed. 1996). In 1977, the UNHCR's Executive Committee affirmed this approach and provided minimum standards to ensure procedural fairness. UNHCR, Executive Committee Conclusion No. 8 (1977).

Significantly, in none of the relevant international instruments is an alien's right to seek asylum qualified by age. The Declaration of Human Rights provides that "everyone" may seek asylum, and the definition of refugee in the Refugee Convention and the 1967 Protocol applies to "any person." Declaration of Human Rights, supra, art. 14; Refugee Convention, supra; art. 1(A), 1967 Protocol, supra, art. 1(2). Consistent with the dictates of these instruments, the United Nations High Commissioner for Refugees has expressly concluded that the right to apply for asylum is not dependent upon the age of the applicant. In the provisions regarding unaccompanied minors, the U.N. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951

Convention and the 1967 Protocol Relating to the Status of Refugees

(Geneva 1979) [hereinafter the U.N. Handbook], observes that:

There is no special provision in the 1951 Convention regarding the refugee status of persons under age. The same definition of a refugee applies to all individuals, regardless of their age.

U.N. Handbook, para. 213.

The Supreme Court has strongly endorsed the U.N. Handbook as an important guide in interpreting the Refugee Convention and 1967 Protocol. See INS v. Cardoza-Fonseca, 480 U.S. 421, 437-39 & n.22, 107 S. Ct. 1207, 1216-17 & n.22 (1987); INS v. Aguirre-Aguirre, 526 U.S. 415, 427, 119 S. Ct. 1439, 1446 (1999).

The rights of children to apply for asylum is further reinforced in the 1989 Convention on the Rights of the Child:

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

28 I.L.M. 1448 (1989), art. 22(1) [hereinafter the CRC]. Article 22 of the CRC does not create new rights for children, but instead merely recognizes and reaffirms their existing rights to apply for asylum.

The provision of the CRC emphasizing that children have rights to seek asylum "in accordance with applicable international . . . law" is a proposition that has been endorsed by the 191 nations that have ratified the convention and is itself therefore further support for

the concept that children are vested with this right. Although the United States is one of only two nations that have not yet ratified the treaty, as a signatory it is obligated to refrain from acts that would "defeat the object and purpose of the Convention," as the INS has acknowledged in its own written guidelines. U.S. Dep't of Justice, Immigration and Naturalization Service, Guidelines for Children's Asylum Claims, at 2, n. 2 (Dec 10, 1998) [hereinafter Children's Asylum Guidelines].

As progeny of the CRC, the 1997 UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum [hereinafter the 1997 Guidelines], provide an authoritative resource to ensure that asylum protection is afforded to refugee children. Regarding access to asylum procedures, the 1997 Guidelines provide that all children, regardless of age, may apply for asylum, and that children seeking asylum, particularly those who are unaccompanied, are entitled to special care and protection. Id., arts. 6, 7.1. The 1997 Guidelines thereby reaffirm the perspective of the global community that child refugees must be approached with heightened degree of sensitivity.

The district court's ruling endorsed an approach that failed adequately to consider international law and standards. It also set a standard that may provide insufficient protection for children in other cases. Again however, the amici emphasize that the propositions set forth here do not address the specific result in the case before this court.

II. U.S. LAW RECOGNIZES THE RIGHT OF CHILDREN TO APPLY FOR ASYLUM

In the United States, aliens have a protected statutory and regulatory right to petition for asylum. Jean v. Nelson, 727 F.2d 957, 983 (11th Cir. 1984)(en banc), aff'd, 472 U.S. 846, 105 S. Ct. 2992 (1985). The United States Congress codified the right of all aliens to seek asylum in 8 U.S.C. § 1158, and by so doing, intended to conform United States asylum law to this country's international obligations. I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 436-37, 107 S. Ct. 1207, 1215-16 (1987). Under 8 U.S.C. § 1158, Congress provided:

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. § 1158(a)(1).

The exceptions to the right of any alien to apply for asylum are specifically set out in the statute. In fact, these exceptions were added by Congress only recently, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. These exceptions relate to cases in which (i) a treaty provides for removal to a "safe third country," (ii) compliance with the one-year filing deadline cannot be demonstrated, or (iii) an applicant's previous asylum claim was denied. 8 U.S.C. § 1158(a)(2).

While the statute provides that "any alien" physically present in the U.S. may apply for asylum subject to limitation, 8 U.S.C. § 1158(a)(1), (b)(2), the discretion provided to the Attorney General is

limited solely to whether asylum may be granted. See 8 U.S.C. § 1252(b)(4)(D). The statute states that "[t]he Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee with the meaning of [8 U.S.C. § 1101 (a)(42)(A)]."

8 U.S.C. s 1158(b)(1). The statute also lists six exceptions to the granting of asylum, and allows the Attorney General "by regulation" to establish "additional limitations and conditions" with respect to the granting of asylum. 8 U.S.C. § 1158(b)(2).

The Immigration and Nationality Act also provides for a form of relief known as "withholding of removal" - which codifies the U.S. obligation of "nonrefoulement" under Article 33 of the 1951 Convention and 1967 Protocol. Cardozo-Fonseca, 480 U.S. 421 at 440, 107 S. Ct. at 1217-18. The statute provides that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). The Attorney General's obligation to grant withholding of removal, which corresponds to our international law duty, is mandatory rather than discretionary. The exceptions to withholding are explicitly set forth in the statute as well. See 8 U.S.C. § 1231(b)(3)(B).

The regulations regarding the filing of asylum applications enumerate limited and specific instances in which an asylum applications may be barred. 8 C.F.R. § 208.4(a). These provisions

correspond to the statutory prohibitions enacted in the 1996 law, specifically the one-year filing deadline and prior denial of an asylum claim. The regulations also specify the circumstances in which an asylum claim may be deemed "incomplete" and may therefore be returned to the applicant. 8 C.F.R. § 208.3(c)(3) ("An asylum application that does not include a response to each of the questions contained in the Form I-589, is unsigned, or is unaccompanied by the required materials specified . . . is incomplete."). The regulations expressly provide that "[t]he Service shall adjudicate the claim of each asylum applicant whose application is complete," 8 C.F.R. § 208.9(a).

The regulations provide that an application for asylum is also deemed to constitute an application for withholding of removal, and that where a determination is made that an applicant is ineligible to apply for asylum (under the statutory exceptions listed above), the asylum application shall be construed as an application for withholding of removal. 8 C.F.R. § 208.3(b).

The regulations relating to asylum at 8 C.F.R. § 208 do not contain any provisions requiring disparate treatment of children's asylum claim. Elsewhere the regulations provide that, where it appears that a "grant of [the relief sought by a child] may effectively terminate some interest inherent in the parent/child relationship and/or the juvenile's rights and interests are adverse with those of the parent," the parent, if residing in the United States, must "be given notice of the juvenile's application for relief . . . and an opportunity to present his or her views and assert his or

her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief." 8 C.F.R. § 236.3. However, rather than barring a claim for asylum, these regulations provide a mechanism which permit a hearing on the merits of a claim, while permitting the parent an opportunity to voice her own interest in the case.

Aside from the regulations, the Immigration and Naturalization Service's own internal guidelines on children's asylum claims also support the plain meaning of 8 U.S.C. § 1158(a)(1) regarding the right of a child to seek asylum. On December 10, 1998, the fiftieth anniversary of Universal Declaration of Human Rights, the INS issued its Guidelines For Children's Asylum Claims Children's Asylum Guidelines, supra. The Children's Asylum Guidelines were developed after the Women's Commission for Refugee Women and Children had called upon the INS to follow the steps taken by Canada and the UNHCR in issuing guidelines relating to children asylum seekers.

The Children's Asylum Guidelines, which were written to provide INS asylum officers with "background and guidance on adjudicating children's asylum claims," clearly confirm the INS's understanding that children have a right to apply for asylum. Id. at 1. The Guidelines state that they apply "primarily to children under the age of 18 who apply for asylum independently rather than as a derivative applicant" of a parent. Id. The Guidelines explain that "[b]ecause of the unique vulnerability and circumstances of children, the [INS] considers it appropriate to issue guidance relating to our youngest asylum seekers." Id. at 2. While the Children's Guidelines provide

detailed legal analysis of " the particular legal issues an Asylum Officer may encounter when adjudicating the claim of a child who has filed a separate asylum application," id. at 16, they nowhere raise any limitations on the ability of children to apply for asylum.

The Guidelines do provide that "[i]f the child does not appear at the interview with a parent or guardian, the Asylum Officer should routinely inquire into the location of the child's parents, whether the parents are aware of the child's whereabouts, and that the child has applied for asylum." Id. at 5. The Guidelines then provide:

Because the circumstances under which an unaccompanied minor may reach the United States can vary greatly, it is necessary to determine, if possible, the location of the child's parents. Children may have been separated from parents during their flight to the United States. Both children and parents may wish to know the location of relatives and whether they are safe. It may be in the child's best interests for the Asylum Officer to notify parents that their child has applied for asylum, provided that the child requests such parental notification in writing. 8 C.F.R. § 208.6(a).

Id. at 5 n.11. The regulation referenced, 8 CFR § 208.6(a), is the regulation that requires the Attorney General to maintain, in general, the confidentiality of asylum applications.¹

Thus U.S. law, regulations and guidelines clearly recognize that children may apply for asylum independently of their parents. So too, as discussed above, do international law and guidelines. Without taking a position on the instant matter, the amici are concerned that the district court's decision fails adequately to consider how best to

¹ "Information contained in or pertaining to any asylum application shall not be disclosed without written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General." 8 C.F.R. § 208.6(a).

preserve a child's right to apply for asylum in cases where a child may have an independent claim for protection, despite objections from a parent. The district court incorrectly viewed the statute as silent on the right of children to apply for asylum. The decision erroneously relied on 8 U.S.C. § 1252(b)(4)(D) - which applies only to the Attorney General's discretion to grant asylum - to conclude that Congress gave the Attorney General broad discretionary judgment in the acceptance of applications for asylum under section 1158(a). As a result, the district court afforded unjustified deference to the Attorney General to cut off the right of refugees to apply for asylum. See Haitian Refugee Ctr. v. Smith, 676 F.2d 1023, 1038-39 (5th Cir. Unit B 1982) (holding that "Congress intended to grant aliens the right to submit and substantiate a claim for asylum, even if the ultimate decision on whether to grant asylum is discretionary").

III. SPECIAL CONSIDERATIONS IN CHILDREN'S ASYLUM CASES

Like their adult counterparts, child asylum seekers flee their homelands to escape war, persecution and political instability. UNHCR estimates that children make up more than half the world's refugee and internally displaced population, accounting for a population of 20 million children. The situation is acute. Out of this population, an estimated 250,000 of these refugee children are separated from their parents. Although only a small fraction of this group seek refuge in

the United States,² the need to ensure adequate protection in our laws for this vulnerable group is paramount.

Unfortunately, the factors that turn children into refugees are more prevalent and diverse now than at any time since World War II, and refugee children are especially vulnerable to the harmful physical and psychological effects of persecution. Where child refugees were once bystanders in adult conflicts, this is increasingly not the case. As witnessed in China, Kosovo and Sierra Leone, and so many other countries around the world, children are the deliberate targets of human rights abuses, including infanticide, conscription as child soldiers, ritual genital mutilation, bonded labor, and sexual servitude. As so eloquently described in the excellent articles by Jacqueline Bhabha and Wendy Young, Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines, 11 Int'l J. Refugee L. 84 (1999) and Through A Child's Eyes: Protecting the Most Vulnerable Asylum Seekers, 75 Interpreter Releases 757 (June 1, 1998), unaccompanied children who must make their way to safety without the assistance of their parents are most at risk. We urge the Court to consider these authorities.

Separated and orphaned children are in particular need of attention. UNHCR has focused considerable attention on the plight of child refugees. UNHCR's Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997 cover a wide

² The INS recently reported that 5,600 unaccompanied children were in INS custody in 1998. See Tom Brune, INS Housing Children In Jails/Few Places Left to Unaccompanied Kids, Newsday, February 4, 2000, at A5.

range of concerns, including education, health and nutrition, psychosocial well-being, protection and long-term, or durable, solutions.

Particularly problematic are cases where parents are incapable of protecting their children from persecution, or worse, where parents are complicit in that persecution. For instance, female genital mutilation ("FGM") is generally conducted at the behest of a young girl's parents. The implications would be quite serious if, for example, the parents of a Togolese girl were to demand that the Attorney General dismiss their daughter's asylum claim and insist that she be returned to Togo where she would be forced to undergo FGM. See In re Fauziya Kasinga, No. A73 476695-Elizabeth, 1996 WL 379826 (BIA June 13, 1996) (19-year old woman who faced FGM as a seventeen year-old granted asylum).

Similar concerns exist for young girls in some traditional societies, who are targeted as the victims of honor killings merely for resisting their subjugation to demeaning social roles. To illustrate, one client of the Lawyers Committee, who was recently granted asylum, was held captive in her father's home and regularly beaten merely for resisting his authority to marry her off against her will.

In recognition of the special vulnerability faced by child refugees, the international community has on numerous instances expressed a global consensus that children deserve special consideration. Along with the 1959 UN Declaration on the Rights of the Child, the UN Convention on the Rights of the Child calls on all

nations to ensure that refugee children are guaranteed protection and affirmative humanitarian assistance under the Refugee Convention. Although the United States has not yet ratified this Convention, it certainly has endorsed the Convention's approach to refugee children through its accession to the Declaration on the Rights of the Child. In any event, given the near universal acceptance by States of the Convention, these norms arguably have achieved the status of customary international law.

Child asylum seekers who have parents, relatives or friends in the United States able to guide them through our complicated asylum system are surely the fortunate ones. However, many are not so lucky, and in the case of unaccompanied child asylum seekers, their protection from persecution demands a vigilant and proactive approach.

CONCLUSION

Without regard to the particular result in the instant case, the amici believe that the district court expressed undue deference to the Attorney General in her exercise of discretion. The amici urge that the appropriate United States and international authorities discussed above be considered.

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CERTIFICATE OF COMPLIANCE

I, Jeffrey A. Tochner, pro bono counsel of record for the Lawyers Committee for Human Rights, the Women's Commission For Refugee Women and Children, and the Florida Immigrant Advocacy Center as amici curiae, do hereby certify that the foregoing brief complies with the type-volume limitation as set forth in FRAP 32(a)(7). The total number of words in the portions of the foregoing brief that count toward type-volume limitations under 11th Cir. R. 32-4 is 4963.

Jeffrey A. Tochner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 15, 2000, I caused a true and correct copy of the foregoing BRIEF OF THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, THE WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, AND THE FLORIDA IMMIGRANT ADVOCACY CENTER AS AMICI CURIAE, IN SUPPORT OF NEITHER PARTY, to be served upon the counsel of record on the attached Service List in the manner indicated:

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