

# AN AMERICAN TUNE: REFUGEE CHILDREN IN U.S. PUBLIC SCHOOLS

*By Daniel B. Weddle\**

*Oh, we come on a ship they call the Mayflower  
We come on a ship that sailed the moon  
We come in the age's most uncertain hour  
And sing an American tune<sup>1</sup>*

## I. INTRODUCTION

We are a nation of refugees. From the Pilgrims fleeing religious persecution to the Irish fleeing famine to the Syrians fleeing Assad, the history of America has been filled with waves of immigrants seeking sanctuary on our shores from persecution, famine, and sword. Generation after generation of Americans have absorbed refugees from all over the world into our national identity.

The Pilgrims helped sow the seeds of the Great Migration of the 1630's in which thousands of Puritans and Separatists fled persecution inspired by King James I.<sup>2</sup> Large migrations in the nineteenth century were often spawned by famine, most famously the Irish Potato Famine of the mid-nineteenth century,<sup>3</sup> but also crop failures in Germany and other parts of the world.<sup>4</sup>

The end of the Nineteenth Century and the first half of the Twentieth saw numerous refugee migrations. Between 1880 and 1924, nearly three million Jews arrived in the United States, fleeing European persecution.<sup>5</sup> Sadly,

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1. PAUL SIMON, *An American Tune, on THERE GOES RHYMIN' SIMON* (Columbia Records 1973).

2. See FRANCIS J. BREMER, *THE PURITAN EXPERIMENT : NEW ENGLAND SOCIETY FROM BRADFORD TO EDWARDS* 60 (2013).

3. See generally MARY C. KELLY, *IRELAND'S GREAT FAMINE IN IRISH-AMERICAN HISTORY : ENSHRINING A FATEFUL MEMORY* (2013)

4. ARISTIDE R. ZOLDBERG, *A NATION BY DESIGN : IMMIGRATION POLICY IN THE FASHIONING OF AMERICA* 129 (2009).

5. HASIA R. DINER, *A NEW PROMISED LAND: A HISTORY OF JEWS IN AMERICA* 44 (2000) ("About a third of all eastern European Jews emigrated to the United States between 1880 and

“although the U.S. admitted about 250,000 refugees during the period of the Holocaust, it admitted proportionately fewer refugees than other countries, such as Britain, the Netherlands, France, and other western European nations, given the size of its population, its capacity for refugee absorption, and the desperate need.”<sup>6</sup> In the early Twentieth Century, tens of thousands of Mexicans crossed our southern border to escape war and political oppression during and after the Mexican Revolution.<sup>7</sup> World War II and the post-war years brought hundreds of thousands of European refugees.<sup>8</sup>

The second half of the Twentieth Century brought millions of refugees from additional parts of the world to the U.S. In the 1960’s, hundreds of thousands of Cubans escaped the rise of Castro including thousands of unaccompanied children.<sup>9</sup> Southeast Asian refugees flooded into the U.S. during the 1970’s and 80’s to find sanctuary from war and genocidal regimes.<sup>10</sup> Indeed,

[H]umanitarian admissions have been the major source of entry for Vietnamese, Cambodian, Laotian, and other refugees affected by the Vietnam War and the governments of Southeast Asia. The fall of Saigon in April 1975 led to a first wave of over 130,000 Southeast Asian refugees during eight months in 1975. Another wave of 380,000 Southeast Asian refugees arrived in the United States between 1979 and 1981. Additional Southeast Asian immigration has come through special legislation such as the 1987 Indochinese Refugee Resettlement and Protection Act, which allowed the entry of “Amerasian” children whose natural fathers were American servicemen during the Vietnam War.<sup>11</sup>

From the 1980’s through today, Central and South American refugees have fled political persecution, war, and brutal drug cartels.<sup>12</sup> Today the U.S. is home to hundreds of thousands of people from Africa and the Middle East who escaped savage civil wars; religious and political persecution; and murderous

1924. Jewish immigration averaged 20,000 a year from 1881 to 1892 and 37,000 a year from 1892 to 1903. Between 1903 and the start of World War I in 1914, when immigration ground to a halt, 76,000 eastern European Jews came to the United States.”).

6. Naomi S. Stern, *Evian's Legacy: The Holocaust, the United Nations Refugee Convention, and Post-War Refugee Legislation in the United States*, 19 GEO. IMMIGR. L.J. 313, 313 (2005)

7. Jorge A. Vargas, *U.S. Border Patrol Abuses, Undocumented Mexican Workers, and International Human Rights*, 2 SAN DIEGO INT’L L.J. 1, 11–12 (2001) (explaining that “Mexico’s revolution . . . may be characterized as that country’s most profound social, economic, and political event . . . [T]his truly social eruption, which lasted for over a decade, uprooted tens of thousands of Mexicans from their rural shelters and forced them to seek refuge and work in the U.S.”).

8. JACQUES VERNANT, *THE REFUGEE IN THE POST-WAR WORLD* 475 (1953).

9. PETE SPRANGER, *CUBAN IMMIGRANTS* 51–56 (2016).

10. ANGELO N. ANCHETA, *RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE SINCE THE MID-1970s* 36 (2006)

11. *Id.*

12. See Kenneth Rapoza, *Immigrants Fleeing Increasingly Violent Latin America, Study Suggests*, FORBES (Jan 28, 2016, 10:49 AM), <https://www.forbes.com/sites/kenrapoza/2016/01/28/immigrants-fleeing-increasingly-violent-latin-america-study-suggests/#342b709a2972> [https://perma.cc/9WS3-QG3K].

regimes, terror organizations, and revolutionary armies.<sup>13</sup> In fact,

[o]ne factor behind this recent wave can be traced to the Refugee Act of 1980, which made it easier for those fleeing conflict-ridden areas, like Somalia and Ethiopia, to resettle in the U.S. Back then, less than 1% of all refugee arrivals were from Africa, compared with 37% in fiscal 2016, according to figures from the U.S. State Department's Refugee Processing Center. Statistics from the *Yearbook of Immigration Statistics* confirm this point. Among the top 10 countries by refugee arrival in 2015, four were in Africa: Somalia, the Democratic Republic of Congo, Sudan and Eritrea.<sup>14</sup>

The Migration Policy Institute estimated in 2015 that approximately "1.02 million refugees from the Middle East are currently residing in the United States, representing 25% of the nation's refugee population."<sup>15</sup> These are but a representative sample of major refugee migrations into the United States since its inception and its colonial days and do not account for forced immigration of indentured servants, convicts, and African-born slaves. American history is replete with such permanent migrations of the persecuted, the unwanted, and the brutalized since the Pilgrims first set foot on Plymouth Rock.

Therefore, in this present climate of anti-immigrant and anti-refugee sentiment—in our electorate and our political leadership—we would do well to remember how many among us are refugees or the descendants of refugees. We would also do well to remember how much of our nation was built by these very people and how much of what is best about who we are as a nation has been formed by their presence. If we are proudly a "nation of immigrants," we are also, perhaps just as profoundly, a nation of refugees. So also, as generations before us, however reluctantly, wove our refugee forbears into the fabric of our national identity, this generation must find a way to do the same and, we must hope, to do so with empathy and a gracious hand.

Nowhere is that need for compassion and grace more critical than in our embrace of refugee children, especially in the nation's schools. It is in our schools that refugee children must spend large portions of their days; and it is there they will learn what it is to live as Americans; and there they will gain the necessary skills, values, and knowledge to navigate this society and ultimately support themselves and contribute to the health and vitality of the nation.

The scope of the demands placed on public schools by immigrants is, of course, significant and growing. Immigrant children, including refugee children, "are the fastest growing segment of the child population in the United States."<sup>16</sup>

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13. Monica Anderson, *African Immigrant Population in U.S. Steadily Climbs*, PEW RES. CTR. (Feb. 14, 2017), <http://www.pewresearch.org/fact-tank/2017/02/14/african-immigrant-population-in-u-s-steadily-climbs> [https://perma.cc/2DC7-LPEP].

14. *Id.*

15. Jennifer Semaan, *Counseling Refugees of Middle Eastern Descent in the United States* 3 (May 2016) (unpublished thesis, James Madison University), <http://commons.lib.jmu.edu/cgi/viewcontent.cgi?article=1025&context=edspec201019> [https://perma.cc/HWP5-3VE5].

16. Leah D. Adams & Krista M. Shambleau, *Teachers', Children's, and Parents'*

Twenty percent of U.S. children live with at least one immigrant parent,<sup>17</sup> and a large portion of immigrant children arrive in the U.S. as refugees unaccompanied by adults.<sup>18</sup>

This current phenomenon of unaccompanied refugee children, however, is certainly nothing new. Unaccompanied children have been immigrating to the U.S. from the first day Ellis Island opened in 1892.<sup>19</sup> In the 1960's, Operation Pedro Pan brought thousands of Cuban children to the U.S.; Operation Baby Lift in 1975 brought three thousand unaccompanied Vietnamese children to the U.S.; and tens of thousands in the past four decades since those operations have arrived through organized efforts to rescue children from violent countries.<sup>20</sup> By September 2015, four years into the Syrian civil war, four million Syrians had become refugees,<sup>21</sup> including millions of children<sup>22</sup>; and many have found asylum in the U.S. War, drug cartels, and political oppression are forcing hundreds of thousands to flee countries in Asia, Africa, the Middle East, and Central and South America; and large numbers of refugee children from those countries are arriving both legally and illegally in the United States and subsequently into our public schools.

The challenge for U.S. schools is, therefore, unquestionably substantial, and not just in terms of numbers. Refugee children often bring with them severe personal traumas, debilitating educational gaps, and few or no English language skills. Unfortunately, educators are generally ill trained to confront such profound obstacles to learning and social adjustment. Nevertheless, schools must wholeheartedly embrace those challenges and those children; and the federal government, states, and local communities must step forward to make those efforts not only possible, but also effective. To do otherwise is to condemn refugee children, who are here through no fault of their own, to further abuse, deprivation, and hopelessness.

## II. THE MEANING OF *REFUGEE*

Perhaps a word about definitions is in order. Federal law contains a specific definition of *refugee* that is narrower than some of the ways the word is used in

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*Perspectives on Newly Arrived Children's Adjustment to Elementary School*, in GLOBAL MIGRATION AND EDUCATION: SCHOOLS, CHILDREN AND FAMILIES 87 (Leah D. Adams & Anna Kirova eds., 2006).

17. *Id.*

18. See *infra* notes 20–23 and accompanying text.

19. Elżbieta M. Goździak, *What Kind of Welcome? Addressing the Integration Needs of Central American Children and Adolescents in US Local Communities*, in CHILDREN AND FORCED MIGRATION: DURABLE SOLUTIONS DURING TRANSIENT YEARS 53 (Marisa O. Ensor & Elżbieta M. Goździak eds., 2016).

20. *Id.* at 53–54.

21. SHELLY CULBERTSON & LOUAY CONSTANT, *THE EDUCATION OF SYRIAN REFUGEE CHILDREN: MANAGING THE CRISES IN TURKEY, LEBANON, AND JORDAN* 1 (2015).

22. Fifty-two percent of Syrian refugees are children under the age of eighteen. Joseph O'Rourke, Note, *Education for Syrian Refugees: The Failure of Second-Generation Human Rights During Extraordinary Crises*, 78 ALB. L. REV. 711, 712 (2015).

this Article. The federal definition focuses on persecution, while the more common definition includes other “push factors” driving those who emigrate under pressure from their homelands.

For purposes of asylum, federal law defines a refugee as:

[A]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . . .<sup>23</sup>

*The Oxford English Dictionary*, however, offers a broader definition: “A person who has been forced to leave their country in order to escape war, persecution, or natural disaster.”<sup>24</sup> *The Cambridge Dictionary* definition is broader still: “a person who has escaped from their own country for political, religious, or economic reasons or because of a war.”<sup>25</sup>

This Article uses these definitions somewhat interchangeably. Refugee children, who are the focus of this Article, include children who meet the strict federal definition and have been granted asylum under U.S. law, but also those children who have fled famine or economic deprivation and have arrived either legally or illegally in the United States and found themselves in U.S. public schools. While the latter group does not enjoy some of the federal protections that cover the former,<sup>26</sup> this Article suggests that children under either definition face similar educational obstacles<sup>27</sup> that justify federal and state protections in

23. 8 U.S.C. § 1101(a)(42) (2012).

24. *Refugee*, CAMBRIDGE DICTIONARY, <https://en.oxforddictionaries.com/definition/refugee> [<https://perma.cc/CEK9-4E4W>].

25. *Id.*

26. Unfortunately, U.S. law and practice regarding unaccompanied minors entering the U.S. does not sufficiently guarantee that those children will receive needed educational benefits. As one commentator has noted:

The Convention on the Rights of the Child (“CRC”) . . . outlines the rights inherent to the humanity of children, including the right to a family, a name, a nationality, and an education, as well as protection from abuse, abandonment, or neglect. Article 3 of the CRC specifies, “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Despite the language included in the TVPRA [William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232 (c)(2)(A) (2008)] and the U.S.’ signing of the CRC, the U.S. is the only member of the United Nations that has not yet ratified the CRC.

Jeanette M. Acosta, *The Right to Education for Unaccompanied Minors*, 43 HASTINGS CONST. L.Q. 649, 664 (2016). The TVPRA requires that an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child. 8 U.S.C. § 1232(c)(2)(A) (2012).

27. See, e.g., Michele R. Pistone & John J. Hoeflner, *Unsettling Developments: Terrorism and the New Case for Enhancing Protection and Humanitarian Assistance for Refugees and Internally Displaced Persons, Including Victims of Natural Disasters*, 42 COLUM. HUM. RTS. L.

public schooling if the nation is to fulfill its historic commitment to the education of children. As the Supreme Court famously declared in *Brown v. Board of Education*,

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>28</sup>

In fact, even in the case of undocumented immigrant children, the Court has recognized the critical role of public education and has determined that it be cannot be denied those children under the Equal Protection Clause:

By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation . . . . It is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation.<sup>29</sup>

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REV. 613, 628 (2011) (“Displaced victims of natural disasters also exhibit relatively high stress levels and “related psychosocial problems,” with economically-poor persons particularly vulnerable to depression. In one study of displaced survivors of an earthquake in Turkey, for example, “PTSD and depression [rates] were 40.1 per cent and 27.3 per cent, respectively.”).

28. *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

29. *Plyler v. Doe*, 457 U.S. 202, 223–30 (1982). International agreements also recognize the importance and the right of refugees to education in their asylum countries:

“The right to education is expressly referred to in several international treaties, beginning with the Universal Declaration of Human Rights (UDHR). The right to education can also be found in enforceable international agreements, the earliest example being the Convention Related to the Status of Refugees (the Refugee Convention). While the Refugee Convention guarantees a refugee equal access to education as compared with signatory nations’ native children, more recent binding international agreements express a right to education that goes further than mere equal access. Specifically, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) each recognize an enforceable right to education for all children. The first articulation of this right comes from article 13 of ICESCR, which states: The States Parties to the present Covenant recognize the right of *everyone* to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or

These concerns form the foundation of this Article's premise: the nation cannot afford—and should not tolerate—a failure to educate children who have already spent large portions of their lives in enduring horrors, mortal dangers, brutality, and deprivations that would strain the imagination and shock the conscience of any reasonable person. The question is not whether these children meet the federal definition of *refugee*, but whether they are refugees in the larger sense of the word, with all of the attendant emotional, psychological, and educational damage and disadvantage associated with their plight.

### III. TRAUMA AS AN OBSTACLE TO LEARNING

Because so many refugee children have fled war-ravaged homelands, it should be no surprise that they bring with them into their new school settings a host of needs springing from personal traumas.<sup>30</sup> Not only do they face the stress of acculturation into what for them is a completely unfamiliar culture with a completely unfamiliar language,<sup>31</sup> with all of the economic difficulties and cultural challenges facing them and their families; children fleeing war and persecution must manage the common challenges facing immigrants while suffering from severe long-term effects of horrors experienced in their homelands,<sup>32</sup> during their flight to safety,<sup>33</sup> and months and often years in refugee camps. Schools receiving refugee children must understand the complex trauma-based challenges facing these children and be prepared to do what is within the educators' power to ameliorate those challenges.

Culture shock and depression are common among refugee children,<sup>34</sup> as well as social isolation and loneliness; but those who have experienced war and violence must contend “with PTSD [post-traumatic stress disorder], including

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religious groups, and further the activities of the United Nations for the maintenance of peace. O'Rourke, *supra* note 22, at 726–27.

30. Adams & Shambleau, *supra* note 17, at 88; see also Lindsay M. Harris, *From Surviving to Thriving? An Investigation of Asylee Integration in the United States*, 40 N.Y.U. REV. L. & SOC. CHANGE 29, 73–74 (2016) (“Mental health services for asylees are critical - many asylees have fled torture or other trauma and some experience symptoms of Post-traumatic Stress Disorder, Major Depressive Disorder, or other psychological challenges. The Office for Refugee Resettlement, through its Services for Survivors of Torture Program under the Torture Victims Relief Act, funds some organizations providing mental health services to torture survivors. This is, however, limited and does not currently cover all of the survivors of torture, including some asylees, living in the U.S.”).

31. Heidi H. Boas, Note, *The New Face of America's Refugees: African Refugee Resettlement to the United States*, 21 GEO. IMMIGR. L.J. 431, 458 (2007) (“In order to be resettled, a refugee has to be uprooted yet again and moved from the country of first asylum to the resettling third country, which often has a very different language, culture, and way of life than the refugee is accustomed to. This second uprooting and readjustment can have emotional, mental, and physical costs for the refugee.”).

32. Kristy Drake, *Competing Purposes of Education: The Case of Underschooled Immigrant Students*, 18 J. EDUC. CHANGE 337, 338 (2017).

33. *Id.* at 338–39.

34. Bobana Ugarokovic, Note, *A Comparative Study of Social and Economic Rights of Asylum Seekers and Refugees in the United States and the United Kingdom*, 32 GA. J. INT'L & COMP. L. 539, 540 (2004).

such effects as ‘flashbacks, sleep disorder . . . and emotional numbing.’<sup>35</sup> We are all now quite familiar with the effects of wartime experiences upon adult soldiers and the long-lasting emotional and psychological damage that afflicts adult victims of violent crime, rape, sexual abuse, and even workplace bullying. These children, however, have endured these experiences at tender ages and often for years.<sup>36</sup> In fact, “sexual violence is rampant” in refugee camps around the world, and children are especially vulnerable to that violence.<sup>37</sup> Because they are still developing physically and emotionally, they are less able than adults to manage severe emotional trauma of these sorts.<sup>38</sup> Compounding the damage, they often encounter domestic abuse and gang violence once they arrive in their new homes in the U.S.<sup>39</sup>

Their experiences often make them hypersensitive to the normal rough and tumble of childhood, as well as to even normal interactions with teachers and administrators. Run-of-the-mill schoolyard horseplay can trigger intense memories for refugee children,<sup>40</sup> for whom extreme violence and bloodshed were facts of their everyday existence. Some who have suffered at the hands of the military before or during their flights can have difficulty trusting authority and may have abnormal reactions to authority in general and authoritarian tones of voice in particular.<sup>41</sup>

More troubling still, many child refugees fled lives as conscripted child soldiers.<sup>42</sup> Child soldiers arrive in the U.S. only to face opposition to their asylum requests because of their histories.<sup>43</sup> Once granted asylum—an extremely difficult task for child-soldiers<sup>44</sup>—they contend not only with the psychological

35. TEACHING IMMIGRANT AND SECOND-LANGUAGE STUDENTS: STRATEGIES FOR SUCCESS 70 (Michael Sadowski ed., 2004).

36. Isok Kim, *Beyond Trauma: Post-resettlement Factors and Mental Health Outcomes Among Latino and Asian Refugees in the United States*, 18 J. IMMIGRANT & MINORITY HEALTH 740, 740–48 (2016) (finding that even among adults “[s]ystematic reviews suggest that refugees who have resettled in Western countries (such as the USA or Canada) are as much as ten times more likely to have developed post-traumatic stress disorders (PTSD) compared with the general population, and in relation to comparable immigrant/migrant groups.”).

37. T. Alexander Aleinikoff, *Rethinking the International Refugee Regime*, 41 YALE J. INTL. L. ONLINE 1, 5 (2016).

38. Jennifer C. Everett, *The Battle Continues: Fighting for a More Child Sensitive Approach to Asylum for Child Soldiers*, 21 FLA. J. INT’L L. 285, 302 (2009).

39. See Goździak, *supra* note 19, at 72 (explaining the importance of protecting already traumatized children from further trauma).

40. *Id.*

41. *Id.* at 73.

42. Mary-Hunter Morris, Note, *Babies and Bathwater: Seeking an Appropriate Standard of Review for the Asylum Applications of Former Child Soldiers*, 21 HARV. HUM. RTS. J. 281, 283 (2008) (explaining that “[c]hildren who are used as soldiers are robbed of their childhood and are often subjected to extreme brutality. Stories abound of children who are drugged before being sent out to fight and forced to commit atrocities against their own families as a way to destroy family and communal ties. Girls are frequently used for sexual purposes, commonly assigned to a commander and at times gang-raped”).

43. Everett, *supra* note 38, at 287.

44. See Morris, *supra* note 42, at 284 (“Unfortunately, since the United States recently renovated its immigration standards in response to national security concerns, even those children



damage arising from exposure to extreme violence but also with the lingering effects of having been forced to inflict that violence on others and enduring abuse from their military units.

Consider the implications for the mental health of children who fit the definition of child soldiers:

Any child, boy or girl, less than 18 years of age, who is recruited compulsorily, by force or otherwise, with the intention of using him or her for combat by armed forces, paramilitary forces, civil defense units or other armed groups. Child soldiers are used as combatants, forced spouses, messengers, porters or cooks, sexual services.<sup>45</sup>

Many of these child soldiers have participated, by compulsion, in genocidal warfare against their own people, including other children, but have also seen their own families murdered or threatened with murder prior to their conscription.<sup>46</sup> Others may have been prostituted for the pleasure of other soldiers or forced to marry strangers, all while they were children. Unsurprisingly, child soldiers bring with them into the school environment a host of emotional problems:

1. PTSD
2. Aggression
3. Hyperactivity
4. Depression
5. Preoccupation with guilt
6. "Emotional flatness"
7. Intrusive flashbacks and sleep disorders.<sup>47</sup>

Their experiences are not transitory, however well they may ultimately recover. Their experiences and trauma fundamentally affect them in long-lasting ways that will follow them into adulthood.<sup>48</sup> Fortunately, schooling can "play a vital role" in helping child soldiers (and other refugee children from war

who miraculously manage to make their way off the battlegrounds and into our courtrooms will likely be met only by more obstacles").

45. Everett, *supra* note 38, at 291.

46. Charlotte Simon, Comment, *Change Is Coming: Rethinking the Material Support Bar Following the Supreme Court's Holding in Negusie v. Holder*, 47 HOUS. L. REV. 707, 722 (2010) (observing that "[a]sylum seekers are increasingly fleeing countries where combatants force innocent victims to take part in their persecutory acts. Because increasing instances of violent civil strife around the world more frequently involve coerced participation in armed conflict, the two terrorism bars--by excluding the victims of armed conflict--come dangerously close to upsetting the very purpose and foundation of asylum law").

47. Everett, *supra* note 38, at 294.

48. Brief of American Professional Society on the Abuse of Children as Amicus Curiae in Support of Respondents at \*4, *Trump v. International Refugee Assistance Project* (Nos. 16-1436, 16-1540), 2017 WL 4163971 (U.S. Sept. 18, 2017) ("As the American Academy of Pediatrics noted, in response to the Executive Order, 'fear and stress, particularly prolonged exposure to serious stress - known as toxic stress - can harm the developing brain and negatively impact short- and long-term health.'").

zones) recover from the traumas they suffered.<sup>49</sup> Researchers have found that “the most positive results come from those who have integrated back into school.”<sup>50</sup>

That integration, however, is hardly guaranteed. At all levels, teachers are unskilled in recognizing the effects of trauma in children who may have faced “torture, physical abuse, and rape.”<sup>51</sup> As a result, even the best teachers may employ the most effective pedagogies for the under-schooled and still be stymied by hidden trauma that makes serious learning extraordinarily difficult. It is tough enough to teach the average student; it is another matter altogether to teach a student suffering undiagnosed PTSD, sleep disorders, and depression, as well as the host of other difficulties faced by children forced from the homelands and required to acclimate to a culture foreign in language, mores, religion, and community dynamics—all in the context of a wholly unfamiliar form of schooling.

Unless schools receiving refugee children are competent in dealing with the extraordinary trauma-induced effects these children suffer, their emotional and psychological damage is unlikely to be mitigated. After all, unfamiliarity with the dominant and also varied cultures in any particular school can retard social and educational development for all immigrant children.<sup>52</sup> What refugee children have often suffered exacerbates those problems in profound ways. Schools that are unaware of, unprepared for, or insensitive to the exceptionally painful challenges afflicting these children will be of little help to them and may add to the pain and damage already dogging them. Teaching “past” such problems is, therefore, no solution; teachers, administrators, and even parents and classmates must be given the tools, understanding, and empathy to help refugee children manage the transition from what, for most of us, are unimaginable horrors. It does not happen by accident.

#### IV. EDUCATIONAL DEPRIVATION

Another considerable obstacle for refugee children is lack of education,<sup>53</sup> or substantial gaps in their schooling.<sup>54</sup> Of course, during the often long and treacherous journeys from their homeland to refugee camps, no schooling whatsoever has taken place. In the camps themselves, educational opportunities

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49. Everett, *supra* note 38, at 295.

50. *Id.*

51. TEACHING IMMIGRANT AND SECOND-LANGUAGE STUDENTS *supra* note 35, at 72-73.

52. Adams & Shambleau, *supra* note 17, at 88.

53. Ugarokovic, *supra* note 34.

54. Pistone & Hoeffner, *supra* note 11, at 630 (“For example, regarding children who were internally displaced within Iraq, 220,000 had their primary school education interrupted in 2007, adding to the 760,000 children displaced within Iraq who were already out of school in 2006. Among Iraqi child refugees, school attendance during the same time period ranged from eleven percent in Syria to 28 percent in Jordan. One can hardly overestimate the consequences of such severely diminished educational opportunities—they are unremittingly negative and reach far into the future.”).

are scarce or nonexistent,<sup>55</sup> and the children may remain in those camps for years. Compounding the problem, the conditions at home have often severely disrupted schooling of any sort.

For example, Syrian children have lost years of schooling, given the war's disruption of Syrian educational systems before the children's flight and the inability to attend school since.<sup>56</sup> The war has produced more than two million refugee children; and in 2015, UNHCR estimated that "fewer than half of Syrian refugee children [were] enrolled in formal education."<sup>57</sup>

As a result, refugee children often lack skills even in rote learning, much less skills in the higher cognitive strategies required in formal schooling in the U.S.<sup>58</sup> The lack of educational skills and English language skills complicates attempts to place children in age-appropriate classrooms,<sup>59</sup> because their peers are so far ahead of them and the curricula so advanced compared to their own preparation that learning in such environments is nearly impossible. Many refugee children, especially those who fled their homelands at very young ages and are now old enough for placement in upper-level elementary classrooms, have little or no classroom experience at all; so their acclimation to formal schooling is even more challenging.<sup>60</sup>

Differences in educational culture present further problems as even those children who have experienced formal education at home may find U.S. classrooms perplexing. For example, their cultural and educational backgrounds may have trained them to look down as a sign of respect when answering questions from adults,<sup>61</sup> but American teachers may interpret that posture as unhealthy shyness or fear and insist the children "sit up straight and answer." That simple and understandable lack of cultural awareness on the part of teachers can place a refugee child in a very confusing bind as she wonders why she is being rebuked for answering respectfully. In her mind, she is damned if she does and damned if she doesn't, and neither she nor her teacher understands the root of the conflict.

Unfamiliarity with the dominant and often varied cultures in a particular school can also retard social and educational development for any immigrant child.<sup>62</sup> Teachers and administrators, however, are often ill-prepared to address such challenges. For example, few high school teachers have the training or experience to teach basic skills to under-schooled teenage refugees, and many of the programs that target under-schooled immigrants tend to create isolation, both culturally and linguistically, compounding the students' integration into the larger student population.<sup>63</sup> High school schedules, in particular, are not

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55. Aleinikoff, *supra* note 37.

56. CULBERTSON & CONSTANT, *supra* note 21.

57. *Id.*

58. Adams & Shambleau, *supra* note 17, at 88.

59. *Id.*

60. *Id.*

61. TEACHING IMMIGRANT AND SECOND-LANGUAGE STUDENTS *supra* note 35, at 74.

62. Adams & Shambleau, *supra* note 17, at 88.

63. Drake, *supra* note 32.

designed to allow innovative approaches to helping under-schooled teenage immigrants gain knowledge and skills at the rate that looming graduation requires.<sup>64</sup>

Further disrupting their focus on education is the burden that refugee children, like other immigrant children, face in becoming mediators of the new culture for their families.<sup>65</sup> Particularly the older children may find themselves having to become “paraphrasers” for their families, speaking for their families and others to navigate daily interactions and fulfill family needs.<sup>66</sup> While the need to mediate for their families to address financial, medical, and cultural needs may increase the children’s desire to engage in education as quickly and effectively as possible,<sup>67</sup> it may also force older refugee children to move immediately into the low-wage workforce rather than complete schooling.<sup>68</sup> Because they are busy supporting their families—and in some cases, themselves—they may never acquire upper-level formal education even at the high school level,<sup>69</sup> and land in the very “sub-class of illiterates” the Supreme Court warned us about.<sup>70</sup>

Thus, this wide variation of educational skill and preparation among immigrant children generally, and refugee children in particular presents, weighty educational challenges for teachers and administrators.<sup>71</sup> Educators must be competent in the skills and knowledge to help these children adjust culturally, socially, and educationally.<sup>72</sup>

## V. LANGUAGE CHALLENGES

The most obvious obstacle to learning faced by refugee children is, of course, language.<sup>73</sup> Teachers and parents both identify language barriers as the chief obstacle to integration of the child into the curriculum and into their peer groups.<sup>74</sup> In fact, many refugee children arrive in the U.S. with limited literacy in their native tongues, much less English, given interruptions in schooling or inadequate schooling in their home countries or both.<sup>75</sup> These under-schooled children face not only the normal difficulties of schooling, particularly in the teenage years, but also the difficulties of understanding and adapting to a complex foreign culture and its language.<sup>76</sup>

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64. *Id.* at 339.

65. *Id.*

66. *Id.*

67. *Id.*

68. See Goździak, *supra* note 19, at 72

69. *Id.* at 66–68.

70. Plyler v. Doe, 457 U.S. 202, 230 (1982).

71. Adams & Shambleau, *supra* note 17, at 88.

72. *Id.*

73. Ugarkovic, *supra* note 34, at 540.

74. Adams & Shambleau, *supra* note 17, at 97.

75. Drake, *supra* note 32, at 338.

76. See *id.* at 339 (explaining how refugee students experience a wide range of issues, both academically and culturally).

In this area of immigration law, the federal government has placed some commonsense requirements on schools, although too many schools lack either the resources or the motivation to fulfill those requirements.<sup>77</sup> The Equal Educational Opportunity Act provides that

[n]o State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.<sup>78</sup>

Under the Act, enacted pursuant to Congress' power under the Fourteenth Amendment, schools must take "appropriate action" to ensure that immigrant children with limited or no English proficiency gain sufficient language skills as rapidly as possible in order to participate meaningfully in the educational process.<sup>79</sup> In effect, the essential holding of *Lau v. Nichols*, which forbade forcing Chinese students to accept all instruction in English, despite their inability to understand the language, has been codified in section 1703.<sup>80</sup>

Section 1703's requirement makes obvious educational sense: "[T]hose who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful."<sup>81</sup> As the *Lau* Court observed: "There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."<sup>82</sup> Failing to address English language deficiencies "make[s] a mockery of public education . . . [b]asic English skills are at the very core of what . . . public schools teach."<sup>83</sup>

That public schools are required to take "appropriate action" to overcome language barriers does not, however, require any particular approach to doing so. Congress intended to leave the specific pedagogical choices to the expertise

77. Acosta, *supra* note 26, at 650 ("While the pressing need to secure and ensure representation for unaccompanied minors remains, little to no attention has been paid to the educational services provided to unaccompanied minors in detention centers, shelters, and public schools."); Matthew P. O'Sullivan, Note, *Laboratories for Inequality: State Experimentation and Educational Access for English-Language Learners*, 64 Duke L.J. 671, 672–73 (2015) ("[I]nterpretations of the EEOA and the No Child Left Behind Act (NCLBA) have allowed the promise of adequate access to education to go unsupervised, permitting the states to adopt sweeping reforms as part of their control over education.").

78. 20 U.S.C. § 1703 (2012).

79. *Id.*

80. See *Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981) ("Thus, although serious doubts exist about the continuing vitality of *Lau v. Nichols* as a judicial interpretation of the requirements of Title VI or the fourteenth amendment, the essential holding of *Lau*, i.e., that schools are not free to ignore the need of limited English speaking children for language assistance to enable them to participate in the instructional program of the district, has now been legislated by Congress, acting pursuant to its power to enforce the fourteenth amendment, in § 1703(f).").

81. *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 133 (3d Cir. 2017).

82. *Id.*

83. *Id.*

of state and local educational officials,<sup>84</sup> so long as those choices are pedagogically sound and ultimately effective. Schools, therefore, are not required to use a bilingual educational approach.<sup>85</sup> A “substantial amount of latitude in choosing the programs and techniques”<sup>86</sup> remains for schools in their decisions concerning how to remedy language barriers under the EEOA.<sup>87</sup> Schools are not required even to equalize language skills among students:

In any event, the EEOA requires “appropriate action” to remove language barriers, § 1703(f), not the equalization of results between native and nonnative speakers on tests administered in English—a worthy goal, to be sure, but one that may be exceedingly difficult to achieve, especially for older ELL students.<sup>88</sup>

Schools need only identify an effective approach to providing sufficient English language skills to make English-based instruction truly accessible and effective. In the pursuit of “appropriate action,” of course, schools must also consider and remedy “the academic deficits that limited English speaking students may incur during a period of intensive language training.”<sup>89</sup> Otherwise, “the language barrier, although itself remedied, might, nevertheless, pose a lingering and indirect impediment to these students’ equal participation in the regular instructional program.”<sup>90</sup>

Importantly, then, schools may employ a segregative approach to language and other instruction for a reasonable period to allow non-English speaking children to acquire proficiency in English. While section 1703 generally forbids “the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools,”<sup>91</sup> “[l]anguage grouping is . . . an unobjectionable practice, even in a district with a past history of discrimination,”<sup>92</sup> so long as the grouping is truly based upon language ability.<sup>93</sup> In other words, national origin and ethnicity cannot be used as proxies for language ability; the school must address actual language deficiencies, not assumed deficiencies, to comply with the EEOA.

To determine whether a school or district has taken “appropriate action” as described above, courts have adopted an approach developed by the Fifth Circuit<sup>94</sup>:

In a case such as this one in which the appropriateness of a particular

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84. *Horne v. Flores*, 557 U.S. 433, 440–41 (2009).

85. *Castaneda*, 648 F.2d at 1011–12.

86. *Horne*, 557 U.S. at 440.

87. *Id.* at 440–41.

88. *Id.* at 467.

89. *Castaneda*, 648 F.2d at 1011.

90. *Id.*

91. 20 U.S.C. § 1703(a) (2012).

92. *Castaneda*, 648 F.2d at 998.

93. *Id.* (“However, a practice which actually groups children on the basis of their language ability and then identifies these groups not by a description of their language ability but with a general ability label is, we think, highly suspect.”).

94. *See Castaneda*, 648 F.2d at 1009; *see also Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 133–35 (3d Cir. 2017).

school system's language remediation program is challenged under s 1703(f), we believe that the responsibility of the federal court is threefold.<sup>95</sup>

First, the court must examine carefully the evidence the record contains concerning the soundness of the educational theory or principles upon which the challenged program is based . . . . The court's responsibility, insofar as educational theory is concerned, is only to ascertain that a school system is pursuing a program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy.<sup>96</sup>

The court's second inquiry would be whether the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school. We do not believe that it may fairly be said that a school system is taking appropriate action to remedy language barriers if, despite the adoption of a promising theory, the system fails to follow through with practices, resources and personnel necessary to transform the theory into reality.<sup>97</sup>

If a school's program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that point, no longer constitute appropriate action as far as that school is concerned.<sup>98</sup>

So long as a school or district has effectively implemented a sound pedagogical approach informed by recognized and accepted educational theory and that approach is actually working, the courts will deem the effort compliant with the EEOA under section 1703. What a school may not do is simply mingle non-English speaking children with English speaking children and hope in vain that the immigrant children will somehow learn what they need to learn by osmosis. Refugee children may well have a strong motivation to learn the language of their new peers, if only to fit into their new world; but obstacles abound to blunt that motivation and remind them that they may never truly belong.

## VI. ANTI-REFUGEE AND ANTI-IMMIGRANT ATTITUDES

Refugee children are not deaf. They undoubtedly hear and understand the many messages that refugees and immigrants are unwelcome in the United States. After all, our President has warned that "[w]hen Mexico sends its people, they're not sending their best . . . . They're sending people that have lots of problems, and they're bringing those problems [here]. They're bringing

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95. *Castaneda*, 648 F.2d at 1009.

96. *Id.*

97. *Id.* at 1010.

98. *Id.*

drugs. They're bringing crime. They're rapists."<sup>99</sup> President Trump wonders aloud why we need more people from "shithole countries" like Haiti and the African nations.<sup>100</sup> Campaign promises and post-inauguration efforts to stop Muslim immigration with travel bans<sup>101</sup> tell refugee parents and their children that leadership at the top levels of government consider Muslims and Latinos, as well as other foreigners, a threat to the safety of the United States.

The vociferous debate over undocumented aliens crossing the southern border also communicates the existence of a widespread resentment among Americans for the intrusion of refugees and others in our society. According to a majority of people in the U.S., Central American children should be welcomed initially but should not be allowed to remain long-term lest their acceptance exacerbate illegal immigration.<sup>102</sup> As children fled violence in Honduras, Guatemala, El Salvador, and Mexico in 2014, "the message [from 'small-town U.S.A.'] was clear: immigrant children fleeing Central America are unwelcome."<sup>103</sup> When Haitian refugees arrive in the U.S., "they join a racially stratified society, and they are assigned a place at the bottom."<sup>104</sup> As one researcher observed,

[B]lack immigrant[s] . . . are shocked by the level of racism they encounter. Though they arrive expecting structural obstacles . . . what they find most distressing is the level of both overt and covert prejudice and discrimination . . . [Overt forms include] blatant acts of prejudice and discrimination . . . [such as] physical attacks, verbal insults, as well as intimidation by police . . . [Covert discrimination includes] the more subtle forms of daily hassles, indignities and "bad vibes" that black people experience constantly in interactions with

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99. *Donald Trump Announces a Presidential Bid*, WASH. POST (June 16, 2015), [https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm\\_term=.af17810d0a7c](https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.af17810d0a7c) [http://perma.cc/2WC6-4EVR].

100. Josh Dawsey, *Trump Derides Protections for Immigrants from 'Shithole' Countries*, WASH. POST (Jan. 12, 2018), [https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94\\_story.html?utm\\_term=.8bd914d165fe](https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.8bd914d165fe) [http://perma.cc/YH3X-YLMQ].

101. After announcing during his campaign that he planned to suspend Muslim immigration into the United States, President Trump enacted three consecutive travel bans aimed primarily at Muslim majority nations. *Int'l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539, 547 (D. Md. 2017), *aff'd in part, vacated in part*, 857 F.3d 554 (4th Cir. 2017), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017), and *vacated and remanded sub nom*, *Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017) ("[T]hen-presidential candidate Donald Trump posted a 'Statement on Preventing Muslim Immigration' on his campaign website in which he 'call[ed] for a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on.'"); Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017); and Proclamation No. 9645, 82 Fed. Reg. 45161 (Sept. 24, 2017). After several court challenges to the bans, the Supreme Court agreed in January 2018 to consider the legality of the President's Proclamation No. 9625. *Trump v. Hawaii*, 138 S. Ct. 923 (2018).

102. Goździak, *supra* note 19, at 55.

103. *Id.* at 52.

104. CAROLA SUÁREZ-OROZCO & MARCELO SUÁREZ-OROZCO, *CHILDREN OF IMMIGRATION* 121 (Harv. Univ. Press 2001).



whites . . . . The suspicion that any individual white might treat one badly because of skin color be-gins to shape every encounter between black and white.<sup>105</sup>

Communities across the country have erected barriers to enrolling immigrant children in schools, especially when they are part of a large wave of children suddenly arriving in the community.<sup>106</sup> Consequently, "[t]here is a sad irony in that the segregation of the foreign-born into failing schools and neighborhoods results in further distancing from the experiences of white, middle-class residents; that distance, in turn, is used as a justification for further prejudice."<sup>107</sup>

In fact, even immigrant communities are not always welcoming toward new immigrants who are themselves minorities in their home countries. Mayan children, for example, may be targeted in school by other Latinos.<sup>108</sup> Thus, schools must confront the animosities that may exist even within what may be perceived as homogeneous immigrant communities.<sup>109</sup>

Refugee children subjected to such sentiments both at school and in the larger society cannot help but be negatively affected and their learning disrupted or hindered. The barrage of messages that they are unwanted necessarily inhibits integration with peers and engagement with teachers and the curriculum. One can easily imagine how it must feel to these children to have been driven from their homelands only to find themselves in a society that resents their presence. Many have certainly developed a high level of resilience in the face of hatred, but its continuation in a new land and in unfamiliar learning environments poses yet another barrier to learning that educators must recognize and address if refugee children are to flourish as members of American society.

## VII. EDUCATIONAL SOLUTIONS

Fortunately, despite the daunting challenges facing refugee children in U.S. public schools, research and experience suggest that carefully planned approaches to integrating them into the American educational experience can mitigate the power of the obstacles they must overcome. Warmth and acceptance, respect sound pedagogical approaches, and sensitivity to their needs, are key to the children's success in navigating the transition from traumatic flight to regained psychological and emotional health and acclimation in their new land.

While prevailing sentiment may discourage that assimilation, in reality most of the historic migrations of children, though controversial at the time, have ultimately been regarded as positive events by the general public in the years

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105. *Id.* at 120 (internal citations omitted).

106. Goździak, *supra* note 19, at 59.

107. Katherine Fennelly & Myron Orfield, *Impediments to the Integration of Immigrants: A Case Study in the Twin Cities*, in TWENTY-FIRST CENTURY GATEWAYS: IMMIGRANT INCORPORATION IN SUBURBAN AMERICA 219 (Audrey Singer et al. eds., 2008).

108. Goździak, *supra* note 19, at 56.

109. *Id.*

following their arrival.<sup>110</sup> Even today, despite anti-immigrant sentiments across the country, many larger cities have explicitly welcomed refugee children and have experienced significant volunteer efforts to help the children succeed.<sup>111</sup> Additionally, under-schooled teenage immigrants show a strong desire to complete their educations because they equate education with future success and well-being,<sup>112</sup> particularly in contrast to their experiences in refugee camps. A reinforced sense of hope can go a long way toward keeping refugee children in school and engaged their own academic success. For example, studies have demonstrated that children who can achieve legal status for residence in the U.S., such as through DACA<sup>113</sup> and the DREAM Act<sup>114</sup>, are more likely to attend school and finish K-12 educations.<sup>115</sup>

Culturally relevant pedagogical approaches tend to encourage under-schooled children to engage the educational process more effectively.<sup>116</sup> Critical to that success is respect for their cultures by teachers and administrators. Importantly, to thrive in their new cultural surroundings, children must maintain respect for the parents' cultures if they are to receive help and support from their families.<sup>117</sup> Therefore, parents must be involved in the development of appropriate strategies for inclusion, integration, and learning if the school is to be successful in building bridges from the children's home cultures to the new cultures encountered at school.<sup>118</sup> Further, "building on the strengths and experiences that [immigrant] children bring to the classroom" is not only beneficial to their American peers; it is essential to forming developmentally appropriate strategies for newly arrived immigrant children.<sup>119</sup>

Also crucial to refugee children's flourishing is reinforcing for their teachers that the children "will succeed in class" if the teachers are patient and confident in the children's eventual achievement.<sup>120</sup> Warmth from the teachers (smiling and hugging [if appropriate to the child's age and culture] and

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110. *Id.* at 54; see also Heidi H. Boas, Note, *The New Face of America's Refugees: African Refugee Resettlement to the United States*, 21 GEO. IMMIGR. L.J. 431, 458 (2007) ("[D]espite the initial costs, refugees 'tend to lift regional economies over time by starting their own businesses, purchasing homes, and becoming consumers.'" (internal citations omitted)).

111. Goździak, *supra* note 19, at 55.

112. See, e.g., Boas, *supra* note 94, at 457 ("The Sudanese Lost Boys resettled to the United States were particularly enthusiastic about the opportunity to receive an education they would likely have been unable to access in Sudan. Some of those who have received college degrees in the United States have used their education to start non-profit organizations to aid Sudan.").

113. See generally Memorandum from Janet Napolitano, Sec'y, U.S. Dep't of Homeland Sec., for David Aguilar, Acting Comm'r, U.S. Customs & Border Prot., et al., Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> [<http://perma.cc/8XYF-27RX>].

114. See generally Dream Act of 2017, H.R. 3440, 115th Cong. (2017).

115. Goździak, *supra* note 19, at 68.

116. See Drake, *supra* note 32, at 340.

117. Adams & Shambleau, *supra* note 17, at 99.

118. See *id.*

119. *Id.*

120. *Id.* at 96.

preparing their classmates to welcome and include the new immigrant children are effective, simple techniques for integrating the child more quickly.<sup>121</sup>

It is also critical for school officials to understand that under-schooled refugee children “need not be fully literate to access critical thinking skills” necessary to deep learning.<sup>122</sup> Teachers can help students develop their critical thinking skills through activities that do not necessarily depend upon facility with English or even the written word. Effective teachers offer “nonlanguage activities” such as “sports, games, and art activities to boost their confidence and further peer interactions.”<sup>123</sup> In addition, “Audio recordings of English books and computerized lessons” are effective tools for teaching English to non-English speaking children in the absence of sufficient bilingual assistance.<sup>124</sup>

Because violence in the children’s home countries is the reason a large portion of immigrant children were forced into flight, attending to the traumas those children have endured must be an principal piece of support for them.<sup>125</sup> Early intervention for refugee children is “critical to later well-being.”<sup>126</sup> Those children may require group therapy sessions and other activities that decrease social isolation,<sup>127</sup> as well as more intensive therapies to address PTSD and related effects. Happily, extreme cases in which refugee children turn to violence or severe drug abuse are still rare, even among former child soldiers<sup>128</sup>; but underestimating the damage they have suffered and the potential long-term effects on them is, frankly, reckless.

School officials need not, and likely cannot, address the serious psychological damage that often attends refugee flight; therefore, states, local communities, and the federal government will have to step up to provide financial and other resources to relieve some of the burden on schools.<sup>129</sup> Private sector sponsoring of refugee children, as is done in Canada, could dramatically increase capacity for accepting them as students and meeting their needs effectively.<sup>130</sup> Unfortunately, U.S. refugee law largely treats child refugees as adults, particularly when they arrive unaccompanied by parents, and so fails to address adequately the special needs of those children for protection and assistance.<sup>131</sup>

Nevertheless, the school may be the most powerful agency for marshalling

121. *See id.* at 92–93.

122. Drake, *supra* note 32, at 340.

123. Adams & Shambleau, *supra* note 17, at 96.

124. *Id.* at 97.

125. Goździak, *supra* note 19, at 69.

126. Adams & Shambleau, *supra* note 17, at 88.

127. Goździak, *supra* note 19, at 69.

128. *Id.* at 75.

129. *See* Zachary Steel et al., *The Politics of Asylum and Immigration Detention: Advocacy, Ethics, and the Professional Role of the Therapist*, in *BROKEN SPIRITS: THE TREATMENT OF TRAUMATIZED ASYLUM SEEKERS, REFUGEES AND WAR AND TORTURE VICTIMS* 670 (John P. Wilson & Boris Drozden eds., 2004) (discussing the burden on the community, including schools and parents, when assisting traumatized children).

130. *See* Aleinikoff, *supra* note 37, at 12.

131. *See* Everett, *supra* note 38, at 303.

expertise, diagnosis, and treatment options for their refugee students. Schools' educational expertise and their experience in screening for educational impediments may well be the best and most logical starting point for providing refugee children the assistance they need. Careful and proactive coordination among schools, community services, volunteer organizations, and state and local government could become powerful and practical partnerships to rescue children from the aftermath of the horrors they have endured.

Further, effective bullying prevention programs are also critical to protecting refugee children from further trauma. Decades of research have identified the long-lasting damage sustained bullying can inflict upon its targets, including isolation, clinical depression, cognitive damage, suicidal ideations and suicide attempts, and retaliation against the bullies.<sup>132</sup> Already vulnerable refugee children cannot afford to be subjected to targeted abuse from peers at school. Perhaps it is tempting to conclude that children who have survived high levels of brutality would be immune to the torment of school bullies, but the opposite is true. Even students with robust confidence and popularity can be sent into a spiral of ruinous effects when they become the targets of bullies<sup>133</sup>; child refugees, whose self-defense mechanisms have been savaged, would likely succumb more quickly and dramatically to ongoing attacks by peer bullies.

Bullying research has also identified the critical attributes of effective prevention programs,<sup>134</sup> so no excuse exists for schools to allow a bullying culture to exist. Schools that hide their heads in the sand and believe they do not have a bullying problem are the very places bullying flourishes unabated.<sup>135</sup> In any given school—rural, urban, suburban—on average fifteen percent of the student body is being subjected to sustained, targeted bullying by their peers.<sup>136</sup> Recent studies suggest the number is much higher.<sup>137</sup> School officials who refuse to recognize those realities and address them with proven prevention programs risk damning refugee students to crushing dynamics they were supposed to have escaped when they arrived in the relative safety of a U.S. school.

A critical key to bullying prevention is the involvement of the whole school community in developing and implementing a manageable bullying policy. Students, parents, maintenance staff, bus drivers, cafeteria workers, teachers, and administrators must all be involved in creating a school culture where

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132. See Daniel B. Weddle, *You're on Your Own, Kid . . . but You Shouldn't Be*, 44 VAL. U. L. REV. 1083, 1085–86 (2010).

133. See *id.* at 1085.

134. See, e.g., MARY A. LENTZ, LENTZ SCHOOL SECURITY § 4:9, Westlaw (database updated Dec. 2017) (describing the components of effective bullying prevention strategies).

135. Daniel B. Weddle, *Bullying in Schools: The Disconnect Between Empirical Research and Constitutional, Statutory, and Tort Duties to Supervise*, 77 TEMP. L. REV. 641, 653–54 (2004) [hereinafter *Bullying in Schools*].

136. *Id.* at 650.

137. LENTZ, *supra* note 118, at § 4.9 (noting that “[s]urveys demonstrate that one in four children in the United States indicate they have been victims of bullying in the school environment”).

bullying is unacceptable to everyone and everyone is committed to intervening to protect a target from abuse and, when necessary, step forward to alert teachers and administrators and serve as witnesses. Multi-dimensional involvement of the school community is essential to successful reduction and prevention of bullying.<sup>138</sup> Failing in that effort places refugee children at special risk.

In the same way, integrating and caring for refugee students requires multi-dimensional involvement from the school community. The classroom teacher cannot bear the full burden of integrating the child into the classroom; other school personnel must also work to help the student successfully transition into her new school culture.<sup>139</sup> Providing training for teachers is critical because most educators are not trained to deal with the difficulties refugee children face in U.S. schools.<sup>140</sup> Therefore, in-service training near the time of the refugee student's arrival is especially effective because the immediate need for expertise and effective strategies heightens the urgency and openness of teachers to adjusting their pedagogical approaches.<sup>141</sup> Experienced mentors for teachers with immigrant students is also a powerful form of support and training.<sup>142</sup>

Other students can likewise be an important component in efforts to integrate refugee students. Therefore, others students' understanding of the refugee child's culture should be a high priority for her teachers.<sup>143</sup> Bringing in the refugee child's family to talk about her home culture is an excellent way to bridge the gap with other students and, in the process, involve the family more directly in their child's schooling.<sup>144</sup> Activities such as having the child's family prepare a traditional meal for classmate can be a "turning point the new child in terms of feeling more confident and secure in school,"<sup>145</sup> and can send the message to the child's parents that the school respects and even welcomes their cultural traditions and values.

Older siblings may also be effective tutors for their younger brothers and sisters, helping them adapt more smoothly and rapidly,<sup>146</sup> and offering an informed perspective based on their own experiences in the new school system. Similarly, using older peers who speak the child's language can be a powerful

138. *Bullying in Schools*, *supra* note 119, at 654–57.

139. GLOBAL MIGRATION AND EDUCATION: SCHOOLS, *supra* note 2, at 101.

140. Local educational agencies need not bear all of the costs of such training, at least in the case of unaccompanied child refugees. The Trafficking Victims Protection Reauthorization Act (TVPRA) requires that "[t]he Secretary of State, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Attorney General shall provide specialized training to all Federal personnel, and upon request, [state] and local personnel, who have substantive contact with unaccompanied alien children." 8 U.S.C. § 1232(e) (2012).

141. See GLOBAL MIGRATION AND EDUCATION: SCHOOLS, *supra* note 2, at 96.

142. See *id.* at 101 (identifying mentoring as one method to increase the likelihood that teachers will effectively assist newly arrived children).

143. See *id.* at 93.

144. See *id.*

145. *Id.*

146. See *id.* (explaining that language and cultural barriers may be addressed by "locating . . . a sibling in the school . . . [to] communicate with the newcomer and explain the classroom routines and procedures").

tool for helping the child adapt, understand classroom rules and procedures, etc.<sup>147</sup>

Because refugee children are not passive objects to be molded and directed by others' superior insights, they should be intimately involved in the efforts to integrate them into the educational setting in which they find themselves. Refugee children, including former child soldiers, who "have been able to take an active role in planning and implementing their own rehabilitative and reintegration processes have been able to neutralize feeling of distrust and estrangement."<sup>148</sup> For all of the vulnerabilities they may have, they have also shown themselves to be resilient and have likely gained important insights and both good and bad survival skills during their flights. Involving them in the design of their own integration will bring those experiences and insights to the table and help school officials avoid a "one-size-fits-all" approach to the very personal and individual histories of refugee children.

### VIII. CONCLUSION

The key to addressing the needs of child refugees, then, is a robust national, state, and local commitment to becoming a true sanctuary of safety, healing, and preparation for life in a free society. The nation must be willing to enact appropriate legislation, provide financial support, marshal volunteer efforts, and develop sound pedagogies to help refugee children overcome the debilitating challenges they face in their new homes.

Schools may not be able to resolve all of those difficulties, but they can play a central role in ensuring their refugee students and their families find critically needed assistance. They must recognize that child refugees are children first and immigrants second, whose needs as children and whose best interests must guide their treatment in their new asylum country.<sup>149</sup> Schools and the governments and communities that support them must respond effectively to the educational and social needs and rights of refugee children.<sup>150</sup>

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147. *Id.*

148. Everett, *supra* note 38, at 295.

149. *Id.* at 304–05 (explaining that UNCHR has suggested factors that states should take into consideration when assessing the asylum claim of an unaccompanied minor. These factors include the age of the child, the child's own desires about his or her own future, and whether extended family or other caretakers reside in the country of refuge, among other considerations. Ultimately, the goal of the best interest of the child principle is to allow the child to grow up "in a family environment, in an atmosphere of happiness, love and understanding . . . . The CRC's recognition that children are the holders of rights and that their best interests should at least be given primary consideration reminds states to recognize that child asylum seekers are children first and asylum seekers second.").

150. *See id.* at 303 (explaining that the CRC takes a unique multi-disciplinary approach to protecting the rights of children as individuals. Among other things, the CRC recognizes children as "the direct holders of rights" with a distinct legal personality from that of adults. By incorporating a vast range of human rights - economic, political, educational, and social - the CRC casts children as individual rights holders, even in instances where "the child may lack the capacity to exercise rights autonomously.").

Our own histories and our nation's deepest and most enduring values demand that we embrace refugee children with compassion, grace, and hope for their futures. Nothing less will do if we are to be the nation we claim to be, the nation we strive to be. Refugee children in our public schools provide the perfect test for the reality of our national convictions. Here's hoping we pass the test, for our own sakes and the sakes of the children.