

European Court of Human Rights

Application no. 6033/13

A.H. and Others v. Russia & Other 22 Applications

Submission by Intervener Third Party

April 14, 2014

The Harvard Law School's Child Advocacy Program, having received leave of the Court to intervene in the case of *A.H. and Others v. Russia & 22 other applications*, pursuant to Article 36, § 2 of the European Convention on Human Rights and to Rule 44, § 3(a) of the Rules of the European Court of Human Rights, respectfully submits the following amicus curiae comments *from the perspective of the human rights of the child*.

I. Expertise of the Intervener

The Harvard Law School's Child Advocacy Program (CAP) is a premier academic program focused on children's rights. CAP is committed to the highest ethical, professional and scholarly standards in the advancement of children's rights through facilitating productive interaction between academia and the world of policy and practice, through training students to contribute in their future careers to a better understanding of the rights of children, and to law and policy reform promoting children's rights in the United States and around the world. CAP works both in and outside of the courtroom, as well as across disciplinary boundaries. As an example of the reach and impact of its policy work, in 2009 the Program issued its International Adoption Policy Statement and Supporting Report, endorsed by many child and human rights experts and by many organizations with child welfare and adoption expertise including the Center for Adoption Policy, the National Council for Adoption, the University of San Diego Children's Advocacy Institute, the University of San Francisco School of Law's Child Advocacy Clinic, and the American Bar Association's Center for Children and the Law. http://www.law.harvard.edu/faculty/bartholet/IA_Stmnt_Rep2008.pdf; <http://www.law.harvard.edu/programs/about/cap/ia/ia---campaign-for-child-rights---endorsements.html>.

CAP's Director, Professor Elizabeth Bartholet, is the Harvard Law School's Morris Wasserstein Public Interest Professor of Law and a leading national and international authority for three decades in family law, child welfare, adoption and children's rights. Prof. Bartholet has spearheaded major legislative reforms in the United States, where she is highly respected for her policy expertise in children's matters. She has authored, among many books and articles, *International Adoption: The Human Rights Position*, 1 Global Policy (2010), *International Adoption: Thoughts on the Human Rights Issues*, 13 Buffalo Human Rights Law Review 151 (2007), and *NOBODY'S CHILDREN: Abuse and Neglect, Foster Drift, and the Adoption Alternative* (Beacon Press 1999).

In the preparation of this submission, Prof. Bartholet was joined by Professor Paulo Barrozo and Professor Vlad Perju of Boston College Law School. Prof. Barrozo is an expert in the human rights foundations of the institution of adoption and author, among other works, of *Finding Home in the World: A Deontological Theory of the Right to be Adopted*, 55 New York Law School Law Review (2010–11), and *A Ideia de Igualdade e as Ações Afirmativas*, 63 Lua Nova 103 (2004). Prof. Perju is the Director of the Clough Center for the Study of Constitutional Democracy at Boston College and an expert in European Union law and in European human rights law, having received the 2009 Ius Commune Prize for his article *Reason and Authority in the European Court of Justice*, 49 Virginia Journal of

International Law 307. He is also the author of, among other works, *Impairment, Discrimination, and the Legal Construction of Disability in the European Union and the United States*, Cornell International Law Journal 44.2 (2011): 279-348.

II. Significance of the Legal Issues Arising in *A.H. and Others v. Russia & 22 Other Applications*

A. Unparented children constitute the most insulated and voiceless minority around the world. Their predicament is insufficiently understood, often resulting in their being considered solely as objects of protection rather than as subjects of human rights. With their numbers estimated at hundreds of millions around the world, the current predicament of the unparented is the largest unrecognized humanitarian and human rights crisis of our time.

The cases here before the Court reflect the predicament of unparented children throughout the world, and raise central questions about their human rights under the European Convention on Human Rights (hereafter the Convention). Given this Court's prestige and influence around the world, its disposition of the cases in question is destined to have an impact on the law of many jurisdictions and on the lives of millions of unparented children.

B. This Court's Statement of Facts indicates that Applicants argue that the Russian Federation Federal Law 272-FZ and related official policies and measures violate Articles 3, 8 and 14 of the Convention.

With a view to providing the Court with reliable information about the social science evidence and the legal principles relevant to the issues presented by this case, the Intervener focuses on the following matters.

Section III *infra*: The rights of the child under the Convention to early nurturing parenting and adoption, including but not limited to Articles 3, 8 and 14. We focus special attention on what we call the *multiple negative impacts doctrine* necessitated by the unique character of children's rights.

Sections IV-IX *infra*: The social science evidence regarding: (1) the immediate and the long-term impact of denying children early nurturing parenting, including by disrupting developing adoptive relationships, and by relegating children to foster and institutional care; and (2) the effectiveness of international adoption including to the United States in addressing the needs of unparented children generally, and children with significant disabilities in particular.

III. The Rights of the Child under the European Convention on Human Rights

A. Summary of Arguments

We argue that children have the fundamental human right under the Convention to live and grow up in a nurturing permanent family, from as early in life as possible, so they can fulfill their human potential, and access and enjoy the whole ambit of the Convention's rights and freedoms.

We argue that unparented children have a related right (corresponding to an Art. 1 positive obligation on the part of state-parties) to be liberated from the conditions characterizing orphanages and most foster care.

We argue that unparented children have a related right (corresponding to an Art. 1 positive obligation on the part of state-parties) to be united through adoption free of undue disruptions, with the first available permanent nurturing families. This includes the right to be united with families through international adoption if that is where nurturing families are immediately available.

There are two principal reasons for the centrality for children of nurturing permanent family life. First is the immediate harm suffered by the child when denied parenting and subjected to the conditions characteristic of state care in fostering and institutional conditions. Second is the long-term harm suffered by those denied the early parenting essential to developing the capacity to access and enjoy all the human rights adults are entitled to under the Convention.

The Council of Europe's *Building a Europe For and With Children* program clarifies, expands, and deepens the state-parties legal, moral, and political obligations toward children in their respective jurisdictions. This Court has recognized in landmark decisions the rights of children including, where appropriate, the best interest of the child, as the governing heuristic.¹ The instant cases invite the Court to advance its current jurisprudence on children's rights to its logical and principled next step, consistent with a worldwide movement in the direction of increasing recognition of children's rights.²

¹ In addition to other cases cited in this submission, the following exemplify the direction of the Court's jurisprudence on matters related to the application of the Convention's rights and freedoms to children: *Marckx v. Belgium* (1979), *Inze v. Austria* (1987), *Gaskin v. The United Kingdom* (1989), *Mazurek v. France* (2000), *Camp and Bourimi v. The Netherlands* (2000), *Sen v. The Netherlands* (2001), *Cyprus v. Turkey* (2001), *Mikulic v. Croatia* (2002), *Pla and Puncernau v. Andorra* (2004), *Tuquabo-Tekle and Others v. The Netherlands* (2005), *Ebru and Tayfun Engin Colak v. Turkey* (2006), *Jäggi V. Switzerland* (2006), *Stagno v. Belgium* (2009), *Brauer v. Germany* (2009), *Kalacheva v. Russia* (2009), *Backlund v. Finland* (2010), *Pascaud v. France* (2011), *Genovese v. Malta* (2011), *Osman v. Denmark* (2011) and *Godelli v. Italy* (2012).

² See *infra* in Conclusion at page 10. For the example of a sister human rights system, see the evolution of the Inter-American system. The American Declaration of the Rights and Duties of Man declared in its *consideranda* that the principal objective of juridical and political institutions in the Americas was the protection of essential rights, creating the concrete conditions of their enjoyment. Article 6 of the Declaration codified the right of every person to a family and the necessary protection therefore. Article 7 recognized children's entitlement to special protection, care and aid. Article 18, the linchpin of the Declaration, affirmed that every person was an independent and full-fledged subject of rights. The American Convention on Human Rights led the system into a new phase of greater clarity and depth of commitment to the human rights of children. The Convention predicates human rights upon human personality and inherent human dignity, regardless of age. Article 5 enshrines every person's right to physical, mental, and moral integrity. Article 17 recognizes the centrality of family in human experience. Article 19 extends to every child the right to positive measures of protection required by her or his condition. The scope of these measures has been defined by the Inter-American Court of Human Rights, and interpreted in light of the provisions of the Convention on the Rights of the Child, to include special protection for children deprived of a family environment, and to guarantee their survival and healthy development. Articles 15 and 16 of the Protocol of San Salvador reinforced the States' obligations in these areas, including that of enforcing the right of every child to grow under the protection and responsibility of families. The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) § 14 demands that placement of unparented children replicate "a stable and settled family environment." These are not merely abstract rights and principles. The Inter-American Commission and the Inter-American Court have brought them to life in landmark reports and opinions. For example, recognizing that the effects of institutionalization generally prevent children from fully enjoying most other rights later in life, the human right to grow in a family is considered in the Inter-

B. The Multiple Negative Impacts Doctrine

Physical, emotional, and intellectual insecurity in the early years of life place children in general at enormous risk of violation of their rights under the Convention both in the present as well as in their future adult lives.

Compared to children in general, unparented children are at significantly greater risk. Early nurturing parenting is essential to normal human development. The conditions characterizing institutions and most foster care deny children that essential nurturing. These conditions often subject children to torturous levels of abuse and neglect. Long term the consequence is all-too-often a life of unacceptably diminished access to and enjoyment of the whole ambit of Convention's rights and freedoms, in a vicious cycle of multiplying negative impacts. Children denied parenting often lose or see diminished the capacities to learn, create, imagine, judge, choose, emotionally connect, communicate, engage in goal-oriented action, and love. By contrast, permanent nurturing families where children grow up as sons or daughters provide the *terra firma* that assures them of their place in the world, and where their own sense of limitation and vulnerability as children may be transmuted into self-confidence and an appetite for the future as an inviting frontier of open possibilities. For the unparented, adoption is the legal institution designed to achieve this fundamental transformation of their personal status from unparented to son or daughter. No other arrangement or type of child placement comes close to the positive effects of adoption for the unparented.³

Therefore, violations of Articles 3, 8 and 14 in the form of disrupted and delayed adoption and unification of the unparented with their adoptive families creates for the victims significant risks of violation of many of the broad range of rights provided under the Convention.⁴

Interpreted in light of the multiple negative impacts expected from delays in and denial of early nurturing parenting, the Convention creates Art. 1 positive obligations for state-parties to promote adoption of the unparented and to place them without delay and undue disruptions with the first available permanent nurturing family.

C. Application of the Convention to Cases of Risk of Multiple Negative Impacts

American system a pre-condition for the enjoyment of most other human rights. See IACtHR, *Case of the "Street Children,"* Joint Concurring Opinion of Judges A. A. Cançado Trindade and A. Abreu-Burelli, paragraph 2, saying that deprived of the right to grow in a nurturing family, children may not create and develop a project of life or seek out a meaning for their own existence.

³ Barrozo, *Finding Home in the World: A Deontological Theory of the Right to be Adopted*. 55 New York Law School Law Review (2010–11). http://works.bepress.com/paulo_barrozo/1/. See generally Sections VI - IX, *infra*.

⁴ That human capabilities are objects of protection of human rights and at the same time pre-conditions for full access and enjoyment of those rights is an insight present from the early stages international human rights. The preamble to the ICCPR reads, in part: "Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."

C.1. Unparented children's rights to life (Art. 2) and to liberty and security (Art. 5) are presently violated or at a greater risk of violation by states' commissive and omissive action which causes, contributes to, or fails to address their unnecessary or longer than necessary delayed adoption and unification with their adoptive families.⁵ See scientifically established facts about harms to children in Sections IV-IX *infra*.

Negative impacts of such violations potentially multiply, diminishing when not substantially depriving present victims of access to and enjoyment of rights to life and to liberty and security well into and throughout their adult lives.

C.2. Unparented children's rights to freedom of thought, conscience and religion (Art. 9), to freedom of expression (Art. 10), to freedom of assembly and association (Art. 11), and to education (Protocol no. 1, Art. 2)⁶ are presently violated or at a greater risk of violation by states' commissive and omissive action which causes, contributes to, or fails to address their unnecessary or longer than necessary delayed adoption and unification with their adoptive families. See scientifically established facts about harms to children in Sections IV-IX *infra*.

Negative impacts of such present violations potentially multiply, diminishing when not substantially depriving present victims of access to and enjoyment of rights to freedom of thought, conscience and religion, to freedom of expression, and to freedom of assembly and association well into and throughout their adult lives.

C.3. Unparented children's rights to private and family life (Art. 8) are violated by states' commissive and omissive action in the present which causes, contributes to, or fails to address their unnecessary or longer than necessary institutionalization and delayed adoption and unification with their adoptive families. See scientifically established facts about harms to children in Sections IV-IX *infra*.

Violations of Art. 8 are further aggravated when the bonds that characterize private and family life are disrespected through disruption of ongoing adoption procedures without reasonable and objective grounding in the best interest of children (*Ageyevy v. Russia*, 2013).

Impacts of such present violations potentially multiply, diminishing when not substantially depriving present victims of access to and enjoyment of rights to private and family life – potentially impacting inclusively the right to marry (Art. 12) – well into and throughout their adult lives.

C.4. Unparented children's rights against torture and inhuman or degrading punishment (Art. 3) are violated by states' commissive and omissive action in the present which causes, contributes to, or fails to address their unnecessary or longer than necessary institutionalization and delayed adoption

⁵ For an articulation of states' violations of Art. 13 in relation to Art. 2, see *Kontrovà v. Slovakia* (2007). For violations of Art 2 in the context of institutional care see *Nencheva and Others v. Bulgaria* (2013).

⁶ On Art. 2 of Protocol no. 1 taken in conjunction with Art. 14, see for instance *D.H. and Others v. The Czech Republic* (2007) and *Oršuš and Others v. Croatia* (2010). The situation of the institutionalized unparented is an extreme case of such violations.

and unification with their adoptive families.⁷ See scientifically established facts about harms to children in Sections IV-IX *infra*.

Violations of Art. 3 also occur when ongoing adoption procedures are disrupted without reasonable and objective grounding in the best interest of children.

Negative impacts of such present violations potentially multiply, placing unparented children at unacceptably greater risks of further violations under Article 3 as well as of forced labor (Art. 4) well into and throughout their adult lives.

C.5. Unparented children's right against discrimination (Art.14) regarding their access to and enjoyment of the Convention's rights and freedoms is violated by states' comissive and omissive action in the present which causes, contributes to, or fails to address their unnecessary or longer than necessary institutionalization and delayed adoption and unification with their adoptive families.

Lack of a permanent family is a personal status. To the extent that parented children are not subject to the same level of present and future risks or deprivation of rights that afflict unparented children, the treatment dispensed to the latter on the ground of their lack of a permanent family is discriminatory in relation to their access to and enjoyment of all affected Convention's rights and freedoms (*Genovese v. Malta*, 2012).

IV. Disruptions in Adoptive Placement Cause Harm to Children

As described in the Court's Statement of Facts, the children in this case had all moved through some stages of the adoptive process, meeting with prospective adoptive parents for varying periods of time, and are old enough to understand that they had been given parents and to anticipate being united with those parents as sons and daughters. Based on the facts as stated by the Court these children at a minimum will have experienced disruption of their developing family relationships and delay in, if not denial of, finding a permanent nurturing home.

These disruptions put the children at enormous risk. Child welfare development experts have recognized increasingly over recent decades the importance of early permanency for children and of maintaining to the degree possible affectional bonds between children and parent figures. In the United States this has been reflected in important policy shifts. For example, children removed from their biological parents were once placed in foster care families that were designed to be temporary, with the foster parents encouraged not to bond with their foster children. Then if adoption was chosen over reunification, the children were assigned to new parents for adoption. Over the years a new priority has been put on placing children with foster parents who will be able to adopt if reunification does not work out. Foster parents are now given a significant preference in selecting among adoptive applicants. Concurrent planning programs encourage placing children upon removal from their biological parents with foster parents who will be interested in adopting.

⁷ On institutionalized violence, see *Tyrer v. the United Kingdom* (1978). Many orphanages in several state-parties are characterized by personal and structural violence and systemic deprivation and degrading treatment. See also *A. V. United Kingdom* (1998). On neglect, see *Z. and Others v. United Kingdom* (2001) and *E. and Others v. United Kingdom*. On Convention's violation in the context of institutional care see *Scozzari and Giunta v. Italy* (2000).

These shifts have been motivated by recognition of the harm that comes to children from disruption of the familial bonds that often begin to form between children and their foster parents.⁸

V. Delays in Adoptive Placement Cause Harm to Children

Given the facts as stated by the Court, delays in adoptive placement and the acquiring of permanent parents are inevitable even for those children lucky enough to be placed with nurturing Russian parents. Additional delays are extremely likely given the difficulty throughout the world of finding adoptive parents for children with significant disabilities, and the likelihood of further adoption disruption.

Extensive social science research regarding both domestic and international adoption over many decades now demonstrates the importance of placing children in permanent adoptive homes as early in life as possible. Early brain development research has confirmed what child development experts have long known: nurturing parenting in the early months and years is vital to normal physical, emotional and intellectual development, and delays or disruptions in providing that nurturing limit children's future potential. Age at placement regularly shows up as the most important factor predicting success or failure of adoptive placement, with the children placed at younger ages doing the best.⁹

Policy in the United States has increasingly recognized the importance of early placement with Congress passing two important laws affecting national child welfare policy in the mid-1990s designed to encourage earlier permanent placement. The Adoption and Safe Families Act of 1997 (ASFA) was designed to expedite in a variety of ways permanency planning for children removed from their biological families, including by limiting the amount of time children could spend in foster care before being either returned to their families of origin or placed for adoption.¹⁰ The Multiethnic Placement Act of 1996 (MEPA) was designed to eliminate delays in adoptive placement based on efforts to place children with same-race parents.¹¹

In the past decade plus, some of the world's leading early brain development experts have collaborated to design and implement a gold standard social science experiment called the Bucharest Early Intervention Project (BEIP) which has produced the most compelling proof yet of the damage done by delays in providing nurturing parental care.¹²

⁸ See generally on these developments Bartholet, *NOBODY'S CHILDREN: Abuse and Neglect, Foster Drift, and the Adoption Alternative* (Beacon Press 1999), at 189-90.

⁹ *Id.* at 179 and n. 8.

¹⁰ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2116 § 102 (amending Title IV of the Social Security Act, 42 U.S.C. 601 *et seq.*).

¹¹ See The Howard M. Metzenbaum Multiethnic Placement Act of 1994, 42 U.S.C. § 622(B)(9), 5115A. Pub. L. No. 103-382, §§ 551-554, 108 Stat. 4056, as amended by the Removal of Barriers to Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996, U.S.C. §§ 671, 674, 1996B, Pub. L. No. 104-188, § 110 Stat. 1903. See MEPA discussion in *NOBODY'S CHILDREN*, *supra* p.1, at 186-88.

¹² Nelson, Fox, & Zeanah, *ROMANIA'S ABANDONED CHILDREN: Deprivation, Brain Development, and the Struggle for Recovery* (Harvard Univ. Press 2014) (summing up and updating research demonstrating the harm to the developing brain caused by institutional conditions, and the importance of removing children early to limit damage to emotional and intellectual development). See also Nelson, Fox & Zeanah, *Anguish of the Abandoned Child*, *Scientific American* 62, 67 (April 2013) ("the evidence suggests that the earlier children are cared for by stable, emotionally invested parents, the better their chances for a more normal development trajectory").

VI. Institutional Conditions Cause Harm to Children

The world has many decades of social science evidence that institutions do devastating damage to children.¹³ This is true even of what are termed “model institutions.”¹⁴ And nobody would term Russia’s institutions model. Indeed those institutions are known as notoriously problematic, plagued by conditions characterizing the most troubled orphanages in the world.¹⁵ A recent report notes research in Russia showing that “one in three children who leaves residential care becomes homeless, one in five ends up with a criminal record and up to one in 10 commits suicide.”¹⁶ Russia’s own reporting also indicates that “95% of Russian children who grow up in their orphanages end up on the streets, unable to function, and are very likely to die shortly after their 18th birthdays.”¹⁷ The BEIP study noted above provides newly compelling evidence of the damage done by institutions, now demonstrated in a randomized controlled social science study designed with the utmost care by world-class scientists, using modern brain scans along with other measures to show the actual differences in children’s brains caused by additional months and years spent in institutions where they are denied parental nurturing, and the related impact on children’s intellectual and emotional capacity and potential.

VII. Foster Care Causes Harm to Children

Social science has long demonstrated that while foster care serves children better than institutional care, it generally serves them far less well than adoption.¹⁸ This understanding has long driven policy efforts in the United States to limit and reduce the number of children in foster care by encouraging some combination of reunification and adoption. ASFA, noted above, is but one relatively recent manifestation of this policy emphasis. ASFA not only limits the amount of time in foster care, but it also permits and encourages child welfare agencies and courts in serious maltreatment cases to terminate parental rights promptly without making any reunification efforts, so as not to unduly prolong children’s stay in temporary foster homes.

VIII. Limiting Access to Medical and Other Special Resources Causes Harm to Children with Disabilities

¹³ See generally Center on the Developing Child, Harvard University, *The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain*, working paper 12 (December 2012) (damage done by the kind of chronic neglect characterizing institutions); authorities cited in Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 Buff. Hum. Rts. L. Rev. 151 (2007), at 179 and n.73

¹⁴ See, e.g., authorities cited in Bartholet, *International Adoption: The Child’s Story*, 24 Ga. St. U. L. Rev. 333 (2008), at 346 n. 25.

¹⁵ Bartholet, *Intergenerational Justice for Children: Restructuring Adoption, Reproduction & Child Welfare Policy*, forthcoming in *Journal of Law & Ethics of Human Rights* (2014) at 15, [http://www.law.harvard.edu/faculty/bartholet/IA-IntgenerJusticeDraftArticle6-12-13%20\(2\).pdf](http://www.law.harvard.edu/faculty/bartholet/IA-IntgenerJusticeDraftArticle6-12-13%20(2).pdf).

¹⁶ Williamson & Greenberg, *Families, Not Orphanages*, at 6 (Better Care Network, Sept 2010).

¹⁷ Reitz, *Adoption: The Best Form of Protection*, Vital Speeches of the Day, quoted and cited in Bartholet, *Intergenerational Justice*, *supra* n.15, at 16.

¹⁸ NOBODY’S CHILDREN, *supra* p.1, at 81-97 (foster care is temporary by legal definition and typically temporary in fact rather than permanent, and available social science reveals it is generally far inferior to adoption for children, as indicated by various measures of child development and adjustment).

Children with disabilities are at particular risk for losing out on the chance for a fulfilling life of loving connection and social involvement. Access to specialized medical, educational and other resources, combined with nurturing permanent parenting, can make all the difference for these children's potential. Children with disabilities adopted by United States families move to a country that has a long tradition of special needs adoption.¹⁹ Studies of special needs adoptions in the United States generally show that these families form the same kind of loving, committed, and satisfying family relationships as those formed in other adoptive families.²⁰ Related to this phenomenon there has been a growth over recent decades in medical clinics specializing in the kind of care needed by many international adoptees. These clinics are staffed by world-class medical specialists with a passion for serving this population of children.²¹ Few if any other countries have a comparable tradition of adoption of children with special needs, and most other countries treat unparented children with special needs very badly. A recent article concludes: "A primary strength [of international adoption into the U.S.] is the number of prospective adoptive parents willing to adopt children with significant special needs....A related strength is specialized health care services prepared to meet the medical needs of special needs children."²²

IX. International Adoption Works to Maximize Children's Potential and has no Demonstrable Downsides

The studies of international adoption demonstrate overwhelmingly that such adoption works for the parents and children involved, in terms of lovingly bonded relationships, and in terms of all the measures social scientists use to assess human well-being.²³ Problems show up in adoptees adopted at older ages, clearly as a result of the harms suffered between birth and adoption. But adoption helps these children repair the harms suffered, enabling most of them to do quite well.²⁴ Children adopted as infants do essentially as well, whether adopted domestically or internationally, as children brought up by untroubled birth parents.²⁵

While many critics of adoption assume that placing children across racial or national lines must be problematic in some way, they have never produced evidence demonstrating any actual harm to the

¹⁹ NOBODY'S CHILDREN, *supra* p.1, at 180-81. Bartholet, *Intergenerational Justice*, *supra* n. 15, at 10 (trend toward placement of increasingly older children damaged by their preplacement life).

²⁰ NOBODY'S CHILDREN, *supra* p.1, at 179.

²¹ See, e.g.: International Adoption Clinic, Floating Hospital for Children, New England Medical Center, Boston, MA., <https://www.floatinghospital.org/Patient-Care-Services/Departments-and-Services/Child-Psychiatry/Clinical-Care-and-Services/Foster-Care-International-Trauma-Adoption.aspx>; U Minnesota Medical School International Adoption Clinic, co-founded in 1986 by Dana Johnson and Margaret Hostetter with the goal of responding to the needs of internationally adopted children due to histories including institutional care and neglect, <http://www.peds.umn.edu/iac/>; Amy Albin, *New UCLA program offers parents medical guidance for international adoptions* (3/17/14) <http://www.healthcanal.com/child-health/48761-new-ucla-program-offers-parents-medical-guidance-for-international-adoptions.html>; http://www.uclahealth.org/body_mattel.cfm?id=2648.

²² Smolin, *The Corrupting Influence of the United States on a Vulnerable Intercountry Adoption System*, 15 Utah Law Rev J of Law & Family Studies 81 at 136 and 272-73 (2014).

²³ See, e.g., Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, *supra* p.1, 13 Buffalo Human Rights Law Rev at 180 and n. 74. For a recent study based on measuring attitudes of children internationally adopted into the U.S. and their parents, see Younes and Klein, *The International Adoption Experience: Do They Live Happily Ever After?*, 17 Adoption Quarterly 1, 65 (2014).

²⁴ Bartholet, NOBODY'S CHILDREN, *supra* p.1, at 178-79; Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, *supra* p.1, 13 Buffalo Human Rights Law Rev at 180.

²⁵ Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, *supra* p.1 at 180.

children.²⁶ Instead, repeated studies show the same thing – what matters in predicting success is that children be placed in adoption, whether domestic or international, as young as possible, before they have suffered physical, emotional and intellectual harms by the conditions of abuse and neglect and impermanence characterizing life before adoptive placement.²⁷


Critics of international adoption have focused attention on cases in which adoptees have suffered abuse, but such abuse is aberrational, representing a tiny percent of all international adoption situations. For example, some cited the fact that 19 adoptees of Russian origin have allegedly died in the United States since the early 1990s. But even assuming the accuracy of the number, and that they all represent cases of parental abuse, this amounts to 19 out of the total of 61,118 adoptions over those years, or an abuse rate of .0003.²⁸ This is truly miniscule compared to the rates of abuse for children in the general population of most countries, and of course compared to the systematic abuse and neglect characteristic of institutional conditions. In the United States, the adoptive parent maltreatment rate is lower than the norm for the general population.²⁹

X. Conclusion

The world has placed increasing emphasis on child rights in recent years, with the overwhelming ratification of the Convention on the Rights of the Child, and the endorsement of child rights in recent national Constitutions such as that of South Africa. The world has become more global, with national borders playing an ever-more-limited role in limiting adult opportunity. The ideas that nations own their children regardless of their ability to care for them, and that children belong in some essentialist sense with their racial or national groups of origin, are ideas of the past that should not govern the future. Condemning the children involved in this case to lose their opportunity to grow and thrive in nurturing permanent adoptive families is a particularly cruel and humanly degrading manifestation of those old ideas.

Respectfully Submitted,

The Child Advocacy Program



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²⁶ See generally Bartholet, *International Adoption: The Human Rights Position*, *supra* p.1, 1 Global Policy at 97; Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, *supra* p.1, 13 Buffalo Human Rights Law Rev. at 180-81; authorities cited in Bartholet, *International Adoption: The Child's Story*, 24 GA. St. U. L. Rev. 333, at 348, 360-61 and nn 27, 51-52 (2007).

²⁷ Id; see *supra* sections IV-VII.

²⁸ See *Intergenerational Justice*, *supra* n. 15, at 14-15 and nn. 50-51.

²⁹ Barth & Berry, Implications of Research on the Welfare of Children Under Permanency Planning, Child Welfare Research Review 330, 333-34 (Barth et al, eds., 1994).