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**UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW BOARD OF IMMIGRATION APPEALS**

In the Matter of:)	File No.:	A 77-825-989
)		
Carlints St. Louis)		
)		
In Removal Proceedings)		

**BRIEF OF *AMICI CURIAE*
ON BEHALF OF RESPONDENTS**

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INTEREST AND IDENTITY OF AMICI

Juvenile Law Center (JLC) is one the oldest multi-issue public interest law firms for children in the United States. JLC was founded in 1975 to advance the rights and well being of children in jeopardy. JLC advocates in particular on behalf of children involved in the juvenile justice and child welfare systems and, increasingly, children involved in the adult criminal justice system. JLC works to ensure that children are treated fairly, and that they receive the treatment and services that these systems are supposed to provide, including, at a minimum, adequate and appropriate education, and physical and mental health care. In addition to litigation and appellate advocacy, JLC has participated as *amicus curiae* in state and federal courts throughout the country, as well as the United States Supreme Court, in cases in which important rights and interests of children are at stake. Of particular relevance, JLC was lead counsel for over 50 advocacy groups nationwide who participated as *amici* in *Roper v. Simmons*, 543 U.S. 551 (2005), in which the Supreme Court ruled that it was unconstitutional to impose an adult punishment, there the death penalty, upon children.

Bernard P. Perlmutter is an Assistant Clinical Professor and Director University of Miami School of Law, Children & Youth Law Clinic. In operation for over ten years, the Clinic primarily serves the legal needs of children in the foster care system in dependency, health care, mental health, disability, independent living, education, immigration and other general civil legal matters, ensuring that they have a voice in the court proceedings. Through individual representation, impact litigation, and the submission of *amicus curiae* briefs, the Clinic has played an influential role in the

development of law affecting Florida's foster children, *Bonnie L. v. Bush* 329 F.3d 1255 (11th Cir. 2003), and *DCF v. In Re C.K.*, 851 So.2d 206 (Fla. 3d DCA 2003).

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STATEMENT OF THE CASE

Amici adopt the statement of the case presented by Respondent.

STANDARD OF REVIEW

While the Board of Immigration Appeals (BIA) may choose to review *de novo* matters of law and discretion on appeal from an immigration judge, *see* 8 C.F.R. §1003.1(d)(3)(ii), as a general matter, the BIA will defer to all the immigration judge's findings of fact, including credibility of testimony, and shall review only to determine whether the findings are clearly erroneous. *See* 8 C.F.R. §1003.1(d)(3)(i)(Westlaw through Apr. 10, 2008).

ISSUE PRESENTED

At issue is whether respondent Carlints St. Louis merits the favorable exercise of discretion in his application for the adjustment of status. The government has alleged that Carlints is inadmissible based on the charge that he has:

- (I)a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
- (II)a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior....

Section § 1182 (a)(1)(A)(iii) of Immigration and Nationality Act (INA).

SUMMARY OF ARGUMENT

The overwhelming weight of the evidence in this case makes clear that the Immigration Judge appropriately exercised his discretion in granting Carlints St. Louis's application for adjustment of status. The record is replete with evidence from persons familiar with the respondent and those with expertise in child welfare, child development, and child psychiatry and psychology that despite examples of serious misbehavior in his early childhood, Carlints has been rehabilitated and is on the road to a positive and successful adulthood, benefiting from the treatment and care provided to him by the child welfare system of the state of Florida. Furthermore, the favorable exercise of discretion in this case is supported by Supreme Court case law, federal, and state law regarding the distinction in treatment under the law of juveniles and adults. This distinction is also clearly noted in immigration law and guidelines. This case law and statutory law reflect the acknowledgement that the actions committed by a youth are likely the result of impulsive actions that are overly influenced by peer pressure as well as a youth's amenability to change rather than persistent bad character or innate criminal behavior. These insights of adolescent development as well as compelling evidence in the record, shows that Carlints has become exactly the type of individual for which a favorable exercise of discretion is appropriate and just.

ARGUMENT

I. FEDERAL LAW AND COURT PRECEDENT ESTABLISH THAT THE COURT GAVE APPROPRIATE WEIGHT TO CARLINTS' AGE IN ITS FAVORABLE EXERCISE OF DISCRETION

A. THE SUPREME COURT HAS HELD THAT THE DISTINCTIONS BETWEEN ADULTS AND CHILDREN ARE LEGALLY RELEVANT

This case involves a youth who was abandoned by his parents at age five, shuttled from Haiti to Canada and then the United States only to be passed among various relatives with little to no supervision or care. Finally, at age twelve, after the State of Florida terminated his parents' rights and no relatives were willing or able to care for him, Carlints St. Louis ("Carlints") ended up in foster care in the child welfare system. He was first placed in an inappropriate foster home where he was not provided supervision, treatment or guidance, and where aggressive behavior among the foster children was left unchecked. At age thirteen, Carlints was placed in a therapeutic foster home in which he has thrived and where he remains today. These foster parents, the Gachelins, have stated their intent to have Carlints remain in their home as he makes the transition to adulthood and plans to enter college. Carlints' early life in the United States was chaotic, unsupervised, and without structure, treatment, or good role models. The youth who appeals to the Board today is a different individual in a very different situation. As the Juvenile Court Judge in Carlints' case stated: "while Carlints could easily have become yet another statistic in the state foster care system, he is instead a model of how the foster care system can succeed." I.J. at 25.

After reviewing the extensive testimony and documentary evidence submitted in this case, the Immigration Judge (IJ) concluded the following:

Respondent has made remarkable progress and it does not appear likely he will repeat similar egregious bad acts in the future...Respondent will suffer substantial hardship if removed to Haiti. Respondent has been rehabilitated due to the intervention, placement into therapeutic foster care, support and therapy he has received in the United States..... The Court has carefully balanced Respondent's bad acts against the outstanding equities in his favor. The strong evidence of Respondent's rehabilitation is a highly significant favorable factor in this case as is the possible hardship Respondent would suffer in Haiti. The Court does not wish to minimize the severity of Respondent's prior bad acts, especially the sexual abuse of his cousin. However, the Court cannot ignore the fact that the bad acts were committed when Respondent was very young and experts have suggested that the bad acts were a reaction to neglect and a chaotic home environment.

I.J. at. 23.

It is clear that an applicant for adjustment of status has the burden of proving that discretion should be exercised on his behalf. *Matter of Tanah*, 18 I&N Dec. 339 (Reg. Comm. 1981). It is within the province of the Immigration Court to weigh the "social and humane considerations" along with the "adverse factors evidencing his undesirability as a permanent resident." *Matter of Buscemi*, 19 I&N Dec. 628 (BIA 1988). However, this balancing must be made on a case-by-case basis, considering the "particular facts presented." *In Re Catalina Arreguin De Rodrigues*, 21 I&N Dec. 38, 39 (BIA 1995). In the case of a juvenile, this process must be informed by accurate information about child and adolescent development and behavior. In addition, the fact that Carlints was abandoned, abused, and neglected presents other special circumstances that the court must consider. Finally, this court is bound by Supreme Court case law and the law of the Eleventh Circuit and should find persuasive trends in state law regarding the treatment of juveniles.

It is clear that the IJ acknowledged and considered the unlawful acts and misbehavior of Carlints, most of which occurred before the state recognized this youth's

need for parenting and supervision.¹ Indeed, the IJ goes into great detail regarding Carlints' involvement with the delinquency system and other disciplinary misbehaviors. I.J. at 9-14, 18-19, 21-22. As legal principles of relevance and materiality require, the IJ also weighed evidence regarding Carlints based on the type of expertise possessed by the witness and the length of time and contact with Carlints.² The IJ, however, noted that Carlints "is a juvenile and all of his most egregious behavior took place before his thirteenth birthday. The Court must take these facts into account and treat the Respondent differently than if he were an adult." I.J. at 19. This is not only a humane observation; it is also an acknowledgment of relevant law and research.

Supreme Court case law, federal law, and state law all confirm that juveniles and adults are categorically different, and that these distinctions are legally relevant and must be reflected in how a case is processed and how punishment is meted out. At all levels of the United States legal system, adults and children are treated differently. In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court clarified that one cannot simply sentence a juvenile as one does an adult. Significantly, the *Roper* Court held that

¹ Despite being placed in homes in which he received almost no supervision, was physically abused, and was exposed to pornography from about age 8 until age twelve, no system intervened to take responsibility for Carlints. I.J. at 11.

² While the Federal Rules of Evidence do not apply in these proceedings, all evidence must be relevant, probative, and fundamentally fair *Doumbia v. Gonzalez*, 472 F.3d 957, 962 (7th Cir. 2007). For a case in which a youth's behavior and actions and his ability and likelihood of rehabilitation are at issue, it is appropriate for the IJ to give great weight to professionals with expertise in working with abused and troubled children and who are versed in child psychology and psychiatry. *See e.g.*, I.J. at 15 ("the Court places great weight on the evidence provided by child psychologists and psychiatrists."); I.J. at 15-16 ("the affidavits and testimony provided by professionals who work with at-risk children on a daily basis were also relevant to the Court's decision-making process," which included the juvenile court judge and social worker); I.J. at 16 (the court afforded "considerable weight" to the testimony of the Guardian Ad Litem, who is "trained to deal with children in crisis" and also had known Carlints for several years). It is also appropriate for the Court to give greater weight to the testimony of those who have known Carlints the longest and "deal with him regularly," such as his foster parents, his social worker, and his Guardian ad Litem versus those who have had little contact with him. *See* I.J. at 16-17 (crediting the testimony of Carlints' foster parents of at least five years who "have day to day contact" with Carlints as "extremely relevant" and giving less weight to the testimony of the police officer who "dealt with respondent on a very limited basis," and therefore had less relevance).

imposing a death sentence on an individual under 18 at the time of the offense violates the 8th and 14th Amendments of the U.S. Constitution because juveniles do not have the same judgment, capability, and impulse control that adults do to warrant the same culpability and punishment.

The Supreme Court's decision in *Roper* was guided by three fundamental characteristics of youthful behavior have been confirmed by voluminous research in adolescent development. These characteristics were held to have great impact on how courts evaluate a youth's behavior and actions and on the ability of youth to change and rehabilitate. Relying on widely accepted psychological and sociological research,³ the *Roper* Court explained that children under 18 should be treated differently than adults because they are 1) less mature and act more impulsively; 2) more susceptible to coercion and peer pressure; and 3) their personalities are not yet fully formed. These three factors are extremely important in this case where the government seeks to prove that the record shows Carlints to have bad character and that he is an undesirable candidate for permanent residency.

³ In *Roper*, the Court cited the following articles and studies in its opinion: Arnett, "Reckless Behavior in Adolescence: A Developmental Perspective," 12 *Developmental Review* 339 (1992); Steinberg & Scott, "Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty," 58 *Am. Psychologist* 1009, 1014 (2003); Erikson, *Identity: Youth and Crisis* (1968). In addition, there are numerous other studies that support the idea that the brain is not fully developed until at least age 25. See Cauffman & Steinberg, "(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults," 18 *Behavioral Sciences and the Law* 741-760 (2000); Scott & Grisso, "Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform," 88 *Journal of Criminal Law and Criminology* 137, 137-189 (1997); Sowell et al., "Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Post Adolescent Brain Maturation," 21(22) *Journal of Neuroscience* 8819, 8819-8829 (2001); National Institute of Mental Health, *Teenage Brain: A work in progress, A brief overview of research into brain development during adolescence* (NIH Publication No. 01-4929, 2001); Gerencher, *Understand Your Teen's Brain to Be a Better Parent* (Detroit Free Press, Feb. 2, 2005); Feld, "Competence, Culpability, and Punishment: Implications of Atkins for Executing and Sentencing Adolescents," 32 *Hofstra L. Rev.* 463, 515-522 (2003) (discussing scientific studies on adolescent neurological development).

Because youth are more likely than adults to act impulsively without thinking, their behavior can appear reckless. *See Roper*, 543 U.S. at 569 (“It has been noted that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” Arnett, “Reckless Behavior in Adolescence: A Developmental Perspective,” 12 *Developmental Rev.* 339 (1992).”). Research has demonstrated, however, that this impulsiveness has more to do with brain development than “bad character.” For that reason “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” (“Even the normal 16-year-old customarily lacks the maturity of an adult”). *Id.* (internal citations omitted). Because much of Carlints’ early misbehavior falls within the category of reckless and impulsive behavior, it is appropriate for the court to consider that there is a high likelihood that his behavior can improve with time and that he is likely to gain the skills needed to control his impulses. There is much in the record to show that this is exactly what happened as Carlints is now a young person in good standing at his school, pursuing athletic activities, and planning for college.

Unlike most adults, youth are extremely vulnerable to the influence of peers. As the Court in *Roper* explained, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.... This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. *See* Steinberg & Scott, “Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty,” 58 *Am. Psychologist* 1009, 1014 (2003) (“[A]s legal minors, [juveniles]

lack the freedom that adults have to extricate themselves from a criminogenic setting”). *Roper*, 543 U.S. at 569. Carlints’ misbehavior in school and with his friends reflects this phenomenon. Further, Carlints’ susceptibility to the influences of peers was particularly acute because, until he was placed with the Gachelins, Carlints’ had little supervision and was not exposed to many models of appropriate adult behavior. Thus, not only did he possess the “normal” adolescent susceptibility to peer pressure, Carlints lacked the positive adult role models in his life to act as protective factors against the negative influences of his peers.

Of most importance in this case is the third finding: a youth’s character is not yet fully formed and youth are much more amenable to change than adults. This has enormous implications for the likelihood of rehabilitation in Carlints’ life:

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. *From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.* Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.” *See also* Steinberg & Scott 1014 (“For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood”).

Roper, 543 U.S. at 570 (emphasis added). *See also* Steinberg & Schwartz, “Developmental Psychology Goes to Court,” in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 23 (Grisso & Schwartz, eds., 2000) (“the malleability of adolescence suggests that a youthful offender is capable of altering his life course and developing a moral character as an adult”); Laub & Sampson, *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70* (2003) (presenting lives of adjudicated

delinquent and showing that their youthful characteristics were not immutable; change to a law-abiding life was possible and depended in many instances upon aspects of their adult lives). In fact, this is not a recent recognition by the court. In 1967, while the Supreme Court extended to youth some of the due process rights of adults, it still recognized the importance of the separation of the juvenile and adult justice systems, noting that the malleability of youth makes juveniles more amenable to rehabilitative interventions than adults. *See In re Gault*, 387 U.S. 1, 15-17 (1967).

Carlints' amenability to change is demonstrated throughout the record. Whether Carlints has been rehabilitated is at the heart of this case, and it is the government's allegations that Carlints is likely to become an adult with bad character and behavior that underlies this appeal. Yet, overwhelming evidence in the record indicates that Carlints has left behind his bad behavior and has shown a great amenability to treatment, support, and guidance. The record includes the opinions of the following persons regarding Carlints' rehabilitation and positive response to treatment, care, and supervision: Family Court Judge William Thomas; Family Caseworker for Carlints, Tamyia Gibbs; Carlints' Guardian ad Litem Thomas Carr; and Carlints' foster father of over five years. *See I.J. at 3-8 (Documentary Evidence Presented)*. These individuals not only had direct contact with Carlints on an ongoing basis, they also have expertise in working with troubled youth who may have uncertain futures.⁴ In addition, the record contains two comprehensive evaluations from a child psychiatrist and psychologist: the expert reports of Dr. Edward Steven Sczechowicz, Jr. and Dr. James Kraus. These reports are

⁴ Contrary to the government's argument that the opinion and testimony of law enforcement officers was not given appropriate weight, the IJ gave appropriate weight to the testimony in relation to the type of expertise that the law enforcement officers possessed. The testifying law enforcement officers had distinguished work histories, but were not criminologists, psychologists, or psychiatrists and did not possess any training in adolescent development or the impact of abuse and neglect on a youth's behavior.

comprehensive and were completed by experts in their fields. Both have the training and experience to evaluate the etiology of any mental health issues and their behavioral manifestations and what the future may hold for Carlints given various circumstances.

Dr. Sczechowicz is a clinical child psychologist who has been practicing for almost thirty years. He is the President of Alliance of Psychological Service and Clinical Director of the South Florida Sexual Addictions and Disorders Treatment Center. Expert Report of Edward Steven Sczechowicz, Jr., 4/29/07, at 1 (“Sczechowicz Report”). He has conducted over 2,500 child/adolescent risk assessments for sexual recidivism. *Id.* at para. 6. He evaluated Carlints over a period of six years: 1999, 2000, 2003, and 2005. Risk Assessment completed by Edward Steven Sczechowicz, Jr., 4/25/07, at 1 (“Sczechowicz Risk Assessment”). He also reviewed treatment records and interviewed the foster parents. He concluded that:

Carlints presented with no indication of a thought disorder or acute psychopathology. Although Carlints has been diagnosed with Attention Deficit Hyperactivity Disorder in the past, no evidence of this was seen during this evaluation...The change in Carlints over the years is remarkable. He has grown into a mature young adult with concrete plans for the future, such as plans involving improving his education and if possible, utilizing athletics to achieve these goals...Results of the present risk assessment would indicate Carlints is a low risk of sexual recidivism.

Id. at 5 (emphasis in original). He also stated that “Carlints has not only made a substantial turnaround, but his ability to improve is confirmation that his behavioral difficulties were not due to any inherent personality characteristics or difficulties such as Attention Deficit Hyperactivity Disorder, ***but rather reflective of his early environment.***” See Sczechowicz Risk Assessment, *supra*, at 7 (emphasis added). He also stated that the

chances of Carlints' sexual recidivism were low. *Id.* at 5. Dr. Szechowicz' assessment is supported by voluminous research.⁵

Dr. James Kraus is a child psychiatrist and is the Chief of Child and Adolescent Psychiatry at Rush University Medical Center. Expert Report of Louis James Kraus, M.D., 4/3/07, at para. 1, 2 ("Kraus Expert Report"). He is the primary author of the American Academy of Child and Adolescent Psychiatry Practice Parameter on Child and Adolescent Forensic Psychiatry Evaluation. *Id.* at para. 1. He has been in practice for almost twenty years and has served as a consultant to many agencies, including the United States Department of Juvenile Justice. *Id.* at para. 5. He has been a consultant in many cases, for both the prosecution and defense. *Id.* at para. 7. Dr. Kraus is not only an expert in child psychiatry, he is also highly involved in the symptomatology and treatment of youth in the juvenile justice system. *See Curriculum Vitae, Louis Kraus, M.D.* Dr. Kraus has worked and continues to work with many youth who have come into contact with the juvenile justice system. *See Kraus Expert Report, para. 2, 4.* Dr. Kraus confirmed that Carlints "does not have any symptomatology of any mental disease or disorder that is associated with harmful behavior and is likely to recur or to lead to harmful behavior." *See Kraus Expert Report, at 4, para. 21.* The final decision from the CDC Review Board, dated June 18, 2007, further confirms this.

⁵ Studies on re-offense behavior among juvenile sex offenders indicate that recidivism rates for sexual offenses are extremely low, with only about 12 to 14 percent re-offending. Schram et al., *Juvenile Sex Offenders: A Follow-up Study of Reoffense Behavior* 6-7 (Sept. 1991), available at <http://www.wsipp.wa.gov/rptfiles/juvsoffreoff.pdf>. These indications that a juvenile is at a low risk to re-offend often coincide with the youth being placed in a supportive environment. The development of autonomy, self-direction and social competence is greatly influenced by an adolescent's environment and the presence of positive role models. Chung et al., *Juvenile Justice and the Transition to Adulthood* (Feb. 2005), available at <http://www.transad.pop.upenn.edu/downloads/chung-juvenile%20just%20formatted.pdf>. Juvenile offenders thrive in a highly structured, stable environment, with caregivers who will set clear boundaries and foster open communication to help them avoid re-offending. Children's Services Practice Notes, *Working with Juvenile Sex Offenders: Special Practice Issues* (May 2002), available at http://ssw.unc.edu/fcrp/cspn/vol7_no2/special%20practice%20issues.htm.

It is clear from the record, and unchallenged by DHS, that Carlints was a victim of both physical and emotional abuse. I.J. at 9, 10. Much research has confirmed the connection between child abuse and maltreatment and the development of adolescent problem behaviors. *See* Kelley et al., “In the Wake of Childhood Maltreatment,” *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention, Aug. 1997).

As maltreated children grow older, their status as victims may be overlooked as their behavior becomes more disruptive and problematic...When a child victim becomes a juvenile offender, legitimate concerns about protecting public safety and holding youth accountable for their behavior can easily overshadow issues of continued trauma from childhood maltreatment. ...Punitive responses also may exacerbate previous emotional and developmental problems resulting from maltreatment.

Id. at 13. *See also* Hagele, “The Impact of Maltreatment on the Developing Child,” 66 *North Carolina Medical Journal* 356 (2005) (the development of maladaptive behavior is correlated with the exposure of children to maltreatment); Chalt et al., “The Multiple Dimensions of Child Abuse and Neglect: New Insights into an Old Problem,” *Child Trends Research Brief* (May 2002).

This connection is important because it indicates that if some misbehavior is generated by exposure to neglect and abuse, treatment and exposure to a positive environment bode well for the improvement of behavior and the potential for change and rehabilitation. This was exactly what happened with Carlints. As Dr. Sczechowicz stated, “[t]he etiological determinants of Carlints’ sexual offenses can be found in his prior history. Carlints was exposed to pornography at an exceptionally early age. His behavior would appear to be of a sexually reactive nature, that is, a reaction to his exposure to pornography without concomitant training in moral values and boundaries.”

See Sczechowicz Risk Assessment, *supra*, at 6. *See also* Kraus Expert Report, *supra*, at para. 22 (Carlints “suffered from transient post-traumatic stress, anxiety, depression and bereavement in childhood and early adolescence brought on by abandonment and the manner in which he came to this country, and by significant environmental stressors that included lack of love, affection, family structure and stability in his aunt’s home and foster families, possible abuse, and loss of his mother.”)

Experts recommend interventions that help parents appropriately care for and supervise their children as well as programs which hold youth accountable, but also address their treatment needs. *See* Kelley, *supra*, at 14. The initial interventions with Carlints by the State of Florida were punishment through detention and other delinquency programs. The second category of interventions, however, began to put Carlints on a positive road. While perhaps a little later than would have been ideal, Florida’s child welfare system did eventually provide the supervision and treatment that Carlints lacked. In Carlints’ case, the child welfare system did what we want it to do for all abused and neglected children: provide a caring and stable home for youth where they can have their special and individualized needs met. After being placed in the therapeutic foster home of the Gachelins, Carlints’ behavior began to improve as did his school achievement. *See* I.J. at 13. He found a place in family and began constructive outlets, such as organized school sports, as a positive outlet for his energy. Like many adolescents, all challenging and even destructive behaviors did not disappear, but the record is replete with evidence of significant and age-appropriate improvements. As the Juvenile Court Judge stated in his submission to the IJ, “while Carlints could easily have become yet another statistic in

the state foster care system, he is instead a model of how the foster care system can succeed.” I.J. at 25.

**B. THE IJ’S DECISION IS CONSISTENT WITH
DISTINCTIONS MADE BETWEEN ADULTS AND
CHILDREN IN CIVIL AND CRIMINAL LAW**

Children have long been granted special protection by the law in recognition that they are not as capable, or as culpable, as adults. In both civil and criminal law, youth are treated differently from adults. Statutes and case law recognize that children do not have adult decision-making capacity. The government generally limits the rights of children because of their lack of adult capability and for their own protection. For example, youth are denied the right to vote, to enter into contracts, to purchase or consume alcoholic beverages, or even to consent to medical care because they are not yet deemed capable of assuming the responsibility and consequences of making such important decisions. These differences must be considered when assessing a consequence as severe as deportation for juveniles.

The Supreme Court has repeatedly acted to ensure that governmental power is constrained from harming juveniles, and that governmental power be wielded to protect juveniles in light of their immature judgment. The power of the Department of Homeland Security to deport Carlints, given this record, is exactly the type of governmental power that should be restrained. The Supreme Court has moved to protect juveniles from the consequences of their actions and decisions where those consequences are far less severe than deportation. *See e.g., Kaupp v. Texas*, 538 U.S. 626 (2003) (considering age and experience in voluntariness of confession by 17-year-old); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (determining whether juvenile has waived Miranda

rights “mandates. . . evaluation of the juvenile’s age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of the Fifth Amendment rights, and the consequences of waiving those rights. . . [courts must] take into account those special concerns that are present when young persons. . . are involved”); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) (in examining voluntariness of consent to search under Fourth Amendment, courts must consider, among the totality of circumstances, the youth of the accused). The Court has also maintained the historic distinction between the juvenile and adult criminal justice systems, ruling in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) that preserving the rehabilitative purpose of the juvenile court was of greater importance than according juveniles the full benefit of jury trials as guaranteed to adult defendants under the Sixth Amendment.

The Supreme Court has even allowed states to exercise power over juveniles that would be unconstitutional if exercised over adults, based on the importance of protecting minors and recognizing developmental differences between minors and adults. *See e.g.*, *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666-68 (2004) (finding compelling government interest in protecting young minors from harmful images on Internet); *Board of Educ. v. Earls*, 536 U.S. 822, 838 (2002) (upholding random, suspicionless drug testing of students engaged in extracurricular activities, including marching band); *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995) (same, but drug testing was limited to athletes in part because of the danger that drug-abusing athletes could end up as negative “role models” for other, impressionable high school students); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (holding that

public school officials may censor school-sponsored, student publications); *Ginsburg v. New York*, 390 U.S. 629, 637 (1968) (holding that states may prevent sale of obscene materials to minors). The Supreme Court has also allowed states to use their *parens patriae* power to *preventively* detain children in order to serve the best interests of the child, to keep them “from the downward spiral of criminal activity. . .” *Schall v. Martin*, 467 U.S. 253, 265-66 (1984) (upholding New York’s power to detain certain at-risk juveniles for up to 17 days).

In fact, the juvenile court, which first emerged over a century ago, must treat children in a developmentally appropriate manner. While the criminal justice system focuses on punitive responses to crime, the juvenile system was developed in large part to facilitate the opportunity for juveniles to reform and become productive citizens.⁶ In order to effectuate the rehabilitative ideal⁷ of the juvenile court, judges are expected to consider a child’s behavior in the broader context of his history and environment. The juvenile justice system has been guided by the general expectation that, due to the amenability of youth to rehabilitation and treatment, offenses committed by youth in most cases should not follow them to adulthood and block their chances at a productive and successful adulthood. *See e.g.*, “Rethinking Expungement of Juvenile Records in Massachusetts: The Case of *Commonwealth v. Gavin G.*,” 38 New Eng. L. Rev. 331, 337

⁶ See Feld, *Cases and Materials on Juvenile Justice Administration* 1-3 (2d ed. 2004).

⁷ The Supreme Court has affirmed the rehabilitative ideal of the juvenile justice system. In *McKeiver*, the Supreme Court underscored the importance of protecting the system’s “rehabilitative goals” and its focus on “fairness”, “concern” and “sympathy.” *McKeiver*, 403 U.S. at 545, 550. Justice White, concurring, observed that while guilty adults are found “blameworthy” and punished to deter them and others from crime, the juvenile’s “conduct is not deemed so blameworthy that punishment is required to deter him or others. Coercive measures, where employed, are considered neither retribution nor punishment. Supervision or confinement is aimed at rehabilitation, not at convincing the juvenile of his error simply by imposing pains or penalties.” *Id.* at 551-52. Similarly, Justice Brennan, concurring, concluded that “however much the juvenile system may have failed in practice,” it remains “an ostensibly beneficent and noncriminal process for the care and guidance of young persons.” *Id.* at 555.

(“Another tenet of juvenile justice was confidentiality of juvenile procedures and records, which was viewed as fundamental in order to work efficiently under the *parens patriae* ideology.”)

As will be discussed in more detail below, immigration law has recognized that the consequences for offenses committed by a youth should be different than the consequences for adults. While convictions for certain crimes can block admissibility, most offenses committed by individuals under age eighteen are excepted from this rule. *See* section 1182(2)(A)(ii) of Immigration and Nationality Act. Furthermore, under Florida law “an adjudication of delinquency by a court with respect to any child who has committed a delinquent act or violation of law shall not be deemed a conviction; nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication.” Fla. Stat. Ann. § 985.35(6) (West, Westlaw through Mar. 14 of 2008 Sess.). In addition, it should be noted that Carlints was only adjudicated delinquent for one offense. *See* U.S. Dep’t of Justice, Decision on Application for Status as Permanent Resident, 4/19/02, Part IV. In all other cases, judicial action was withheld or charges were dropped.

If Carlints is deported based on offenses committed as a juvenile, most of which occurred when he was under age thirteen and without a stable home, it will be contrary to federal and state law as well as the policies and principles of our juvenile justice system. What could be more punitive and life-changing than sending an eighteen year old boy back to a country where he did not grow up, where he has no known family or resources, where he does not speak the native language, and where currently riots over the lack of availability and cost of food has resulted in several deaths and threatens the stability of

the already weak government.⁸ “[W]e must never forget that in creating a separate juvenile system, the [legislature] did not seek to ‘punish an offender but to salvage a boy who may be in danger of becoming one.’” *In the Interest of K.B.*, 639 A.2d 798, 807 (Pa. Sup. 1994) (quoting *In re Holmes*, 109 A.2d 523, 525 (Pa. 1954)), *overruled on other grounds*, 690 A.2d 175 (Pa. 1997).

C. THE IJ DECISION IS CONSISTENT WITH DISTINCTIONS MADE BETWEEN ADULTS AND CHILDREN IN IMMIGRATION LAW

i. THE IJ’S DECISION IS CONSISTENT WITH GUIDANCE PROVIDED BY THE U.S. CITIZENSHIP AND IMMIGRATION SERVICE AND THE DEPARTMENT OF JUSTICE ON HOW TO ADJUDICATE A CHILD’S CLAIM

While the immigration system does not have specialized courts to adjudicate the claims of juveniles, the Department of Justice (DOJ) has issued guidelines governing particular children’s claims which acknowledge the legal importance of making distinctions between children and adults in certain areas. Specifically, the DOJ issued Guidelines for Children’s Asylum Claims (Dec. 10, 1998)(“Child Asylum Guidelines”) and Operating Policies and Procedures Memorandum: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children (May 22, 2007)(“Unaccompanied Alien

⁸ The Bureau of Consular Affairs states that “Haiti is one of the least developed and least stable countries in the Western Hemisphere.” “Country Specific Information: Haiti,” Apr. 27, 2007, *available at* http://travel.state.gov/travel/cis_pa_tw/cis/cis_1134.html. It is also stated that “[i]n some cities and towns ordinary services such as water, electricity, police protection and government services are either very limited or unavailable.” *Id.* “[T]here are no safe areas in Haiti. Crime, a chronic problem over the years, has increased in recent years...” *Id.* Furthermore, recent riots regarding food prices and food shortages have been reported in Haiti, which have resulted in deaths, including that of a United Nations peacekeeper. *See. e.g.*, Delva & Loney, “Haiti’s Government Falls After Food Riot,” Reuters, Apr. 12, 2008, *available at* <http://www.reuters.com/article/newsOne/idUSN1228245020080412> (prime minister fired by senators following a week of food riots); “View From Haiti: Aid Worker,” *BBC News*, Apr. 10, 2008, *available at* <http://news.bbc.co.uk/2/hi/americas/7341467.stm> (reporting riots, looting, and violence in Haiti); Marc Lacey, “After Protests Haitian Leader Announces Rice Subsidies,” *N.Y. Times*, Apr. 13, 2008 (explaining that the existing poverty and instability in Haiti has made the effect of global food shortages even more acute than experienced in other countries).

Children Memorandum”). These publications reflect DOJ’s understanding that a child’s claim is not synonymous with an adult claim, and should be considered in a developmentally appropriate manner. “[C]hildren and adolescents are entitled to special attention because their needs, and their social and legal status, can be significantly different from those of adults, and from each other as well, due to age-related developmental differences.” Child Asylum Guidelines, *supra*, at 3 (citing UNHCR Policy on Refugee Children, EC/SCP/82 (Aug. 6, 1993)). Although no specific guidance governs Carlints’ application for adjustment of status, the IJ considered his claim within the holistic framework of Carlints’ traumatic history and his dramatic record of rehabilitation. It was not only appropriate for the judge to do this, it was critical for him to do so in order to fully and fairly consider Carlints’ claim. Thus, the IJ’s approach was consistent with DOJ Guidelines governing SIJS applicants and child asylum seekers, and with federal case law regarding juveniles.

The Department of Justice issued the Child Asylum Guidelines seek to increase the efficacy of Asylum Officers (AO). The Child Asylum Guidelines reflect a general policy to give careful consideration to “the unique vulnerability and circumstances of children” in evaluating the claims of unaccompanied minors.⁹ Child Asylum Guidelines, *supra*, at 2. The Child Asylum Guidelines discuss procedural and substantive considerations, exploring the various ways in which a child’s status impacts the procedure and substance of an asylum claim.¹⁰

⁹ The Child Asylum Guidelines favorably cite international policies promoting children’s rights and are a bold and progressive statement by the United States, as it is only the second country in the world to adopt special procedures for children’s claims. *See* Child Asylum Guidelines at 2; *INS Issues New Guidelines for Children’s Asylum Claims*, 76 No. 1 Interrel 1 (Jan. 4, 1999).

¹⁰ Specifically, the section on “procedural consideration” suggests that children have a trusted adult present during the interview, that children be interviewed by officials who have specialized training in child

Fundamentally, the Child Asylum Guidelines advance the ability of AOs to make accurate decisions by “enhance[ing] the ability of all Officers to make *informed, consistent, and fair decisions.*” Child Asylum Guidelines, *supra*, at 23 (emphasis added). Consideration of a child’s status is not about leniency, it is about reasonableness and fairness. Recent case law interpreting the Child Asylum Guidelines makes clear that the age of the minor must be given more than mere superficial consideration; a strict, in-depth analysis of the age factor in the analysis of claims is required. In *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042 (9th Cir. 2007), the Ninth Circuit found that the IJ committed legal error by merely acknowledging the ages of child claimants without “look[ing] at the events from their perspective, nor measure[ing] the degree of their injuries by their impact on children of their ages.” *Hernandez-Ortiz*, 496 F.3d at 1046. *See also Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006) (requiring vacatur of the decision “[b]ecause the IJ failed to . . . address the harms . . . from the perspective of a small child.”)

The government’s Unaccompanied Alien Children Guidelines direct immigration judges how to adjudicate claims in a fair and appropriate manner. The Unaccompanied Alien Children Guidelines are premised upon the conviction that in order to accurately adjudicate children’s claims, an IJ must recognize and address the relevant distinctions between adults and children. They instruct IJs on how to ensure that courtroom settings and procedures facilitate the accurate adjudication of claims, consistent with their

refugee issues, that a child-friendly atmosphere should be created, that child sensitive questioning and listening techniques should be employed, that a broad range of evidence may be considered, that credibility determinations should take into account developmental and cultural considerations. Child Asylum Guidelines at 4. The section on “Legal Analysis of Claims” evaluates how the age of a child may affect the analysis of his or her refugee status- on what qualifies as a “well-founded fear of persecution,” on the nexus requirement, on membership in a particular group, and on evidentiary issues. Child Asylum Guidelines, *supra*, at 12.

statutory obligations: “Although most suggestions pertain to juvenile and family court issues, *they have application in immigration cases as well*....By carefully controlling how the proceedings are conducted, immigration judges can effectively discharge their obligation under the INA and the regulations in a way that takes full account of the best interest of the unaccompanied alien child.” Unaccompanied Alien Children Guidelines, *supra*, at 6 (emphasis added).

While the scope of the Unaccompanied Alien Children Guidelines is the adjudication of Special Immigrant Juvenile Status (SIJS) claims, the principles have broader application. In developing the Unaccompanied Alien Children Guidelines, the Office of the Chief Immigration Judge sought out guidance from the juvenile court system, a system designed to account for juvenile status. *Id.* at 2. The Unaccompanied Alien Children Guidelines state that “issues of age, development, experience and self-determination impact how a court deals with a child respondent.” *Id.* These Guidelines acknowledge that although written for SIJS cases, some of the provisions will be relevant to other cases involving children. *Id.* at 4. In fact, the section pertaining to “Ensuring appropriate courtroom procedures” states that “The following suggestions have relevance to most, if not all, cases where children are respondents.” *Id.* at 6.¹¹ Therefore, the basic tenets reflected in the Unaccompanied Alien Children Guidelines should be applied to the adjudication of children’s cases generally.

In the instant matter, the IJ appropriately and effectively applied the principles underlying the Child Asylum Guidelines and the Unaccompanied Alien Children Guidelines in considering a child’s developmental state in assessing a claim. The

¹¹ The following suggestions are discussed: “explain the proceeding at the outset; pay particular attention to the interpreter; be aware of time; prepare the child to testify; employ child-sensitive questioning; make proper credibility assessment; control access to the courtroom.”

behavior at issue in this case occurred when Carlints was a child.¹² The IJ explicitly acknowledges that the analysis would differ for an adult Respondent:

If Respondent were an adult at the time he committed the bad acts, it would be extremely difficult for Respondent to establish enough positive equities to outweigh the bad acts. However, the facts and circumstances of this case are different from a typical adjustment of status case because Respondent is a juvenile and all of his most egregious behavior took place before his thirteenth birthday. The Court must take these facts into account and treat Respondent differently than it would if he were an adult.

I.J. at 19. In considering Respondent’s juvenile status, the IJ does not dismiss or excuse Carlints’ past behavior, rather he contextualizes it. The IJ extensively cites first to evidence demonstrating that Carlints’ delinquent behavior was connected to his traumatic childhood, and then to evidence demonstrating that since Carlints has been in a stable, healthy home environment he has been rehabilitated. To be sure, the IJ declares that had Carlints delinquent record carried on, adjustment of status would have been inappropriate: “Despite Respondent’s difficult childhood, if he had continued to commit bad acts the Court would be unwilling to favorably exercise discretion. However, there is abundant evidence that Respondent has been rehabilitated.” I.J. at 20. Thus, the IJ’s framing of issues within the context of Carlints’ childhood is consistent with the principles underlying the government’s own policies with respect to the immigration claims of children.

ii. **THE IJ’S DECISION IS CONSISTENT WITH THE PURPOSE OF THE SPECIAL IMMIGRANT JUVENILE STATUS PROVISION OF THE INA**

The enactment of Special Immigrant Juvenile (SIJ) Status as part of the Immigration Act of 1990—INA § 1101 (a)(27)(J)-- demonstrates Congress’

¹² All of Carlints’ serious offenses occurred before the age of 13. I.J. at 19.

recognition that children who have experienced maltreatment in their families deserve special protection and are extremely vulnerable as children, immigrants, and survivors of family abuse, neglect, or abandonment. SIJ status was intended to provide lawful permanent residence for children unable to live with or reunify with their biological families or legal custodians, due to their status as state court dependent minors.¹³

After the juvenile court has made the requisite findings that the minor is dependent and eligible for long-term foster care due to abuse, neglect, or abandonment, and declared that it is in the minor's best interests to remain in the U.S., the child is eligible to apply to the DHS for the SIJ immigration benefit. *See* 8 C.F.R. § 204.11 (Westlaw through Apr. 10, 2008).¹⁴ Once the minor has received the federal SIJ benefit and is under the protection of the child welfare system, the minor can receive federally-funded shelter, food, clothing, medical care, mental health counseling, and other services. The benefits available to the special immigrant juveniles reflect the uniquely generous, humanitarian nature of the special status accorded by Congress to this vulnerable population.¹⁵

¹³ “The SIJ provisions of the INA were enacted in 1990 to protect abused, neglected, or abandoned children who, with their families, illegally entered the United States. Congress provided an alternative to deportation for these children. Rather than being deported along with abusive or neglectful parents, or deported to parents who had abandoned them once in the United States, such children may seek special status to remain in the United States.” *Yeboah v. U.S. Dep’t of Justice*, 345 F.3d 216, 221 (3d Cir. 2003).

¹⁴ The federal regulation defines “juvenile court” as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a). In 1998 the INS issued a memorandum clarifying that minors in juvenile delinquency proceedings may also be eligible under the SIJ statute. Interim Field Guidance Relating to Public Law 105-19 (Sec. 113) amending Section 1101 (a)(27)(J) of the INA – Special Immigrant Juveniles, Aug. 7, 1998, Thomas E. Cook, Acting Assistant Commissioner, Adjudications Division, United States Department of Justice, INS, at 3.

¹⁵ *See, e.g.*, Salisbury, “The Legality of Denying State Foster Care to Illegal Alien Children: Are Abused and Abandoned Children the First Casualties in America’s War on Immigration?,” 50 U. Miami L.

One issue that arose immediately upon the creation of SIJ status was that no related provisions of the INA had been amended in the 1990 Act to ensure that those granted SIJ status could translate such a grant into legal resident status.¹⁶ In 1991, Congress addressed this problem by passing technical amendments to “alleviate hardships experienced by some dependents of United States juvenile courts.”¹⁷ Created by technical amendments, section 245(h)¹⁸ provides for the adjustment of status of SIJ applicants by waiving specific grounds of inadmissibility that apply to adults, including being a public charge¹⁹ or absence of valid immigrant visa,²⁰ as well as allowing for waivers of other grounds of inadmissibility on a case-by-case basis.²¹ Section 245(h) also provides that SIJ applicants are deemed paroled into the United States.²²

Rev. 633, 654 (1996) (“[O]nce a state-dependent alien child attains lawful permanent residency through special immigrant juvenile status, the child becomes eligible for a host of additional federal financial benefits, including Medicaid, housing, food stamps, and school food programs.”), *citing National Immigration Law Center Guide to Alien Eligibility for Federal Programs* (1991) *see also* Chen, “Elian or Alien? The Contradictions of Protecting Undocumented Children Under the Special Immigrant Juvenile Statute,” 27 *Hastings Const. L. Quarterly*, 597, 605 (2000) (same).

¹⁶ “A significant number of aliens eligible for classification as special immigrant juvenile court dependents were ineligible to become lawful permanent residents because they could not meet the statutory requirements for immigrant visa issuance or for adjustment of status.” *Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court*, 58 *Fed. Reg.* 42,483 (Aug. 2, 1993).

¹⁷ *Special Immigrant Status*, 58 *Fed. Reg.* at 42,844. The most egregious example of hardship, of course, as noted above, was that court-ordered dependent minors could not overcome public charge grounds for exclusion. *Id.*

¹⁸ As enacted by Sec. 302(d)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733; INA §1255(h)(2000).

¹⁹ INA § 1182(a)(4)(A).

²⁰ INA § 1182(a)(7)(A).

²¹ INA § 1255(h)(2)(B).

²² INA § 1255(h)(1). While parole into the United States does not constitute an admission, INA § 1182(d)(5), *see also Leng May Ma v. Barber*, 357 U.S. 185, 186 (1958), it is, nevertheless, necessary for adjustment of status if an applicant was never admitted. INA §1255.

The technical amendments made clear that “for the purpose of applying for adjustment of status as a special immigrant juvenile ... of the Act only, these juveniles will be treated as if they had been paroled into the United States.”²³ This provision reflected a Congressional acknowledgment of the differences between children and adults within the context of eligibility for adjustment of status as Special Immigrant Juveniles and also within the broad structure of immigration law.²⁴ Unlike adults, most minors are not actually responsible for their manner of entry, admission, or lack of admission into the United States.²⁵ In addition, all children are, by definition, dependent, and likely to be public charges if the state removes them from their parent or caregiver. Thus, allowing the waiver of grounds of inadmissibility and deeming minors paroled ensures that dependent minors can establish eligibility for the relief intended them in the 1990 Act—becoming a legal permanent resident status.

Whereas other categories of adult immigrants have access to only limited waivers for certain grounds of inadmissibility that often require a showing of extreme hardship to family members who are United States citizens or lawful permanent residents, INA §

²³ Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court, 58 Fed. Reg. 42,843, 42,849 (Aug. 12, 1993).

²⁴ In 1993, Congress, in an effort to ensure protections for minors experiencing family violence, added amendments to the SIJ statute, creating waivers for SIJ applicants from many of the standard bars to obtaining lawful permanent resident status. For example, in the 1993 amendments to the statute, SIJ aliens were given automatic waivers from the public charge ground and some documentation grounds of inadmissibility and discretionary waivers for almost all other grounds of inadmissibility. See discussion of the relationship between the “deemed paroled” and the automatic and discretionary waiver of inadmissibility provisions of INA § 1255(h) *infra*.

²⁵ The former INS itself recognized in its comments to the final regulations for SIJ status that “a child in need of the care and protection of the juvenile court should not be precluded from obtaining special immigrant status because of the actions of an irresponsible parent or other adult.” Special Immigrant Status, 58 Fed. Reg. at 42,847.

1255(h) provides generous allowances for SIJ applicants.²⁶ Hence, an alien who was not previously inspected and admitted or paroled into the United States, and who seeks admission to the U.S. as a Special Immigrant Juvenile, is eligible not only for parole for the purpose of adjusting status under INA § 1255(a),²⁷ but is also eligible for both automatic waivers *and* discretionary waivers of inadmissibility, exercised by the Attorney General for “humanitarian purposes, family unity, or when it is otherwise in the public interest.” *Id.* And significantly for purposes of this case, as noted above, the statute creates an automatic waiver of the INA § 1182(a)(4) public charge ground for inadmissibility.²⁸

²⁶

Application with respect to special immigrants.

In applying this section to a special immigrant described in section 101(a) (27) (J) INA § 1101(a) (27) (J)—

(1) such an immigrant shall be *deemed*, for purposes of subsection (a) of this section, to have been *paroled into the United States*; and

(2) in determining the alien’s admissibility as an immigrant—
(A) paragraphs (4), (5)(A), and (7)(A) of section 212(a) [INA §1182(a)] shall not apply, and

(B) the Attorney General may waive other paragraphs of section 212(a) [INA §1182(a)] (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien’s natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2) (B). Nothing in this subsection or section 101(a)(27)(J) [INA § 1101(a)(27)(J)] shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

INA § 1255(h).

²⁷

INA § 1255(a) states: “The status of an alien...paroled into the U.S....may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence.”

²⁸

See, e.g., Gegiow v. Uhl, 239 U.S. 3 (1915) (defining a public charge as a person who “by reason of poverty, insanity, disease or disability would become a charge upon the public.”); *see also* 69 Fed. Reg. 6931-38 (Feb. 13, 2004) (establishing federal poverty guidelines).

The automatic public charge waiver in INA § 1182(h)(2)(A), when read *in pari materia* with the “deemed paroled” provision of INA § 1182(h)(1), evidences a broad humanitarian purpose. Clearly, when read in its entirety, INA § 1182(h) evinces a generous Congressional intent with respect to Special Immigrant Juveniles seeking admission to lawful permanent resident status, including juveniles presenting with histories of delinquency or mental health diagnoses. It reflects the fundamental purpose of the Congressional enactment of SIJ status: to provide lawful permanent residence for a vulnerable population. By definition, as recent empirical and public health studies have demonstrated, children (especially males) who are the victims of family abuse or neglect are more likely than children who grow up in stable, non-abusive family settings to exhibit mental health disorders or at greater risk of becoming involved in delinquency proceedings stemming from their experiences as victims of familial abuse or neglect and their similarly disruptive and traumatic experiences in foster care. *See* Section I(A).

The IJ’s decision in the instant matter is entirely consistent with the recognition by Congress that the abuse and neglect suffered by a child prior to entry into the foster care system are equities weighing in the child’s favor in the exercise of discretion. The IJ appropriately took judicial notice of the clinical evidence and expert testimony showing the influence on Carlints’ negative behaviors in his home and school of his difficult and traumatic loss of parental support and other early childhood experiences: “He was abandoned by his mother at the tender age of five and the identity and whereabouts of his father are unknown. Respondent’s last contact with his mother was when he was nine and family members presumed she is dead. Both parents have had their parental rights terminated by the State of Florida.” I.J. at 19.

The IJ also, appropriately, drew a nexus between the neglect suffered by Carlints at this critically vulnerable age, particularly his exposure to pornography and the failure of his caregivers to provide “concomitant training in moral values and boundaries,” and the disturbing sexually inappropriate behaviors that he exhibited at this young age. I.J. at 19-20.

Lastly, the IJ looked to the physical abuse of Carlints at the hands of his aunt and his physical harassment by peers in an early foster care placement as equities weighing in his favor. The IJ also appropriately recognized the treatment that he was able to receive in a therapeutic foster care setting starting at age 12, as the impetus for Carlints’ ability to recover from these abusive and no doubt traumatic experiences, and the fact that he was able to overcome his prior negative behaviors through the interventions provided by therapeutic foster care, as further positive equities in his favor. I.J. at 20.

The Immigration Court's decision is thus consistent with the core purposes of the SIJ statute and the underlying rationales for its passage, *viz.*, that children who have experienced maltreatment in their families deserve special protection and are extremely vulnerable as children, immigrants, and survivors of family abuse, neglect, or abandonment, and the recognition of differences between adults and children both within the structure of immigration law and through their exemption from some of the bars to admissibility as Special Immigrant Juveniles.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center *et al.*, respectfully request that the decision of the Immigration Judge to favorably exercise discretion in the case of Carlints St. Louis be affirmed.

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DATED: April 18, 2008

Carlints St. Louis
A 77-825-989

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this *BRIEF OF AMICI CURIAE ON BEHALF OF RESPONDENTS* was mailed by United States postal mail on this 18th day of April, 2008, to the following persons:

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