UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

January 18, 2008

Amicus Brief filed by
Marsha Levick
on behalf of
Juvenile Law Center

1. My name is Marsha Levick. I certify that I am licensed to practice before the Supreme Court of Pennsylvania. I further certify:

a. I am not a party to any Commission case in any capacity, I do not have an attorney client relationship with any person whose case has been referred to a Military Commission, I am not currently nor I am seeking to be *habeas* counsel for any such person, and I am not currently nor am I seeking to be next-friend for such person.
b. I certify my good faith belief as a licensed attorney that the law in the attached brief is accurately stated, that I have read and verified the accuracy of all points of law cited in the brief, and that I am not aware of any contrary authority not cited to in the brief or substantially addressed by the contrary authority cited to in the brief.

2. Issues Presented.

a. Supreme Court jurisprudence supports the argument that the military commissions lack jurisdiction over Omar K.
b. Federal legislation supports the argument that the military commissions lack jurisdiction over Omar K.
c. Social science research supports the argument that the military commissions lack jurisdiction over Omar K.
d. The U.S. has historically sought to rehabilitate and reintegrate child soldiers and is committed to doing so pursuant to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

3. Statement of Facts. *Amicus Curiae* hereby adopt the Statement of Facts set forth in Defendant's Brief.

4. Law & Argument.

Amicus supports Defendant Omar K.'s argument that military commissions convened pursant to the Military Commissions Act (MCA) lack jurisdiction over Omar K. The MCA is silent as to the issue of personal jurisdiction over minors and the military commissions do not provide for a distinct process for juveniles. It would be untenable to impute personal jurisdiction into a silent statute particularly when, in every state in the nation, juvenile offenders are submitted to adult prosecution *only* by express authorization.[1] To impute jurisdiction where

[1] **Alabama,** Ala. Code § 12-15-34(a) (Westlaw through 2007 Sess.); **Alaska**, Alaska Stat. § 47.12.100 (Westlaw through 2007 Sess.); **Arizona**, Ariz. Rev. Stat § 13-501 (West, Westlaw through 2007 Sess.); **Arkansas**, Ark. Code Ann. § 9-27-318 (West, Westlaw through 2007 Sess.); **California**, Cal. Welf. & Inst. Code § 602 (West, Westlaw through 2007 Sess.); **Colorado**, Colo. Rev. Stat. Ann. § 19-2-518 (West, Westlaw through 2007 Sess.); **Connecticut,** Conn. Gen. Stat. Ann. § 46B-127(a) (West, Westlaw through 2007 Sess.); **District of Columbia**, D.C. Code § 16-2307 (Westlaw through 2007 Sess.); **Delaware**, Del. Code Ann. tit. 10, § 1010 (Westlaw through 2007 Sess.); **Florida**, Fla. Stat. § 985.565 (Westlaw through 2007 Sess.); **Georgia**, Ga. Code Ann. § 15-11-30.3 (West, Westlaw through 2007 Sess.); Hawaii, Haw. Rev. Stat. § 571-22 (Westlaw through 2007 Sess.); **Idaho,** Idaho Code Ann. § 20-508 (Westlaw through 2007 Sess.); **Illinois**, 705 Ill. Comp. Stat. 405/5-130 (Westlaw through 2007 Sess.); **Indiana**, Ind. Code § 31-30-3-4 (Westlaw through 2007 Sess.); **Iowa**, Iowa Code Ann. § 232.45 (West, Westlaw through 2007 Sess.); **Kansas**, Kan. Stat. Ann. § 38-2347 (Westlaw through 2006 Sess.); **Kentucky**, Ky. Rev. Stat. Ann. § 610.010 (West, Westlaw through 2007 legislation); **Louisiana**, La. Child. Code Ann. art. 857 (Westlaw through 2007 Sess.); **Maine**, Me. Rev. Stat. Ann. tit. 15, § 3101 (Westlaw through 2007 Sess.); **Maryland**, Md. Code Ann., Cts. & Jud. Proc. § 3-8A-06 (West, Westlaw through 2007 Sess.); **Massachusetts**, Mass. Gen. Laws Ann. ch. 119, § 74 (West, Westlaw through 2007 Sess.); **Michigan**, Mich. Comp. Laws Ann. § 712A.4 (West, Westlaw through 2007 Sess.); **Minnesota**, Minn. Stat. Ann. § 260B.125 (West, Westlaw through 2007 Sess.); **Mississippi**; Miss. Code Ann. § 43-21-151 (West, Westlaw through 2007 Sess.); **Missouri,** Mo. Ann. Stat**.** § 211.073 (West, Westlaw through 2007 Sess.); **Montana,** Mont. Code Ann. § 41-5-206 (Westlaw through 2007 Sess.); **Nebraska**, Neb. Rev. Stat. § 43-247 (Westlaw through 2007 Sess.); **Nevada,** Nev. Rev. Stat. § 62B.390 (Westlaw through 2005 Sess.); **New Hampshire**, N.H. Rev. Stat. Ann. § 169-B:24 (Westlaw through 2007 Sess.); **New Jersey**, N.J. Stat. Ann. § 2A:4A-26 (West, Westlaw through 2007 Sess.); **New Mexico**, N.M. Stat. Ann. § 32A-2-20 (West, Westlaw through 2007 Sess.); **New York**, NY Family Court Act § 301.2 (Westlaw through 2007 Sess.); **North Carolina**, N.C. Gen. Stat. Ann. § 7B-1604 (West, Westlaw through 2007 Sess.); **North Dakota**, N.D. Cent. Code § 27-20-34 (Westlaw through 2007 Sess.); **Ohio**, Ohio Rev. Code Ann. § 2152.12 (West, Westlaw through 2007 Sess.); **Oklahoma**, Okla. Stat. Ann. tit. 10, § 7306-1.1 (West, Westlaw through 2007 Sess.); **Oregon,** Or. Rev. Stat. Ann. § 419C.352 (West, Westlaw through 2007 Sess.); **Pennsylvania**, 42 Pa. Stat. Ann. § 6355(e) (West, Westlaw through 2007 Act 56); **Rhode Island**, R.I. Gen. Laws § 14-1-7 (Westlaw through 2007 Sess.); **South Carolina**, S.C. Code Ann. § 20-7-7605 (Westlaw through 2007 Sess.); **South Dakota**, S.D. Codified Laws § 26-11-4 (Westlaw through 2007 Sess.); **Tennessee**, Tenn. Code Ann. § 37-1-134 (West, Westlaw through 2007 Sess.); **Texas**, Tex. Fam. Code Ann. § 54.02 (Vernon, Westlaw through 2007 Sess.); **Utah**, Utah Code Ann. § 78-3a-601 (West 2007); **Vermont**, Vt. Stat. Ann. tit. 33, § 5506 (Westlaw through 2007 Sess.); **Virginia**, Va. Code Ann. § 16.1-269.1 (West, Westlaw through 2007 Sess.); **Washington,** Wash. Rev. Code § 13.04.030 (Westlaw through 2007 legislation); **West Virginia**, W. Va. Code § 49-5-10 (Westlaw through 2007 Sess.); **Wisconsin**, Wis. Stat.

there is silence would be comparable to states transferring a juvenile from juvenile court to adult court in the absence of a legislative directive to do so. All 50 states, plus the District of Columbia affirmatively declare the parameters in which a juvenile may be, or in some cases must be transferred to adult court. No state would arbitrarily transfer a juvenile to adult court without such explicit direction. Similarly the military commission cannot arbitrarily assume jurisdiction over a juvenile when jurisdiction has not been explicitly conferred.

Defendant's brief lays out the analysis establishing that Congress' silence in the MCA presupposes that an enemy combatant subject to military commission jurisdiction must at least be the minimum age to participate in hostilities and join the military force on whose behalf he allegedly fought. The brief establishes that this interpretation is supported by longstanding military law, international humanitarian law, and congressional intent. *Amicus* build from Respondent's argument to demonstrate that Respondent's analysis of the MCA is further supported by a broad range of federal law distinguishing juveniles from adults. Moreover, this federal law is complemented by an emerging body of social science research attesting to the developmental differences between adolescents and adults. Finally, *amicus* note that the United States has a history of, and commitment to rehabilitating and reintegrating child soldiers.

United States Supreme Court jurisprudence and federal legislation have consistently accounted for the developmental and social differences of youth in delineating their constitutional and legal rights when they are accused of crimes. But "[i]n detaining Omar K., the

---

Ann. § 938.183 (West, Westlaw through 2007 Sess.); **Wyoming**, Wyo. Stat. Ann. § 14-6-237 (Westlaw through 2007 Sess.).

United States has flouted juvenile justice standards that provide for children to be treated in accordance with their unique vulnerability, lower degree of culpability, and capacity for rehabilitation." *See* Human Rights Watch, Press Release, *US: Move O.K. and Hamdan Cases to Federal Court*, (June 1, 2007), http://hrw.org/english/docs/2007/06/01/usdom16050.htm. As demonstrated *infra*, the recognition that youth have a "unique vulnerability, lower degree of culpability, and capacity for rehabilitation" is indeed embedded in our legal tradition. And the powerful testimony of former Sierra Leonean child soldier Ishmael Beah at the hearings on the Child Soldier Prevention Act of 2007 reminds us of the wisdom of that tradition:

> I wouldn't be alive today if it weren't for the presence of non-governmental organizations that believed that children like myself, due to our emotional and psychological immaturity, had been brainwashed and forced to be killers, and above all, that we could be rehabilitated and reintegrated into society. Healing from the war was a long-term process that was difficult but very possible. It required perseverance, patience, sensitivity, and a selfless compassion and commitment from the staff members at my healing center. Effective rehabilitation of children is in itself a preventative measure and this should be the focus, not punitive measures against children that have no beneficial outcome.

Hearing on Casualties of War: Child Soldiers and the Law Before The Senate Judiciary Subcommittee on Human Rights and the Law, 110th Cong (April 24, 2007) (testimony of Ishmael Beah, Author, A Long Way Gone: Memoirs of a Boy Soldier), *available at* http://judiciary.senate,gov/print_testimony.cfm?id=2712&wit_id=6387. A holding that the military commissions convened pursuant to the Military Commissions Act (MCA) lack jurisdiction over O.K would fit squarely within this legal tradition.

I. FEDERAL LAW CONSISTENTLY RECOGNIZES THE DEVELOPMENTAL DIFFERENCES BETWEEN ADOLESCENTS AND ADULTS

A. The United States Supreme Court Has Repeatedly Recognized Key Social and Developmental Differences Between Adolescents and Adults In Adjudicating Their Rights Under the Constitution.

That minors are different is a principle that permeates our law. As Justice Frankfurter so aptly articulated, "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). Accordingly, for the last sixty years, Supreme Court jurisprudence has consistently reflected this view in determining the scope of minors' rights under the constitution.

For example, the Supreme Court has long recognized that minors and adults are different for the purpose of determining the voluntariness of confessions during custodial interrogation. The Court has recognized that minors are generally less mature than adults and, therefore, are more vulnerable to coercive interrogation tactics. As the Court admonished in *Haley v. Ohio*, 332 U.S. 596 (1948), a teenager

> *cannot be judged by the more exacting standards of maturity*. That which would leave a man cold and unimpressed can overawe and overwhelm a lad... [W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.

Id. at 599-600 (emphasis added).

The Court also has noted that minors generally lack critical knowledge and experience,

and have a lesser capacity to understand or exercise their rights when they are "made accessible only to the police." *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (finding statement taken from a 14- year-old boy outside of his parents' presence to be involuntary). And in *In re Gault*, 387 U.S. 1, 55 (1967), where the Court extended many key constitutional rights to minors subject to delinquency proceedings in juvenile court, the Court reiterated its earlier concerns about youths' special vulnerability: "The greatest care must be taken to assure that [a minor's] confession was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."[2]

The Supreme Court's protective stance toward youth in confession cases parallels its stance in other areas of criminal procedure. For example, the Court has endorsed the juvenile court's core principles of individualized rehabilitation and treatment, noting youth's greater amenability to rehabilitative interventions than adults and declining to extend the right to jury trials to juveniles for fear of impeding this rehabilitative focus. *See McKeiver v. Pennsylvania*,

---

[2] *See also Kaupp v. Texas*, 538 U.S. 626 (2003)(per curiam), where the Court suppressed a 17-year-old's confession following an illegal arrest (absent undisclosed intervening evidence in the record) under the Fourth and Fourteenth Amendments. The Court applied earlier precedents in considering the defendant's status as a 17-year-old in its analysis:

> A *17-year-old boy* was awakened in his bedroom at three in the morning by at least three police officers, one of whom stated "we need to go and talk..... [The boy's] `Okay' in response to Pinkins's statement is no showing of consent under the circumstances. *Pinkins offered [the boy] no choice, and a group of police officers rousing an adolescent out of bed in the middle of the night with the words `we need to go and talk' presents no option but `to go.'* There is no reason to think [the boy's] answer was anything more than `a mere submission to a claim of lawful authority.' *Id.* at 631 (emphasis added) (citations omitted)

Yarborough v. Alvarado, 541 U.S. 652 (2004) is not to the contrary. There, the Court held that youth was not a vital consideration when determining whether an individual is in custody for purposes of triggering *Miranda* warnings prior to interrogation. *Alvarado* did not disturb this Court's prior precedents that youth is an important factor in assessing the voluntariness of confessions under the due process clause. Moreover, *Alvarado* was a habeas corpus proceeding pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA); the Court only analyzed whether the state court's interpretation of the law in *Alvarado* was reasonable, not whether it was correct.

403 U.S. 528, 540 (1971); *Gault*, 387 U.S. at 15-16.

The Supreme Court has relied on the differences between youth and adults in its application of other constitutional provisions to youth. For instance, the Court has repeatedly held that Fourth Amendment strictures may be relaxed when dealing with youth in public schools because youth as a class are in need of adult guidance and control. The Court has sustained the constitutionality of warrantless searches by school officials of students' belongings upon reasonable suspicion that a student has violated school rules or the law, *New Jersey v. T.L.O.*, 469 U.S. 325, 341-42 (1985). In the same vein, the Court has upheld random, suspicionless drug testing of student athletes, *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 664-65 (1995), and random, suspicionless drug testing of students engaged in extracurricular activities, *Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 838 (2002).[3]

The Supreme Court has also endorsed constitutional distinctions between minors and adults outside the criminal law. In a series of cases involving state restrictions on minors' reproductive choices, the Court has said that "during the formative years of childhood and adolescence, *minors often lack the experience, perspective, and judgment to avoid choices that*

Alvarado, 541 U.S. at 663-64.

[3] To support these Fourth Amendment rulings, the Court has observed that "[t]raditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination -- including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians." *Vernonia*, 515 U.S. at 654 (citation omitted). This echoes the Court's earlier declaration in *Schall v. Martin*, 467 U.S. 253, 265 (1984), in explaining the rejection of a constitutional challenge to the preventive detention of juveniles charged with delinquent acts, that "*juveniles, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to care for themselves.* They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*..." (emphasis added) (citations omitted). *Cf. Vernonia*, 515 U.S. at 655 (when parents place their children in school they delegate custodial power to the latter, permitting the school a degree of supervision and control over their children that could not be exercised over free adults); *T.L.O.*, 469 U.S. at 339

could be detrimental to them," *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (emphasis added), as well as "*the ability to make fully informed choices that take account of both immediate and long-range consequences." Id.* at 640 (emphasis added); *see also Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) ("The State has a strong and legitimate interest in the welfare of its young citizens, whose *immaturity, inexperience, and lack of judgment* may sometimes impair their ability to exercise their rights wisely.") (emphasis added). For this reason, the Court has held that states may choose to require that minors consult with their parents before obtaining an abortion. *See Hodgson*, 497 U.S. at 458 (O'Connor, J., concurring in part) (the liberty interest of a minor deciding to bear a child can be limited by parental notice requirement, given that immature minors often lack ability to make fully informed decisions); *Bellotti*, 443 U.S. at 640 (because minors often lack capacity to make fully informed choices, the state may reasonably determine that parental consent is desirable).[4] Most recently, in its landmark decision *Roper v. Simmons*,

---

(same).

[4] The Court also has curtailed the liberty interests of minors in other settings. In *Parham v. J.R.*, 442 U.S. 584 (1979), the Court rejected a constitutional challenge to Georgia's civil commitment scheme that authorized parents and other third parties to involuntarily commit minors under the age of 18. The Court stressed that "[m]ost children, *even in adolescence, simply are not able to make sound judgments concerning many decisions*...." *Id*. at 603 (emphasis added).

The Court has also distinguished youth from adults under the First Amendment. In *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004), the Court was unanimous that protecting minors from harmful images on the Internet, due to their immaturity, is a compelling government interest. *Id.* at 683 (Breyer, J., dissenting). In *Ginsburg v. New York*, 390 U.S. 629, 637 (1968), the Court upheld a state statute restricting the sale of obscene material to minors. Such a restriction was permissible for youth, as compared to adults, because "*a child -- like someone in a captive audience – is not possessed of that full capacity for individual choice* which is the presupposition of First Amendment guarantees." *Id.* at 649-50 (Stewart, J., concurring) (footnotes omitted) (emphasis added). *See also Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (holding that public school authorities may censor school-sponsored publications). Most recently in *Morse v. Frederick*, 127 S.Ct. 2618 (2007) (holding that the principal did not violate student's right to free speech by confiscating a banner she reasonably viewed as promoting illegal drug use) the Court reaffirmed the principle that "[T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings") (citing *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986)).

543 U.S. 551, 569-72 (2005), the Court relied in part on social science research to hold that imposition of the death penalty on those who committed their offenses under the age of 18 constitutes cruel and unusual punishment. Specifically, the Court noted that studies confirm that "a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." *Id.* at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). Additionally, the Court noted that youth have less control over their environment.[5] *Id.* at 569 (citing Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003)).

The Court's findings with respect to the developmental differences of teenagers in the

---

These themes are echoed in the Court's public school prayer decisions. *See, e.g.*, *Lee v. Weisman*, 505 U.S. 577 (1992) (In holding that prayers delivered by clergy at public high school graduation ceremonies violate the Establishment Clause of the First Amendment, the Court placed great emphasis on the "public pressure, as well as peer pressure," that such state-sanctioned religious practices impose on impressionable students. The Court stated it was not addressing whether the government could put citizens to such a choice when those "affected . . . are mature adults," rather than "primary and secondary school children," who are "often susceptible to pressure from their peers towards conformity . . . in matters of social convention." *Id*. at 593.); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (Court held that prayers authorized by a vote of the student body and delivered by a student prior to the start of public high school football games violated the Establishment Clause, stressing "the immense social pressure" on students "to be involved in the extracurricular event that is American high school football." *Id.* at 311.) By contrast, the Court rejected an Establishment Clause challenge to the delivery of prayers at the start of legislative sessions, where the audience is almost exclusively comprised of adults. *Marsh v. Chambers*, 463 U.S. 783 (1983).

[5] If Congress had intended for the MCA to apply to juveniles, it would have explicitly prohibited the imposition of the juvenile death penalty given that *Simmons* was decided only one year prior to the enactment of the MCA. The MCA provides that an alien unlawful enemy combatant tried in a military commission may be sentenced to capital punishment. *See* 10 U.S.C.A. § 948d(d) (West, Westlaw 2007) ("A military commission under this chapter may...adjudge any punishment not forbidden by this chapter, including the penalty of death.."); *but see* 10 U.S.C.A. § 949s (West, Westlaw 2007) (prohibiting the imposition of cruel or unusual punishments generally). Among other offenses, Omar K. has been charged with "murder in violation of the law of war," which is punishable by death. 10 U.S.C. § 950v(b)(15) (West, Westlaw 2007). The fact that the MCA does not mention juveniles at all, even in this provision, supports Omar K.'s contention that Congress did not intend for juveniles to be tried in the military commissions. *See* 10 U.S.C.A. § 948a-948c (West, Westlaw 2007) (describing military commissions generally,

critical realms of decision-making and judgment, in turn, are well-supported by a wide body of social science and medical research, as discussed in detail in Part II, *infra.*

B. Congress Has Differentiated Between Minors and Adults in the Criminal Context.

Congress understands the need to treat children differently from adults in the criminal context. For example, the Juvenile Delinquency Act, 18 U.S.C.A. § 5031, *et seq.* (hereinafter "JDA"), differentiates between adult and juvenile offenders by setting forth specific procedures for the detention and prosecution of persons under the age of 18, procedures that differ from those for the detention and prosecution of persons over the age of 18. The JDA specifically provides that juveniles shall not be prosecuted in a federal court unless (1) the state juvenile court (or another appropriate state court) lacks jurisdiction or refuses to exercise jurisdiction; (2) the state lacks "available programs and services adequate for the needs of juveniles"; or (3) the charged offense is a violent felony or a certain violation of the Federal Controlled Substances Act or Controlled Substances Import & Export Act, and there is a substantial federal interest in exercising federal jurisdiction. 18 U.S.C.A. § 5032 (West, Westlaw 2007). Additionally, the JDA lays out a broad range of factors that must be considered when evaluating whether transfer to adult court would be appropriate. The JDA lays out the following factors:

> "the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems. In considering the nature of the offense, as required by

---

who is subject to them, and the scope of their jurisdiction without specifically mentioning juveniles).

> this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer."

18 U.S.C.A. § 5032 (West, Westlaw 2007).

By setting forth in the JDA special procedures for the prosecution, detention and rehabilitation of juveniles, Congress recognized the need to treat juvenile offenders differently from adult offenders. For example, if a juvenile is adjudged delinquent, the JDA mandates that he not be "placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges," and "[w]henever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home or community." 18 U.S.C.A. § 5039 (West, Westlaw 2007). *See also In re Sealed Case*, 893 F.2d 363, 367-68 (D.C. Cir. 1990) ("[T]he Act's underlying purpose is to rehabilitate, not to punish, so as 'to assist youth in becoming productive members of our society [by] channel[ing] juveniles, for whom the criminal justice system is inappropriate, away from and out of the system into human problem-solving agencies and professions.' The Act is premised on the notion that it is in the best interest of both the juvenile and society that juveniles be insulated from the stigma associated with criminal trials, the publicity, the retributive atmosphere and the threat of criminal incarceration attendant to criminal proceedings.") (quoting S.Rep. No. 1011, 93rd Cong., 2nd Sess., 22 (1974),

reprinted in U.S.Code Cong. & Admin. News 1974, p. 5286).[6]

II. SOCIAL SCIENCE RESEARCH SUPPORTS THE LONG-HELD VIEW THAT ADOLESCENTS ARE CATEGORICALLY DIFFERENT THAN ADULTS

Both the Supreme Court jurisprudence and federal legislation discussed in Part I, *supra*, are well-supported by social science research in this area. Empirical studies have established that youth are developmentally different from adults. Specifically, this scholarship shows that adolescents are more likely than adults to engage in risky behavior; are more likely to consider only the immediate effects of their acts rather than the long-term consequences; and are far more susceptible to being overcome by external pressure from peers and authority figures than are adults, both in terms of how they evaluate their own behavior and in conforming their conduct. The scholarship also shows that because they live in the moment, adolescents feel that they have less of a stake in the future. This research confirms the wisdom in Congress's decision to withhold jurisdiction from the military commissions convened pursuant to the Military Commissions Act (MCA) over youth such as Omar K.

First, the social research has demonstrated that youth, as compared to adults, are much less capable of controlling their criminal behavior and, consequently, they are less culpable than adults. Adolescents are often characterized as risk takers, more willing to take risks than adults and more likely to believe that they will avoid the negative consequences of risky behavior.

---

[6] *See also United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir. 1980) ("The purpose of the Act, as amended in 1974, was to enhance the juvenile system by removing juveniles from the ordinary criminal justice system and by providing a separate system of treatment for them.") (citing S.Rep. No.93-1011, 93d Cong., 2d Sess., 22 (1974), reprinted in U.S.Code Cong. & Admin.News, p. 5283.); *Fagerstrom v. United States*, 311 F.2d 717, 720 (8th Cir. 1963) (stating that to be adjudged a juvenile delinquent and committed to custody is not to be convicted of or sentenced for a crime, and "[t]he very purpose of the Act is to avoid the prosecution of juveniles as criminals").

Developmental psychology research supports this perception. Not only do adolescents prefer to engage in risky or sensation-seeking behavior, but, perhaps just as important, they may have different perceptions of risk itself. *See* Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 Law & Hum. Behav. 249, 260 (1996) ("The few extant comparisons of adults and adolescents suggest that thrill seeking and disinhibition [as assessed via measures of sensation seeking] may be higher during adolescence than adulthood."). For example, adolescents appear to be unaware of some risks of which adults are aware, and to calculate the probability of positive and negative consequences differently than adults. The proven inability of juveniles as a class to appreciate the consequences of their actions, their propensity toward reckless behavior, their immature decision-making and, most importantly, their susceptibility to negative external influence, warrants different treatment of child soldiers than adult enemy combatants.

Moreover, adolescents are risk-takers who are more resistant to social control and less susceptible to deterrence. *See* Carl Keane et al., *Deterrence and Amplification of Juvenile Delinquency by Police Contact: The Importance of Gender and Risk-Orientation*, 29 Brit. J. Criminology 336, 338 (1989) ("We suggest that those adolescents who are risk-takers will be more resistant to familial and formal control ...."). Issues of risk perception are closely related to those of temporal perspective, sometimes described as future orientation. Generally, adolescents tend to focus more on short-term consequences and less on the long-term impact of a decision or behavior. *See* Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 Law & Hum. Behav. 221, 231 (1995) ("In general, adolescents seem to discount the

future more than adults and to weigh more heavily the short-term consequences of decisions--both risks and benefits--a response that in some settings contributes to risky behavior.") (citation omitted). This focus on the present makes sense: adolescents have had less experience with long-term consequences due to their age and they may be uncertain about what the future holds for them.

Also, adolescents are more likely than adults to be influenced by others, both in terms of how they evaluate their own behavior and in their conformity to their peers. *See* Thomas J. Berndt, *Developmental Changes in Conformity to Peers and Parents*, 15 Developmental Psychol. 608, 615 (1979) (showing peak peer conformity at grade 9 between grades 3 and 12); Scott, *Evaluating Adolescent Decision Making* at 230. Because a majority of delinquent adolescent behavior occurs in groups, *see* Franklin E. Zimring, *Kids, Groups and Crime: Some Implications of a Well-Known Secret*, 72 J. Crim. L. & Criminology 867, 867 (1981), peer pressure may exert a powerful counterweight to the societal commands of the criminal law. Furthermore, peer involvement affects perceptions of the certainty and severity of sanctions. *See* Mark C. Stafford & Mark Warr, *A Reconceptualization of General and Specific Deterrence*, 30 J. Res. Crime & Delinq. 123, 132 (1993) ("[A]n intelligent offender might be tempted to draw stronger conclusions about the certainty and severity of punishment from the cumulative experiences of friends than from his or her own relatively narrow life experiences."). Omar K. is alleged to have acted with Al Qaeda, including attending an Al Qaeda training camp. In a group training camp environment, the peer pressure that affects juveniles is able to reign. But the MCA created no specific process by which the military commission could account for the effect of peer pressure

on children or the unique characteristics of child soldiers discussed herein.

An adolescent's position in society is different from that of an adult, as reflected in legislation and case law cited in Part I of this brief. Adolescent autonomy is more restricted than that of adults, and minors are less integrated into the pro-social responsibilities, roles, and relationships of adulthood. Developmental psychologists have documented this reduced "stake in life." *See* Christopher Slobogin et al., *A Prevention Model of Juvenile Justice: The Promise of Kansas v. Hendricks for Children*, 1999 Wis. L. Rev. 185, 199 (1999). Like adolescents' attitude toward risk and their foreshortened temporal perspective, this deficit may lead adolescents to underestimate the real costs of antisocial conduct. Stated another way, adolescents have had less exposure to the external constraints that create internal controls.

In addition, juveniles may be more prone to give false confessions when subjected to today's sophisticated psychological interrogation techniques. Studies have shown that juveniles do not understand the words of the *Miranda* warnings as well as adults, and do not appreciate the significance and function of *Miranda* rights. *See, e.g.,* Thomas Grisso, *Juveniles' Capacities to Waive Miranda Warnings: An Empirical Analysis,* 68 Cal. L. Rev. 1134-1166 (1980). Their low social status *vis-a-vis* their adult interrogators, societal expectations that they respect authority, and their naivete in believing that police officers would not deceive them, also may make them more likely to comply with the demands of their interrogators. *See* Barry C. Feld, *Competence, Culpability, and Punishment: Implications of Atkins for Executing and Sentencing Adolescents,* 32 Hofstra L. Rev. 463 (Spring 2004); *see also* Gerald Robin, *Juvenile Interrogation and Confessions,* 10 J. Pol. Sci. & Admin. 224, 225 (1982). Moreover, juveniles' immature decision-

making abilities, their short-term thinking and greater willingness to take risks, *see* Thomas Grisso & Laurence Steinberg et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 Law & Human Beh. 333, 353-356 (2003), make them particularly ill-suited to engage in the high stakes risk-benefits analysis that is called for in the modern psychological interrogation.[7] These deficits would only be magnified during periods of prolonged, highly sophisticated, highly coercive interrogation such as the interrogation Omar K. has been subjected to during confinement.

The research and studies set forth above and relied upon in *Simmons*[8] are equally relevant here in considering the jurisdiction of this tribunal over Omar K. Juveniles' heightened vulnerability to external pressure and their diminished control over their environment is

[7] There are no scientific studies proving definitively that juveniles are more likely to falsely confess than adults when subjected to psychological interrogation techniques. This is because it would be highly unethical to subject juvenile subjects to such stressful conditions for research purposes. Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 Law & Human Behavior 141, 142 (April 2003). One recent study, however, which subjected juveniles to far less coercive circumstances than are at play in interrogations, found that juveniles were significantly more likely to accept responsibility for an act they did not commit than are adults, and that confronting juvenile subjects with false evidence of their guilt only increased the likelihood that they would do so. *Id.* at 151-52.

[8] The Court cited the following articles and studies in its opinion: J. Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Review 339 (1992); Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003); E. 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* Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 *Behavioral Sciences and the Law* 741-760 (2000); Elizabeth S. Scott & Thomas Grisso, *Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88(1) Journal of Criminal Law and Criminology 137, 137-189 (1997); Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Postadolescent Brain Maturation*, 21(22) The 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); Kristen Gerencher, *Understand Your Teen's Brain to be a Better Parent*. Detroit Free Press, Feb. 2, 2005; Barry C. 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).

particularly relevant to child soldiers who are recruited into battle. *Cf. Simmons* 543 U.S. at 570 (recognizing that juveniles' "own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment"). Human rights and humanitarian organizations recognize that "children are uniquely vulnerable to military recruitment because of their emotional and physical immaturity" and "are easily manipulated and can be drawn into violence that they are too young to resist or understand." Human Rights Watch Fact Sheet, *Facts About Child Soldiers*, http://hrw.org/campaigns/crp/fact_sheet.html (last visited Aug. 13, 2007). Such organizations also recognize that the manipulation and recruitment to take up arms may come from family members, as was the case for Omar K. *See* Coalition to Stop the Use of Child Soldiers, Why Children Join, http://www.child-soldiers.org/childsoldiers/why-children-join (last visited Jan. 18, 2008) ("Family and peer pressure to join up for ideological or political reasons or to honour family tradition may also be motivating factors.").

Finally, there is compelling social science evidence supporting the view that children generally have a greater capacity to rehabilitate than adults. *See* Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court*, *in Youth on Trial: A Developmental Perspective on Juvenile Justice* 23 (Thomas Grisso & Robert G. 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").[9] The *Simmons* Court found that the "reality that juveniles still struggle to define their identity means it is less supportable to conclude even a heinous crime committed by a juvenile is evidence of an irretrievably depraved character" and, therefore, "[f]rom 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." *Simmons*, 543 U.S. at 570 (citing Johnson v. Texas, 509 U.S. 350, 368 (1993)). As juveniles mature into adults, "the impetuousness and recklessness that may dominate in their younger years can subside." *Id.* It is reasonable to conclude that child soldiers are likewise more amenable to rehabilitation and reintegration into society than their adult counterparts.

Given the widespread recognition of this research, it is untenable to impute military commission personal jurisdiction over juveniles based on the MCA's silence with regard to juveniles.

III. THE UNITED STATES HAS HISTORICALLY SOUGHT TO REHABILITATE AND REINTEGRATE CHILD SOLDIERS AND, SINCE RATIFYING THE OPTIONAL PROTOCOL, IT HAS ALSO MADE AN OFFICIAL COMMITMENT TO DO SO

Children soldiers are not combatants or actors in a criminal sense, they are weapons of combatants; tools of the actors. In the 1990's, questions surrounding the humanitarian treatment of children under arms were increasingly and urgently raised as young people were routinely being used as weapons in conflicts throughout the world. As one commentator notes:

---

[9] *See also* John H. Laub & Robert J. 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).

> The most vulnerable children often share many characteristics regardless of their global location. Usually, these children are economically or socially deprived, with little or no educational access. They are from marginalized groups…. Even without war, these same children are usually the child laborers in peacetime. They clearly need protection because they cannot adequately protect themselves.

Ann Davison, *Child Soldiers: No Longer a Minor Incident*, 140 Willamette J. Int'l L. & Disp. Resol. 124, 140 (2004).

Accordingly, the U.N. General Assembly directed the Secretary General to prepare a report with recommendations regarding nations' responsibilities in response to this problem. In 1996, Graca Machel, appointed by the Secretary General to lead this effort, submitted her report, *Impact of Armed Conflict on Children*. The Secretary-General, *Report of Graca Machel, Expert of the Secretary-General, on the Impact of Armed Conflict on Children, delivered to the General Assembly*, U.N. Doc. A/51/306 (Aug. 26, 1996). Most relevant to Omar K.'s case, this report acknowledged that children are not the same as willful adult actors. Rather, they are employed as tools by adults -- weapons themselves rather than soldiers with free will and autonomy. The Report further noted:

> Children serve armies in supporting roles, as cooks, porters, messengers and spies. Increasingly, however, adults are deliberately conscripting children as soldiers. Some commanders have even noted the desirability of child soldiers because they are more obedient, do not question orders and are easier to manipulate than adult soldiers.

Id. at para. 34 (internal quotation marks and citation omitted).[10]

Machel recommended that the Convention on the Rights of the Child be strengthened

[10] Two other findings of the Machel report relevant to Mr. Khadr's case include:
"Some children feel obliged to become soldiers for their own protection. Faced with violence and chaos all around, they decide they are safer with guns in their hands. Often such children join armed opposition groups after experiencing harassment from government forces." *Id.* at para. 41; and: "The lure of ideology is particularly strong in early adolescence, when young people are developing personal identities and searching for a sense of social

regarding the use of children in armed conflict, specifically by raising the minimum age for soldiering to 18, and rejecting the argument that the age of recruitment is a technical matter best left to individual states. "[E]ffective protection of children from the impact of armed conflict requires an unqualified legal and moral commitment which acknowledges that children have no part in armed conflict." *Id*. at para. 231.

In 2000, the General Assembly adopted an Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (hereinafter "Optional Protocol"). The United States ratified this independent optional protocol in September 2002, and it came into force with respect to United States Law in January 2003.[11] Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, GA Res. 54/263, U.N. Doc. A/RES/54/49, Annex I (May 25, 2000).

The Protocol condemns the use of child soldiers and recognizes the responsibility of those who recruit, train, and use children as combatants. Optional Protocol, Preamble para.11. With respect to regular armies of U.N. member states, the Protocol prohibits compulsory military service of children under 18. Id., Art. 2.[12] With respect to irregular armies, the Protocol declares that children should not be used in hostilities under any circumstances. *Id*. Art. 4, para. 1. Signatory states, like ours, are also required to take all necessary steps to ensure that the

---

meaning…. Children are very impressionable and may even be lured into cults of martyrdom." *Id*. at para. 43.

[11] Though the United States has not ratified the Convention on the Rights of the Child itself, the terms of the Protocol allow states that had not ratified the CRC to nevertheless participate in the Protocol. Omar Khadr was captured in July 2002. Afghanistan acceded to the Protocol in September 2003.

[12] The Protocol allows for the recruitment of volunteers under 18, but directs states to ensure that children do not take place in hostilities. Optional Protocol, Art. 1. Pursuant to this aspect of the protocol, the United States allows 17 year olds to volunteer for service with parental consent, but we do not allow such children to serve in direct

Protocol is implemented. Among other things, states are directed to take steps to demobilize or otherwise release from service any children who are recruited or used in combat in contravention to the Protocol. *Id*. Art. 6, para. 3. Under the Optional Protocol, the United States is required to report to the United Nations Committee on the Rights of the Child regarding our implementation of the Protocol. We released our first report on May 8, 2007, in which there are two items of note. First, the United States detailed its efforts to ensure that its military does not deploy any children under 18 in combat. Initial Report of the U.S.A. to the U.N. Committee on the Rights of the Child Concerning the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2007), http://www.state.gov/documents/organization/84649.pdf at para. 17. Second, we detailed our efforts to cooperate with and fund programs aimed at reintegrating child ex-combatants into society. The report declared that we are "committed to continue to develop rehabilitation approaches that are effective in addressing this serious and difficult problem" and that we as a nation "also espouse the principle that family reunification and community reintegration are both goals and processes of recovery for former child combatants." *Id.* at para. 35.[13] In Afghanistan

---

combat roles. Additionally, signatory States must enact safeguards to ensure that children who sign up for military service do so in a way that is truly voluntary and knowing. *Id*. Art. 3.

[13] To that end, the United States spent $10 million through USAID and $24 million through the Department of Labor on such programs, *including programs in Afghanistan*, such as:

> a program to provide emotional support for war-affected children, including child ex-combatants, through non-formal education activities, opportunities to play, training in vocational skills, and psychosocial recovery and well-being. Such programs seek to instill a sense of security, encourage positive social interactions, enable children to participate in the recovery and development of their community, provide opportunities for emotional expression, teach non-violent approaches to conflict resolution, sensitize communities to the needs and legal rights of children, and facilitate the social integration and protection of all children, including those who have participated in or been affected by armed conflict.

alone, the U.S. funded programs served nearly 3,400 former child soldiers. *Id.* at para. 36.[14]

Although our military has previously encountered armed children during wartime, never before has it presumed to adjudicate, punish and even consider execution for their acts during conflict. By the terms of the Optional Protocol, the US has agreed that children may not be combatants. As discussed above, this decision is primarily based on the universally understood lack of developed capacity in children. As this country has agreed, and indeed followed in the past, children soldiers require reintegration and education, not punishment. To subject children like Omar K. to punitive incarceration followed by a military tribunal judgment without all of the indispensible procedural guarantees required by the standards of civilized humanity itself may constitute a war crime. The way to insure no such liability is created is to rule that military commissions have no jurisdiction over children.

United States military forces have certainly faced children with weapons before. Perhaps the most infamous and organized such force in our near past was the *Hitler Jugend*, or Hitler Youth, during World War Two.[15] This country's appropriate post-war response to the Hitler Youth, who made up a notable aspect of Hitler's last armed defense of Berlin, was education and

---

[14] The United States is also a party to the International Labor Organization Convention No. 182, *ILO Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor* (ILO C182), June 17, 1999, 38 I.L.M. 1207. ILO Convention No. 182 obligates parties to ban and eliminate the use of the worst forms of child labor, which is defined in part as "all forms of slavery or practices similar to slavery. . . including forced or compulsory recruitment of children for use in armed conflict." Art. 3, para. (a). It also requires parties to "provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration." Art. 7, para. 2.

[15] When the military invasion of Nazi Germany loomed, Hitler organized the "*Volkssturm*" under the command of Heinrich Himmler. Every male between the age of 16 and 60 were conscripted. However, pleas to allow the use of even younger boys – Omar K's age of 15 for example – were rejected as too barbarous. Even though younger children later fought, and many of these children under arms killed and were killed in combat, the Allied military rejected any suggestion that they should be subjected to military punishments for those acts.

reintegration. The United States saw these young people not as war criminals, but as victims of a society that would promote racist ideology and violence as a proper means of youthful behavior. In order to help cure both the children and the underlying national culture which gave rise to Nazism, the United States at that time understood that basic education and reeducation were the only appropriate means of addressing these children's needs:

> [I]n the first years after the war, discourse about youth played a central role in Germany's coming to terms with the past. Indeed, discourse about youth and reeducation became an essential means by which (adult) Germany narrated its transition from its own, abruptly dubious history; it served as a means that would propel and progress the culture out of the now tainted … Nazi periods.

Jaimey Fisher, *Disciplining Germany: Youth, Reeducation, and Reconstruction after the Second World War* at 4 (2007). Similarly in other conflicts in which we faced child soldiers, including Viet Nam, our country has always sought to educate and has never before sought to prosecute children for their actions on a battle field.

Contrary to all of our history and legal commitment, Omar K. -- only fifteen at the time of his acts -- has been declared to be an unlawful enemy combatant and is charged with murder and attempted murder in violation of the laws of war; conspiracy; providing material support for terrorism; and spying. The United States has thus acknowledged that he is a child soldier. Such children soldiers, by this country's own consistent position,[16] must be treated as subjects for rehabilitation, not further victimization and punishment.

Subjecting a child soldier to any legal proceeding must be accomplished by protecting

[16] For example, since 1998, the United States has voted in favor of six Security Council resolutions that condemn the recruitment and use of child soldiers and that call for the rehabilitation of former child soldiers. Security Counsel

both the due process rights as required by international human rights conventions and the particular vulnerabilities of children. Such proceedings may never be punitive but must proceed on a rehabilitative model which is predicated on the best interests of the child. *See generally*, Amnesty International, *Child Soldiers: Criminals or Victims?* (2000), *available at* http://www.amnesty.org/en/report/info/IOR50/002/2000. A military prosecution without such a governing standard or the required indicia of due process required by human rights standards may itself violate the laws of war. *See generally*, International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI) (1996) at 21 U.N. GAOR Supp. No. 16 at 52 (1966).[17] For, whether a military force does violence directly to war victims or after woefully inadequate, unfair and unreliable procedures -- such violations of human rights may rightly be considered war crimes. *See, e.g. Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T, Trial Chamber I Judgment at para. 599 (indicating war crime tribunal power to prosecute "violations of Article 3 common to the four Geneva Conventions of 12 August 1949 for the Protection of War Victims… [including] (g) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensible by civilized people….'). The only appropriate action consistent with our history, legal obligations, and the

---

Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005), *available at* http://www.un.org/documents/scres.htm.

[17] Of particular relevance are the rights as outlined in Article 14 ("fair and public hearing," "independent and impartial tribunal," "adequate time and facilities for the preparation of his defense," "to examine … the witnesses against him," and "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"); Article 15 ("no one shall be held guilty of any criminal offense on account of any act … which did not constitute a criminal offense … at the time it was committed") and Article 24 ("[e]very child shall

requirements of civilized humanity is the dismissal of these proceedings against Omar K.

Respectfully submitted,

Marsha L. Levick*
**Counsel of Record*
mlevick@jlc.org
Mia Carpiniello
mcarpiniello@jlc.org
Neha Desai
ndesai@jlc.org
Juvenile Law Center
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551

Erik S. Pitchal
Assistant Clinical Professor
epitchal@suffolk.edu
Jeffrey J. Pokorak
Associate Professor
jpokorak@suffolk.edu
Suffolk University Law School
120 Tremont Street
Boston, MA 02108-4977
617-573-8100

---

have … the right to such protections as are required by his status as a minor….")