

# Penn State Journal of Law & International Affairs

---

Volume 11 | Issue 2

---

May 2023

## The “Deliberate Indifference” Standard of Mental Health Care: How it Fails Unaccompanied Minors Seeking Asylum

Karina Virk

Follow this and additional works at: <https://elibrary.law.psu.edu/jlia>



Part of the [International and Area Studies Commons](#), [International Law Commons](#), [International Trade Law Commons](#), and the [Law and Politics Commons](#)

ISSN: 2168-7951

---

### Recommended Citation

Karina Virk, *The “Deliberate Indifference” Standard of Mental Health Care: How it Fails Unaccompanied Minors Seeking Asylum*, 11 PENN. ST. J.L. & INT'L AFF. 261 (2023).

Available at: <https://elibrary.law.psu.edu/jlia/vol11/iss2/10>

*The Penn State Journal of Law & International Affairs* is a joint publication of Penn State's School of Law and School of International Affairs.

**Penn State**  
**Journal of Law & International Affairs**

---

2023

VOLUME 11 No. 2

---

**THE “DELIBERATE INDIFFERENCE”  
STANDARD OF MENTAL HEALTH CARE:  
HOW IT FAILS UNACCOMPANIED  
MINORS SEEKING ASYLUM**

*By Karina Virk\**

TABLE OF CONTENTS

I. INTRODUCTION .....	262
II. BACKGROUND.....	265
A. The Historical Treatment of Immigrant Children .....	265
B. Unaccompanied Minor.....	267
C. <i>A.M. v. Luzerne County Juvenile Detention Center</i> .....	269
D. <i>Doe v. Shenandoah Valley Juvenile Center Commission</i> .....	272
E. The History of the “Deliberate Indifference” Standard..	276
F. Effect of Untreated Mental Illness .....	278
G. Mental Developmental Differences Between Children and Adults.....	280
III. ANALYSIS.....	282
A. The Judicial and Congressional Distinction Between Children and Adults .....	282
B. The Judicial Treatment of Juveniles and the Dangers of Treating Immigrant Children Like Adults .....	285
C. Deliberate Indifference.....	286
D. A Substantial Departure from Accepted Standards of Professional Judgment.....	289
E. What Matters More: Age or Trauma? .....	291

---

\* Karina Virk is the Managing Editor of Research of The Journal of Law and International Affairs and a 2023 Juris Doctor Candidate at The Pennsylvania State University School of Law.

F. A Denied Writ of Certiorari—What This Means for the Future of UACs .....	292
IV. CONCLUSION .....	294

## I. INTRODUCTION

A seven-year-old boy spends the formative years of his youth witnessing gang violence and the brutal murders of his friends.<sup>1</sup> After suffering a machete attack and experiencing violence for most of his life, he decides to flee to the United States for his own safety. While traveling to the border, he is robbed, beaten, and shot. Alone, hurt, and terrified, he manages to cross over into the United States—the country he envisions as his haven. Instead, this boy’s dream transforms into a nightmare when he ends up in a detention center that fails to care for his mental health by ignoring the signs of mental illness.

Another young boy ends up at a detention center after an arrest for indecent exposure.<sup>2</sup> At the center, the boy faces a slew of bullying where other residents spit on him, punch him, shove his head in trash cans, throw urine on his bed, whip him, and choke him. Physical signs of abuse mar his body—bruises, black eyes, and swollen lips. Childcare workers at the center fail to do anything to help this child despite the obvious signs of abuse.

Detention centers exist to maintain the health and wellness of the juveniles in their custody, including caring for the juveniles’ mental health.<sup>3</sup> However, when that mental healthcare is inadequate, unaccompanied immigrant children need a legitimate opportunity to fight back and demand adequate care. Immigrant children fleeing to the United States experience a variety of traumatic experiences which affect their mental and emotional development. The treatment these children receive at detention centers must consider their unique

---

<sup>1</sup> *Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 329 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>2</sup> *A.M. v. Luzerne County Juv. Det. Ctr.*, 372 F.3d 572, 587 (3d Cir. 2004).

<sup>3</sup> 8 U.S.C. § 1232(c)(3)(A) (2018).

vulnerabilities and treat them with proper care. The legal standard for determining the adequacy of mental health care provided to detained immigrant children must account for the detrimental effects a lack of mental health care has on a child.<sup>4</sup>

This Comment will address what standard should apply when determining the adequacy of mental health care provided to detained immigrant children, and why that standard should differ from the standard for a detained adult. Particularly, this Comment will focus on the two standards at issue: a “substantial departure from accepted standards of professional judgment,”<sup>5</sup> and “deliberate indifference.”<sup>6</sup> This comment will delve deeper into both standards by analyzing what constitutes an “accepted standard of professional judgment” and “indifference,” and why unaccompanied alien children (UACs) deserve the higher standard of a “substantial departure from accepted standards of professional judgment” rather than “deliberate indifference.”<sup>7</sup>

Once unaccompanied minors reach the U.S. border, they become wards of the Department of Health and Human Service’s Office of Refugee Resettlement (ORR) who must find adequate care and facilities to care for these children.<sup>8</sup> Federal law requires these children to “be promptly placed in the least restrictive setting that is in the best interest of the child,”<sup>9</sup> and any proposed custodian must be “capable of providing for the child’s physical and mental wellbeing.”<sup>10</sup> This comment will analyze how each standard compares to the federal requirement to provide for a child’s mental well-being.

Five Supreme Court decisions have created a common law difference between children and adults: *Roper v. Simmons*, *Graham v.*

---

<sup>4</sup> See discussion *infra* Sections II.F, II.G.

<sup>5</sup> See discussion *infra* Section III.D.

<sup>6</sup> See discussion *infra* Section III.C.

<sup>7</sup> This comment uses “UAC” and “unaccompanied minor” interchangeably.

<sup>8</sup> See Amelia Cheatham & Diana Roy, *U.S. Detention of Child Migrants*, COUNCIL ON FOREIGN RELS. (Dec. 2, 2021, 10:30 AM), <https://www.cfr.org/backgrounder/us-detention-child-migrants>; see also 8 U.S.C. § 1232(c)(3)(A) (2018).

<sup>9</sup> 8 U.S.C. § 1232(c)(2)(A) (2018).

<sup>10</sup> *Id.* at § 1232(c)(3)(A).

*Florida*, *Miller v. Alabama*, *Johnson v. Texas*, and *Eddings v. Oklahoma*. While these rulings specifically refer to juvenile culpability in criminal cases, the research on adolescent brain development is clear that the mind of an average child lacks the psychosocial maturity found in the brain of the average adult, and courts must apply this distinction to all cases involving juveniles, not just criminal cases.<sup>11</sup> Considering the differences in psychosocial maturity levels between juveniles and adults, juveniles in detention centers require more careful treatment than adults.

The standard of determining adequate mental health care for detained immigrant children should differ from that of an adult. In *Doe v. Shenandoah Valley Juvenile Center Commission*, the Fourth Circuit created a circuit split by applying the “substantial departure from accepted standards of professional judgment” standard to unaccompanied minor children rather than the “deliberate indifference” standard,<sup>12</sup> created in *Estelle v. Gamble*, used for adults.<sup>13</sup> The “professional judgment” standard, first used in *Youngberg v. Romeo*,<sup>14</sup> has historically applied to involuntarily committed psychiatric patients while the “deliberate indifference” standard applied to criminal cases involving prisoners or pre-trial detainees, such as in *Patten v. Nichols*.<sup>15</sup> The “professional judgment” standard should determine the adequacy of mental health care for detained immigrant children since mental health care aligns more with medical decisions provided to psychiatric patients, and these children have not committed any crimes.

The Supreme Court recently denied a writ of certiorari to hear *Doe v. Shenandoah Valley Juvenile Center Commission* and resolve the current circuit split between the Third and Fourth Circuit.<sup>16</sup> This comment will address three potential holdings the Supreme Court

---

<sup>11</sup> See Steinberg, *infra* note 148.

<sup>12</sup> See *Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 342 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>13</sup> See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

<sup>14</sup> See *generally* *Youngberg v. Romeo*, 457 U.S. 307 (1982).

<sup>15</sup> See *generally* *Patten v. Nichols*, 274 F.3d 829 (4th Cir. 2001).

<sup>16</sup> See *Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 342 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

could make if it decides to resolve this issue. All three avenues make UAC protection a priority because UACs deserve a higher level of care and protection than they are currently provided.

## II. BACKGROUND

### A. The Historical Treatment of Immigrant Children

Generally, the U.S. immigration system treats immigrant children crossing the border poorly.<sup>17</sup> Under the Trump administration, the United States separated thousands of children from their parents after the implementation of a zero-tolerance policy.<sup>18</sup> This new policy called for the criminal prosecution of any adult entering the United States illegally, including those requesting asylum.<sup>19</sup> Since these minors could not legally remain in custody with their legal guardians, U.S. Immigration and Customs Enforcement (ICE) separated children from their parents and declared them unaccompanied; altogether, more than 4,300 children lost their families.<sup>20</sup> Once separated, the U.S. Customs and Border Protection (CBP) took custody over these children.<sup>21</sup> A study shows that CBP agents continuously violate policies put in place to protect UACs.<sup>22</sup> An estimated sixty-seven percent of children reported cold temperatures, twenty-three percent of children reported insufficient sustenance, and thirty-three percent of UACs had their requests for

---

<sup>17</sup> See Charles Oberg et al., *Treatment of Migrant Children on the US Southern Border is Consistent with Torture*, 147 AM. ACAD. PEDIATRICS 1, 1-3 (Jan. 1, 2021), <https://publications.aap.org/pediatrics/article/147/1/e2020012930/33464/Treatment-of-Migrant-Children-on-the-US-Southern>.

<sup>18</sup> See Suzanne Gamboa, *Trump's Border Separations Left Children, Parents with Severe Trauma, Study Finds*, NBC NEWS (Dec. 1, 2021), <https://www.nbcnews.com/news/latino/new-study-finds-severe-trauma-children-parents-separated-border-rcna7287>.

<sup>19</sup> See *id.*

<sup>20</sup> See Cheatham, *supra* note 8.

<sup>21</sup> See Kiera Coulter et al., *A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Prot.*, J. ON MIGRATION & HUM. SEC. (Apr. 22, 2020), <https://journals.sagepub.com/doi/10.1177/2331502420915898>.

<sup>22</sup> See *id.*

medical care ignored.<sup>23</sup> These conditions directly violate the 1997 Flores settlement.

The plaintiff in *Reno v. Flores*, a class action filed on behalf of immigrant children against the Immigration and Naturalization Service (INS), accused the INS of the mistreatment of minors.<sup>24</sup> After ten years of litigation, the government reached a settlement with immigration advocacy groups<sup>25</sup> called the Flores Settlement which provided protections for immigrant children and stipulated that the federal government had to provide basic standards of care including “temperature-controlled conditions, water, food, [and] medical assistance.”<sup>26</sup> Before this settlement, the INS did not have to adhere to any standards.<sup>27</sup> Over the last twenty years, the settlement has expanded to limit the detention of minors to a total of twenty days,<sup>28</sup> and the detention of unaccompanied minors by the CBP to seventy-two hours.<sup>29</sup> After the children leave CBP custody, Department of Health and Human Services Office of Refugee Resettlement (ORR) assumes custody.<sup>30</sup>

In 2018, the Trump Administration implemented a new information sharing policy between ORR, ICE, and CBP.<sup>31</sup> ORR

---

<sup>23</sup> See *id.*

<sup>24</sup> See *Reno v. Flores*, 507 U.S. 292, 296 (1993).

<sup>25</sup> See Matthew Sussis, *The History of the Flores Settlement – How a 1997 Agreement Cracked Open Our Detention Laws*, CTR. FOR IMMIGR. STUDS. (Feb. 11, 2019), <https://cis.org/Report/History-Flores-Settlement>.

<sup>26</sup> *What Is the Flores Settlement Agreement and What Does It Mean for Family Separation and Family Detention?*, JUST. FOR IMMIGRANTS, <https://tinyurl.com/ma96t4mn> (last visited Oct. 8, 2021).

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See Danilo Zak, *Fact Sheet: Unaccompanied Migrant Children (UACs)*, NAT'L IMMIGR. F. (Nov. 2, 2020), <https://immigrationforum.org/article/fact-sheet-unaccompanied-migrant-children-uacs>.

<sup>30</sup> See CONG. RSCH. SERV., R43664, ASYLUM POLICIES FOR UNACCOMPANIED CHILDREN COMPARED WITH EXPEDITED REMOVAL POLICIES FOR UNAUTHORIZED ADULTS: IN BRIEF (2014).

<sup>31</sup> See Memorandum of Agreement Between the Off. of Refugee Resettlement, U.S. Immig. and Customs Enft (Apr. 13, 2018), <https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>; Zak, *supra* note 29.

supplied ICE with information regarding the immigration status of unaccompanied minors' families and potential sponsors.<sup>32</sup> This resulted in fewer family members and sponsors claiming these children for fear of deportation or detention by CBP or ICE and left many children in ORR's custody for months waiting for a suitable sponsor.<sup>33</sup>

During the beginning of the COVID-19 pandemic in March 2020, the U.S. government did not allow any undocumented immigrants, including unaccompanied minors and those seeking asylum, to enter the United States. As a result, the U.S. government immediately deported over 8,500 UACs without putting them into the custody of ORR or screening for human trafficking despite testing negative for the coronavirus.<sup>34</sup> In July 2020, reports found that ICE had instituted the Temporary Housing Program where ICE secretly held UACs in private hotels, withheld legal representation, and deported them back to their home countries.<sup>35</sup> This program detained at least 577 unaccompanied minors between March 2020 and July 2020, from ages ranging from ten to seventeen.<sup>36</sup>

## B. Unaccompanied Minor

Eight potential classifications exist to categorize immigrant children: (1) asylum seeker, (2) deferred action for childhood arrival (DACA), (3) child with immigrant parents, (4) first-generation immigrant children, (5) refugee, (6) special immigrant juvenile status, (7) temporary protected status, and (8) an unaccompanied alien child (UAC).<sup>37</sup> This comment focuses on the final classification—an unaccompanied minor. A UAC is defined as a child who “lack[s] lawful immigration status in the United States, [is] under the age of 18, and [is] without either a parent or legal guardian in the United

---

<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

<sup>34</sup> *See id.*

<sup>35</sup> *See Flores v. Barr*, 977 F.3d 742, 743 (9th Cir. 2020).

<sup>36</sup> *See id.*

<sup>37</sup> *See* Ranit Mishori, *U.S. Policies and Their Effects on Immigrant Children's Health*, AM. FAM. PHYSICIAN (Feb. 15, 2020), <https://www.aafp.org/afp/2020/0215/p202.html>.



States, or a parent or legal guardian in the United States available to provide care and physical custody.”<sup>38</sup> As a UAC in the United States, that child has rights under the Fifth Amendment’s Due Process Clause<sup>39</sup> regardless of whether they entered the country legally or illegally.<sup>40</sup> The Due Process Clause of the Fourteenth Amendment also protects UACs.<sup>41</sup> For UACs under the care of ORR, a federal requirement exists under the “Enhancing Efforts to Combat the Trafficking of Children” subsection of the U.S. Code.<sup>42</sup> This subsection requires the placement of UACs into facilities “capable of providing for the child’s physical and mental well-being.”<sup>43</sup> Additionally, Eighth Amendment protections extend to UACs convicted of a crime,<sup>44</sup> including a cap on bail and fines, and protection against “cruel and unusual punishments.”<sup>45</sup>

Most UACs experience significant trauma before attempting to enter the United States for asylum. Most UACs come from El Salvador, Guatemala, Honduras, and Mexico, countries have some of the world’s highest murder rates.<sup>46</sup> These children face gang violence, sexual assault, war, human trafficking, torture, family separation, and homelessness.<sup>47</sup> Sustained exposure to traumatic events leads to the

---

<sup>38</sup> CONG. RSCH. SERV., R43599, *Unaccompanied Alien Children: An Overview 1* (2021).

<sup>39</sup> See generally U.S. CONST. amend. V.

<sup>40</sup> See *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

<sup>41</sup> See *Plyler v. Doe*, 457 U.S. 202, 228 (1982) (holding that a person’s immigration status is not sufficient to deny benefits afforded to other residents).

<sup>42</sup> 8 U.S.C. § 1232 et seq. (2023).

<sup>43</sup> *Id.* § 1232(c)(3)(A).

<sup>44</sup> See generally U.S. CONST. amend. VIII; see also Ilya Somin, *The Constitutional Rights of Noncitizens*, LEARN LIBERTY (Apr. 30, 2017), <https://www.learnliberty.org/blog/t-he-constitutional-rights-of-noncitizens/>.

<sup>45</sup> *Cruel & Unusual Punishment—Conversation Starter*, AM. BAR ASS’N, [https://www.americanbar.org/groups/public\\_education/programs/constitution\\_day/conversation-starters/cruel-and-unusual-punishment/](https://www.americanbar.org/groups/public_education/programs/constitution_day/conversation-starters/cruel-and-unusual-punishment/) (last visited Feb. 19, 2023).

<sup>46</sup> See *Trafficking Victims Protection Reauthorization Act Safeguards Children*, NAT’L IMMIGR. F. (May 23, 2018), <https://immigrationforum.org/article/trafficking-victims-protection-reauthorization-act-safeguards-children>.

<sup>47</sup> See *Unaccompanied Migrant Children*, THE NAT’L CHILD TRAUMATIC STRESS NETWORK (Dec. 2014), [https://www.nctsn.org/sites/default/files/resources/unaccompanied\\_migrant\\_children.pdf](https://www.nctsn.org/sites/default/files/resources/unaccompanied_migrant_children.pdf).

development of serious mental health afflictions including depression, anxiety, and post-traumatic stress disorder.<sup>48</sup> Because of these experiences, UACs constitute an extremely vulnerable group requiring careful treatment. Prolonged detention and inadequate mental health care hurts this population even more.<sup>49</sup> According to psychologists, “indefinite detention could have a lasting impact on the development and mental health” of UACs.<sup>50</sup> Researchers have found a strong correlation between prolonged detention and poor mental health among children.<sup>51</sup>

### *C. A.M. v. Luzerne County Juvenile Detention Center*

Until *Doe v. Shenandoah Valley Juvenile Center Commission*, courts used the “deliberate indifference” standard to analyze whether a claim of inadequate medical treatment rose to the level of an Eighth Amendment or Due Process violation.<sup>52</sup> In *A.M. v. Luzerne County Juvenile Detention Center*, the Third Circuit applied the “deliberate indifference” standard to a case involving a claim of inadequate care of a juvenile in a detention center.<sup>53</sup> *A.M.* concerns a juvenile arrested and detained in a facility awaiting sentencing, while *Doe* relates to an unaccompanied minor detained in a facility for his own wellbeing. Furthermore, *Doe* concerns a UAC in detainment while *A.M.* does not.

In *A.M. v. Luzerne County Juvenile Detention Center*, *A.M.*, a juvenile, was arrested for indecent exposure and taken to a detention center to await sentencing.<sup>54</sup> He sued the Luzerne County Juvenile

---

<sup>48</sup> See Jayne Leonard, *What Is Trauma? What to Know*, MED. NEWS TODAY (June 3, 2020), <https://www.medicalnewstoday.com/articles/trauma>.

<sup>49</sup> See Rhitu Chatterjee, *Lengthy Detention of Migrant Children May Create Lasting Trauma, Say Researchers*, NAT'L PUB. RADIO (Aug. 23, 2019, 1:48 PM), <https://tinyurl.com/44ybzhhn>.

<sup>50</sup> *Id.*

<sup>51</sup> See Matthew Hodes, *The Mental Health of Detained Asylum Seeking Children*, 19 EUR. CHILD & ADOLESCENT PSYCHIATRY 621, 622 (2010).

<sup>52</sup> See generally *Estelle v. Gamble*, 429 U.S. 97 (1976).

<sup>53</sup> See *A.M. v. Luzerne County Juv. Det. Ctr.*, 372 F.3d 572, 587 (3d Cir. 2004).

<sup>54</sup> This case uses initials to represent the plaintiff for protective purposes since the plaintiff is a minor child.

Detention Center and various staff members alleging a violation of his Fourteenth Amendment Due Process rights as a result of the Center's failure to protect him from harm while detained.<sup>55</sup> While at the Center, A.M. suffered abuse by other juvenile residents.<sup>56</sup> These residents "had, among other things, spit on him, punched him in the arm, put his head in a garbage can, and thrown urine on his bed."<sup>57</sup> Other incidents involve an assault on the back of the head with a ping-pong paddle, whipping, and choking, all over a two week period.<sup>58</sup> A.M. bore physical signs of his assault including "multiple bruises over his body, puncture wounds, black eyes, and swollen lips."<sup>59</sup> While childcare workers at the detention center wrote up incident reports, they did not take any further action to protect A.M. from the other residents.<sup>60</sup>

Prior to his stay at the detention facility, A.M. suffered from various mental illnesses including "ADHD, anxiety disorder, depressive disorder, atypical bipolar disorder, and intermittent explosive disorder."<sup>61</sup> Additionally, A.M. had a history of psychiatric hospitalizations, and prior to his arrest he regularly met with a psychiatrist and took medication for his ADHD.<sup>62</sup> The detention center, aware of A.M.'s history of mental illness, did not provide A.M. with his medication.<sup>63</sup> After a psychiatric evaluation by Dr. Paul Gitlin, A.M. began to take medication to "reduce his impulsiveness and motor restlessness," and the Center did not provide A.M. with further mental healthcare after his consultation with Dr. Gitlin.<sup>64</sup>

About a month after his initial detention, the Center transferred A.M. to the Northwestern Intermediate Treatment Facility per a court order. There, a counselor learned of the abuse at the Center and wrote up an incident report along with a Report of

---

<sup>55</sup> See *Luzerne County Juv. Det. Ctr.*, 372 F.2d at 575.

<sup>56</sup> See *id.*

<sup>57</sup> *Id.*

<sup>58</sup> See *id.* at 576.

<sup>59</sup> *Id.*

<sup>60</sup> See *id.*

<sup>61</sup> *Id.*

<sup>62</sup> See *id.*

<sup>63</sup> *Id.* at 576.

<sup>64</sup> See *id.*

Suspected Child Abuse.<sup>65</sup> A.M. claimed that the staff at the Center knew of the abuse and intentionally disregarded his pleas to stop it.<sup>66</sup> A.M. and his mother claimed a violation of A.M.'s Due Process rights under the Fourteenth Amendment against the Center and various staff members for failing to provide adequate care to A.M. while detained.<sup>67</sup> A.M. also directed the court towards multiple policies and customs of the Center as a basis for liability.<sup>68</sup> Evidence against the defendants implied inadequate educational training for staff workers, an insufficient number of childcare workers to adequately supervise the residents, reprimands from the Center towards childcare workers regarding a failure to follow security measures, and testimony from a corrections officer claiming that the "inadequate supervision directly contributed to the abusive treatment A.M. endured at the Center."<sup>69</sup>

The Third Circuit used the "shock the conscious"<sup>70</sup> standard to determine whether a Due Process violation existed. The Court reasoned that while simple negligence can never "shock the conscious," "deliberate indifference" acts as the middle ground between the two standards and can sometimes rise to the level of "shocking the conscious."<sup>71</sup> According to the Court, using the "deliberate indifference" standard only applies "when actual deliberation is practical," and in the case of a juvenile detention

---

<sup>65</sup> See *Luzerne County Juv. Det. Ctr.*, 372 F.2d at 577.

<sup>66</sup> See *id.*

<sup>67</sup> See *id.*

<sup>68</sup> See *id.* at 580.

<sup>69</sup> See *id.* at 581.

<sup>70</sup> See *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998) (explaining that a violation of the Due Process right under the Fourteenth Amendment can be shown by conduct that "shocks the conscious.") (citing *Rochin v. California*, 342 U.S. 165, 172 (1952) (holding that forcibly pumping the defendant's stomach to prove he had possessed morphine, a violation of the California Health and Safety Code, was conduct that shocked the conscious)); see also *Rochin v. California*, 342 U.S. 165, 172 (1952) (holding that forcibly pumping the defendant's stomach to prove he had possessed morphine, a violation of the California Health and Safety Code, was conduct that shocked the conscious); *Domingo v. Kowalski*, 810 F.3d 403, 416 (6th Cir. 2016) (holding that a teacher gagging her student to prevent spitting, strapping a student to a toilet to keep her from falling, and forcing a student to sit on a training toilet without pants in front of her classmates did not constitute conduct that shocked the conscious).

<sup>71</sup> *Luzerne County Juv. Det. Ctr.*, 372 F.3d at 579.

center, it is practical since monitoring the welfare of residents is obligatory.<sup>72</sup> Therefore, the Third Circuit found it necessary to apply the “deliberate indifference” standard to this case.<sup>73</sup>

*D. Doe v. Shenandoah Valley Juvenile Center Commission*

*Doe v. Shenandoah Valley Juvenile Center Commission*, a class action brought by multiple UACs, resulted in a circuit split regarding the appropriate legal standard to determine the adequacy of mental healthcare provided to UACs.<sup>74</sup> The Supreme Court denied a writ of certiorari which will cause confusion among circuit courts regarding the proper standard to apply.<sup>75</sup> John Doe experienced significant trauma growing up in Honduras. From seven to eight years old, Doe witnessed a slew of traumatic events, including murder.<sup>76</sup> While on his way to seek asylum in the United States, Doe was a victim of a robbery and a physical beating while crossing through Mexico. After Doe crossed into the United States, CBP officers slammed his head into the ground before arresting him.<sup>77</sup> After arriving at the Shenandoah Valley Juvenile Center Commission (SVJC), Dr. Gorin diagnosed Doe with PTSD and ADHD, and noted his concern about self-harm and suicide attempts based on Doe’s history of violence and trauma.<sup>78</sup> Eventually, Doe attempted suicide.<sup>79</sup> Based on these facts, Dr. Gorin recommended the transfer of Doe to a residential treatment facility.<sup>80</sup> Despite the recommendation, SVJC failed to

---

<sup>72</sup> *Id.*

<sup>73</sup> *See id.* at 587-88 (holding that A.M. failed to show evidence to support a claim of “deliberate indifference” from two staff members but found there was sufficient evidence of “deliberate indifference” to prevent summary judgment in favor of six other staff members and the Luzerne County Juvenile Detention Center).

<sup>74</sup> *See Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 329 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>75</sup> *See Shenandoah Valley Juv. Ctr. Comm’n v. Doe*, 142 S. Ct. 583 (2021).

<sup>76</sup> *See Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d at 331.

<sup>77</sup> *See id.*

<sup>78</sup> *See id.* at 332.

<sup>79</sup> *See id.*

<sup>80</sup> *See id.*

transfer Doe and claimed several centers refused to accept him as a result of his history of violent behavior.<sup>81</sup>

During his time at SVJC, doctors prescribed Doe with a variety of ADHD medications and anti-depressants, and Doe attended weekly, individual counseling sessions.<sup>82</sup> Doe was not the only child at SVJC to display self-harm and suicidal tendencies. Between 2015 and 2018 “at least 45 children intentionally hurt themselves or attempted suicide.”<sup>83</sup> Staff members knew of these incidents and frequently had to intervene to prevent these children from harming themselves.<sup>84</sup> Dr. Gregory Lewis, an expert psychologist retained by Doe’s counsel, determined that SVJC failed to account for the vulnerability of this group and instituted an approach of “punishment and behavioral control through such methods as solitary confinement, physical restraint, strapping to a restraint chair, and loss of behavioral levels.”<sup>85</sup> Compounding this trauma with the unimaginable horrors that UACs have already experienced can lead to detrimental effects to a child’s mental health.<sup>86</sup>

The class action focused on three claims against SVJC: “(1) excessive use of force . . . ; (2) fail[ure] to provide a constitutionally adequate level of care for plaintiffs’ serious mental health needs; and (3) discrimination on the basis of race and national origin.”<sup>87</sup> The district court granted summary judgment to SVJC on the second claim.<sup>88</sup> The court applied the “deliberate indifference” standard which, historically, has applied to “civil detainees, including immigrant detainees.”<sup>89</sup> To prevail on a “deliberate indifference” claim, the plaintiff must show (1) that the detainee had an objectively serious medical need, and (2) that the official subjectively knew of the

---

<sup>81</sup> *Id.*

<sup>82</sup> *See id.*

<sup>83</sup> *Id.* at 334.

<sup>84</sup> *See id.* at 346.

<sup>85</sup> *Id.*

<sup>86</sup> *See Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d at 334.

<sup>87</sup> *Id.*

<sup>88</sup> *See id.* at 335.

<sup>89</sup> *Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d at 335.

need and disregarded it.<sup>90</sup> Because the SVJC provided medication to Doe, along with individual counseling sessions, following his initial evaluation with Dr. Gorin, the district court held that the SVJC did not act “deliberately indifferent” to the transfer recommendation by Dr. Gorin.<sup>91</sup>

Instead of applying the standard of “deliberate indifference” to this case, the Fourth Circuit Court of Appeals applied the “substantial departure from accepted professional judgment” standard from *Youngberg v. Romeo*.<sup>92</sup> *Youngberg* involved the rights granted to a mentally disabled individual under the Fourteenth Amendment.<sup>93</sup> In *Youngberg*, the respondent had suffered over sixty injuries while treated at Pennhurst State School and Hospital. The complaint alleged that the facility staff knew of the injuries and “failed to institute appropriate preventive procedures”—a violation of the respondent’s Due Process rights under the Fourteenth Amendment.<sup>94</sup> The Supreme Court adopted the “substantial departure” standard to determine whether the State provided constitutionally adequate care.<sup>95</sup> The Court balanced the interests of the state along with the “rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints.”<sup>96</sup> The Court held that the judgment of a qualified professional deserves deference unless the decision exhibits a “substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.”<sup>97</sup>

The Fourth Circuit also applied the *Youngberg* standard in *Patten v. Nichols* in 2001.<sup>98</sup> The court based that decision on the significant difference between “pre-trial detainees” and “involuntarily

---

<sup>90</sup> Farmer v. Brennan, 511 U.S. 825, 837 (1970).

<sup>91</sup> *Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d at 335.

<sup>92</sup> *See id.* at 339 (citing *Youngberg v. Romeo*, 457 U.S. 307, 320-23 (1982)).

<sup>93</sup> *See Youngberg*, 457 U.S. at 309.

<sup>94</sup> *Id.* at 310; *see generally* U.S. CONST. amend XIV.

<sup>95</sup> *See id.* at 314, 321.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 323.

<sup>98</sup> *See Patten v. Nichols*, 274 F.3d 829, 835 (4th Cir. 2001).

committed psychiatric patients.<sup>99</sup> Pre-trial detainees endure confinement as they await criminal trials while psychiatric patients remain detained to prevent them from harming themselves and others. The Fourth Circuit used this same reasoning to apply the *Youngberg* standard in *Doe v. Shenandoah Valley Juvenile Center Commission*; the SVJC did not exist to detain children before a criminal trial.<sup>100</sup> Rather, they provided care to the children in their custody. Federal law requires that a UAC in custody of the Secretary of Health and Human Services must be “placed in the least restrictive setting that is in the best interest of the child.”<sup>101</sup> Because of the nature of the facility and its purpose, the situation resembles that of *Youngberg* and *Patten* more than one of *A.M.*

The SVJC argued in favor of the “deliberate indifference” standard usually used for adults, where the level of culpability is recklessness.<sup>102</sup> Under this standard, liability would only arise if the plaintiff proves “the official [knew] and [disregarded] an excessive risk to inmate health or safety.”<sup>103</sup> The Fourth Circuit rejected this standard since “mental health treatment is a primary objective for the traumatized youth placed at SVJC.”<sup>104</sup> SVJC has a team of mental health professionals who determine whether they can provide adequate mental health care and consider the child’s specific mental health needs when determining a child’s release.<sup>105</sup> Therefore, the Court deemed the *Youngberg* standard most appropriate.<sup>106</sup> Other circuits have applied the “deliberate indifference” standard to adult immigrant detainees but never to an unaccompanied immigrant child.<sup>107</sup> Unlike an adult detained for enforcement proceedings, UACs

---

<sup>99</sup> *Id.* at 840.

<sup>100</sup> *See Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 339 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>101</sup> 8 U.S.C. § 1232(c)(2)(A) (2018).

<sup>102</sup> *See Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d at 340, 342; *see also Farmer*, 511 U.S. at 836.

<sup>103</sup> *Farmer v. Brennan*, 511 U.S. 825, 837 (1970).

<sup>104</sup> *Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d at 341-42.

<sup>105</sup> *See id.* at 341.

<sup>106</sup> *See id.* at 342.

<sup>107</sup> *See id.*; *see generally* *Newbrough v. Piedmont Reg’l Jail Auth.*, 822 F. Supp. 2d 558 (E.D. Va. 2011) (applying the “deliberate indifference” standard to an adult immigrant detainee for a claim against lack of medical care); *E.D. v. Sharkey*, 928



legally enter the United States to seek asylum, and the state becomes responsible for providing them with care.<sup>108</sup> The notable difference between *Doe v. Shenandoah Valley Juvenile Center Commission* and other cases is the difference in the standard of care necessary for a detained adult immigrant versus an unaccompanied minor. Additionally, unlike the plaintiff in *A.M.*, Doe did not get arrested or accused of a crime.

#### E. The History of the “Deliberate Indifference” Standard

The Supreme Court created the “deliberate indifference” standard to determine when inadequate medical treatment of a prisoner rises to the level of an Eighth Amendment violation.<sup>109</sup> In *Estelle v. Gamble*, Gamble suffered an injury leading to extreme back pain.<sup>110</sup> Dr. Astone treated Gamble and approved the plaintiff to continue some light work about three weeks after the injury despite Gamble’s reports of severe pain.<sup>111</sup> Gamble refused to work and was taken before the prison disciplinary committee who directed Gamble to see Dr. Gray.<sup>112</sup> Dr. Gray wrote a prescription for pain medicine which remained unfilled for four days after the staff lost it.<sup>113</sup> Gamble was subsequently twice admitted into the hospital for his ongoing pain and seen by Captain Blunt who testified to the prison disciplinary committee about Gamble’s “first class medical condition” and ability to get back to work.<sup>114</sup> A few days later Gamble complained of chest pains and requested to see a doctor; his request went unanswered for almost twelve hours.<sup>115</sup> Three days later,

---

F.3d 299 (3d. Cir. 2019) (applying the “deliberate indifference” standard to a female immigrant detainee who was sexually assaulted by a detention center’s employee); *Adekoya v. Herron*, 2013 U.S. Dist. LEXIS 164575 (W.D. N.Y. 2013) (holding that a claim of inadequate medical care must rise to the level of “deliberate indifference”); *Harvey v. Chertoff*, 263 Fed. Appx. 188 (3d. Cir. 2008) (applying the “deliberate indifference” standard to an adult detainee who complained of inadequate care for a herniated disc).

<sup>108</sup> See *Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d at 342.

<sup>109</sup> See *Estelle v. Gamble*, 429 U.S. 97, 97 (1976).

<sup>110</sup> See *id.* at 99.

<sup>111</sup> See *id.* at 100.

<sup>112</sup> See *id.*

<sup>113</sup> See *id.*

<sup>114</sup> *Id.* at 101.

<sup>115</sup> See *id.*

Gamble's pain continued to intensify, but the prison ignored his request for medical treatment another two days.<sup>116</sup>

Gamble complained that the defendants "subjected him to cruel and unusual punishment in violation of the Eighth Amendment."<sup>117</sup> The Supreme Court held that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment."<sup>118</sup> The Court created a "deliberate indifference" standard to determine when actions rise to the level of an Eighth Amendment violation. The "deliberate indifference" standard only applies where the risk of serious harm to the plaintiff is obvious.<sup>119</sup> If the result of ignoring a request for medical treatment will not foreseeably result in harm, the "deliberate indifference" standard does not apply. To prevail on a "deliberate indifference" claim relating to ignored medical claims, a plaintiff must prove that they suffered from a serious medical condition and that the defendant showed "deliberate indifference" to their condition.<sup>120</sup>

Courts have defined a "serious medical condition" as "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity of a doctor's attention."<sup>121</sup> The second prong of a "deliberate indifference" claim implements a subjective knowledge requirement since the defendant must show "deliberate indifference" to the plaintiff's condition. The Seventh Circuit Court of Appeals explained the subjective knowledge requirement in *Connor v. Rubin-Asch*, where the Court found that the plaintiff had to show that the defendant "(1) subjectively knew the prisoner was at substantial risk of committing suicide and (2) intentionally disregarded the risk."<sup>122</sup>

---

<sup>116</sup> *See id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 104.

<sup>119</sup> *See Farmer v. Brennan*, 511 U.S. 825, 836 (1970).

<sup>120</sup> *See id.* at 834; *see also* *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016).

<sup>121</sup> *Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004) (citing *Hill v. Dekalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994)).

<sup>122</sup> *Connor v. Rubin-Asch*, 793 F. App'x 427, 430 (7th Cir. 2019) (quoting *Collins v. Seeman*, 462 F.3d 757, 761 (7th Cir. 2006) (Plaintiff was an inmate and

This standard requires actual knowledge, a higher standard than mere negligence. However, medical decisions warrant deference unless that decision exhibited a “substantial departure from accepted professional judgment.”<sup>123</sup> In other words, a failure under this standard requires a decision so deficient that “no minimally competent professional would have responded under those circumstances.”<sup>124</sup> Therefore, the “deliberate indifference” standard has a “professional judgment” component. Since medical judgments rely on specific patient facts, the line between poor medical judgment and “deliberate indifference” becomes essentially indistinguishable.<sup>125</sup>

#### F. Effect of Untreated Mental Illness

Due to the trauma faced by UACs, untreated mental illnesses can have devastating effects. UACs suffer from a host of mental health issues. Without treatment they may suffer devastating consequences.<sup>126</sup> One in six children between the ages of six and seventeen experience mental health illnesses every year.<sup>127</sup> A large portion of the population diagnosed with a mental illness lacks treatment; only fifty percent of children in the United States received mental health treatment in 2016.<sup>128</sup> A variety of factors can cause a lack of mental health treatment including stigma surrounding mental

---

sued his psychologist and multiple correctional officers under an 8th Amendment deliberate indifference claim for failing to prevent his suicide attempt).

<sup>123</sup> *Id.* at 430 (quoting *McGee v. Adams*, 721 F.3d 474, 481 (7th Cir. 2013)).

<sup>124</sup> *Sain v. Wood*, 512 F.3d 886, 895 (7th Cir. 2008) (quoting *Collignon v. Milwaukee Cnty.*, 163 F.3d 982, 989 (7th Cir. 1998) (“In the context of medical professionals, this standard also has been described as the ‘professional judgment’ standard: A medical professional is entitled to deference in treatment decisions unless ‘no minimally competent professional would have so responded under those circumstances.’”).

<sup>125</sup> *See Petties*, 836 F.3d at 729.

<sup>126</sup> *See* Dorothy L. McLeod, CTR. FOR THE HUM. RTS. OF CHILD., *A Review of Needs and Challenges Facing Unaccompanied Minor Children (UAC) Released into U.S. Communities* 6-7 (Aug. 2016), <https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1011&context=chrc>.

<sup>127</sup> *Mental Health by the Numbers*, NAT’L ALL. ON MENTAL ILLNESS, <https://www.nami.org/mhstats> (last updated June 2022).

<sup>128</sup> *Id.*

illness, a lack of health insurance, and inaccessible mental health care.<sup>129</sup>

Mental illnesses fall into two categories: any mental illness (AMI) and serious mental illness (SMI).<sup>130</sup> AMI refers to a “mental, behavioral, or emotional disorder” that varies in symptoms. It ranges from “no impairment to mild, moderate, and even severe impairment,” pushing that individual into the SMI category.<sup>131</sup> SMI comprises of an AMI that “result[s] in serious functional impairment, which substantially interferes with or limits one or more major life activities.”<sup>132</sup> This distinction challenges the misconception that all mental illnesses are detrimental; not all mental illnesses will result in irreparable harm—some illnesses are very manageable and barely effect the day-to-day life of the affected individual.<sup>133</sup>

However, in many cases a lack of treatment can lead to devastating effects on the individual, such as a steady decline in mental health.<sup>134</sup> Left untreated, certain mental illnesses can progress drastically making them more difficult to treat.<sup>135</sup> An individual affected by a mental illness may only experience minor symptoms at first. However, left untreated, they will develop into a more severe illness or even suicide.<sup>136</sup> For example, depression, which may initially manifest itself as lethargy, can lead to self-harming behaviors and suicidal ideations.<sup>137</sup> A lack of mental health treatment can also manifest itself with physical symptoms, such as increased muscle

---

<sup>129</sup> See Joel L. Young, *Untreated Mental Illness*, PSYCH. TODAY (Dec. 30, 2015), <https://www.psychologytoday.com/us/blog/when-your-adult-child-breaks-your-heart/201512/untreated-mental-illness>.

<sup>130</sup> See *Mental Illness*, NAT'L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/statistics/mental-illness> (last updated Jan. 2022).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> See *id.*

<sup>134</sup> See Young, *supra* note 129.

<sup>135</sup> See *id.*

<sup>136</sup> See *id.*; see also NAT'L ALL. ON MENTAL ILLNESS, *supra* note 130.

<sup>137</sup> See *Does Depression Increase the Risk of Suicide?*, U.S. DEPT OF HEALTH & HUM. SERVS. (Sep. 16, 2014), <https://www.hhs.gov/answers/mental-health-and-substance-abuse/does-depression-increase-risk-of-suicide/index.html>.

tension, while chronic stress might lead to gastrointestinal distress, heart attacks, stroke, or obesity.<sup>138</sup>

Untreated mental illnesses in children can make it difficult for them to maintain steady employment and earn a living in the future.<sup>139</sup> The rate of mental illness among the homeless population is twice as high as the rate of mental illness among the rest of the population.<sup>140</sup> Untreated mental illnesses also lead to a higher rate of incarceration.<sup>141</sup> Seventy-three percent of female state prison inmates suffer from mental illness while fifty-five percent of men do.<sup>142</sup> Sixty-three percent of prisoners who have demonstrated a history of mental illness do not receive treatment while incarcerated in state and federal prisons. A study has also shown that the “[y]outh in detention are [ten] times more likely to suffer from mental illnesses than youth in the community.”<sup>143</sup>

Left untreated, mental illness can have a rippling effect on the affected individual, their family, their community, and even our society. Untreated mental illnesses in the United States have cost the country over \$100 billion a year in lost productivity.<sup>144</sup> The economic effects of untreated mental health illness include higher hospitalization rates, a greater number of special education classes in schools, and increased incarceration rates.<sup>145</sup>

#### G. Mental Developmental Differences Between Children and Adults

The American Psychological Association (APA) conducted a study to research the differences in cognitive and emotional abilities

---

<sup>138</sup> See Young, *supra* note 129.

<sup>139</sup> *Id.*

<sup>140</sup> See *Health and Homelessness*, AM. PSYCH. ASS'N (2011), <https://www.apa.org/pi/ses/resources/publications/homelessness-health>.

<sup>141</sup> See Young, *supra* note 129.

<sup>142</sup> See *id.*

<sup>143</sup> NAT'L ALL. ON MENTAL ILLNESS, *supra* note 130.

<sup>144</sup> See *The Neglect of Mental Illness Exact a Huge Toll, Human and Economic*, SCI. AM. (Mar. 1, 2012), <https://www.scientificamerican.com/article/a-neglect-of-mental-illness/>.

<sup>145</sup> See *id.*

and their maturity rates using people from ages ten to thirty.<sup>146</sup> Results showed minimal differences among children, but revealed significant differences in maturity levels between those aged sixteen to seventeen and those twenty-two years and older.<sup>147</sup> While juveniles can demonstrate cognitive abilities comparable to adults, their psychosocial maturity levels take longer to develop.<sup>148</sup> Cognitive abilities refer to skills involving learning, awareness, understanding, and judgment while psychosocial factors encompass the social and environmental factors that affect mental health and behavior.<sup>149</sup> Emotional abilities, including impulsivity and susceptibility to peer pressure, “show[] continued development well beyond middle adolescence and even into young adulthood.”<sup>150</sup>

The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice conducted the Juvenile Adjudicative Competence Study to study whether there is a correlation between age differences and competency to stand trial.<sup>151</sup> The overall results of the study indicate that “[b]y age 16, adolescents’ general cognitive abilities are essentially indistinguishable from those of adults,” but psychosocial maturity levels remain “significantly less mature than [those] of individuals in their mid-20s” even at the age of 18.<sup>152</sup> Juveniles risk a finding of incompetence which prevents them

---

<sup>146</sup> See *While Adolescents May Reason as Well as Adults, Their Emotional Maturity Lags, Says New Research*, AM. PSYCH. ASS’N (2009), <https://www.apa.org/news/press/releases/2009/10/teen-maturity>.

<sup>147</sup> See *id.*

<sup>148</sup> See Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults? Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop”*, 64 AM. PSYCH. 583, 592 (2009).

<sup>149</sup> See *Cognitive Ability*, APA DICTIONARY OF PSYCH (2d ed. 2015).

<sup>150</sup> Steinberg et al., *supra* note 148, at 587.

<sup>151</sup> See *id.* Data was collected from five cities: Los Angeles, CA; Irvine, CA; Denver, CO; Philadelphia, PA; and Washington D.C. 935 people were included in the study and were comprised of ethnically and socioeconomically diverse individuals. 56.2 percent of participants were under the age of 18. In addition to other measures, participants were asked to complete “a series of questionnaires designed to measure a variety of psychosocial capacities relevant to discussions of how adolescents should be treated by the legal system.” In measuring psychosocial maturity, the study focused on five factors: *risk perception*, *sensation seeking*, *impulsivity*, *resistance to peer influence*, and *future orientation*.

<sup>152</sup> *Id.* at 592.

from standing trial because they lack the basic capabilities essential for a legitimate case. Based on this study and the precedent that U.S. criminal law has set for juvenile offenders, adolescents' treatment under the law depends on the legal issue and whether it involves a juvenile's cognitive or psychosocial ability.<sup>153</sup> A meaningful gap between the psychosocial ability of a juvenile and an adult signifies that the law must treat them differently.

### III. ANALYSIS

#### A. The Judicial and Congressional Distinction Between Children and Adults

The concept of two distinct legal standards for children and adults is not novel in the U.S. legal system. For example, the criminal justice system treats juveniles differently from adults. Due to the likelihood of rehabilitation, courts do not publicize juvenile records to protect the privacy of the young offender.<sup>154</sup> Conversely, courts publicize adult records and even allow the public to sit in on court proceedings.<sup>155</sup> Additionally, adults face a trial while juveniles face a hearing that considers legal factors along with the offender's social history.<sup>156</sup> In most states, juveniles do not have a right to a trial by jury—rather, a judge hears their case and determines their sentencing.<sup>157</sup> If found guilty of a crime, a court holds a juvenile as “delinquent,” and an adult as “guilty,” implying the juvenile committed a less serious infraction.<sup>158</sup> Furthermore, the criminal justice system aspires to reintegrate juveniles back into society—a stark difference to the more punitive goals of the justice system regarding adult offenders.<sup>159</sup> The disparities between the administrative proceedings of juveniles compared to adults signify the

---

<sup>153</sup> See discussion *infra* Section III.A.

<sup>154</sup> See *Juvenile vs Adult Justice*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/juvvsadult.html> (last visited Feb. 11, 2022).

<sup>155</sup> See *id.*

<sup>156</sup> See *id.*

<sup>157</sup> See *id.*

<sup>158</sup> See *id.*

<sup>159</sup> See *id.*

legal system's recognition that juvenile offenders must be treated differently than adult offenders.

In U.S. criminal law, minors generally receive lighter sentences than adults who commit comparable crimes,<sup>160</sup> and various Supreme Court justices have considered youthfulness as a "mitigating quality."<sup>161</sup> Three Supreme Court decisions since 2004 require that under the Eighth Amendment of the Constitution, criminal sentences must consider the youthfulness of the defendant.<sup>162</sup> These paramount cases removed the death penalty for juveniles<sup>163</sup> and eliminated the possibility of life sentences for non-homicide crimes<sup>164</sup> while also requiring the possibility of parole.<sup>165</sup> These holdings suggest the Supreme Court believes that the age of an offender affects their decision-making skills so significantly that it must be considered when sentencing a juvenile.

The Juvenile Justice and Delinquency Prevention Act (JJDP A) reveals another way the government has separated juveniles from adults. Congress implemented the JJDP A to improve juvenile justice programs and provide federal funding for delinquency prevention.<sup>166</sup> Three provisions make a differentiation between children and adults: "(1) the deinstitutionalization of juvenile

---

<sup>160</sup> See *Roper v. Simmons*, 543 U.S. 551, 572-73 (2004) (finding three differences between juveniles under 18 and adults: (1) lack of maturity, (2) increased vulnerability to environmental influences, and (3) the likelihood of reform.); see also *Graham v. Florida*, 560 U.S. 48, 82 (2009); *Miller v. Alabama*, 567 U.S. 460, 487 (2012).

<sup>161</sup> See *Johnson v. Texas*, 509 U.S. 350, 367 (1993) (holding that a defendant's young age is a "mitigating quality" because youth indicates a "time and condition of life when a person may be susceptible to influence."); see also *Eddings v. Oklahoma*, 455 U.S. 104, 115-6 (1982) ("Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.").

<sup>162</sup> See generally *Roper*, 543 U.S. 551; *Graham*, 560 U.S. 48; *Miller*, 567 U.S. 460.

<sup>163</sup> See *Roper*, 543 U.S. at 572-73.

<sup>164</sup> See *Graham*, 560 U.S. at 82.

<sup>165</sup> See *Miller*, 567 U.S. at 487.

<sup>166</sup> See Juvenile Justice Reform Act of 2018, Pub. L. No. 115-385, 132 Stat 5123 (2018).



offenders,<sup>167</sup> (2) adult jail and lock-up removal,<sup>168</sup> and (3) sight and sound separation.”<sup>169</sup> Two of these provisions physically separate juveniles from adults, providing juveniles a greater opportunity for rehabilitation.

While certain circumstances may require detaining a juvenile in an adult prison, the JJDPa requires a court to consider a variety of factors including the age and mental state of the juvenile offender.<sup>170</sup> Juveniles are detained separately from adults because detainment offers a different solution for juveniles—rehabilitation rather than punishment. Adults are detained to punish them for crimes while juveniles are detained to keep them from recidivating. Congress’s implementation of the JJDPa signifies its intent to treat juveniles differently from adults. Since congressional and judicial policies identify an intent to provide different standards to juveniles than adults, the Supreme Court must consider resolving the current circuit split by applying the “professional judgment” standard to UACs in cases involving inadequate mental healthcare.

---

<sup>167</sup> See *id.* (Deinstitutionalization keeps juveniles from criminal charges associated with crimes only applicable to those under the age of eighteen such as truancy, alcohol possession, and mandated curfew violations.).

<sup>168</sup> See *id.* at 5136 (The adult jail and lock-up removal requirement aims to remove juveniles from adult jails and detention facilities.).

<sup>169</sup> See *id.* at 5135-36 (The sight and sound separation requirement keeps juveniles away from any interactions with adult inmates).

<sup>170</sup> See *id.* A court considers the following factors when determining the necessity of detaining a juvenile in an adult prison:

- (I) the age of the juvenile; (II) the physical and mental maturity of the juvenile; (III) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile; (IV) the nature and circumstances of the alleged offense; (V) the juvenile’s history of prior delinquent acts; (VI) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and (VII) any other relevant factor.

## B. The Judicial Treatment of Juveniles and the Dangers of Treating Immigrant Children Like Adults

Applying the “deliberate indifference” standard to the care given to detained immigrant children effectively treats children no differently than adults. If courts continue to apply this standard, hundreds of UACs will suffer. The “deliberate indifference” standard has historically applied almost exclusively to adults. Ignoring that critical distinction in criminal law between children and competent adults is illogical. Until *Doe*, the “deliberate indifference” standard only applied to cases involving adults or minors who committed an illegal act. *Doe* marks the first case involving an innocent minor, and the standard must change to accommodate the situation.

The “professional judgment” standard is the correct standard to apply in cases involving a claim of inadequate mental health treatment for unaccompanied children. *Doe*, the first case to apply a different standard to UACs, acknowledges that juveniles require a different standard of care than adults.<sup>171</sup> In addition to their juvenile status, UACs also suffer unique trauma not experienced by most children or adults in the United States.<sup>172</sup>

The U.S. criminal system makes a distinction between juveniles and adults in multiple ways, including sentencing.<sup>173</sup> Ignoring that reasoning and the various medical studies proving that juveniles lack the psychosocial maturity levels seen in adults supports an argument to overturn decades of case law related to juvenile sentencing. Since courts do not consider age when determining the standard for the adequacy of mental health care, they should not consider age when sentencing juveniles.

The U.S. legal system could potentially see the end of juvenile detention centers if courts fail to treat children differently than adults, resulting in thirteen-year-olds imprisoned alongside forty-year-olds and child death sentences in jurisdictions that have yet to abolish the

---

<sup>171</sup> See *Doe v. Shenandoah Valley Juv. Ctr. Comm'n*, 985 F.3d 327, 350 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>172</sup> See THE NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 47.

<sup>173</sup> See discussion *supra* Section III.A.

death penalty. An increasing popularity of the “deliberate indifference” standard to UACs has the potential to affect every juvenile offender, UAC or not, until the Supreme Court resolves the circuit split.

Applying the “deliberate indifference” standard, a lower standard than the “professional judgment” standard, in this situation also risks the safety of detained children. The lack of adequate mental health care can lead to debilitating outcomes, especially for children whose brains continue to develop.<sup>174</sup> The majority of UACs in custody will suffer from some form of mental illness. Without adequate treatment, these children could develop depression, physical side effects including heart attack and stroke, or even suicide.<sup>175</sup> These conditions represent the extreme risks faced by UACs receiving inadequate care, and they deserve protection from the legal system when they do not receive that care. UACs do not have family available to care for them when they enter the United States, and their personal effects remain few and far between; they do not have the means to afford long-term mental health treatments.<sup>176</sup> If the facilities who exist to care for them and “[provide] for the child’s physical and mental wellbeing” fail to do so, these kids will go the rest of their lives suffering the consequences of untreated mental illness.<sup>177</sup>

### C. Deliberate Indifference

The “deliberate indifference” standard fails to consider common law precedent treating children differently than adults. Sentencing disparities between children and adults exist because of the belief that children have a genuine opportunity to reform their behavior.<sup>178</sup> Children’s minds have not fully developed, and reformation offers these children an opportunity to right their wrongs. This theory is confirmed by what psychologists have found

---

<sup>174</sup> See discussion *supra* Section II.F.

<sup>175</sup> See *supra* text accompanying notes 134-137.

<sup>176</sup> See THE NAT’L CHILD TRAUMATIC STRESS NETWORK, *supra* note 47.

<sup>177</sup> 8 U.S.C. § 1232(c)(3)(A) (2018).

<sup>178</sup> See Nicole Scialabba, *Should Juveniles Be Charged as Adults in the Criminal Justice System?*, AM. BAR ASS’N (Oct. 3, 2016), <https://tinyurl.com/5ehrxkaz>.

regarding brain development and the differences in psychosocial maturity levels between teenagers and those in their late twenties.<sup>179</sup> Therefore, the basic standard of care must vary depending on age. Children have more physical and emotional needs than adults, so the basic standard of care for a juvenile should not resemble the basic standard of care for an adult. Generally, rehabilitation serves as a primary goal in the juvenile court system while punishment and deterrence function as the primary goals of adult courts. Since juvenile brains regularly develop over time, “their behavior is malleable” and rehabilitation seems more likely for youthful offenders.<sup>180</sup> Therefore, parole and probation constitute the ideal methods of punishment for juveniles along with counseling and community service.<sup>181</sup>

The Flores settlement requires facilities like the ones in *Doe* to provide basic standards of care, yet these facilities fail to recognize the differing needs of children and adults.<sup>182</sup> Therefore, the question becomes whether the standard of “deliberate indifference” protects detained juveniles and ensures they get the basic mental care they require. It does not. The problem with using the “deliberate indifference” standard for juvenile mental health care is the unknown nature of mental health issues, especially in children, since signs and symptoms vary depending on the child.<sup>183</sup> Depression can mimic lethargy, and PTSD can manifest itself through anger issues or irritability.<sup>184</sup> The symptoms of PTSD, one of the mental illnesses prevalent among UACs, include intrusive memories, avoidance, negative changes in thinking and mood, and changes in physical and emotional reactions.<sup>185</sup> Anyone other than the affected individual may not notice these symptoms. Even if those responsible for caring for a child with PTSD knew they suffered from the disorder, the standard

---

<sup>179</sup> See Steinberg et al., *supra* note 148, at 586.

<sup>180</sup> See PBS, *supra* note 154.

<sup>181</sup> See *id.*

<sup>182</sup> See JUST. FOR IMMIGRANTS, *supra* note 26.

<sup>183</sup> See Vanessa Howells, *Ask the Expert: Children's Mental Health*, JOHNS HOPKINS MED. (June 2, 2014), <https://tinyurl.com/363wfvta>.

<sup>184</sup> See *Post-traumatic Stress Disorder (PTSD)*, MAYO CLINIC, <https://tinyurl.com/knjdrzna> (last visited Jan. 19, 2023).

<sup>185</sup> See *id.*

of “deliberate indifference” would virtually make it impossible for a juvenile to bring forth a claim of inadequate mental health care; the defendant could simply claim the disorder lacked obviousness, and they would prevail. Additionally, UACs remain separated from their parents.<sup>186</sup> This means they suffer from additional distress and simultaneously do not have people to care for them who would normally recognize the symptoms of a mental health disorder. The stigma surrounding mental health can also cause people to put on a façade encouraged by shame, fear, denial, or a lack of self-awareness which could hurt the plaintiff in a case surrounding the adequacy of mental health care.<sup>187</sup>

In *Doe*, John Doe suffered from PTSD and ADHD, but his diagnosis alone did not necessarily make his condition obvious.<sup>188</sup> People will generally understand the seriousness of the condition when an individual suffers from physical symptoms. If a detainee suffered from a stroke and did not receive treatment, facility workers would note the seriousness of the condition. With mental health conditions, it becomes difficult to identify the point when a mental health concern becomes serious. Since the seriousness of a mental illness depends on a variety of factors, someone without extensive mental health education would find it difficult to differentiate between symptoms.<sup>189</sup> In *A.M.*, the plaintiff prevailed on his claim after the court applied the “deliberate indifference” standard only because he bore physical signs of assault, and it would have been difficult for the Center to claim they did not know the abuse would take a toll on his mental health considering they already knew of his mental health history.

The misconceptions surrounding mental health exhibit are another reason that courts may not find a mental health condition obvious. Many people do not realize the seriousness of undiagnosed

---

<sup>186</sup> See CONG. RSCH. SERV., *supra* note 38.

<sup>187</sup> See *Stigma, Prejudice and Discrimination Against People with Mental Illness*, AM. PSYCH. ASS’N. (Aug. 2020), <https://www.psychiatry.org/patients-families/stigma-and-discrimination>.

<sup>188</sup> See *Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 332 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>189</sup> See discussion *supra* Section II.F.

mental illnesses and its devastating effects. People have preconceived notions of how they think a mentally ill person should act. For example, some people may believe the incorrect notion that everyone with a mental illness exhibits violent behavior.<sup>190</sup> While society continues to adopt the notion that mental illnesses debilitate people just as harshly as physical illnesses, mental health stigma still exists. Individuals suffering from mental illnesses should not be left to suffer because of society's lack of awareness on the issue.

The subjective knowledge requirement of a "deliberate indifference" claim requires a plaintiff to prove the defendant had actual knowledge of the plaintiff's medical issue and remained "deliberately indifferent" to it.<sup>191</sup> This requirement makes it difficult for a defendant to prevail in a case like *Doe* involving plaintiffs with mental health issues. Even if the staff is aware that a patient suffers from PTSD, they would not necessarily know the serious consequences of their indifference to the patient's condition. Plaintiffs attempting to prove the serious nature of a physical ailment do not have this issue because of the physical manifestations such as bleeding, swelling, and bruising. Therefore, the "deliberate indifference" standard fails to protect UACs from receiving adequate mental healthcare.

#### D. A Substantial Departure from Accepted Standards of Professional Judgment

The "professional judgment" standard must be used for UACs who claim inadequate mental healthcare because it follows common law precedent. It protects UACs without setting unrealistic standards for detention facilities. Failing to meet this standard indicates a failure to provide a constitutionally adequate level of care for a patient's mental health needs when the action or policy leads to "such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment."<sup>192</sup> The Supreme Court has held that individuals involuntarily committed in

---

<sup>190</sup> See discussion *supra* Section II.F.

<sup>191</sup> See discussion *supra* Section II.E.

<sup>192</sup> *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982).

state institutions “enjoy[] constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests.”<sup>193</sup> Courts have interpreted this standard to apply in three circumstances: “cases which reflect that no judgment was exercised at all; cases in which the judgments were made by non-professionals or unqualified professionals; and cases in which professionals made judgments based on impermissible factors, such as budgetary constraints or the availability of resources.”<sup>194</sup> Using the “professional judgment” standard, courts defer to and do not interfere with the decision-making process of licensed professionals as long as the party proves that a qualified professional made the judgments.<sup>195</sup> Some courts have held that a deviation from departmental guidelines constitutes a departure.<sup>196</sup> However, simply following its own guidelines does not equate to a facility’s lack of liability.<sup>197</sup>

The standard to determine the adequacy of mental healthcare for detained immigrant children must remain high enough to provide suitable care but not be so high that facilities face undue liability. The “professional judgment” standard provides a higher level of protection to institutionalized patients because “[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”<sup>198</sup> Using this rationale, UACs in the care of the U.S. government deserve the “professional judgment” standard rather than the “deliberate indifference” standard since their detainment aims to care for them,

---

<sup>193</sup> *Id.* at 324 (holding that involuntarily committed patients have rights under the Due Process clause of the Fourteenth Amendment).

<sup>194</sup> Susan Stefan, *What Constitutes Departure from Professional Judgment?*, 17 MENTAL & PHYS. DISABILITY LAW REP., 17(2), 207 (1993).

<sup>195</sup> *See id.* at 208; *see also Youngberg*, 457 U.S. at 323 n. 30 (defining a “professional” as someone who is “competent, whether by education, training, or experience, to make the particular decision at issue”).

<sup>196</sup> *See Gary H. v. Hegstrom*, 831 F.2d 1430, 1439 (9th Cir. 1987) (Ferguson, J. concurring); *see also Thomas S. v. Flaherty*, 902 F.2d 250, 252 (4th Cir. 1990).

<sup>197</sup> *See Stefan*, *supra* note 194, at 210.

<sup>198</sup> *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982).

rather than punish them like prisoners. Like institutionalized patients, detained juveniles have not committed a crime, and U.S. law entitles them to considerate treatment and acceptable conditions.<sup>199</sup> In fact, the ORR takes responsibility for finding adequate care and facilities to care for these children since they are categorized as “asylum seekers.”<sup>200</sup> The standard for determining adequate mental care for detained immigrant children must exceed the standard provided to criminals.

#### E. What Matters More: Age or Trauma?

If the Supreme Court decides to resolve this circuit split, it can pursue three avenues to resolve the conflict. The first option for the Court involves distinguishing between children and adults and holding that juveniles deserve the higher standard of “professional judgment” while keeping the “deliberate indifference” standard in place for adults. This would reverse the ruling of the Third Circuit in *A.M.* by applying the “professional judgment” standard and emphasize the importance between the differences in psychosocial capabilities that affect maturity.<sup>201</sup> However, this holding could result in overturning hundreds, if not thousands, of cases based on the age of the plaintiff, overwhelming the court system.

Patten identifies another avenue for the Court to resolve the split. The Court can use the Fourth Circuit’s reasoning and distinguish between pre-trial detainees and psychiatric patients.<sup>202</sup> With this option, the Court concedes that UACs deserve more rights than pre-trial detainees and that their rights mirror those provided to psychiatric patients. This holding would result in an affirmation of the test used in *Doe* and create a distinction between *Doe* and *A.M.*, effectively resolving the split. However, this holding could lead to confusion if a UAC commits an illegal act while detained. In that scenario, the law would characterize a UAC as a pre-trial detainee rather than a psychiatric patient.

---

<sup>199</sup> See 8 U.S.C. § 1232(c)(3)(A) (2018).

<sup>200</sup> See CONG. RSCH. SERV., *supra* note 30, at 2.

<sup>201</sup> See Steinberg et al., *supra* note 148, at 592.

<sup>202</sup> See Patten v. Nichols, 274 F.3d 829, 840 (4th Cir. 2001).



While these potential holdings would resolve the circuit split, they do not consider the real issue behind *Doe*. *Doe*'s case deserves to be analyzed under a higher standard not solely because of *Doe*'s youthfulness or innocence but because of the combination of these factors. The vulnerability of a child combined with their potentially severe mental illness encompasses why UACs require a higher standard of mental healthcare. The trauma faced by UACs in combination with their youthfulness should trigger the "professional judgment" standard. The high level of trauma faced by UACs places these children at a much higher risk of developing a mental illness,<sup>203</sup> and the consequences of an untreated mental illness increase drastically.<sup>204</sup> A clear test to determine the standard of mental healthcare that considers both age and trauma results in the protection of UACs without burdening the court system and overturning a slew of cases. Applying both of these elements, a UAC who commits a crime while detained would still deserve the "professional judgment" standard of care. This holding would eliminate any confusion a court might have regarding the rights of UACs. If a court identified a detainee as a UAC, the "professional judgment" standard would apply.

All three avenues would result in the application of the "professional judgment" standard in *Doe* and effectively raise the bar for mental healthcare. Eighteen years after the holding in *A.M.*, mental health research has made significant breakthroughs, and the Supreme Court has denied themselves the opportunity to set a new, better-informed standard.

#### F. A Denied Writ of Certiorari—What This Means for the Future of UACs

The Supreme Court's denied writ of certiorari in *Doe v. Shenandoah Valley Juvenile Center Commission* means an unpredictable future for UACs and a potential increase in depression and suicide rates. Because of the continued circuit split, courts maintain the ability to set a low standard for care facilities. A consistent lack of

---

<sup>203</sup> See Leonard, *supra* note 48.

<sup>204</sup> See Young, *supra* note 129.

proper mental health treatment could lead to advanced stages of an existing condition and cause a UAC to self-harm along with other devastating consequences.<sup>205</sup> After advances in mental health education in the eighteen years since *A.M.*, courts must consider the consequences of applying the “deliberate indifference” standard to cases like *Doe*. UACs deserve protection while in the care of the U.S. government, and detention centers need proper motivation to maintain the health and wellness of UACs as required under the U.S. Code.<sup>206</sup>

“The land of the free and the home of the brave”—this national mantra means nothing if the U.S. legal system refuses to protect a UAC’s freedom of accessible and adequate mental healthcare. UACs seeking asylum in the United States have not broken any laws, and that should entitle them to humane conditions, especially when the U.S. government has custody of these minors. The SVJC provided treatment to forty-five UACs over a period of three years, all of whom self-harmed or attempted suicide.<sup>207</sup> These high rates do not necessarily indicate that many UACs have suicidal tendencies. Rather, these numbers suggest a pattern of inadequate care provided by the SVJC which led a disproportionate number of UACs to succumb to suicidality. With the current standard, actions taken by detention facilities must approach an egregious level before plaintiffs can prevail on a claim of inadequate care of a juvenile.<sup>208</sup>

This denied writ places UACs at risk of experiencing more trauma through a lack of adequate care from detention facilities. A prolonged circuit split on this issue gives courts considerable leeway in allowing care facilities to get by without taking higher precautions in consideration of the adolescence and trauma faced by UACs. The Supreme Court’s decision means continued litigation and unpredictability on this issue while UACs suffer the consequences.

---

<sup>205</sup> See discussion *supra* Section II.F.

<sup>206</sup> See 8 U.S.C. § 1232(c)(3)(A) (2018).

<sup>207</sup> See *Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 334 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>208</sup> See *supra* discussion Section III.C.

## IV. CONCLUSION

By applying the “deliberate indifference” standard to cases like *Doe*, courts inevitably punish UACs by treating them like adults who have committed crimes. UACs have experienced some of the worst horrors any child could possibly bear.<sup>209</sup> Most of them will suffer from some form of mental illness, and the facilities responsible for their care need to accommodate that. The only protection offered to UACs regarding adequate care comprise of: (1) the Due Process Clause under the Fifth Amendment, (2) the Due Process Clause of the Fourteenth Amendment, and (3) the Flores Settlement.<sup>210</sup> These protections do not offer much beyond the bare minimum. Inadequate treatment can easily lead to misdiagnoses and untreated mental illnesses.<sup>211</sup> The harm faced by juveniles because of untreated mental illnesses requires a higher standard of mental healthcare, and care facilities cannot continue to get by with inadequate mental health treatment.<sup>212</sup>

The criminal justice system has historically treated children differently than adults. Along with a variety of administrative differences, children receive lighter sentences than adults.<sup>213</sup> The Court does not excuse juvenile offenders from responsibility for their actions. Rather, the Supreme Court recognizes the lack of maturity and high degree of vulnerability of juveniles which makes them less blameworthy than adults. The criminal justice system recognizes the substantial differences between those under the age of eighteen and those over. The federal government makes this distinction as well with the JJDPA.<sup>214</sup> This program funds delinquency prevention with the objective of reforming juveniles.<sup>215</sup> The rationale behind rehabilitation rather than incarceration relates to how a higher degree

---

<sup>209</sup> See THE NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 47.

<sup>210</sup> See *supra* text accompanying notes 26, 40-42.

<sup>211</sup> See NAT'L INST. OF MENTAL HEALTH, *supra* note 130.

<sup>212</sup> See discussion *supra* Section II.F.

<sup>213</sup> See discussion *supra* Section III.A.

<sup>214</sup> See Juvenile Justice Reform Act of 2008, Pub. L. No. 115-385, 132 Stat. 5123 (2018).

<sup>215</sup> See *id.*

of education leads to a decreased rate of recidivism.<sup>216</sup> If deprived of educational opportunities, an incarcerated juvenile will likely offend again.<sup>217</sup>

Congress and the Supreme Court have both set the precedent of differing treatment between children and adults.<sup>218</sup> Therefore, that precedent must expand to the decision involving the proper standard to apply in a case involving UACs' mental healthcare. The Supreme Court made a mistake by denying the writ of certiorari in *Doe v. Shenandoah Valley Juvenile Center Commission* and failed to take a stance. The "deliberate indifference" standard has historically applied to prisoners and pre-trial detainees. Detained children who have not committed a crime deserve a higher standard of care.<sup>219</sup> These unaccompanied children remain detained for their own wellbeing—not as punishment. UACs placed in long-term care facilities and foster homes do not have any parents or guardians able to care for them in the United States, and their situation merits a higher duty of care.<sup>220</sup> Courts have used the "professional judgment" standard to determine the adequacy of medical care for psychiatric patients, and the reasoning behind that supports the application of that standard for UACs.<sup>221</sup>

The Fourth Circuit's distinction in *Patten* between "pre-trial detainees" and "involuntarily committed psychiatric patients" deserves extra emphasis.<sup>222</sup> The SVJC serves to provide care for the children in its custody, just like psychiatric institutions. Unlike prisons or detention centers, the SVJC's primary role does not include imprisonment. In fact, the center's primary objective revolves around mental health treatment due to the trauma that most of the UACs in

---

<sup>216</sup> See *Youth Tried as Adults*, JUV. L. CTR., <https://jlc.org/issues/youth-tried-adults> (last visited Feb. 11, 2022).

<sup>217</sup> See *id.*

<sup>218</sup> See discussion *supra* Section III.A.

<sup>219</sup> See *Patten v. Nichols*, 274 F.3d 829, 840 (4th Cir. 2001); see also *Estelle v. Gamble*, 429 U.S. 97, 97 (1976).

<sup>220</sup> See CONG. RSCH. SERV., *supra* note 38.

<sup>221</sup> See *Youngberg v. Romeo*, 457 U.S. 307, 307 (1982).

<sup>222</sup> See *Patten*, 274 F.3d at 840.

its custody have faced.<sup>223</sup> The U.S. judicial system must do better for these children. By allowing care facilities too much deference and allowing them to deprive UACs of adequate mental healthcare, the Court lowers the bar as to what constitutes basic care.

A lower standard leads to lower expectations. If the Court chooses to apply the “deliberate indifference” standard, no obstacles remain preventing care facilities from toeing that line and treating UACs in a way that does not quite reach the level of “deliberate indifference” but still deprives them of humane care. The “professional judgment” standard, on the other hand, allows for more sufficient treatment. Two different distinctions support the “professional judgment” standard of adequate healthcare for UACs. The first requires a distinction between the psychosocial capabilities of children and adults, and the second option requires a distinction between the level of trauma experienced by UACs compared to other youths in the United States. Either way, UACs secure a higher standard of care. Without a response from the Supreme Court, UACs continue to face the consequences of inadequate mental healthcare. If other circuit courts choose to follow the Third Circuit’s standard in *A.M.*, UACs will continue to be subjected to a lower standard of care. Additionally, the current standard threatens years of Supreme Court precedent involving a distinction between children and adults.<sup>224</sup> By refusing to hear *Doe* and set a new standard for UACs, the U.S. legal system has failed unaccompanied immigrant children.

---

<sup>223</sup> See *Doe v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 341-42 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 583 (2021).

<sup>224</sup> See *Roper v. Simmons*, 543 U.S. 551, 572-73 (2004); see also *Graham v. Florida*, 560 U.S. 48, 65 (2009); *Miller v. Alabama*, 567 U.S. 460, 487 (2012).