The Young Center for Immigrant Children’s Rights: Fighting for children’s best interests in immigration cases & federal immigration policy

Jennifer Nagda, Esq., Policy Director

American University
February 21, 2020
In all actions concerning children...the best interests of the child shall be a primary consideration. —Article 3

The views of the child [shall be] given due weight in accordance with the age and maturity of the child. —Article 12

All 50 states, Puerto Rico, District of Columbia require consideration of the child’s best interest for certain decisions regarding the child’s custody and placement.

Concerns: subjectivity; bias; patriarchal, not child-rights-centered

TVPRA: HHS]shall place children in the “least restrictive setting in their best interest”

TVPRA: A child advocate shall be provided access to materials necessary to effectively advocate for the best interest of the child

INA: authorizing “special immigrant juvenile status” when it is not in the child’s best interests to return to country of origin

TVPRA: DHS to report on efforts to ensure that children are safely and humanely repatriated
Framework for Considering Best Interests in Immigration Proceedings

- safety and well-being;
- the child’s expressed interests, in accordance with the child’s age and maturity;
- health;
- family integrity;
- liberty;
- development (including education); and
- identity
Independent Child Advocates

Program developed over 16 years in 8 locations:

• **Goal:** consideration of child’s best interests in every decision from apprehension to end of legal case (placement, release, protection or repatriation)

• **Model:** attorneys and social workers applying a child’s-rights framework to advocate with every federal agency, supported by volunteers who accompany child and learn child’s story over time

• **Advocacy:** ORR: safe placement, prompt release, family integrity; developmentally appropriate and trauma-informed services while in custody
  DOJ/USCIS: safety, permanency (protection)
  DHS: family integrity, permanency (protection), safe repatriation
Young Center Paradigm: Considering Best Interests of the Child

**CHILD’S WISHES**

The Child Advocate should always advocate for the child’s wishes unless there is a clear risk to the child’s safety.

**CHILD’S SAFETY**

The Child Advocate should always advocate for the child’s safety.

- **FAMILY INTEGRITY**
  Child’s right to be with parents, siblings, children.

- **LIBERTY**
  Child’s right to be free from detention.

- **DEVELOPMENT**
  Child’s right to food, shelter, education and medical care.

- **IDENTITY**
  Including religion, language, gender, sexuality.
Undermining Children’s Safety through Policy & Practice

IMMIGRATION PRINCIPLES & POLICIES

I. BORDER SECURITY

A. Border Wall. Our porous southern border presents a clear threat to our national security and public safety, and is exploited by drug traffickers and criminal cartels. The Administration therefore proposes completing construction of a wall along the southern border of the United States.

i. Ensure funding for the southern border wall and associated infrastructure.

ii. Authorize the Department of Homeland Security (DHS) to raise, collect, and use certain processing fees from immigration benefit applications and border crossings for functions related to border security, physical infrastructure, and law enforcement.

iii. Improve infrastructure and security on the northern border.

B. Unaccompanied Alien Children. Loopholes in current law prevent “Unaccompanied Alien Children” (UACs) that arrive in the country illegally from being removed. Rather than being deported, they are instead sheltered by the Department of Health and Human Services at taxpayer expense, and subsequently released to the custody of a parent or family member—who often lack lawful status in the United States themselves. These loopholes in current law create a dramatic pull factor for additional illegal immigration and in recent years, there has been a significant increase in the apprehensions of UACs at our southern border. Therefore, the Administration proposes amending current law to ensure the expeditious return of UACs and family units.
Policies Targeting Children to Deter Migration and Deny Protection

- Detention/Denied Entry
- Criminalization
- No "Best Interests of the Child" Standard
- Narrowing/Closing Asylum
- Information-Sharing
Policies Targeting Children to Deter Migration and Deny Protection

- Detention/Denied Entry
  - Regulation to End Flores Settlement
  - Influx Facilities
  - Prolonged Waits for Foster Care
  - Remain in Mexico
  - Metering
  - Adult Detention on 18th birthday

- Criminalization
  - No "Best Interests of the Child" Standard

- Narrowing/Closing Asylum

- Information-Sharing

©2020 Young Center for Immigrant Children’s Rights
Policies Targeting Children to Deter Migration and Deny Protection

- Detention/Denied Entry
- Criminalization
- Information-Sharing
- No "Best Interests of the Child" Standard
- Narrowing/Closing Asylum

- Transit Ban
- Rocket Dockets
- Stripping "UAC" designation
- Limiting Continuances
- Matter of A-B-
- L-A-B-R-
- Denying "Friend of Court" Appearances

©2020 Young Center for Immigrant Children’s Rights
Policies Targeting Children to Deter Migration and Deny Protection

- Detention/Denied Entry
- Criminalization
- No "Best Interests of the Child" Standard
- Narrowing/Closing Asylum
- Information-Sharing

Clinical, health records used against child in 240 proceeding
Arresting, Deporting Sponsors

©2020 Young Center for Immigrant Children's Rights
Policies Targeting Children to Deter Migration and Deny Protection

- Detention/Denied Entry
- Narrowing/Closing Asylum
- Information-Sharing

Criminalization

- Prosecuting Parents, Family as "Smugglers"
- Arrests in and around schools, courthouses
- "Criminal History" Separation (2019-2020)
- Zero Tolerance (2017-2018)
- "MS-13" rhetoric

No "Best Interests of the Child" Standard

©2020 Young Center for Immigrant Children’s Rights
Policies Targeting Children to Deter Migration and Deny Protection

Detention/Denied Entry

- No "Best Interests of the Child" Standard

Criminalization

- "Criminal History" Separation (2019-2020)
- Zero Tolerance (2017-2018)
- "MS-13" rhetoric
- Clinical, health records used against child in 240 proceeding
- Arresting, Deporting Sponsors

Information-Sharing

- Arresting, Deporting Sponsors
- "MS-13" rhetoric

Narrowing/Closing Asylum

- Regulation to End Flores Settlement
- Influx Facilities
- Prolonged Waits for Foster Care
- Remain in Mexico
- 200, 500, 1,400 bed facilities
- Metering
- Transit Ban
- Rocket Dockets
- Stripping "UAC" designation
- Denying "Friend of Court" Appearances
- Limiting Continuances

Denying "Friend of Court" Appearances

- Prosecuting Parents, Family as "Smugglers"
- Arrests in and around schools, courthouses
- "MS-13" rhetoric
- Clinical, health records used against child in 240 proceeding

©2020 Young Center for Immigrant Children’s Rights
Fair Day in Court?

Brownsville Tent "Court" for Families Trapped in Matamoros, Mexico under MPP
(Noorjahan Akbar, Young Center)
Least Restrictive Setting in Best Interests?
Resources: Best Interests for Immigrant Children

- Schoenholtz, Andrew I. *Developing the Substantive Best Interests of Child Migrants: A Call to Action.* (2012)
Young Center

• Chicago
• Harlingen
• New York
• Houston
• San Antonio
• Phoenix
• Los Angeles
• Washington, DC

Jennifer Nagda
Policy Director
@JenniferNagda
jnagda@theyoungcenter.org

info@theyoungcenter.org