



ADVANCING A FUNDAMENTAL
STANDARD FOR THE TREATMENT
OF IMMIGRANT CHILDREN

For over a century, the best interests standard has served as the cornerstone of a robust legal architecture erected by every state in the U.S. to safeguard the well-being of children, regardless of their immigration status. A global consensus, embodied in the U.N. Convention on the Rights of the Child (CRC), has also embraced the best interests standard as the fundamental framework to guide decision-making involving children. As a signatory to the CRC, which this year marks its thirtieth anniversary as the most widely ratified treaty in recent history, the U.S. government has pledged not to act in a manner that undermines the best interests principle. And yet, despite these longstanding commitments, our country is witnessing a systematic assault on the rights of migrant children as the Trump administration works to roll back hard-fought progress in extending the best interests standard into immigration law and practice.

We propose to convene a high-profile, interdisciplinary symposium to generate impactful publicity around this erosion of fundamental protections and to equip advocates and policymakers to defend and reassert the primacy of the best interests standard in the treatment of children in the U.S. immigration system. The symposium will also leverage the multidisciplinary expertise of participants to offer more precise guidance for the implementation of the best interests standard in the immigration context, where children's unique circumstances often require attention to factors less common in other child welfare settings. This proposal takes advantage of both opportune timing and the lead sponsor organizations' demonstrated expertise. Political battles around immigration will continue to figure prominently in the run-up to the 2020 presidential election, affording a critical opportunity for this work to inform the national discourse and effect positive change. The expertise of American University's Center for Latin American & Latino Studies (CLALS) and Washington College of Law (WCL) combines social science research on the conditions motivating the migration of children and families and their integration experiences in the U.S. with nationally recognized excellence in the study and practice of immigration law. The American Immigration Lawyers Association (AILA) contributes to this collective expertise an established track record of targeted advocacy, ideally situating us to accomplish our overarching objective of catalyzing informed public dialogue and generating tools for activists, advocates, and policymakers.

Background: Notwithstanding the efforts of successive administrations to deter new arrivals, child migration to the U.S. has continued unabated since 2014, with numbers for the most recent fiscal year (FY) reaching unprecedented levels. In FY2019, apprehensions of unaccompanied children (UACs)—predominantly from the Northern Triangle (NT) countries of El Salvador, Guatemala, and Honduras—exceeded 75,000, pushing the total number of unaccompanied arrivals to over 330,000 since the start of the 2014 crisis. As the influx of UACs has rebounded to record levels, the wave of migrant families, including hundreds of thousands more children, has continued to soar. Over 470,000 migrants traveling as family units arrived at the U.S.-Mexico border during FY2019, a 342% increase over previous years.

These children—many of whom are victims of domestic abuse, gang violence, and malnutrition—are no less deserving of protections afforded by domestic law and international norms that implement the best interests standard. However, the Trump administration is acting not only to foreclose any further expansion of these treatment norms into immigration law but also to deprive immigrant children of the minimal protections currently in place. While explicit requirements to consider children's best interests are few in the immigration context, meaningful progress had been made on two fronts: substantive law and agency practice—both of which are now under attack. The key protection under the 1997 Flores Settlement Agreement (FSA)—as codified in bipartisan legislation passed in 2008—limits the detention time for UACs and requires that the government promptly place these minors in the “least restrictive

setting that is in the best interests of the child.” In 2016, advocates successfully sued to expand the FSA’s detention limits to all immigrant children. But in August, the Trump administration issued a final rule that would eliminate this protection for children of detained families, subjecting them to indefinite detention in increasingly inhumane conditions. And while the rule leaves in place protections for UACs, it essentially nullifies them by terminating court oversight of the U.S. government’s compliance with the FSA and freeing detention facilities from state licensing requirements. Meanwhile, executive agencies have rolled back efforts—spearheaded by the Young Center for Immigrant Children’s Rights—to bring the best interests standard to bear on government decision-making involving UACs. By 2016, this work had gained considerable momentum and produced demonstrable results, including a training program for judges presiding over children’s cases and a special unit tasked with evaluating whether repatriation was in the best interests of children denied asylum. But these and similar efforts have come to an abrupt halt.

Proposed Activities and Core Objectives: With the aim of defending and reinforcing the best interests principle as the central framework for decision-making involving immigrant children, we propose a one-and-a-half-day symposium that will convene an interdisciplinary group of researchers, practitioners, advocates, and policymakers to accomplish the following core objectives:

1. **Document and bring to the fore of the public discussion the U.S. government’s failures** to provide immigrant children with treatment consistent with standards widely accepted under domestic law and international norms. Each panel presentation will be dedicated to a specific point along the migration continuum, allowing experts to assess how the best interests standard can inform decision-making at various critical junctures in the immigration process (e.g., point-of-entry processing, detention, release and placement decisions, legal proceedings, provision of post-release services, etc.).
2. **Expand analogous pre-Trump administration initiatives focused exclusively on the unique needs of UACs to include all immigrant children.** At a moment when the number of family arrivals has skyrocketed, there is an urgent need to extend both scholarly and policy discussions beyond the narrow UAC category and to give careful consideration to how the best interests standard should be implemented in the broad range of cases involving accompanied minors. The symposium will provide a forum for this more inclusive discussion.
3. **Deepen the often superficial invocation of the best interests standard as a panacea for addressing the needs of immigrant children by generating concrete recommendations** for its implementation in the immigration context. While policymakers have reiterated the fundamental soundness of the best interests framework, both the U.N. and recent scholarship have pointed to a need for clearer application guidelines consistent with established youth development principles. Here, our network of skilled, immigrant-serving practitioners across professional domains ideally situates us to advance work to inform and refine best interests assessments through a more contextualized and robust understanding of sociocultural norms, economic realities, and dynamics of violence that shape the experiences of Central American migrants.
4. **Revitalize and inspire efforts to counter the dismantling of specialized protections for immigrant children by launching an aggressive media campaign** to widely publicize the symposium and disseminate related work products. We are in the process of securing co-sponsorships from prospective partner institutions, which will heighten the visibility of our collaborative efforts and ensure substantive input from a wide range of key stakeholders.

Outputs and Broader Impact: Symposium outputs will include (1) a comprehensive report integrating participants’ analyses and recommendations for implementing the best interests standard; (2) a series of short-form blog posts highlighting insights emerging from the symposium; and (3) a toolkit for activists, the media, and decision-makers to use in advocating for a return to the best interests standard, likely to include a one-pager of recommendations and talking-points to serve as an accessible reference in pushing for recommended reforms. Symposium-related materials will be designed and disseminated so as to sustain the broader impact of our work, providing much-needed inputs for the development of law, policy, and practice that bear on the treatment of immigrant children.