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The Young Center for Immigrant Children's Rights:

Fighting for children's best
interests in immigration cases &
federal immigration policy

Sources of Best Interests Law



Convention on the Rights of the Child

In all actions concerning children....the best interests of the child shall be a primary consideration. —Article 3

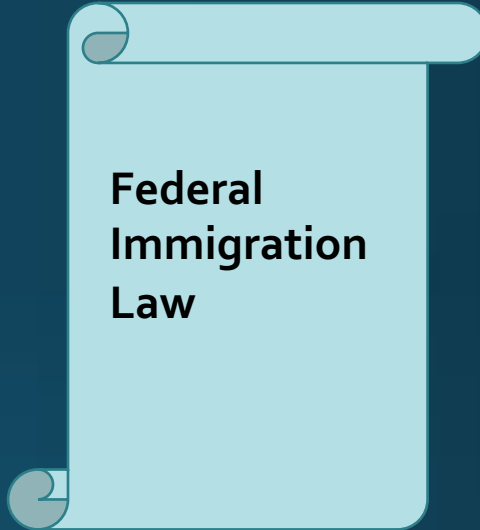
[T]he views of the child [shall be] given due weight in accordance with the age and maturity of the child. —Article 12



Domestic Child Welfare Laws

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



Federal Immigration Law

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

1. 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.

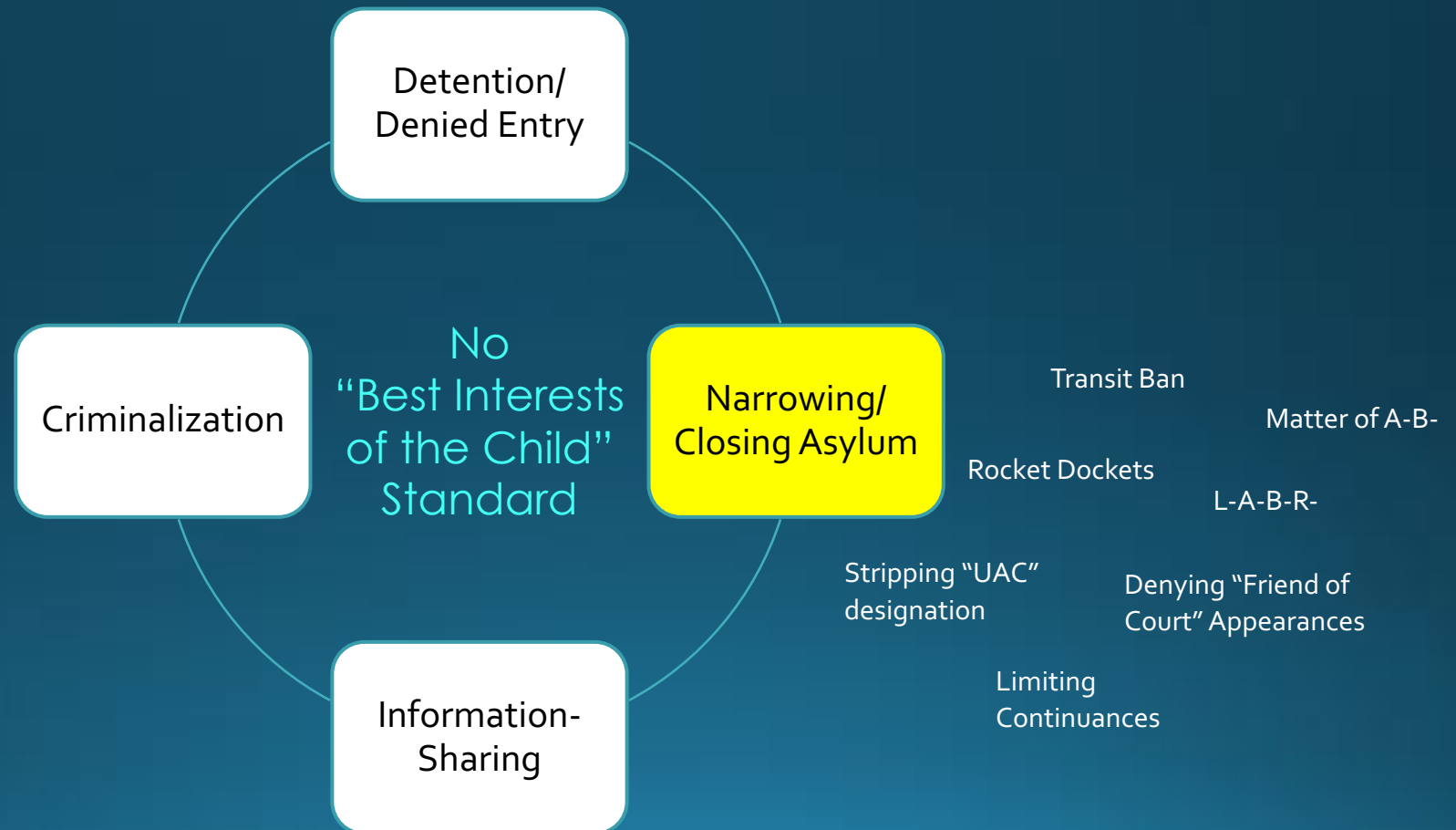
Policies Targeting Children to Deter Migration and Deny Protection



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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?



Matamoros Encampment, January 2020

(Jennifer Nagda, Young Center)

Resources: Best Interests for Immigrant Children

- **Woltjen, Maria et al.** *Best Interests of the Child Standard: Bringing Common Sense to Immigration Decisions.* (2015)
- **Thronson, David.** *Of Borders and Best Interests: Examining the Experiences of Undocumented Families in U.S. Courts.* (2005) *Thinking Small: The Need for Big Changes in Immigration Law's Treatment of Children.* (2010)
- **Carr, Bridgette A.** *Incorporating a Best Interests of the Child Approach into Immigration Law and Procedure.* (2009)
- **Schoenholtz, Andrew I.** *Developing the Substantive Best Interests of Child Migrants: A Call to Action.* (2012)
- **Interagency Working Group on Unaccompanied and Separated Children.** *Framework for Considering the Best Interests of Unaccompanied Children.* (2016)

Young Center

- Chicago
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