

BEST INTERESTS OF THE CHILD STANDARD: Bringing Common Sense to Immigration Decisions

by

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Many Americans are now aware that unaccompanied children from Honduras, Guatemala, El Salvador, and Mexico are coming to the United States through the Mexico–U.S. border. Given the political firestorm, many also know that immigration officials have the authority to decide whether those children may remain in the United States or be sent back. What most Americans likely do not know is there is no requirement that immigration authorities should consider the children’s best interests—specifically, the children’s safety and well-being—in making these decisions. Border patrol agents do not have to consider best interests when returning a vulnerable child to Mexico. Immigration judges do not have to consider best interests when deciding whether to deport a child. Immigration officials who adjudicate visa applications do not have to consider best interests when deciding whether to grant a visa to a child trafficking survivor. Immigration and Customs Enforcement (ICE) attorneys who prosecute cases against children and arrange for their repatriation do not have to consider whether their decision may place a child directly in harm’s way or permanently separate the child from a parent.

Not surprisingly, the absence of a best-interests standard for children in our immigration law has led to absurd results. Consider the following:

- » At the age of 11, Julia fled to the United States to escape a home in which her caregiver (her grandmother) had been sexually assaulted by a police officer and where Julia was a witness to the event. Julia’s hope was to find safety with her mother in the United States. After more than six months in a locked “shelter,” where she had just a weekly, 10-minute phone call with her mother, Julia unexpectedly told her lawyer she wanted to quit fighting her case and ask the judge whether she could go back to Honduras. Julia was so devastated at being prevented from being with her mother that she had decided she would rather return to a family member who could not protect her from danger, rather than remain so close to, but separated from, her mother. Until that moment, Julia’s attorney had been preparing a petition for asylum. The lawyer knew that when Julia went to court and asked for permission to go back to her country, the judge would have no obligation to ask any questions about whether Julia would be safe or who would care for her in her home country. Julia’s mother would have no role at the hearing. Even if Julia’s mother called the court asking to be present telephonically, the court would have no obligation to speak to Julia’s mother or include her in the proceedings before deciding whether to repatriate Julia. Because Julia’s attorney was obligated to tell the court Julia’s expressed interests (her desire to return), there was no one to advise the court of the risks of return to Julia’s safety and well-being.
- » Baby Ana, just 13 months old, was discovered when a smuggler was caught bringing her into the United States. Ana’s mother had been killed only weeks before. Prior to that, Ana had been raised by her mother and her maternal grandparents, who desperately wished for Ana’s return to their country. Despite Ana’s age and the fact that she was still preverbal, the Department of Homeland Security (DHS) decided to charge Ana with entering the United States without permission and require her to appear in immigration court to defend against these charges. For Ana to be reunified with her family—her grandparents in her home country—the request would have to be made by Ana, through an attorney she would have to retain, in formal immigration-removal proceedings. This procedure was certainly not in her best interests nor in the interests of government efficiency, given the many additional immigration court officials now involved in her case.

When children like Julia and Ana become the subject of federal immigration proceedings and decision making, what standards should inform the decisions? How do we ensure a fair and just adjudication of a child’s request for a visa or asylum? How can we ensure that the recommendation of the child

advocate—appointed to identify and advocate for the child’s best interest—is not colored by subjective beliefs? How do we ensure that the child advocate’s determination does not ignore the child’s wishes or disregard the child’s culture or the family’s wishes for the child? Is it possible to establish the appropriate weight an immigration judge or other immigration authority should give to a recommendation about a child’s best interests?

The answers to these questions are to be found in universally accepted law and policy—that consideration of best interests is both necessary and possible. There is a process and set of standards for gauging the best interests of the child. Moreover, these procedural and substantive protections can be applied for all children subject to immigration removal without undermining the decision-making authority of immigration officials. Finally, this can be done in a manner that ensures the child’s voice and rights are heard and upheld and that weeds out bias and paternalism.

Surprise 1: Clearly Articulated Standards for Assessing “Best Interests”

The “best interests of the child” standard is a hallmark of U.S. child protection laws. The laws of all 50 states require consideration of a child’s best interests in any decision “about a child’s custody or other critical life issues.”¹ This standard is also a foundational principle of international guidelines governing the treatment of children—in particular, the Convention on the Rights of the Child (CRC).² At this moment, only two countries—the United States and Somalia have failed to ratify the CRC.³

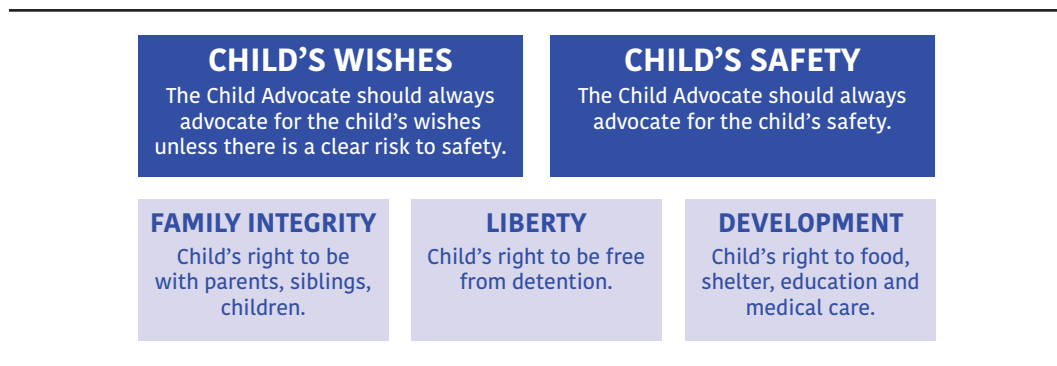
Best interests is a term of art; there is no exact definition. The term encompasses both a substantive right—the child’s right to have his or her best interests considered in any decision about him or her—and procedural protections to ensure that there is “an evaluation of the possible impact” of decisions upon a child or group of children.⁴ The factors entering into the determination of *best interests* vary case by case. Nevertheless, certain factors—safety, well-being, permanency—appear consistently in statutes, case law, regulations, and policies defining best interests. In 2013, the Committee on the Rights of the Child articulated seven specific elements for assessing a child’s best interests:⁵

1. The child’s views
2. The child’s identity
3. Preservation of the family environment and maintaining relations
4. The care, protection, and safety of the child
5. A situation of vulnerability
6. The child’s right to health
7. The child’s right to education

The Young Center for Immigrant Children’s Rights has worked for more than a decade to distill these criteria into a meaningful framework for considering the best interests of unaccompanied children facing deportation. Under the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA),⁶ the Secretary of Health and Human Services has the authority to appoint independent child advocates—the equivalent of a best interests guardian *ad litem*—for unaccompanied children charged with being in the United States without permission. By way of context, these children are charged with breaking the law, placed in adversarial immigration court proceedings, and (at least

temporarily) detained and separated from their families. The Young Center served as the model for this statutory provision and remains the only organization providing child advocate services to unaccompanied children at this time. The independent child advocate’s role is to identify and advocate for the best interests of child trafficking victims and other vulnerable immigrant children. Consistent with the CRC and most domestic statutes, child advocates assess children’s best interests by applying the framework shown in Figure 1.

Figure 1.
Child advocate paradigm for assessing best interests



Source: Young Center for Immigrant Children’s Rights © 2014

Child’s Wishes. The Young Center has adopted a child’s rights–driven model based on the CRC, in which a child’s wishes *must* be considered, giving due regard to the child’s age and maturity.⁷ There is no age threshold below which children cannot express their wishes: the center has worked with toddlers who could express their desire to be with a particular parent or caregiver.

Immigrant children in removal proceedings are treated much like defendants in the criminal system. They are charged with violating immigration laws. As such, their desires—often the right to live permanently in the United States—cannot trump U.S. laws and regulations. However, their wishes are not only relevant to the adjudication of their cases but also should be a *primary consideration* when deciding whether a child is permitted to remain in the United States or is ordered deported. We have no doubt that the best way to ensure that a child’s voice is heard is to ensure that the child is represented by qualified counsel with experience representing children, provided at government expense if the children or their family are unable to retain counsel on their own. A “federal defender” model of representation for children who do not receive pro bono or nongovernmental organization (NGO)–based attorneys would ensure that every child has an attorney to advise the child of his or her rights; prepare applications for relief or request discretionary action on the child’s behalf; or if the lawyer did not believe the child could make a claim under the law, ensure that the child could express his or her wishes directly to the judge, who would determine whether the child could proceed.

Safety. The Young Center will only make a recommendation that contradicts a child’s expressed wishes when the child has stated a desire that endangers his or her safety or well-being; and even then, we will only do so after convening a panel of independent, interdisciplinary experts who participate

on a “best interests determination” (BID) panel, described in more detail below. Safety includes “the right of the child to protection against all forms of physical or mental violence, injury or abuse, sexual harassment, . . . as well as protection against sexual, economic, and other exploitation, drugs, labor, armed conflict, etc.”⁸ Although safety is a relevant factor for some forms of immigration relief, a child’s lack of safety in home country is not, standing alone, a basis for remaining permanently in the United States. Our country routinely deports children to unsafe situations.

Family Integrity. Family integrity is a central component of a child’s best interests.⁹ The CRC recognizes the family as the “natural environment for the growth and well-being of all its members and particularly children”¹⁰ and insists that “a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”¹¹ For years, the Young Center has relied on these principles—and corresponding principles in U.S. child welfare laws—to advocate for the release of children from detention to parents and other family members determined to be safe sponsors. In recent years, the federal government explicitly recognized the potential for immigration enforcement to disrupt families and threaten parents’ constitutional rights to the care and custody of their children, though in the context of parents facing deportation.¹²

Nevertheless, there is no such policy when it comes to children facing prolonged or permanent separation from a parent *when the child* is the subject of immigration proceedings.

Liberty. A child’s right to liberty¹³ is particularly relevant for unaccompanied children who are apprehended by immigration authorities and then transferred to the custody of the Department of Health and Human Services. Under a 1997 settlement decree, unaccompanied children may be released from detention to the care and custody of a parent, family member, or other sponsor during the pendency of their proceedings.¹⁴

Periods of detention prior to a child’s release—when a child is not free to leave and during which the government compiles a custodial file that can be used against the child in adversarial court proceedings—must be recognized as detention. There are few foster homes for children awaiting family reunification. Detention in locked facilities is potentially traumatic, even when that time is used to provide information about legal rights or other services or to identify a safe placement for the child. Holding children in highly restrictive detention, separated from family, while their cases are adjudicated thus runs afoul of two central tenants of a child’s best interests—the child’s right to be raised by family and the child’s right to liberty. The practice of detaining families—particularly mothers with young children—also violates a child’s liberty rights and poses risks to the child’s safety, health, and development.

Development. In a system that generally treats children as adults-in-miniature, Young Center child advocates have advocated that decisions be made in light of a child’s right to development considering the particular needs, vulnerabilities, and strengths of each child. The right to develop includes the right to health and education and may be best understood as *well-being*, which “in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.”¹⁵ The Committee on the Rights of the Child defines this need as one of “protection and care”¹⁶ and “expects States to interpret development as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological, and social development.”¹⁷

Surprise 2: Application of the Best Interests Standard Is Consistent with the Goal of Fair and Just Adjudication

With few exceptions, our immigration laws do not require consideration of a child's best interests.¹⁸ Incorporating a best interests standard as a primary consideration in all decisions and assigning judges dedicated to children's immigration court dockets would not only ensure the fair and just adjudication of children's cases (from decisions made at the moment of the child's apprehension through the determination of where the child will reside permanently), but would also reduce some of the burdens on our immigration system and ensure that decisions about children are made by judges and officials with particular expertise in children's cases.

“Every child has an individual story. The best interests of the child standard ... requires that each child's story be known and understood before immigration authorities make decisions that could put the child in harm's way. Such individualized inquiries are the hallmark of fairness and due process.”

For example, 13-month-old Ana was charged and placed in removal proceedings by DHS authorities who first found and brought her into custody. Removal proceedings are formal, adversarial proceedings, which take place before a judge and where there is an attorney representing the government. Once placed in removal proceedings, children, like adults, must make a formal request of the judge for the right to remain in the United States or to withdraw their application for entry. And children, like adults, do not have a right to government-appointed counsel when they appear in immigration court.

If DHS had a policy and procedure for considering the best interests of children in *all* decisions, the agency might have decided not to formally charge Ana until more could be learned about her family. This would have eliminated the expense of convening multiple immigration court proceedings—each of which required the presence of an immigration judge, a DHS attorney, a court clerk, and a court reporter—so that the immigration judge could eventually entertain the fiction that Ana was “withdrawing her application for admission.”

Immigration courts (part of the U.S. Department of Justice, a separate federal agency) also lack a framework for considering best interests, which in Ana's case would have required consideration of her right to grow up with her family. In our current system, Ana's grandparents, despite being appointed her legal guardians in their country of origin, were denied any role in their granddaughter's immigration case, which may have deprived the court of valuable information—such as their appointment as her legal guardians and their willingness and ability to provide her with a safe home in their country. In this case, a Young Center independent child advocate, appointed under TVPRA, was able to provide this information to nonprofit attorneys who stepped in to represent Ana free of charge, as well as to the court—but only after the court exercised its discretion to consider and give weight to our best interests recommendation, a procedure not yet statutorily required under current immigration law.

In 11-year-old Julia's case, her attorney requested a Young Center child advocate because the attorney feared for Julia's safety in Honduras. The attorney had been preparing an asylum application based on Julia's fear of persecution by police and others. If Julia insisted on requesting voluntary departure (a way of returning to her country, without penalty), her attorney knew that the request was likely to be granted. The absence of a best interests standard in the immigration courts and within

the agency (DHS) responsible for returning children meant that the immigration judge *might* ask Julia a few questions about the person(s) to whom she'd be returning but that neither the judge nor the government attorneys prosecuting the case against her would ask questions such as, "Where are your parents?" "Will you be safe if you go back?" "Will you be able to go to school when you return?" "Did anyone try to hurt you before you left?" No questions would be asked of the family in home country, such as: "Are you able to care for this child?" "Do you want to care for this child?" "Can your family raise another child?" "Who lives in the home?" The answers to those questions would have revealed that Julia faced persecution in her country, making her eligible to apply for asylum and possibly other visas that would lead to lawful permanent status in the United States. The inquiry also would have revealed that there was no adult in Julia's country able to care for her or protect her from harm.

Not all children have a viable claim under U.S. law to remain permanently in the United States, but every child has an individual story. The best interests of the child standard, which is inherently individualized, requires that each child's story be known and understood before immigration authorities make decisions that could put the child in harm's way. Such individualized inquiries are the hallmark of fairness and due process, which are stated goals of our immigration courts.²⁰

"The role of the child advocate is to ensure that the child's voice is heard and considered and that relevant evidence about the child's safety and well-being is provided to all immigration authorities with the ability to make decisions about the child."

Surprise 3: Best Interests Recommendations Can Be Child Driven, Child's Rights Oriented, and Valuable for Federal Immigration Authorities

Establishing and implementing a best interests standard, in which the decision maker considers the child's safety, wishes, separation, or reunification with family, liberty, and ability to grow and develop would not require a radical departure from our immigration laws, nor would it upend our immigration system such that every child in immigration proceedings would be permitted to remain permanently in the United States. Under U.S. law, immigration decisions are discretionary. Even when a child or adult establishes that she or he satisfies the criteria for asylum, the government is not obligated to grant petition for asylum.²¹ Rather, immigration judges, asylum officers and other officials with the power to issue visas retain the discretion to grant or deny requests for relief from removal.

Requiring a judge, asylum officer, or immigration official to consider a child's best interests does not strip that official of the discretion to weigh all of the facts. An immigration judge in a jurisdiction that lacks a child advocate program once explained that when he makes a decision about a child's case, he wants to have as much information as possible. Immigration judges know the legal standards for establishing a claim and can determine how to weigh the information in front of them. The judge we spoke with expressed a clear preference for receiving all relevant information about a child's decision to leave his or her country, particularly information about the child's safety.²²

Adversarial proceedings presume a worthy adversary. Every effort must be made to ensure that the expressed wishes of children—who are still developing, maturing, and learning to communicate and put their life experiences in context²³—are heard. A best interests of the child standard requires that

immigration authorities take special care to elicit the child's opinion and give that opinion due weight in accordance with the child's age and maturity (while also considering the child's safety, family integrity, liberty, and ability to develop).

When a child's desires do not endanger his or her safety or well-being, the role of the child advocate is to ensure that the child's voice is heard and considered and that relevant evidence about the child's safety and well-being is provided to all immigration authorities with the ability to make decisions about the child. However, in particularly challenging cases—such as when the child's wishes put him or her in harm's way, or when the child lacks capacity to express an opinion, or when the child faces long-term or permanent separation from a parent—the Young Center convenes BID panels to guide its recommendations²⁴ regarding the child's best interests.

BID Recommendations. The Young Center's BID panels are modeled on a procedure developed by the UN High Commissioner for Refugees.²⁵ The BID panels comprise a group of diverse experts who are unrelated to the case and whose expertise allows them to apply the best interest framework to the specific facts of a child's case. A typical BID panel includes an immigration attorney, an expert in domestic child welfare law, someone from the child's country of origin, and a subject matter expert (for example, an expert in domestic violence or in labor trafficking), as well as the child advocate and the BID panel supervisor. After reviewing the facts of the case, BID panelists ask questions of the child advocate and then work to reach consensus on what is in the child's best interests or determine what additional information would be needed to make a recommendation. The BID panel's recommendations are incorporated into the final recommendation (again, a recommendation as opposed to a final decision) of the child advocate.

The BID panel provides the child with procedural protection against the risk that a well-intentioned lawyer, social worker, or volunteer, acting alone, may allow his or her bias to cloud a best interests recommendation. The BID process also protects against paternalistic recommendations of the “for their own good” variety.

Most important, “an adult's judgment of a child's best interests cannot override the obligation to respect the child's rights under the Convention.”²⁶ This concern for preventing the substitution of an adult's judgment for the child's expressed interests is grounded in both international law and domestic child welfare law. Thus, a child advocate's best interests recommendation is formulated in consideration of where the child feels safe, as opposed to where the child advocate believes the child will be safe.²⁷

The Young Center's BID panels are designed to bring as much expertise as possible to the best interests recommendation process. In some ways, they reflect the domestic child welfare model in which a guardian *ad litem* gathers information from everyone connected to the child and is entitled to have access to all of the information about the child's case. Outside of immigration law, the best interests standard is such a well-accepted principle that during the 2008 debates over comprehensive immigration reform, three senators took to the Senate Floor to express their dismay over the absence of a best interests standard in immigration law and their disappointment that such a provision would be considered controversial.²⁸ Nevertheless, there remain critics of incorporating a best interests standard into immigration law.

Concerns. In particular, children's attorneys are concerned that best interests may be used to trump the child's expressed interests. But this should not be the case if a child-rights best interests framework, such as the one applied by the Young Center and required by the CRC, is applied. Even when a child advocate's ultimate recommendation contradicts the child's expressed interests (for example, in cases in which a child requests a decision that puts her or him in harm's way), the child advocate has an obligation to identify the child's desires and ensure those desires are heard. Moreover, the child advocate

is subject to cross-examination by the child or the child’s attorney, as well as by the immigration judge and the trial attorney in immigration court proceedings. At the Young Center, our first endeavor on behalf of a child’s best interests is often to ensure that the child has an attorney to represent him or her.

Government officials have expressed concern that considering children’s best interests will open the floodgates to children’s claims to remain in the United States. Principles of due process require that all children have an opportunity to tell their story, to explain what they were seeking when she came to the United States, and why they wish to stay or why they now wish to return. The best interests standard would require *consideration* of children’s best interests in making that decision. It would not prohibit immigration judges, asylum officers, U.S. Customs Border Protection or U.S. Citizenship and Immigration Services officials from considering other important factors—for example, safety to the community or national security concerns. Those and many other factors would continue to be incorporated into the decision-making process. Understanding the difference between best interests as a *primary* consideration and best interests as the *sole* consideration should alleviate the fears of both attorneys and enforcement authorities.

“This is precisely what child welfare and human rights principles call upon us, as a country, to do—to protect children.”

In addition, without change to the forms of relief available to children—which are limited primarily to asylum, U visas, T visas, special immigrant juvenile status, and occasional Violence Against Women Act claims—consideration of the child’s best interests will not change the bases under which children can gain permanent status. It may help tip the scales in cases where an adjudicator finds that the child has established his or her eligibility for relief but is on the fence about whether to exercise discretion in the child’s favor. It may also result in more discretionary actions by enforcement authorities, who may choose not to charge a child with removability or may agree to close a child’s immigration case. Yet this is precisely what child welfare and human rights principles call upon us, as a country, to do—to protect children. If a discretionary grant of asylum or the termination of a child’s immigration case ensures that the child does not face harm at a moment when he or she is still growing and developing and is in the care of a parent or guardian, then we’ve applied the best interests principle for which it was designed—to ensure the safety and well-being of children.

Conclusion

Ultimately, both Ana and Julia reunified with their families—Ana, to her grandparents in her country of origin; and Julia, to her mother in the United States, where she applied for and was granted asylum. Both decisions were made after an independent child advocate submitted a best interests recommendation—in Ana’s case, to an immigration judge; and in Julia’s case, to the agency responsible for deciding whether she could be released to her mother and later to the asylum officer adjudicating her claim. In both cases, the immigration authorities considered the best interests recommendation in making their decisions—even though there is no explicit best interests standard in the immigration law as it presently exists. It is not terribly difficult to imagine an immigration system in which every child has the opportunity to have his or her best interests considered, particularly when authorities are making decisions that could result in permanent separation from family, banishment, or returning the child to a dangerous environment. Consideration of the best interests of the child in immigration deportation proceedings makes sense. It requires asking questions, gathering information, and then balancing that information with other equities in the case. In other words, a process of fair adjudication.

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Notes

1. Child Welfare Information Gateway, Children's Bureau, U.S. Department of Health and Human Services, "Determining the Best Interests of the Child," 2013, https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf; see also B. A. Carr, "Incorporating a 'Best Interests of the Child' Approach into Immigration Law and Procedure," *Yale Human Rights and Development Law Journal* 12 (2008): 120, 124 (identifying the "best interests of the child" as a "common legal standard for cases that involve children") (citation omitted).
2. United Nations Convention on the Rights of the Child (CRC), G.A. Res. 44/25, art. 3, Annex, U.N. Doc. A/44/736, 1577 U.N.T.S. 3 (November 20, 1989).
3. L. Blanchfield, "The United Nations Convention on the Rights of the Child," Congressional Research Service, April 1, 2013, 1, <http://fas.org/sgp/crs/misc/R40484.pdf>; D. B. Thronson, "Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law," *Ohio State Law Journal* 63 (2002): 979, 988.
4. United Nations Committee on the Rights of the Children, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para.1), ¶6, U.N. Doc. CRC/C/GC/14 (May 2013), http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf ("the child's best interests is a threefold concept . . . (a) A substantive right . . . (b) A fundamental, interpretative legal principle . . . (c) A rule of procedure").
5. *Ibid.* ¶¶48–79.
6. 8 U.S.C. §1232(c)(6).
7. CRC, *supra* note 3, art. 12; see also Committee on the Rights of the Children, *supra* note 5, 53.
8. Committee on the Rights of the Children, *supra* note 5, 73.
9. CRC, *supra* note 3, arts. 5, 7, 8, 9.
10. *Ibid.* Preamble.
11. *Ibid.* art. 9.
12. See, for example, U.S. Immigration and Customs Enforcement, 11064.1: "Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities," August 23, 2013, 2, http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf (recognizing the "fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law").

13. CRC, *supra* note 3, art. 37(b) (“The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” [emphasis added]).
14. *Flores v. Reno*, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997), http://aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf.
15. Committee on the Rights of the Children, *supra* note 5, ¶71.
16. *Ibid.*
17. *Ibid.* ¶4, n.2 (internal quotations and citation omitted).
18. See Carr, *supra* note 1, at 123 (“The failure of immigration law and procedure to incorporate a ‘best interests of the child’ approach ignores a successful means of protecting children that is common both internationally and domestically.”). The Immigration and Nationality Act (INA) references the “best interests” of children subject to its intricate provisions only a few times. The Department of Health and Human Services is required to place unaccompanied children “in the least restrictive setting that is in the best interest of the child” (8 U.S.C. § 1232(c)(2)). In 2008, the TVPRA amended the INA to permit the appointment of independent child advocates, who must be provided “access to materials necessary to effectively advocate for the best interest of the child” (8 U.S.C. § 1232(c)(6)). The TVPRA also permits support for “best interest determinations” for certain unaccompanied children, “to identify child trafficking victims and to assist in their safe integration, reintegration, and resettlement” (William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 104(1)(B), 22 U.S.C. § 7105(a)(1)(F)). The term also appears in the definition of a special immigrant juvenile (8 U.S.C. §1101(a)(27)(J)(i–ii)), requiring, among other things, a determination that it is not in a child’s best interests to return to his or her country of residence.
19. Executive Office for Immigration Review (EOIR), Department of Justice, “About the Office: Goals,” accessed July 25, 2014, <http://www.justice.gov/eoir/orginfo.htm> (“EOIR’s primary mission is to adjudicate immigration cases in a careful and timely manner . . . while ensuring the standards of due process and fair treatment for all parties involved”).
20. E. Frankel, “Detention and Deportation with Inadequate Due Process,” *Duke Forum for Law and Social Change* 3 (2011): 63, 92 (stating that all forms of immigration relief are considered a “benefit” and not a right and that a judge may always exercise discretion and deny that benefit, even if a child makes a showing that he or she qualifies for one).
21. Notes on file with authors.
22. See A. I. Schoenholtz, “Developing the Substantive Best Interests of Child Migrants: A Call for Action,” *Valparaiso University Law Review* 46 (2012): 991, 999–1000 (recognizing child migrants as “developing beings, both cognitively and biologically” and acknowledging general agreement “that children are evolving beings”).
23. It is important to note that the Young Center uses the BID process to develop a recommendation and not a determination (or decision).
24. Office of the United Nations High Commissioner for Refugees, “UNHCR Guidelines on Determining the Best Interests of the Child,” May 2008, <http://www.unhcr.org/4566b16b2.pdf>.
25. Committee on the Rights of the Children, *supra* note 5, at ¶4 (internal quotations and citation omitted).

26. See, for example, 705 ILCS 405/1-3 (requiring consideration of the child's sense of attachments as part of any best interests determination, and defining attachments as "where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued)").
27. 159 Cong. Rec. S4667, S4669 (daily ed. June 19, 2013) (Senators Mary Landrieu (D-LA) and Harry Reid (D-NE) discussing amendments to the Border Security, Economic Opportunity, and Immigration Modernization Act and expressing disbelief that inclusion of a "best interest" standard could be controversial); 159 Cong. Rec. S4736 (daily ed. June 20, 2013) (Senator Patrick Leahy (D-VT) urging his colleagues to vote on a proposed "best interest" amendment to immigration reforms).