

ON THIS WE CAN AGREE: CHILDREN REQUIRE SPECIAL CARE

Five Principles to Guide Any Changes to Immigration Law, Policy or Procedure

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In recent years, increasing numbers of children have come to the United States across the southern border. Most children arriving today are from Central America but children come from countries around the world including China, India, Ghana, Somalia, Romania, Afghanistan, Mexico, Brazil and Ecuador. The majority come seeking protection from harm or abuse in their countries. Some have been trafficked. Others are fleeing severe poverty and come hoping to work. Many come to reunify with a parent or family member. Any child who wishes to remain permanently in the United States must raise a legal claim for protection and win their case before a government agency. Following are specific recommendations to guide any changes to immigration law or policy that would affect these children.

1. Children are different from adults and should be afforded special protections.

All 50 states recognize that children are different from adults. Each state has special court proceedings for children where the decision makers have special training or expertise and where decisions are made in consideration of the child's best interests—their safety, permanency, well-being and expressed wishes.

- **Reform recommendations: (1) Any changes to immigration law, policy or procedure must preserve or provide special protections for all children and must require decision makers to consider each child's best interests—safety, permanency, well-being and stated interests—before rendering a decision. (2) While children await a permanent solution, they should be reunified with family or placed in the least restrictive setting and connected with services to address their immediate needs. (3) Children's ability to access educational, medical and mental health services at all times is vital to their safety and development.**

2. Children cannot have a fair immigration proceeding without an attorney to represent them.

Currently, most children determined to lack lawful immigration status are placed in formal immigration court ("removal") proceedings where they must present and then win their case to remain in the United States. They are required to present their case to an asylum officer or immigration judge and face an attorney from the government agency trying to send them back. Children are not provided an attorney at government expense but are instead responsible for finding their own lawyer—even children who are still toddlers, who are in elementary school, or who have a mental illness or developmental delay. Every child has the right to be heard in fair proceedings that will determine where they will live and whether they will be safe if repatriated to their home country.

(Children cannot have a fair immigration proceeding without an attorney—cont'd.)

- **Reform recommendations: (1) No immigration proceeding should take place until the child is represented by an attorney. (2) The decision to return a child to his or her country of origin should only be made after the child has had an opportunity to make all possible claims for protection in a fair proceeding before a judge (never in an expedited manner unless requested by the child's attorney) and only after considering the child's safety.**

3. Children need time to establish trust.

Teachers, doctors, child welfare professionals and parents know that most children will not open up to a complete stranger, even (and sometimes especially) when that person holds a position of authority. Children need time to establish trust. This is both a learned behavior and developmentally appropriate. For children who have experienced trauma, it is critical that they have time to settle and establish trust before being subject to any legal processes or immigration proceedings.

- **Reform recommendations: (1) Children should have sufficient time to recover from trauma and establish a relationship of trust before they are asked to make or participate in important decisions. (2) Children's immigration cases should not be decided in the days or weeks immediately following their apprehension, and certainly not while they are held in immigration custody or separated from family against their wishes. (3) Particularly vulnerable children should be appointed an independent Child Advocate whose responsibility is to advocate for the child's best interests in all decisions.**

4. Safety must be a paramount concern when investigating each child's unique story.

Children migrate for vastly different reasons under vastly different circumstances. No two children, even siblings, have precisely the same story. Turning children away at the border, or returning them to their home country without an individualized assessment of their safety by someone with child welfare expertise greatly increases the risk that they will be harmed. Children who have made the journey across international borders should be allowed reasonable time to tell their stories in a child-appropriate space, before officials trained in child development, and in a manner that does not further harm the child.

- **Reform recommendations: (1) Protective laws and procedures must apply to all children, regardless of country of origin. (2) Each child should have the opportunity to have the specific facts of his or her case considered by government officials who are trained in developmentally-appropriate screening and trauma-informed approaches. (3) No child shall be repatriated to a circumstance that places the child at risk of harm.**

5. The government should not disrupt the parent-child relationship except in extraordinary circumstances, and only then to protect the child's safety.

Family unity is a foundational principle of child welfare law. The U.S. Constitution protects parents' rights to the care and custody of their children. Reunification with a parent, traditional caregiver or family member in the United States while the child's immigration case proceeds should only be denied when reunification poses a risk to the child's safety, though children should not be released to sponsors without a screening to assess the potential for abuse, neglect or trafficking or the need for services upon reunification. Moreover, unless the child's safety or well-being is at risk, policy should not require a child to be separated from a parent simply because the parent is subject to immigration proceedings. Finally, when children leave a country where a parent, traditional caregiver or family member remains behind, careful consideration must be given to the decision to separate and the child's decision to seek protection in the U.S. In every situation, the child's claim for protection must be given fair consideration and the child must be afforded procedures tailored to the child's development.

- **Reform recommendations: (1) No child encountered by government authorities without his or her parent should be denied temporary protective custody while the child's circumstances are investigated. (2) Reunification with family in the United States, while the child's immigration case proceeds, should not increase a child's risk of removal or result in the child losing access to child-friendly legal processes and procedures. (3) The presence of family in a child's home country should not negate or limit the child's ability to seek protection in the United States.**

The organizations below support endorse these five principles and recommendations: