

**CAMPAIGN PRINCIPLE 1**

# Unaccompanied children are children first

Policies and practices designed for adults are largely inappropriate for unaccompanied children. The best interests of the child should be at the center of all decisions regarding reception at the border, care and custody determinations, and final outcomes of cases such as granting asylum or determining that a child must return to their home country.

## Children are children first, regardless of their immigration status or national origin.

Immigration laws and policies affecting children should be developed with children in mind and consider children's unique needs and developmental characteristics. Currently, there is a gap between how the immigration system treats children and how other areas of law treat children. The Keeping Kids Safe campaign builds on long-standing notions of society's responsibility to safeguard all children and aims to bring immigration law in line with widely accepted child protection practices.



## A Brief History of Child Protection

### **U.S. child protection laws originated in the Industrial Revolution when children began to work in factories with their parents.**

As workplace injuries and deaths rose, social reformers began to advocate for workplace protections and distinctions between child and adult laborers. By the mid-19th century, these efforts led to prohibitions or limitations on child labor in many industries.

- Over the course of the **19th and 20th centuries** in the United States, society took greater responsibility for the protection of children and came to recognize that government had a role to play in protecting children:
- Evolving notions of the family led to dismantling laws that gave male heads of households “property” rights over spouses and children.
- The creation of a best interests<sup>1</sup> standard in family law acknowledged that children had rights and interests separate from those of the parent that must be taken into account when making placement and custody decisions.
- Laws began to mandate education and other basic rights and protections for children.
- In **1899**, the first U.S. juvenile court was established in Chicago. Juvenile courts quickly spread around the country, eventually leading to a nationwide juvenile justice system.
- In **1974**, the Child Abuse Prevention and Treatment Act (CAPTA) was passed, which provided federal funding for federal and state child-maltreatment research and services.
- In **1980**, Congress passed the first comprehensive federal child protective services act, the Adoption Assistance and Child Welfare Act.

### **Notions of children and children's rights also began to change in international law in the 20th century:**

- The Declaration on the Rights of the Child, adopted by the League of Nations in **1924** and then by the United Nations in **1959**, was the first international treaty on children. The Declaration states that all children need to be protected, fed, housed, and kept safe from exploitation in the workplace.
- The **1951** United Nations Refugee Convention recognizes the vulnerability of unaccompanied children and the need to judge their claims for protection consistent with their age and level of maturity.

- In **1989**, the Convention on the Rights of the Child established that “In all actions concerning children... the best interests of the child shall be a primary consideration,” and specifically states that “children who move from their home country to another country as refugees should get help and protection and have the same rights as children born in the country to which they move.” Almost every country in the world has ratified the Convention, except for Somalia and the United States.
- In the **1990s**, the special rights of refugee children were recognized in UNHCR’s Refugee Children: Guidelines on Protection and Care and Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum.

## **How does U.S. immigration law treat children?**

**For most of the 20th century, U.S. immigration law primarily treated children as dependents on their parents and children's immigration status was based on the parent's legal status.** One critical exception to this is the Fourteenth Amendment's guarantee of citizenship to all persons born in the United States. But for immigrant children, especially those who arrived in the United States on their own, there were no special considerations based on their age, maturity, or developmental needs. The lack of distinction between children and adults meant that children from toddlers to teenagers were subject to the same grounds of deportation, courtroom proceedings, custody requirements, and legal standards as adults.

**In the 1980s and 1990s, turmoil in Central America led to the first significant wave of forced migration of children to the United States.** In 1985, the Center for Human Rights and Constitutional Law and two other organizations filed a class action lawsuit to address the serious mistreatment of immigrant children in federal custody. The landmark case *Flores v. Reno*, settled in 1997, established national standards for the treatment, placement, and release of all immigrant children detained by the federal government. The care and custody standards set by *Flores v. Reno* continue to govern immigrant children's treatment, including that children should be detained for the minimum necessary time.

<sup>1</sup> “Best interests of the child” refers to standards that courts use to make decisions that affect a child during adjudication or assessment of their needs, such as who is best suited to care for a child and which services, actions, and orders will best serve a child. Best interests determinations consider several factors related to the child's circumstances as well as the parent or caregiver's circumstances and capacity to parent and prioritize the child's safety and well-being above all else.

**Important advancements have been made in the efforts to bring immigration law in line with broader child protection principles, including:**

- **transferring authority** for unaccompanied children's care and custody from deportation and removal officers at the legacy Immigration and Naturalization Service to child welfare professionals within the Department of Health and Human Services Office of Refugee Resettlement (ORR);
- **adopting laws** to protect unaccompanied children from trafficking, including mandatory screening, victim assistance, humanitarian immigration status, and exemptions from accelerated deportation measures such as expedited removal and the one-year asylum filing deadline;
- **creating Special Immigration Juvenile Status**, a humanitarian protection to provide lawful status and eventual permanent resident status to immigrant children who have been abused, abandoned, neglected, or otherwise harmed;
- **facilitating access** to pro bono legal services for unaccompanied children;
- **creating agency policy guidance** addressing appropriate techniques for conducting interviews and assessing testimony of unaccompanied children.

At the end of 2023, the Executive Office for Immigration Review and DHS formally announced the creation of children's dockets in immigration court, a cohort of specially trained government counsel to participate in these cases, and new guidelines for managing and assessing children's claims. In November 2023, Members of Congress introduced the Immigration Court Efficiency and Children's Court Act. This bipartisan legislation would establish separate Children's Courts within the immigration court system to improve children's access to U.S. protection and help reduce strain on the immigration court backlog.

In 2024, ORR issued final regulations partially codifying the *Flores* agreement.

But there is much more to do. The Keeping Kids Safe campaign identifies common sense approaches to safeguarding children within the immigration system. Over the next ten years, the campaign will partner with those concerned about child welfare to remake the immigration system for children, beginning with targeted legislative and policy measures.

## This campaign needs your support.

For more information or to get involved,  
visit: [supportkind/KeepingKidsSafe.org](https://supportkind.org/KeepingKidsSafe.org)  
email: [KeepingKidsSafe@supportkind.org](mailto:KeepingKidsSafe@supportkind.org)

## Campaign Priorities for Principle One

1. **Passage** of the Immigration Court Efficiency and Children's Court Act
2. **Implementation** of already authorized funds to hire child welfare professionals to work at the border with Customs and Border Protection (CBP)
3. **Creating better coordination** between ORR and CBP by promoting co-location of agencies at the border to avoid unnecessary government custody and keep kids with extended family members
4. **Preserving and expanding access to counsel** for children, including within the Central American Minors Program
5. **Providing access to social service** professionals for children in custody and upon release
6. **Ensuring and protecting access to education** for immigrant and newcomer children in their communities.
7. **Creating opportunities for all newcomer students** including unaccompanied children to thrive and succeed
8. **Ensuring unaccompanied children are protected** from dangerous and exploitative labor
9. **Encouraging civic engagement** and education about citizenship for unaccompanied children and other young people
10. **Fostering opportunities** for these youth to build on their strengths and resilience to become contributing members of their communities.