

**Young Center Recommendations for Dedicated Children's Dockets
in Immigration Courts and Asylum Offices
May 2014**

For ten years, attorneys, social workers and volunteers at the Young Center for Immigrant Children's Rights have served as Child Advocate—comparable to a state court best interests guardian *ad litem*—for unaccompanied immigrant children. These are children who come to the United States from all over the world on their own, without their parents. The children are taken into federal custody and placed in immigration removal proceedings where they have the burden of proving their eligibility to remain in the United States, or to return to their home country without penalty. The government does not provide them with attorneys. In our capacity as Child Advocate, a role defined by federal statute,¹ the Young Center advocates for the best interests—the safety, permanency and well-being—of hundreds of individual children and works to advance changes in federal policy so that no decision is made without first considering the child's best interests. For children who must appear in adversarial court proceedings and face deportation, it is unquestionably in their best interests to be represented by an attorney, to have a Child Advocate to identify and advocate for their best interests, and to appear before specially trained adjudicators in an environment that recognizes them as children and ensures a minimum level of child-protective measures.

We recommend that all immigration courts and asylum offices establish dedicated dockets for non-detained, unaccompanied children and children who are primary applicants for relief. Such dockets would enable all immigrant children—whether detained or released—to appear before an immigration judge or asylum officer without being commingled with adults. Scheduling children's dockets for specific days would facilitate the provision of services that are essential to the fundamentally fair treatment of these children. In particular, immigration officials would be better able to coordinate the children's access to attorneys and Child Advocates appointed pursuant to the Trafficking Victims Protection Reauthorization Act (TVPPRA).² Establishing special dockets for released children is a practical and feasible change in the immigration adjudication system, laying the foundation for implementation of policies and procedures tailored to the special needs of children.

One of the few child-friendly procedures adopted by the immigration courts has been a special docket for *detained* children. However, upon a child's release to a parent or sponsor, most often in a new immigration court jurisdiction, that child's case typically is mixed back into the general population with adult cases. Appearing in court can be a terrifying experience for a child, and even more so if the child is not accompanied by an adult. Unaccompanied immigrant children

¹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(6), 8 U.S.C.A. § 1232(c)(6) (2009) (authorizing the appointment of Child Advocates for unaccompanied alien children).

² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed May 8 2014]

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often distrust adults; in some cases, they've been instructed to tell a story concocted by their smuggler or trafficker. They're often afraid of police and any government official. Separate dockets are less threatening for children, particularly if they are not accompanied by an adult. What's more, it is much easier for court personnel to modify adult-oriented proceedings once a week or once a month to hear several children's cases as a group than it is to make accommodations on an ad hoc basis whenever a child's case appears in the general docket. It's more difficult to make accommodations on the spur of the moment when a single child is scheduled for court. Consequently, children who appear in court with adults may not have the level of comfort needed to participate fully.

There are significant benefits—for children, immigration judges and asylum officers—to establishing dedicated dockets for children. Separate dockets would allow officials to focus on children's protection needs and facilitate children's comprehension of, and participation in, legal proceedings. A child-appropriate setting would facilitate children's continued appearance in court. Separate courts would allow the Executive Office for Immigration Review (EOIR) to develop a corps of judges, and U.S. Citizenship and Immigration Services (USCIS) to assign a small number of asylum officers, who are specially trained in children's protection needs—even if those judges or asylum officers serve for only limited periods of time on children's dockets or share the docket with other specially-trained judges or officers. What's most important is that it would facilitate legal representation for children and access to Child Advocates for the most vulnerable children.

Establishment of dedicated children's dockets in immigration court and asylum offices would not require new resources. There is no need to build a separate building or even to designate a separate courtroom. Instead, court personnel and asylum office administrators could simply schedule all children's cases for a specific day of the week or month. This is already done in a small number of jurisdictions around the country.

Envisioning Children's Immigration Dockets

Establishing children's dockets in immigration courts and asylum offices would mean that every jurisdiction has a designated day³ for all cases involving unaccompanied children, or cases in which children are the primary applicants for relief.

Elements of children's immigration dockets would include the following:

1. **Unaccompanied children and children who are primary applicants, both detained and released, would be the only respondents before the immigration judge, or scheduled for an asylum interview, at the time designated for children's cases.**⁴ This would allow the judge or asylum officer to use procedures that are child appropriate. It would also ensure that children in immigration courtrooms do not have to disclose

³ In jurisdictions with small numbers of cases, a monthly, half-day docket might be sufficient. Other jurisdictions may require weekly or more frequent dockets.

⁴ There may be cases in which non-minors are on the docket, *e.g.*, a minor's sibling who was once an unaccompanied child but who is now an adult.

personal information in front of adults (other than the immigration judge and trial attorney) whom they do not know.

2. **Dedicated judges and asylum officers would be assigned to children's dockets.** These judges and asylum officers would receive significant but uniform training on adjudicating children's cases, including forms of relief specific to children, evidentiary rules as they relate to children in immigration proceedings, assessing the credibility of children's testimony (as distinct from assessing credibility in adult cases)⁵ and child development. This training could be cost-neutral by recruiting children's advocates to develop *pro bono* trainings and deliver them via Skype or a secure website. National organizations comprised of judges and attorneys from juvenile and family courts may also be willing to provide training and other resources. We recommend that each immigration court jurisdiction have at least two judges who share the children's docket(s). Priority in appointments should be given to judges who volunteer for, and express an interest in, adjudicating children's claims. Dockets could and should be scheduled with a frequency that reflects the specific need within that jurisdiction; in some locations the court or asylum office might schedule weekly (or even more frequent) children's dockets; in other jurisdictions, the children's dockets could occur less frequently.
3. **Legal services providers and *pro bono* attorneys would be assigned to all children's dockets.** These attorneys would meet with unrepresented children, advise them of their rights, screen them for possible legal relief or schedule them for screening, and provide representation. With the exception of the initial intake interview, EOIR proceedings concerning a child should not take place until the child is represented by an attorney.⁶ Immigration judges should not take pleadings or proceed with hearings when a respondent is under 18 years of age and is unrepresented.
4. **TVPRA Child Advocates would be assigned to all children's dockets.** Child Advocates (comparable to a state court best interests guardian *ad litem*) would be available to advocate for the best interests of the children. The immigration judge or asylum officer would refer particularly vulnerable children for the appointment of a Child Advocate. Child Advocates would also be available to meet with children for whom there are suspected trafficking concerns or other vulnerabilities—*e.g.*, children accompanied by traffickers, or children who make an outcry about an abusive situation.
5. **Legal Orientation Programs for Custodians of Unaccompanied Children (LOPC providers) would be available at all children's dockets to provide services to sponsors who accompany children to court or the asylum office.** LOPC providers inform children's parents and sponsors to educate them on their responsibilities in protecting the children from mistreatment and exploitation and to ensure their attendance at immigration court. A children's docket would allow LOPC providers to be on-site and available to meet with sponsors.
6. **Judges and asylum officers would use child-appropriate advisals for all aspects of a children's cases** (*e.g.* plain language explanation of voluntary departure and removal).
7. **Qualified interpreters would be available to provide complete and simultaneous interpretation of all statements made during the proceedings.** At present, in many

⁵ ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States, p. 67.

⁶ ABA Standards for Unaccompanied Children, p. 66.

immigration courts, only the judge's advisals and statements to the child are interpreted, while conversations between the judges and attorneys are not interpreted for the child.

8. **Procedures would be established to ensure protection from arrest for parents and sponsors who accompany children to immigration court.** Absent an order for their removal, parents and sponsors should not have to risk being taken into immigration custody when they accompany children to immigration court.
9. **Child-sensitive procedures would be implemented, including but not limited to, those identified in the EOIR OPPM 07-01 and described in the ABA Standards for Unaccompanied Children.**⁷ Examples include employing child-sensitive questioning and explaining the purpose of the proceeding in child-appropriate language.
10. **Child-sensitive evidentiary standards would be promulgated by the adjudicatory agencies.** Domestic juvenile and family courts have developed procedures to respect children's sensitivities. For example, state courts are mindful that requiring children to testify about the abuse and neglect they have suffered could re-traumatize them. Thus, in lieu of in-court testimony, state courts permit the use of appropriately documented testimony taken from children at accredited "child advocacy centers." Both EOIR and USCIS could consider and promulgate policies modeled on this and other child-protective procedures from state courts.

Establishing dockets that are dedicated to children's cases would not only protect the rights of vulnerable immigrant children but also would introduce efficiencies and efficacies to the work done by immigration judges, asylum officers, DHS trial attorneys, children's attorneys and Child Advocates.

Implementation of these recommendations would, over time, increase efficiencies in the adjudication of children's cases by: (1) ensuring legal representation for children; (2) providing access to TVPRA Child Advocates (3) identifying and removing barriers to children's full participation in proceedings; and (4) providing immigration judges and asylum officers with additional resources and training.

*The Young Center gratefully acknowledges
the MacArthur Foundation for its support.*

⁷ Additional child-sensitive procedures have been included in the Inter-Agency Working Group Subcommittee on Best Interests Draft Framework for Considering the Best Interests of Children, which will be finalized later this year. The Subcommittee's suggestions include, but are not limited to: increased confidentiality protections for children; special procedures for evaluating children's capacity for decision-making; special protections for trafficking and abuse victims; liberal use of adjournments and Motions to Reopen; use of telephonic appearances for children's counsel; prohibitions against the use of handcuffs and shackles except in extraordinary circumstances; and improved mechanisms to track a child's status as an unaccompanied child, the appointment of a Child Advocate, and friend of the court appearances.

