



The Legal Rights of Separated Children August 2018

The family separation crisis is far from over. Hundreds of families remain torn apart with no clear plan for their reunification. Parents and children face lasting trauma as a result of their sudden, and in many cases, ongoing separation. Limited access to counsel, frequent facility transfers, deportation, and coercion have impeded the ability of thousands of parents and children to learn about their legal rights and to have their claims for humanitarian protection fully and fairly heard.

This due process emergency poses profound consequences for separated children. The federal government must not only promptly facilitate physical reunification but must do so in a way that does not limit the children's legal rights or their access to due process.

KIND urges the government to respect children's legal rights and process their immigration cases in the following ways:

1. **A separated child has the right to request humanitarian protection and must be permitted to exercise this right independent of whether the child has been reunified with a parent. A child may request such protection at any time, including before, after, or while awaiting reunification with a parent or sponsor.** Many children are eligible for humanitarian protection, including asylum, Special Immigrant Juvenile Status, or visas for victims of severe trafficking and other crimes. A child's physical reunification with a parent should not diminish the child's ability to pursue such protection, which they may seek independently of their parent.
2. **A child who the government has forcibly separated from a parent has been legally rendered "unaccompanied" and should be eligible for full immigration proceedings pursuant to the Trafficking Victims Protection Reauthorization Act of 2008.** Children torn from their parents were legally rendered "unaccompanied" by the government—a legal designation that carries with it certain procedural protections, including the right to removal proceedings before an immigration judge and the opportunity to have their asylum case first heard in a non-adversarial setting. A child's reunification with a parent should not impact or limit the availability of these protections, which should remain open unless knowingly waived by a child after being provided an opportunity to consult with an attorney.
3. **A child has a right to determine whether to proceed with his or her legal case independently of or jointly with the child's parent or legal guardian.** Separated children may share legal claims with their parents, or be eligible for different or additional forms of relief. Children should be given an opportunity to meet with a lawyer to learn more about their legal rights and the options available to them. There may be instances in which a child wishes to pursue an individual claim. Physical reunification with a parent should not cut off access to those protections nor should it automatically cause the child's case to be joined with his or her parent's without the child's consent.

4. **Notices to Appear (NTA) for immigration proceedings in which a child may pursue humanitarian protection should not be automatically rescinded upon reunification.** The government's filing of an NTA initiates removal proceedings against a child. These proceedings, which are distinct from the expedited removal procedures applied to separated parents, give children an opportunity to present claims for legal relief before an immigration judge and to pursue humanitarian protection before the U.S. Citizenship and Immigration Services (USCIS) Asylum Office and other relevant government authorities. A child's reunification with a parent should not result in the automatic rescission of the child's NTA, which may interrupt and discontinue the child's case for protection. A child should, however, be provided an opportunity to consult with an attorney and to request that an NTA be withdrawn.
5. **Reunification of a separated child with a parent should occur outside of detention.** Parents and children should be reunified through alternatives to detention, and not in family detention facilities. Child welfare and medical professionals have spoken out about the negative emotional, physical, and developmental effects of detention on children, including those detained with their parents.
6. **Children who have been reunified with parents in family detention should be offered a free legal screening, separately from their parent if desired, to advise them of their legal rights and options.** Children who have been reunified with parents in family detention facilities should be promptly provided a free screening and consultation with an attorney to help identify whether they are eligible for legal relief and to inform their decision about whether to independently pursue their case, join their case with that of their parent, or discontinue their case and request return to their home country.
7. **Separated children reunified with a parent in family detention should retain the option to be released from detention to the care of a sponsor, including the child's other biological parent.** In many cases, children have been reunified in a family detention facility with the parent from whom they were initially separated. KIND urges that reunified families be released from custody through alternatives to detention. In the event that a parent and child remain in family detention, children should be provided an opportunity to be released to the care of a sponsor outside of detention, including their other biological parent.