



KIND Endorses FAIR Proceedings Act (S. 2389/H.R. 4155) And Urges Members of Congress to Cosponsor

Background

Unaccompanied children, many of whom have fled dangers that include extreme violence and sexual exploitation, are among the world's most vulnerable groups.¹ Legal counsel is essential to ensuring due process in their immigration proceedings and preventing their deportation to the same harms they escaped. Indeed, it is virtually impossible for these children to successfully navigate the U.S. immigration system without lawyers to assess their eligibility for humanitarian protection and advocate for them during adversarial hearings. The Executive Office for Immigration Review (EOIR)'s most recent available data, covering the period of FY 2018 and the first half of FY 2019, bears this out, revealing:²

- Immigration judges were **70 times less likely** to grant relief to unaccompanied children without counsel than their represented counterparts; and
- Immigration judges were **more than twice as likely** to order the deportation of unaccompanied children without counsel than their represented counterparts.

Legal representation of children also prevents waste of judicial resources by screening out inapplicable forms of protection and minimizing unneeded court time. With the immigration court backlog now exceeding 1.2 million cases,³ the enhanced efficiency afforded by attorneys is needed more than ever.

Yet though counsel is essential to ensuring the fairness and efficiency of unaccompanied children's cases—though it can mean the difference between a child's life and death—there is no right to appointed counsel in immigration proceedings. **In fact, over half of unaccompanied children currently lack attorneys.** Far from a novel problem, year after year many if not most unaccompanied children face immigration court alone.⁴ It is imperative that Congress meaningfully confront this systemic due process failure.

FAIR Proceedings Act (S. 2389/H.R. 4155)

The Funding Attorneys for Indigent Removal (FAIR) Proceedings Act of 2019, introduced by Senator Kristen Gillibrand (D-NY) and Representative Donald McEachin (D-VA), would resolve

¹ See, e.g., KIND, "Death by a Thousand Cuts" (May 2018); https://supportkind.org/wp-content/uploads/2018/05/Death-by-a-Thousand-Cuts_May-2018.pdf.

² Congressional Research Service, "Unaccompanied Alien Children: An Overview" (Oct. 29, 2019) (citing data provided to CRS by EOIR); <https://fas.org/sgp/crs/homsec/R43599.pdf>.

³ TRAC, "Immigration Court Backlog Tool" (through Aug. 2020); https://trac.syr.edu/phptools/immigration/court_backlog/.

⁴ See, e.g., TRAC Immigration, "Representation for Unaccompanied Children in Immigration Court" (<https://trac.syr.edu/immigration/reports/371/>).



chronic underrepresentation of unaccompanied children by ensuring the provision of attorneys to these children for the duration of their immigration proceedings.

Among other vital changes, this legislation would:

- **Mandate the provision of counsel to unaccompanied children and other vulnerable individuals undergoing immigration proceedings**, including victims of abuse, torture, and violence, persons with disabilities, and individuals whose income is at or below 200 percent of the poverty line;
- **Ensure access to counsel, including the availability of legal orientation programs**, for all individuals detained in Customs and Border Protection and Immigration and Customs Enforcement facilities; and
- **Require that all individuals in immigration proceedings receive and have adequate time to review Department of Homeland Security documents** relevant to their cases before those proceedings move forward.

KIND strongly endorses the FAIR Proceedings Act and urges Members of Congress to protect due process and fundamental fairness for vulnerable unaccompanied children by cosponsoring this legislation. For further information, please contact KIND's Director of Policy, Jason Boyd, at jboyd@supportkind.org.