



## **KIND Endorses Senator Gillibrand’s FAIR Proceedings Act of 2021 And Urges Senators 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.<sup>1</sup> 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 navigate the U.S. immigration system without lawyers to assess their eligibility for humanitarian protection and advocate for them during adversarial hearings. Recent Executive Office for Immigration Review (EOIR) data, covering the period of FY 2018 and the first half of FY 2019, bears this out, revealing:<sup>2</sup>

- 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. As the immigration court backlog nears 1.3 million cases,<sup>3</sup> 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.**<sup>4</sup> Far from a novel problem, year after year many if not most unaccompanied children face immigration court alone.<sup>5</sup> It is imperative that Congress meaningfully confront this systemic due process failure.

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<sup>1</sup> See, e.g., KIND, “KIND Blueprint: Concrete Steps to Protect Unaccompanied Children on the Move: “Death by a Thousand Cuts” (Nov. 2020); <https://supportkind.org/wp-content/uploads/2020/11/KIND-Blueprint-Concrete-Steps-to-Protect-Unaccompanied-Children-on-the-Move-FINAL-2.pdf>.

<sup>2</sup> KIND calculated these figures based on Executive Office of Immigration Refugee (EOIR) data published by the Congressional Research Service in its report titled “Unaccompanied Alien Children: An Overview,” p. 15 (Oct. 9, 2019); <https://fas.org/sgp/crs/homesecc/R43599.pdf>.

<sup>3</sup> TRAC, “Immigration Court Backlog Tool” (through Feb. 2020); [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/).

<sup>4</sup> KIND, “Fact Sheet,” <https://supportkind.org/wp-content/uploads/2019/12/KIND-Fact-Sheet-January-2020.pdf>.

<sup>5</sup> See, e.g., TRAC Immigration, “Representation for Unaccompanied Children in Immigration Court” (<https://trac.syr.edu/immigration/reports/371/>).



### **FAIR Proceedings Act of 2021**

The Funding Attorneys for Indigent Removal (FAIR) Proceedings Act of 2021, introduced by Senator Kristen Gillibrand (D-NY) on March 23, 2021, would remedy 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 survivors 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** 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 Senators 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](mailto:jboyd@supportkind.org).