



Recommendations for the Legal Aid Interagency Roundtable to Expand Legal Representation of Unaccompanied Children

Background

On May 18, 2021, President Biden announced the reinvigoration of the White House Legal Aid Interagency Roundtable (LAIR), an initiative dedicated to strengthening legal services and access to justice.¹ KIND commends the administration for this important action and emphasizes that, consistent with the statutory requirement that the federal government maximize legal representation of unaccompanied migrant children,² LAIR and its participating members should work to expand representation rates among this uniquely vulnerable population. Without attorneys, it is all but impossible for unaccompanied children to navigate the U.S. immigration system. In FY 2018 and the first half of FY 2019, for example, unrepresented unaccompanied children were 70 times less likely than their represented counterparts to be granted potentially life-saving relief by immigration judges.³ Children’s legal counsel also improves the efficiency of the long-overburdened immigration court system, which now has a backlog exceeding 1.3 million cases nationwide.⁴ Despite these considerations, on a perennial basis most unaccompanied children lack attorneys—an ongoing due process crisis.⁵ KIND therefore urges LAIR and its participating members to take every available measure to expand legal representation of unaccompanied children.

Recommendations

- Reflecting the directive in the Trafficking Victims Protection Reauthorization Act of 2008 to maximize legal representation of unaccompanied children, LAIR should make one of its core objectives the legal representation of *all* unaccompanied children for the duration of their immigration proceedings.
- The Department of Health and Human Services (HHS) should assign as its representative to LAIR a high-ranking official whose purview includes the HHS Office of Refugee Resettlement (ORR)’s legal services program for unaccompanied children.

¹ President Biden, “Memorandum on Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable” (May 18, 2021); <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/>.

² See 8 U.S.C. § 1232(c)(5): “The Secretary of Health and Human Services shall ensure, to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.

³ KIND calculated this figure 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/homsec/R43599.pdf>.

⁴ TRAC, “Immigration Court Backlog Tool” (through Apr. 2021); https://trac.syr.edu/phptools/immigration/court_backlog/.

⁵ KIND, “KIND Blueprint: Concrete Steps to Protect Unaccompanied Children on the Move” (Nov. 2020); <https://supportkind.org/wp-content/uploads/2020/11/KIND-Blueprint-Concrete-Steps-to-Protect-Unaccompanied-Children-on-the-Move-FINAL-2.pdf>.

- As the Department of Justice (DOJ) works to restore and expand its Access to Justice function⁶—an initiative connected to the reinvigoration of LAIR—DOJ should ensure that its Access to Justice staff feature an immigration subject matter expert with proficiency in unaccompanied children’s issues.
- LAIR, together with participating members, should advocate for robust congressional appropriations to ORR for legal services for unaccompanied children, as well as passage of authorizing, fully funded legislation that would ensure legal representation of *all* unaccompanied children for the duration of their immigration proceedings.
- LAIR, together with participating members, should identify and advocate for administrative policy changes across relevant agencies that would strengthen legal assistance for unaccompanied and other migrant children, such as:
 - Rescission of Attorney General certification decisions and associated guidance issued under the Trump administration that, among other harmful impacts, obstruct children’s ability to obtain counsel by limiting the discretion of immigration judges to grant continuances or to administratively close or terminate cases;⁷
 - Modification of southern land border facilities by the Department of Homeland Security, in collaboration with ORR, to ensure child-friendly, confidential spaces for providing legal assistance to children; and
 - Measures ensuring counsel for vulnerable children located in northern Central America who pursue humanitarian protection through the revived Central American Minors program.
- LAIR should engage on an ongoing basis with nonprofit organizations that provide legal services to unaccompanied children, including by soliciting their input on needed administrative policy changes.
- In its annual report to the President, LAIR should report on:
 - The number of unaccompanied children currently in immigration proceedings (including unaccompanied children whose cases have been administratively closed/terminated in immigration court but who have applications for relief pending before U.S. Citizenship and Immigration Services);
 - The number and percentage of these children who have legal representation;
 - Efforts undertaken by LAIR and participating members to maximize the percentage of unaccompanied children with attorneys and to otherwise strengthen legal assistance for migrant children; and
 - An estimate of the amount of congressional appropriations necessary for ORR to ensure that all unaccompanied children have attorneys for the duration of their immigration proceedings.

⁶ President Biden, “Memorandum on Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable” (May 18, 2021); <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/>.

⁷ *E.g.*, *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018); <https://www.justice.gov/eoir/page/file/1064086/download>; *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); <https://www.justice.gov/eoir/page/file/1087781/download>; *Matter of S-O-G- & F-D-B*, 27 I&N Dec. 462 (A.G. 2018); <https://www.justice.gov/eoir/page/file/1095046/download>.