



Legal Counsel for Unaccompanied Children Is Essential to Due Process and Government Efficiency

Only with legal counsel can unaccompanied children receive a fair day in court.

- It is virtually impossible for children to successfully navigate the U.S. immigration system without an attorney. That system is both complex and adversarial, pitting children against ICE trial attorneys seeking their removal during high-stakes court hearings. Attorneys are essential to upholding children’s legal rights in those hearings, assessing their eligibility for humanitarian relief, and guiding case preparation.
- Government statistics bear out the necessity of counsel for children. Data from the Executive Office for Immigration Review (EOIR), which covers the period of FY 2018 and the first half of FY 2019, **reveals that immigration judges were 70 times less likely to grant relief to unaccompanied children without counsel than their represented counterparts.**¹ These numbers make plain that attorneys often mean the difference between relief and deportation and, by extension, a child’s safety or danger.
- Though legal representation is necessary to ensure the fairness of unaccompanied children’s cases, there is no right to appointed counsel in their immigration proceedings. **In fact, over half of unaccompanied children lack attorneys.**² Far from a novel problem, year after year many if not most unaccompanied children face immigration court and ICE attorneys alone³—including children as young as three or four. It is imperative that Congress remedy this systemic due process failure.

Legal representation of unaccompanied children strengthens government efficiency.

- As EOIR’s backlog nears 1.4 million cases,⁴ measures that protect due process *while also strengthening immigration court efficiency and conserving resources* are urgently required. Counsel for unaccompanied children serves all these ends.
- Attorneys help screen out inapplicable forms of protection for children and, critically, identify when children are not eligible for relief in the U.S. immigration system. Ensuring counsel for unaccompanied children also helps prevent postponement of hearings to afford children an opportunity to find lawyers. And because attorneys play a critical role in explaining immigration court procedures to children, they make hearings more efficient and preserve judicial resources.

¹ 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/homesecc/R43599.pdf>.

² See KIND Fact Sheet (Jan. 2020); <https://supportkind.org/wp-content/uploads/2019/12/KIND-Fact-Sheet-January-2020.pdf>.

³ See, e.g., TRAC Immigration, “Representation for Unaccompanied Children in Immigration Court” (<https://trac.syr.edu/immigration/reports/371/>).

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

- Children who are represented by counsel have an extraordinarily high appearance rate in immigration court. **From FY 2005 through FY 2019, 98% of children with attorneys appeared for court.**⁵ By helping keep children in the system, the provision of counsel promotes orderly, efficient EOIR operations.

ORR’s legal services program for unaccompanied children leverages the private sector—creating a powerful public-private partnership.

- By enlisting private sector attorneys to represent cases pro bono, legal counsel programs for unaccompanied children have consistently demonstrated the effectiveness of harnessing the private sector to advance public objectives.
- KIND, for example, **leverages every dollar received in government donations into seven dollars in pro bono services for unaccompanied children. In all, pro bono counsel works on more than 70 percent of KIND’s cases.** And KIND has formed pro bono partnerships with **more than 670 leading corporations, law firms, law schools, and bar associations.**
- Counsel for unaccompanied children therefore not only serves due process and government efficiency; it is a model public-private partnership.

The American electorate strongly approves of legal counsel for unaccompanied children.

- An October 2020 national survey showed that **over 70 percent of the American electorate** supports the provision of legal counsel to all unaccompanied children.⁶ This is a nonpartisan, good government proposal rooted in fairness and government efficiency.

⁵ American Immigration Council, “Fact Sheet—Immigrants and Families Appear in Court: Setting the Record Straight” (Jul. 19, 2019); [Immigrants and Families Appear in Court | American Immigration Council](#).

⁶ See Memo on National Survey of Registered Voters, (Oct. 13, 2020).