



Specialized Children's Dockets in Immigration Court

Kids in Need of Defense (KIND) is the leading national organization working to ensure that no child faces immigration court alone. We have served more than 20,000 unaccompanied children in removal proceedings; have 15 field offices around the country; and have a network of pro bono partnerships with over 700 corporations, law firms, law schools, and bar associations.

As part of a holistic vision to create a child-centered approach to the processing of children's cases, KIND supports the establishment of a children's court or children's division of an independent immigration court to adjudicate children's cases that would focus on the best interests of children, including prioritizing child safety, permanency, and well-being. A children's court should be designed to address the vulnerabilities of children, similar to juvenile courts in other disciplines, and it should employ a coordinated approach with U.S. Citizenship and Immigration Services (USCIS) to limit burdens on children and repeated inquiry into traumatic past events.

Until such a court is established, KIND is calling upon the Executive Office for Immigration Review (EOIR) within the Department of Justice (DOJ) to renew and expand specialized children's dockets within each immigration court that would be solely dedicated to handling unaccompanied children's claims. Children's dockets should focus on ensuring due process, expanding child-friendly court practices, and streamlining applications for applicable legal relief for unaccompanied children's immigration cases.

The unique vulnerability of unaccompanied migrant children demands a unique system to adjudicate their claims. They have traveled hundreds or thousands of miles to the United States, often completely on their own, to escape extreme violence, sexual abuse, human trafficking, and other dangers. Often alone, these children face daunting obstacles in navigating the complex U.S. immigration system and obtaining potentially life-saving legal protection, and children's dockets could help ease part of this complexity. EOIR's Director David Neal recognized the value of children's dockets in a recent Policy Memorandum in which he writes: "Immigration Judges are reminded to employ the child-friendly practices described in other agency guidance, such as scheduling dedicated juvenile dockets, employing child-sensitive questioning, and allowing the use of a Friend of the Court, among other practices."¹

In order to maximize fairness for unaccompanied children and efficiencies for the immigration courts, children's dockets should consistently utilize several elements:

- **Training:** Children's dockets should be overseen by a specially trained corps of judges who have experience working with children. Their training should include headquarters-level training in which non-governmental experts in children's cases and protection participate, and it should cover methods for explaining the proceeding to children; child-sensitive questioning techniques, including trauma-informed interviewing and adjudication methods; and an understanding of the limits of a child's ability to provide testimony. Department of Homeland Security (DHS) attorneys representing the government

¹ EOIR, Policy Memorandum 21-08, *Encouraging and Facilitating Pro Bono Legal Services*, Nov. 2021, available at: <https://www.justice.gov/eoir/book/file/1446651/download>.

in these cases should also be trained in child-sensitive practices and children's unique claims for immigration relief.

Specialized judges and attorneys steeped in considerations and procedures affecting the adjudications of children's cases would create new efficiencies that will streamline the court's operations in addition to strengthening due process. For example, personnel expert in children's issues would be better able to identify claims for relief and potential non-adversarial procedures that may be both less traumatic for children and less resource-intensive for courts, such as applications for relief that could be completed entirely through USCIS.

- **Child-focused Adjudications:** Specialized children's dockets should employ a less adversarial approach than immigration court proceedings designed for adults. Immigration judges should affirmatively offer accommodations to meet the developmental levels of child respondents. Judges should employ docket management tools and other practices that allow children time to retain counsel and to understand and seek immigration relief for which they are eligible, including relief adjudicated by USCIS. Judges, DHS attorneys representing the government, USCIS, and the child's representatives should operate with the goal of identifying options available to the child consistent with the law. This approach will reduce the burden on EOIR, DHS, and USCIS by reducing the number of hearings in children's cases, identifying cases ripe for dismissal or termination, and it will also increase the likelihood of a just result in the child's case.
- **Coordination with Legal and Social Service Organizations:** Judges and administrators overseeing children's dockets should coordinate with the legal service providers and pro bono attorneys that serve unaccompanied children in their jurisdiction with the goal of ensuring that every unaccompanied child has representation. Opportunities for collaboration include: consolidating children's initial master calendar hearings on consistent days so that attorneys can regularly schedule attendance to meet unrepresented children; providing space for nonprofit organizations to meet with children; permitting Friend of the Court appearances by legal service providers at juvenile dockets; and granting ample continuances until children are able to secure a lawyer. Courts should also invite child advocates to be present at dockets to make recommendations on children's best interests, where appropriate, and community organizations to provide services during children's dockets to help ensure that children are connected to needed services, including education, health, or counseling services, and reintegration services for children who will be returning to their country of origin.² Coordinating with legal services organizations so that children access legal screening and services at the same time and place as their proceedings would result in children obtaining counsel much faster and more efficiently, and coordination with providers of wraparound services would further advance child safety and wellbeing.

KIND stands ready to work with EOIR and local immigration courts to implement specialized children's dockets that will facilitate legal representation, increase due process, and reduce burdens on the courts. Such dockets offer a straightforward option to immediately improve protections for vulnerable children who have migrated alone in search of safety.

² The dedicated children's docket utilized in New York immigration court in the past offers a model of collaboration where the court scheduled children's cases on specific days of the month, provided space in the court building for attorneys to meet with children, and allowed for city agencies including the departments of education and health to meet with children while they were at the court.