



KIND Endorses Fair Day in Court for Kids Act of 2023 and Urges Senators to Cosponsor

By ensuring legal representation of unaccompanied children in immigration proceedings, the Fair Day in Court for Kids Act of 2023, introduced by Senator Hirono (D-HI), would help uphold fundamental fairness for children who are at risk of deportation to the same dangers they fled. It would also better protect these children from labor exploitation in the United States, all while strengthening the efficiency of the backlogged U.S. immigration court system. KIND strongly endorses this legislation and urges Senators to co-sponsor.

Background

Unaccompanied children, many of whom are seeking protection from dangers that include extreme violence and sexual abuse, are among the world's most vulnerable groups. Legal counsel is essential to ensuring due process in their immigration proceedings and preventing their deportation to the very 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 relief, help prepare their cases, and advocate for them during adversarial hearings. The Executive Office for Immigration Review (EOIR)'s most recent available data, covering completed immigration court cases from FY 2018 through the first half of FY 2021, bears this out, revealing¹:

- Immigration judges **were almost 100 times less likely** to grant relief to unaccompanied children without counsel than unaccompanied children with counsel; and
- Immigration judges were **more than twice as likely** to order the deportation of unaccompanied children without counsel than unaccompanied children with counsel.

As press accounts bring into relief U.S. employers' labor exploitation of unaccompanied children, it is important to emphasize that attorneys often function as these children's most trusted advocates in situations of exploitation.² By law, the attorney-client relationship is a confidential one. That confidentiality, coupled with the unique rapport built over months or years of representation, can mean that a lawyer is the sole authority-figure to whom children feel safe disclosing information about labor abuses and other mistreatment. Attorneys can report these incidents as appropriate; facilitate access to support services; and by helping children obtain lawful immigration status when eligible, deliver the stability needed for children to pursue long-term security and optimally integrate into their communities.

Critically, legal representation of children prevents waste of judicial and other government resources. Attorneys help screen out inapplicable forms of protection, minimize unneeded court time, and averting hearing postponements that would otherwise be necessary to afford children an opportunity to obtain counsel. What is more, attorneys promote orderly court operations by helping ensure children's appearances. From FY 2005 through June FY 2019, **98 percent of children** with lawyers appeared

¹ KIND calculated this figure based on EOIR data published by the Congressional Research Service in its report titled "Unaccompanied Alien Children: An Overview," p. 16 (Sep. 1, 2021); <https://fas.org/sgp/crs/homesec/R43599.pdf>.

² KIND, "Legal Representation: A Vital Safeguard to Protect Unaccompanied Children from Labor Exploitation" (Apr. 2023); https://supportkind.org/wp-content/uploads/2023/04/23_A-Vital-Safeguard-to-Protect-Unaccompanied-Children-from-Labor-Exploitation.pdf.

for court.³ With the immigration court backlog **exceeding 2.6 million cases**,⁴ the enhanced efficiency achieved by legal representation is needed more than ever.

Although counsel is essential to ensuring the fairness and efficiency of unaccompanied children's cases—and can mean the difference between a child's life and death—there is no right to appointed counsel in immigration proceedings. Year after year, many if not most unaccompanied children, including children as young as three and four, face immigration court alone. It is imperative that Congress remedy this systemic due process failure.

Overwhelmingly, the American public supports efforts to do. October 2021 polling by Hart Research found that **77 percent of the American public** believe that counsel should be provided to unaccompanied children who cannot afford it.⁵

Fair Day in Court for Kids Act

The Fair Day in Court for Kids Act would resolve chronic underrepresentation of unaccompanied children and make immigrant courts more efficient by ensuring legal representation of these children for the duration of their immigration proceedings.

Among other vital changes, this legislation would:

- Require the provision or appointment of legal counsel to all unaccompanied children in proceedings unless they obtained counsel independently;
- Mandate that, if the government fails to provide counsel to an unaccompanied child and orders that child removed, the filing of a motion to reopen proceedings will stay removal;
- Ensure access to counsel for all noncitizens in Customs and Border Protection and Immigration and Customs Enforcement custody;
- 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; and
- Mandate government reporting on the provision of counsel to unaccompanied children.

KIND encourages Senators to protect due process for vulnerable unaccompanied children, better safeguard these children against labor exploitation, and strengthen the efficiency of the nation's overburdened immigration court system, by cosponsoring this legislation.

³ 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](#).

⁴ TRAC Immigration, "Immigration Court Backlog" (through Aug. 2023); <https://trac.syr.edu/phptools/immigration/backlog/>.

⁵ "National Polling Finds Overwhelming Public Support for Ensuring Legal Representation of Unaccompanied Children" (Nov. 3, 2021); <https://supportkind.org/resources/national-polling-finds-overwhelming-public-support-for-ensuring-legal-representation-of-unaccompanied-children/>.