

Unaccompanied Children

Despite thousands of children appearing in immigration courts each year, [immigration law and immigration courts treat children like adults](#). Like adults, children in removal proceedings have the right to legal representation at no expense to the government. If a child cannot find an attorney, they must navigate a complex, adversarial process on their own. The law and the courts provide no safeguards to ensure children's rights are protected. [This is outrageous](#).

Although they may have a family member or guardian with them in the courtroom, unaccompanied children face removal proceedings alone, usually because they entered the United States without a parent or guardian. Unaccompanied children may have valid legal claims to protection from deportation based on persecution, trafficking, or abuse, abandonment, or neglect, but **securing protection from deportation is overwhelmingly complicated**. Children must keep track of court dates, arrive on time to hearings, juggle multiple legal cases before federal agencies and state courts, and inform multiple agencies of address changes throughout years of proceedings. They are afforded virtually no language access beyond an interpreter during court hearings but must file all paperwork in English. **Any mistake, from a missed court date to an improperly filed form, can result in a deportation order.**

This failure to provide unaccompanied children with attorneys results in fundamentally unfair hearings and violates basic notions of due process. More pro bono and nonprofit attorneys can help, but without guaranteed access to counsel, the United States is failing to meet the most basic guarantees of justice. Congress must fix this.

In the meantime, the federal government must make every effort to mitigate these deficits and ensure that children receive full and fair hearings. This responsibility does not rest solely with the immigration court. The Department of Homeland Security, when prosecuting children for removal, must ensure children have access to protections provided under law. The Office of Refugee Resettlement, when releasing children to sponsors, must ensure children and their sponsors know what they need to do to, including when and where to appear in court and how to find competent legal counsel.

Immigration judges presiding over unaccompanied child cases face an unenviable task. Courts face long and growing backlogs, with grossly insufficient funding. Court rules permit judges to make some accommodations when children appear in court. But agency guidance reminds immigration judges that the "best interest of the child" standard does not apply in determining whether a child should be removed from the United States and that judges have no authority to appoint guardians or counsel to children appearing in their courtrooms. **Both are called for under international human rights standards.** Until remedied by statute, removal proceedings against children will be inherently problematic.

After a long COVID interruption, the Fort Snelling Immigration Court resumed a separate juvenile docket in February 2022. The Immigration Court Observation Project's juvenile docket team has observed more than 1000 hearings since February 2022, and this Issue Brief highlights observations during the first year of resumed operations.

Finding 1: Due process requires age-appropriate, trauma-informed hearings

Age and trauma history impede children's ability to understand what is happening. Court observers regularly see hearings involving very young children, children who report traumatic events, or children who demonstrate behavior in court suggesting a history of trauma.

Observers report:

- *Given that she is 3, she obviously showed no understanding of what was going on.*
- *Respondent appeared very traumatized and would not speak.*
- *Respondent referred to being "abused" by her stepfather. Respondent could well be suffering from trauma or mental health issues - very withdrawn, almost inaudibly soft spoken, slumped posture often associated with abuse victims.*
- *I thought that respondent's body language showed a defiant little boy, turning his back to the court, things such as that. I later changed my mind and saw a scared little boy. He appeared to be depressed and not understanding what was happening today. He answered questions after a delay and was extremely soft spoken.*
- *No inquiry about their well-being, no mention of school, nor how long they had been in the US.*
- *The clerk was visibly annoyed with the child blowing in the microphone... she moved the microphone away from him (although he grabbed it and kept playing with it).*

Navigating immigration and court proceedings is extremely difficult, but **unaccompanied children face even greater challenges due to their age, education, trauma history, and lack of agency.**

Unaccompanied children may have fled persecution, suffered violence during their journey, or experienced other traumatic events. They may be vulnerable to exploitation in the United States, including child labor or human trafficking. This trauma may impede their ability to understand and navigate the legal process.

Every aspect of proceedings must be welcoming and developmentally appropriate to give children the best chance of understanding. Information provided before children come to court, including written notices and the Executive Office for Immigration Review website, must be clear and written at a reading level appropriate to children who are expected to appear in court. The language used by and demeanor of personnel at the reception desk and in the waiting room must ensure that children are calm and ready to enter the courtroom.

Most importantly, immigration judges should employ age-appropriate practices whenever a child is in the courtroom as a respondent or as a witness. The language used by and demeanor of the immigration judge, government attorney, court clerks, and interpreters in the courtroom must focus on ensuring the each child understands why they are in court, what is expected of them, and what happens if they do not follow instructions.

- Recommendations:**
- The Office of Refugee Resettlement should ensure continuous case management to address the mental health and safety needs of unaccompanied minors released from custody and expand its Child Advocate program nationwide.
 - Congress should appropriate funds to ensure representation of unaccompanied children in court and to pilot and implement programs that can help children in the capacity of Friend of the Court.
 - The immigration court should maintain its docket dedicated to cases involving unaccompanied children. That unique docket should ensure appropriate, effective practices that ensure full and fair proceedings for unaccompanied children appearing in court.
 - Immigration judges and government attorneys assigned to cases with unaccompanied child respondents must receive specific training on legal pathways for unaccompanied minors, signs of abuse or exploitation, child development, and other child-centered, trauma-informed practices that support due process for children in court.
 - Immigration judges, government attorneys, court personnel, and interpreters should receive regular training on age-appropriate, trauma-informed communication.

Finding 2: Crowded dockets undermine due process for children

Crowded dockets mean immigration judges rush to complete scheduled hearings and no time is allowed to provide courtroom orientation, identify necessary accommodations for children, or even to ensure basic understanding of what is happening.

Observers report:

- *Dockets are long and everything feels rushed.*
- *As with all the cases I observed over my 1-3/4 hours there, the pace was SO FAST. It was almost hard to understand the judge. A frenetic pace.*
- *Because the docket so long the judge is really skimming over important distinctions.*
- *IJ has a ridiculously full docket. It's not doable. As a consequence, they go so fast and it's like they are on automatic pilot, everything is the same, and they've got a rote way they memorized the script, and they have cut corners and it is confusing and unhelpful.*

The Fort Snelling juvenile docket averaged more than 70 hearings per hearing day in its first year. Unreasonably long dockets and strained resources leave no time or capacity to follow Immigration Court guidelines regarding accommodations for child respondents and witnesses, outlined in OPPM-17-03. Court personnel do not provide courtroom orientation to children or identify necessary courtroom modifications to ensure children, insofar as possible, are put at ease when appearing in court.

Judges do not have time to sufficiently explain the purpose of the hearing, the rights and responsibilities of the respondent, the role of the judge and prosecutor, or how to navigate the system. Judges rush to explain complex legal information and do not take time to check for understanding. Crowded dockets condition judges to rush, even when fewer children are scheduled.

- Recommendations:**
- **Limit docket size** so the immigration judge has time to assess any individual need for modification, explain information, and check for understanding in each case.
 - **Check for understanding** by asking children to explain what they understand, do not just ask, "Do you understand?" Provide training to immigration judges to develop this skill.
 - **Institute courtroom orientation and accommodation assessments.**

Finding 3: Lack of access to counsel undermines due process for children

Children struggle to find legal representation. The federal government makes no effort to ensure that children released from ORR custody, or their families or guardians, are connected to legal representation. Immigration judges cannot appoint counsel.

Meanwhile, free legal service providers face the same dynamics driving long dockets and court backlogs. Cases opened a decade ago remain pending, meaning legal service providers have little capacity to take new cases. Federal, state, and private funding remain inadequate to serve the thousands of newly arrived children in the region. Arbitrary statutory visa limits mean children may wait more than a decade between an approval of a special immigrant juvenile status-based I-360 and adjustment of status. Backlogs at the USCIS Asylum Office mean children may wait years for adjudication of asylum claims.

Despite this reality, immigration judges push cases forward even when children cannot find attorneys. Immigration judges give children the same amount of time to find a lawyer after their first appearance as they give adults. Juvenile docket observers noted an average continuance for a child to find an attorney was 3.9 months, with a range of 8 weeks to 6 months. Continuances for adults are nearly identical, with an average interval of 3.8 months and a range of 7 weeks to 8 months.

Children are ordered removed in absentia, despite being dependent on adults to get to court on time or to file change of address paperwork so they receive notice of their hearings. Practices vary from week to week, with the immigration judge sometimes adjudicating in absentia orders at the end of the morning and sometimes at the end of the day.

- Recommendations:**
- **Standardize intervals** between hearings to maximize children's chance to find representation.
 - **Provide adequate time** for children to find attorneys.
 - **Adjudicate in absentia orders** at the end of each day and ensure children who arrive to court late, but on the day of their hearing, are not ordered removed in absentia.

Finding 4: Child respondents do not understand why they are in court, what the judge is asking, or what the consequences will be

All children appearing in immigration court need to understand what is happening, but this need is particularly acute for the many children who appear without legal representation. Nonetheless, court observers report children routinely appear confused about why they are in court.

Attorneys report that many unaccompanied children believe that the reason they are being summoned to court is to be deported, and that children often do not understand that the purpose of the hearing is to decide if there is some legal way for them to remain.

For children appearing without attorneys, the immigration judge is left to explain vital, complicated information. The immigration judge must use age-appropriate language and concepts to communicate clearly and accurately with child respondents. They must build rapport, so child respondents are not too frightened or overwhelmed to listen and understand.

Recommendations:

- The Immigration Court should provide orientation at the beginning of each juvenile docket so children, under the supervision of court personnel, can explore an empty courtroom, sit in all locations, and practice answering simple questions before the hearing. Funding should be appropriated to ensure adequate staffing.
- EOIR should **appropriate sufficient funds** to staff the Immigration Court with a bilingual clerk at the court reception window who can answer questions, check people in, and provide instructions on where to wait for their court appearance.
- EOIR should develop **age-appropriate videos** to introduce children to immigration court, explain the basics of removal proceedings, and explain the role of different immigration officials and agencies. These videos should be produced in multiple languages, shown in courtroom waiting areas, and be available online. Links should be included in hearing notices and distributed to children and their guardians when released from ORR custody.
- Immigration legal service providers should pursue funding through the Vera Institute of Justice for the **Immigration Court Helpdesk Program** to provide non-detained respondents with information about the court process.
- Congress should ensure that every child facing removal proceedings has access to a lawyer. Fund universal representation programs to pay for appointed counsel. EOIR can facilitate universal screening and limited representation at a first court appearance as an interim step.

Finding 5: Informal advisals can obscure important information

Immigration judges attempt to be friendly and unthreatening to child respondents, but this can lead to lack of clarity about essential information. Observers note that it is often difficult to distinguish between a friendly suggestion and a consequential requirement.

Observers report:

- *Respectful, but it would be hard to understand the lingo if this was the first time in court. Lots of verbal short-cuts.*
- *[The judge] tries to put people at ease, but the rapid and memorized script is actually unclear, and the judge doesn't realize that is problematic.*
- *The judge tells children, "Immigration law CAN be complicated." It IS complicated, especially if you are a child!!*

Immigration judges often use unclear or confusing questions or phrases. Court observers noted several commonly used phrases which repeatedly appear to confuse the respondent or which appear to result in an answer that is not responsive to the question the judge is trying to ask. This both frustrates the judge and dismisses the information the child is attempting to convey.

#1 "Do you know why you are here?"

When the judge opens hearings by asking, "Do you know why you are here?" respondents often answer with a description of why they came to the United States.

Observers report:

- *The judge started to ask why you're here in court, and the girl answered, "I'm here because my stepfather tried to abuse me." The judge then moves on to explain the reason for the court hearings.*
- *The judge asked, "Do you know why you are here?" meaning in immigration court. They answered as if the question was, "why did you come to the U.S.?"*
- *I think a lot of people are confused because when they encounter ICE or CBP and get allowed into U.S., they think they got paroled. So don't understand when IJ says you are here without permission. The respondent thinks: but they let me in? It's the legal issue vs lay language and how they interpret events.*
- *The judge explained the nature of the proceedings and the meaning of the NTA, and asked, "Do you understand?" She looked up and said, "no."*

#2 "Come back with an attorney next time."

When the judge says, "Come back with an attorney," children may think that they are not allowed to return to court until they have an attorney. A pro bono attorney reported getting calls from children who are afraid to return to court because they haven't been able to find an attorney. They believe they were instructed that they need to return with an attorney, and not until then.

Observers report:

- *"Work hard to find an attorney who can sit next to you at the table."*
- *IJ says, "I'll have you come back with an attorney next time." What if they can't find an attorney?*
- *Father asked, "So if he doesn't have an attorney next time, will he get removed?" I took this to clearly ask, "Is removal a consequence of not having an attorney?" Instead of understanding the question, the IJ launched into a long "maybe" answer, which was even more confusing.*

#3 Move forward with your case."

If the respondent doesn't know what the process is or what they are supposed to do, this is both ominous and uninformative.

Observers report:

- *The phrase "moving forward" is really unclear and has no substance that tells the respondent what will happen next. And it was used a lot!*
- *Used the phrase "I wouldn't wait any longer to move forward with your case" several times. This was not clear. What do they need to do to move forward with their cases?*

#4 "If you don't come back, you could be removed, and you wouldn't want that." The consequences of failing to appear in court are minimized. The word "deportation" is rarely used, even though it is a more familiar concept. More direct phrases like "order you to leave the United States" could help with understanding.

Observers report:

- *"It's important that you come back next time, or you can be removed in your absence." What does "removed in your absence" mean, and what happens, what are the consequences? Judges need a much better script.*
- *The judge needs to use the words "can be ordered deported." What is removed? Removed from where?*
- *"You could get removed if you miss your hearing." These advisals need to be done more clearly, more formally, and tell the person, "I'm going to give you two important instructions." It sounds like chatting instead of critical information.*

Recommendations:

- **Establish rapport** with respondents at the outset of each hearing. The immigration judge should introduce themselves and the other people present in the courtroom before the start of the hearing. Ask routine questions such as age, name, and school attendance in order to put the children at ease.
- **Develop advisals** that are specific, age appropriate, clear, and evaluated for accuracy and understanding by people with expertise in communicating with children. Advisals must thoroughly explain the nature of proceedings, the rights and responsibilities, and the consequences of non-compliance.
- **Check for understanding** by asking the child to tell what they understand. Don't just ask "do you understand?"

Conclusion

The current system fails to ensure due process for unaccompanied children in removal proceedings. It leaves judges to adjudicate high-stakes cases, replete with trauma, for children who cannot be held legally responsible for their actions in any other setting. Tragically, it results in harm to the thousands of unaccompanied children who have turned to the United States for safety. Reform is needed, and absent that reform, every effort must be made to mitigate these failures. Immigration judges, court staff, and other federal agencies have a duty to ensure children can access justice in the immigration legal system.

About the Immigration Court Observation Project

The Immigration Court Observation Project, established in 2017, sends volunteers into the Fort Snelling Immigration Court to observe hearings for people facing deportation. An established human rights practice, trial monitoring serves to bring transparency and accountability to judicial proceedings.

The Immigration Court Observation Project upholds those same principles of transparency, accountability, the fair application of the law, and adherence to human rights principles. The volunteer observers of the juvenile docket were specifically invited to participate based on their observation and/or their professional work experience. This project is a collaboration between The Advocates for Human Rights, the University of Minnesota Law School's James H. Binger Center for New Americans, and Robins Kaplan LLP.

Since 1983, The Advocates for Human Rights has worked to implement international human rights standards to promote civil society and reinforce the rule of law. By engaging volunteers in hands-on human rights work, The Advocates accomplishes critical research and advocacy while transforming volunteers into advocates for human rights. With a dual focus on systemic change and direct services, The Advocates grounds policy work in real-life experiences of clients and partners. Rooted in deep expertise and strong relationships, The Advocates works in partnerships in our home community and around the globe to address some of the world's most intractable human rights issues.

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