

SAFE PASSAGE PROJECT

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Permanent Subcommittee on Investigations
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Washington, DC 20510

To Members of the Committee:

On behalf of Safe Passage Project and my colleagues who provide pro bono services to children, I am writing to urge you to support appointing legal counsel for unaccompanied children released from Office of Refugee Resettlement (ORR) custody. Appointed legal counsel for unaccompanied children would play a critical role in protecting children released from ORR custody. In addition, ORR should ensure it focuses legal resources for children where the majority now require it – after they are released from ORR custody. Limiting resources to children in custody would not reach most of the children who are quickly released to relatives. But most of the relatives do not have the economic resources to hire immigration defense counsel.

First, appointed counsel for unaccompanied children would provide critical protections for children. Lawyers play an important role in gaining a child's trust, which is important for uncovering problems and any abusive treatment that the children has received in the past or is receiving after being released from ORR custody. Children respond favorably to interviews by lawyers who are required to keep information confidential under the attorney-client privilege and are dedicated to representing their interests in Immigration Court. Children are likely to seek help and guidance from their lawyers about problems they are encountering. In addition, immigration lawyers regularly ask children about any mistreatment they are receiving for two independent reasons – first, to safeguard the well-being of the child and second, to examine whether they may be eligible for U nonimmigrant status as someone who is the victim of a serious crime that the United States could prosecute. Lawyers also have an ongoing relationship with children as they help them seek the legal protections they qualify for through a series of appearances in Immigration Court. Many of the same benefits would also be attained by providing dedicated child advocates along with appointed counsel.

The right to appointed counsel follows from the Due Process Clause of the United States Constitution. In 1967, the Supreme Court held in *In re Gault*, 387 U.S. 1 (1967) that the government must provide legal representation to children facing juvenile

delinquency charges to make sure the proceedings are fundamentally fair. In *Reno v. Flores*, 507 U.S. 292 (1993), the Supreme Court held that immigrant children are also entitled to Due Process when threatened with deportation. Immigration law is extremely complex and children are not given a fair opportunity to defend themselves when they must appear in Immigration Court without a lawyer.

Moreover, appointed counsel help move cases more quickly through the system. The majority of continuances in immigration court are to provide children and their sponsors time to locate appropriate counsel. There are many studies that demonstrate that experience and skilled counsel help make the adjudication system fair, efficient and accurate.

I recently analyzed the data released by the Immigration Court for fiscal years 2014 and 2015. In fiscal year 2014 I found that nearly 87% of the represented children had positive outcomes in their cases. In contrast unrepresented children were only able to obtain a good result 19% of the time. Further, most of the relief for children is found in other forums where the complete adjudication is before the Asylum Office of the USCIS or other jurisdictions such as family court. Lawyers are needed to guide the child from jurisdiction to jurisdiction from agency to agency.

Along with the legal requirement to provide appointed counsel, it is the morally right action to take to make sure that the United States does not deport a child to a place where he or she may be attacked or killed even though the child qualifies for legal protections under United States immigration law, just because the child did not have a legal representative to help the Immigration Judge understand why he or she qualified.

Second, ORR should ensure that it focuses legal resources for children on where the majority of those children now require assistance – after they are released from ORR custody. For many years, many children were held in ORR custody throughout the course of their legal proceedings. Today, however, the vast majority of children are released at some point from ORR custody before their case is decided in Immigration Court. Therefore, ORR should make sure that its resources are appropriately focused on providing post-release services to unaccompanied children.

Recently, Chairman Ron Johnson raised concerns that where a governmental agency has an increase to its caseload, there should be scrutiny about whether the agency is short-circuiting its process to ensure that protections are in place. In January 2016, Chairman Johnson noted the importance of checking whether USCIS is short-circuiting its vetting of certain refugees in light of a substantial increase in its caseload. Similarly, serious scrutiny is deserved of ORR about whether it is short-circuiting its process of providing legal resources to unaccompanied children in light of a substantial increase in its caseload and an exponential increase in the number of unaccompanied children who are released from ORR custody before their case is decided in Immigration Court.

As the Executive Director of Safe Passage Project, we see young people every day who are in need of legal counsel as they face deportation. We know that children who are victimized by traffickers are rarely able to report that abuse due to their vulnerability. Having an attorney they can trust and who they know is there to help them, helps the young person come forward to comply with court dates and to reveal problems that may have arisen in the release to sponsor or in the community where they live. We also know that children are more optimistic and likely to do better in school when they have an attorney encouraging them to attend school and their immigration hearings. The in absentia order rate for represented children is less than 2%, in contrast with a rate over 20% for children who have no counsel. Taking this action would make an incredible difference to the children in our country.

Should you have further questions, please do not hesitate to reach out to me.

Sincerely,



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