



Legal Aid for Unaccompanied Children in the U.S. Illegally

BY CARLEE GOLDBERG

Children entering the United States alone are afforded certain protections under the U.S. immigration law, but legal counsel is not one of them. In 2019, more than 72,000 unaccompanied alien children (UAC) traveled to the U.S. without a parent or legal guardian. Most of these minors went through the legal process of deportation without a lawyer.

Under federal law, immigration courts are classified as civil as opposed to criminal. As a result, government-provided lawyers are not required in immigration courts—even when juveniles are involved—like they are in criminal and juvenile delinquency proceedings.

Instead, federal, state and local governments, as

well as nonprofit organizations, work to provide legal pro bono services to children who enter the U.S. illegally and are facing removal. Despite these efforts, it is estimated that 75% to 90% of children undergoing deportation proceedings do so without an attorney.

Evidence shows the presence of counsel influences the outcome of these cases. In 2014, 12% of unaccompanied minors represented by an attorney were deported, compared to a more than 80% deportation rate for those without legal representation.

The U.S. Supreme Court case *Flores v. Reno* led to the establishment of child welfare standards for immigrant detention facilities, including state

Did You Know?

- Under *Flores v. Reno*, child immigration facilities must adhere to all applicable child welfare laws in the state where they are located.
- There are many classifications for which unaccompanied children may qualify, including special immigrant juveniles, asylum, victims of crime, victims of trafficking, and Deferred Action for Childhood Arrivals.
- Upon arrest, unaccompanied minors are provided with a directory of pro bono resources in each state, although they may be unavailable due to high demand.

standards for housing and care of dependent children. The standards also cover state licensing of detention facilities, food, medical assistance and contact with family members. The Office of Refugee Resettlement (ORR) and U.S. Immigration and Customs Enforcement created specific facilities and policies regarding the treatment of minors. However, the right to counsel was not included among these updated rules.

With the current [backlog](#) of child immigrant cases reaching over 90,000, thousands will face their day in court without legal support.

Federal Action

Following the *Flores v. Reno* case, ORR was given jurisdiction under the Department of Health and Human Services to provide services for minors who enter the country without legal permission. ORR has since funded the [Vera Institute for Justice](#) to support a national network that provides free legal representation to immigrants facing deportation, including unaccompanied minors.

The Department of Justice's [Executive Office for Immigration Review](#) (EOIR) created the [Legal Orientation Program for Custodians of Unaccompanied Alien Children](#) in 2010. The goal of the program is to provide legal education to adult caregivers of UAC facing deportation. It currently operates in 14 locations across 11 states and the District of Columbia. The EOIR also offers a series of other [legal access programs](#), including the Board of Immigration Appeals Pro Bono Project, Model Hearing Program and Self-Help Legal Centers.

In 2014, the American Civil Liberties Union, American Immigration Council and other organizations sued the U.S. government in *J.E.F.M. v. Holder/ F.L.B v. Lynch*. The case was a class action lawsuit arguing for the right to counsel for unaccompanied minors. Though the U.S. Ninth Court of Appeals dismissed the suit for lack of jurisdiction, its [ruling](#) advocated for this right to be pursued through legislative means.

Since then, a series of bills have been introduced in Congress proposing mandated appointments of counsel in deportation cases for unaccompanied children. In 2019, these bills (still pending) included:

- [Stop Cruelty to Migrant Children Act \(SB 2113/ HB 3918\)](#).
- [Protecting Families and Improving Immigration Procedures Act \(SB 1733\)](#).
- [Reunite Every Unaccompanied Newborn Infant, Toddler and other children Expediently Act \(HB 1012\)](#).
- [Central America Reform and Enforcement Act \(SB 1445\)](#).

- [Funding Attorneys for Indigent Removal Proceedings Act \(SB 2389/ HB 4155\)](#).
- [Northern Triangle and Border Stabilization Act \(HB 3524\)](#).
- [Immigrant Detainee Legal Rights Act \(HB 1045\)](#).
- [Protecting the Rights of Families and Immigrants Who Legally Entered From Detention Act \(SB 2396\)](#)

State Action

Though the right to counsel was extended to state criminal prosecutions in *Gideon v. Wainwright*, it was not extended to civil proceedings, under which immigration courts are classified.

Some states have created or proposed legislation and programs aimed at extending the right to counsel to minors in the U.S. illegally.

Both New York and California include allocations in their budget to fund legal services for unaccompanied minors. In 2018, this included [\\$3 million](#) spent by the California Department of Social Services for legal service providers. New York allocated [\\$4 million](#) to expand the [New York Immigrant Family Unity Project](#), a public defense program for immigrants in the U.S. without legal permission.

In addition, New York ([SB 6225/ AB 7815](#)), Connecticut ([SB 00377](#)), Illinois ([SB 3861](#)) and Hawaii ([SB 2829](#)) have introduced legislation that would mandate legal representation or appropriate funds to contract organizations on behalf of unaccompanied minors who do not have legal status.

Florida ([FLA Stat. 39.5075](#)) passed a law requiring that counsel be appointed for undocumented children who qualify for [Special Immigrant Juvenile Status](#) (SIJS). Children who qualify under SIJS are unable to be reunified with their parents due to abuse, neglect, abandonment or another state qualification and are placed under a juvenile court's jurisdiction.

Other states have developed pilot programs to fund legal representation for UAC. These include Maryland's [Baltimore Representation Initiative for Unaccompanied Children](#), Tennessee's [Immigrant Rights Defense Center](#) and Illinois' [Immigrant Child Advocacy Project](#).

In addition to state and federal government-sponsored initiatives, pro bono and reduced rates of service are provided by individuals and organizations through both government grants and private donations.

Additional Resources

- [Breakdown of Unaccompanied Minors With and Without Representation by State, TRAC Immigration](#)
- [State Statutes Providing the Right to Counsel in Civil Cases, Brennan Center for Justice](#)

NCSL Contact

Ann Morse
202-624-8697