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Representing Unaccompanied Children

by Olsa Alikaj-Cano

With the continued increase in numbers of unaccompanied children apprehended at the southwest border, and the overwhelming majority being placed in removal proceedings, the need for legal representation on their behalf is imminent. It is crucial that we commit to taking these cases pro-bono, because the unaccompanied children not only fear for their lives if forced to return home, and alone in a foreign country where they cannot speak the language, but they are also not afforded the opportunity to be heard through appointed legal counsel. This fundamental violation of their due process rights is one of the many reasons why our immigration community is fighting tirelessly on their behalf. See *JE.FM v. Holder*, No. 2:14-cv-01026 (W.D.W. filed Jul. 9, 2014).



Tens of thousands of children are fleeing to the southwest border to escape the violence in their home countries, including Honduras (above).

The term unaccompanied children refers to someone who: a) has no lawful immigration status in the United States; b) has not attained 18 years of age; and c) with respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody. See 6 U.S.C. § 279(g)(2); adopted

by TVPRA § 235(g). Once apprehended, CBP personnel must screen the unaccompanied children individually, within 48 hours, and determine if a child has been a victim of severe form of trafficking in persons, or if the child may have a credible fear of returning home. ([AILA InfoNet Doc. No. 14081363](#)). However, to date, only a small number of

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children apprehended by the CBP have requested asylum, or have filed other applications with the USCIS. Instead, they have been issued a Notice to Appear (NTA), which when filed with the Court commences the removal proceedings.

By the time the unaccompanied children meet an immigration attorney, they have already been questioned by individuals they do not know. The children are confused and have no idea what awaits them in immigration court. Most of the time, they are embarrassed to talk about their traumatic personal experiences. This is why empathetic, non-judgmental, and open communication is essential in order to ensure a solid relationship, which leads to a successful legal representation. It starts with obtaining the correct information from the shelters or non-profit organizations housing the UACs, so we do not miss anything about their story. As we assist the unaccompanied children with legal advice, and represent them in removal proceedings, we should be mindful of their needs and consider other forms of counseling for them when necessary.

1) Once the case is before the EOIR, preparation is key. It is important (as so many of us forget) to verbally state that you are representing the unaccompanied children pro-bono, before the court, and also do so in writing. While not automatic, most

HELPING CHILDREN IN NEED:

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immigration judges, and sometimes the trial attorneys (DHS counsel/trial attorneys), are inclined to be more accommodating to the pro-bono attorneys.

2) Do not plea if you have never seen the NTA, or if you have a copy of the NTA but you are not ready to proceed. If you need time to prepare, conduct research or seek help from fellow attorneys, always ask for attorney preparation time or a continuance on the matter. Read the NTA carefully, and if you see issues with it, challenge it and seek termination of the proceedings. See Practice Advisory: “Notices to Appear: Legal Challenges and Strategies” [“American Immigration Counsel. N.P., June 30, 2014.](#) To preserve the record for appeal, always state your reasons clearly during the hearing.

3) Finally, once you have pleaded to the NTA, the most important step will be identifying the relief in court. While asylum may be the first form of relief that comes to mind, do not forget to explore other forms

of relief such as Special Immigrant Juvenile Status (SIJ), (note: work closely with a family law attorney on this); the T-visa (for victims of severe forms of human trafficking); or U-visa if your client has been a victim of a crime that has occurred in the United States. ([AILA InfoNet Doc. No. 14072245](#)). Finally, if during the course of the proceedings, any of the petitions filed with the USCIS is pending or has been approved, you can seek administrative closure or termination of proceedings, depending on your circumstances. ([AILA InfoNet Doc. No. 14070344](#)).

The cases involving unaccompanied children in removal proceedings are particularly sensitive, compelling, and difficult at the same time. Whether you have handled cases before the EOIR or not, seek help from your fellow AILA member attorneys, and continue to take pro-bono UAC cases. This will be one of your most rewarding experiences as a practitioner.

Olsa Alikaj-Cano is a member of the litigation team of FosterQuan LLP, in its Houston office. She focuses on cases involving federal litigation as well as cases with removal and deportation issues before the Executive Office of Immigration Review. She has been admitted to practice by the U.S. Supreme Court, the State Bar of Texas, U.S. District Court Southern District of Texas, and the Court of Appeals for the Fifth Circuit. She is the AILA Texas Chapter New Members Division Liaison.

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