

Here's How Hard It Is for Unaccompanied Minors to Get Asylum

The process for the tens of thousands of children entering the United States to gain asylum in America is incredibly complicated. And many kids are attempting to navigate it with no legal help.

By [Rachel Roubein](#)
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The English-only application spans at least nine pages, the first hurdle for an unaccompanied child seeking asylum in the United States.

Then there's an interview. A child is asked to recount to an asylum officer details of past traumas—such as gang recruitment and kidnappings, prostitution, and abuse. If asylum is denied, the young migrant goes before an immigration judge as a federal attorney typically argues for deportation.

This process is one that the majority of the tens of thousands of unaccompanied children crossing the border this year are expected to maneuver solo. Navigating the world of immigration law is complex even for a law student, who would typically take a semester's time to become conversant in its nuances. For a child, it's nearly impossible, according to immigration attorney Kristen Jackson.

"If you have an unrepresented child," she said, "their actual ability to do any of this as a pro se from my perspective is zero."

In early 2011, about half of children undergoing deportation proceedings were doing so without counsel, according to an estimate by Kids in Need of Defense, a nonprofit organization partnering with more than 200 law schools, firms, and more to find children legal representation. That was just before the wave of unaccompanied minors from Central America's Northern Triangle began. And the capacity to provide pro bono representation hasn't caught up, leaving the majority of children lawyerless, according to KIND President Wendy Young.

On the first of every month, KIND opens an online referral process to help minors receive counsel. Within 30 minutes on July 1, the maximum number had been signed up in two of KIND's eight offices. By 3 p.m. that day, six offices had reached their cap.

Thus, many immigration advocates are arguing that legal representation should be required for the thousands of children from El Salvador, Guatemala, and Honduras surging into the United States. They're fleeing economic disparities and a spike of violence plaguing the region—

problems so intense the United Nations calls for international protections and lawmakers coined it a "humanitarian crisis."

President Obama's \$3.7 billion emergency supplemental request allocates \$15 million for providing direct legal representation services to children in immigration proceedings. Another \$2.5 million would expand the legal orientation program, which provides aid to adults and the sponsors of children in the immigration court system.

"We're really glad that he has some of the money in there, but it's a drop in the bucket in terms of the need," said Greg Chen, advocacy director at the American Immigration Lawyers Association. "It's just not going to be enough."

HOW IT WORKS

A Customs and Border Patrol agent apprehends an unaccompanied Central American child as he or she crosses the U.S.-Mexico border. A brief screening ensues.

Then the minor is automatically given a notice to appear in court. Within 72 hours, the minor is placed in the Health and Human Services Department's custody, where a trained provider conducts an initial interview to determine if the child may be a victim of abuse, a crime, or trafficking, Mark Greenberg, acting assistant secretary for HHS's Administration for Children and Families, said at a Senate committee hearing last week.

The child is given a legal-rights presentation while in HHS's care and before the department finds a parent, relative, or sponsor for the minor to live with while undergoing immigration proceedings. The government is not required to provide legal representation to children, which is the crux of a lawsuit the American Civil Liberties Union, the American Immigration Council, the Northwest Immigrant Rights Project, Public Counsel, and K&L Gates filed last week against the federal government.

Visas are available for victims of trafficking and certain crimes, as well as for those who were abused, neglected, or abandoned by one or both parents, according to the American Immigration Council.

Asylum is the form of relief most unaccompanied minors streaming across the border likely have a viable claim to, according to Jackson, who has worked representing children at the California-based pro bono law firm Public Counsel for the past decade. It's an international protection given to refugees in the United States with a well-founded fear of persecution on the grounds of race, religion, nationality, political opinion, or membership in a certain social group.

"While it's the one most children have legitimate claim to, it's also the one that's the most legally complex," Jackson said.

The asylum application must be filled out in English. Attorneys and community-based organizations can provide help; the U.S. Citizenship and Immigration Services does not provide

assistance, because it would present a conflict of interest, USCIS spokesman Christopher Bentley wrote in an email.

Once the application is complete, an attorney—if the child has one—begins to build a case.

The attorney works to create a rapport with the unaccompanied minor to help the child open up about past traumas. These incidents will not only need to be detailed to the attorney, but also told later to an asylum officer, according to Jackson.

"The reality is, it may be very, very difficult for children to talk about the things that have happened to them," she said. "They may avoid talking about them. They may minimize them. They may become so distraught that they exhibit behaviors, like refusing to look someone in the eye, shaking, turning red."

This behavior may make it seem like the child is lying. That's why attorneys try to find additional evidence through interviewing witnesses inside and outside the U.S., searching for medical records and working with experts on the children's home countries, Jackson said.

The asylum officer has the first say, and the claim was granted just 34 percent of the time for immigrants of any age undergoing removal proceedings from Oct. 1 last year to March 31, according to USCIS data.

If the claim is approved, the child goes before an immigration judge to request termination of the removal proceedings based on the child's new asylee status.

If that is denied, an immigration judge hears the case in a courtroom-like setting. There's the child and his or her counsel—if the minor even has representation—on one side. On the other, the government is represented by a U.S. Immigration and Customs Enforcement attorney likely arguing that the child should be deported, according to Jackson.

With legal representation, it's possible for a child to be granted asylum, which provides a pathway to citizenship, Young said. But without counsel, it's "virtually impossible."

"Bottom line: The laws are complicated, and then you put a child through that with their lack of capacity to understand," she said. "The results are not going to be positive, because it's just too hard for children to do it. But that's what we have—unfortunately—and it's getting worse."

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