



February 23, 2016

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

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**Re: ACLU Statement for Senate Committee on the Judiciary’s Hearing on
“The Unaccompanied Children Crisis: Does the Administration Have a
Plan to Stop the Border Surge and Adequately Monitor the Children?”**

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the American Civil Liberties Union (ACLU), we submit this letter to the U.S. Senate’s Committee on the Judiciary for its hearing: “The Unaccompanied Children Crisis: Does the Administration Have a Plan to Stop the Border Surge and Adequately Monitor the Children?” The ACLU is extremely troubled by the administration’s harsh response to the refugee situation in Central America, which has been focused on detaining and deporting families and children who have fled persecution. In 2016, the Department of Homeland Security (“DHS”) has targeted Central American families and children for deportation, including those with no legal representation. Forcing children and other vulnerable immigrants to defend themselves against trained government prosecutors, with their lives literally on the line, violates due process and runs counter to our country’s values. Therefore, the ACLU urges Congress to support S. 2540, the “Fair Day in Court for Kids Act of 2016,” which would provide appointed counsel for unaccompanied children and other vulnerable immigrants. In light of this administration’s harsh response, S. 2540’s alternative method of providing appointed counsel for all children is the only way to ensure a fair process for children and families fleeing persecution.

I. Children and families in deportation proceedings currently do not have a right to appointed counsel and, as a result, often represent themselves alone in immigration court without an attorney.

The federal government, with limited exceptions,¹ does not currently recognize a right to appointed counsel for immigrants in removal proceedings. That means that those who are unable to find an attorney or afford one, including children and families fleeing violence and persecution have no choice but to represent

¹ The Obama administration recognizes only one narrow exception to this rule, for certain individuals with serious mental disabilities.

themselves in deportation proceedings. This problem has been exacerbated by the administration's use of "rocket dockets," which directs immigration courts to schedule initial hearings for Central American families and unaccompanied children on an expedited basis. By accelerating the deportation process, families and children often have only a few weeks to obtain an attorney.

However, this administration continues to deport children who have no legal representation. Between July 2014 and August 2015, almost 2,800 children, who did not have counsel and were granted one hearing, were ordered removed.² At least 40 percent of the children were less than 17 years old.³

Children, by definition, lack the legal capacity to represent themselves in court proceedings. The overwhelming majority of children lacks the financial resources and know-how to find and retain their own attorneys. Most do not speak English. Without legal representation, children cannot present complex asylum, human trafficking, and other immigration claims. In a lawsuit brought by the ACLU on behalf of children in deportation proceedings without legal representation, a federal court stated that requiring children in immigration court to defend themselves without an attorney "pit[s] juveniles against the full force of the federal government." Furthermore, the judge ruled that "[a] fundamental precept of due process is that individuals have a right 'to be heard 'at a meaningful time and in a meaningful manner'" before 'being condemned to suffer grievous loss of any kind.'"⁴

The very notion of deporting children to life-threatening conditions without counsel runs contrary to our constitutional tradition of fairness as well as our nation's commitment to protecting the most vulnerable among us.

II. S. 2540 would establish fairness and due process for unaccompanied children and other vulnerable immigrants, including those with mental disabilities.

Some senators, including three Members of the Judiciary Committee, have introduced legislation that would establish due process for unaccompanied children and other vulnerable immigrants. The "Fair Day in Court for Kids Act of 2016" (S. 2540), sponsored by Senate Minority Leader Harry Reid (D-NV), as well as Judiciary Committee Ranking Member Patrick Leahy (D-VT), Senator Richard Durbin (D-IL), and Senator Al Franken (D-MN), would require the federal government to appoint counsel to unaccompanied children, "particularly vulnerable" individuals—such as persons with disabilities or victims of abuse, torture, or violence—and individuals "whose circumstances are such that the appointment of counsel is necessary to help ensure fair resolution and efficient adjudication of the proceedings."⁵

² David Rogers, *Under 16 and ordered deported—with no lawyer*, POLITICO, Nov. 18, 2015, <http://www.politico.com/story/2015/11/under-16-and-ordered-deported-with-no-lawyer-215944>.

³ *Id.*

⁴ *J.E.F.M. v. Holder*, 107 F.Supp.3d 1119 (W.D. Wash. 2015) (order granting in part and denying part defendants' motion to dismiss), available at https://www.aclu.org/sites/default/files/field_document/jefm_v_holder_mtd_order_4_13_15.pdf.

⁵ S. 2540, 114th Cong. (2nd Sess. 2016) (Sec. 2(c)).

Having counsel significantly improves an individual's chances at every step of the immigration process. Immigrants with legal representation in deportation proceedings are 5.5 times more likely to obtain immigration relief than those without counsel.⁶

For children, the presence of competent immigration counsel greatly increases their chances of winning their immigration case.⁷ In fact, whether an unaccompanied child has an immigration attorney has been found to be “the single most important factor influencing the case's outcome.”⁸ In nearly three-quarters of cases in which a child was represented, the immigration court allowed the child to remain in the U.S.⁹ In the cases where the child had no immigration counsel, only 15 percent of the children were allowed to remain in the U.S. The remaining 85 percent were ordered to be deported. Children with attorneys are also far more likely to appear for their court dates¹⁰ and more likely to obey court orders.

III. S. 2540 would mean the difference between life and death for Central American families and children fleeing brutal violence and seeking asylum in the U.S.

S. 2540 would ensure that asylum-seeking Central American families and children, who have legitimate claims for immigration relief under U.S. law, are not returned to the very violence they are fleeing. For asylum-seekers, having counsel has been shown to greatly increase their chances of being granted asylum. According to one report from the U.S. Government Accountability Office (“GAO”), “Representation generally doubled the likelihood of affirmative and defensive cases being granted asylum.”¹¹

Having a competent attorney can also make the difference between life and death. As reported by *The Guardian*, between January 2014 and October 2015, at least 83 individuals who were deported back to El Salvador, Guatemala, and Honduras were killed upon their return,¹² the majority of whom were killed within a year of deportation.¹³

Many of these families and children have fled the Northern Triangle region in Central America to escape brutal sexual violence and gang violence. In 2014, a survey conducted by the United Nations High Commissioner for Refugees (“UNHCR”) found that 58 percent of children fleeing to the United States from Honduras, Guatemala, El Salvador, and Mexico have valid claims to asylum or other legal protection, meaning that they could face serious

⁶ Ingrid V. Eagly and Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581161.

⁷ Laura Meckler and Ana Campoy, *Children Fare Better in U.S. Immigrant Courts if They Have an Attorney*, WALL ST. J., Jul. 15, 2014, <http://www.wsj.com/articles/children-fare-better-in-u-s-immigrant-courts-if-they-have-an-attorney-1405531581>.

⁸ TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (“TRAC”), REPRESENTATION FOR UNACCOMPANIED CHILDREN IN IMMIGRATION COURT (2014), available at <http://trac.syr.edu/immigration/reports/371/>.

⁹ *Id.*

¹⁰ Mark Noferi, *Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court*, AM. IMMIGRATION COUNCIL, Jul. 15, 2014, <http://immigrationimpact.com/2014/07/18/taking-attendance-new-data-finds-majority-of-children-appear-in-immigration-court/> (citing data from the Transactional Records Access Clearinghouse showing that 95.4 percent of children represented by lawyers have not been designated in absentia).

¹¹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-940, U.S. ASYLUM SYSTEM: SIGNIFICANT VARIATION EXISTED IN ASYLUM OUTCOMES ACROSS IMMIGRATION COURTS AND JUDGES (2008), <http://www.gao.gov/assets/290/281794.pdf>.

¹² Sibylla Brodzinsky, Ed Pilkington, *US government deporting Central American migrants to their deaths*, THE GUARDIAN, Oct. 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>.

¹³ JOSE MAGAÑA-SALGADO, IMMIGRANT LEGAL RESOURCE CENTER, RELIEF NOT RAIDS: TEMPORARY PROTECTED STATUS FOR EL SALVADOR, GUATEMALA, AND HONDURAS 1 (2016), http://www.ilrc.org/files/documents/01-13-2016_relief_not_raids_-_immigrant_legal_resource_center.pdf.

harm or death if returned to their home countries.¹⁴ In El Salvador, which is ranked the most violent nation in the world, almost 7,000 people were violently killed in 2015, a 70 percent increase in violent deaths from the year before.¹⁵ Honduras had held the title of “Murder Capital of the World”¹⁶ until its replacement by El Salvador this year. Additionally, El Salvador, Honduras, and Guatemala currently rank first, third, and seventh in the world, respectively, for rates of female homicides. Indeed, in July 2014 the UN Special Rapporteur on Violence Against Women noted that violent deaths of women in Honduras had increased 263.4 percent between 2005 and 2013.¹⁷

IV. Conclusion


S. 2540 would establish much-needed fairness and due process to the most vulnerable immigrants and protect against violent death for asylum-seeking families and children. As the administration continues to rapidly detain and deport Central American families and children fleeing persecution, providing access to counsel for all children in immigration proceedings is necessary to ensure that children and families receive full and fair adjudication of their cases through meaningful court hearings. We urge members of this Committee to cosponsor S. 2540 and swiftly pass it out of Committee.

For more information, please contact ACLU Legislative Counsel Joanne Lin (202-675-2317; jlin@aclu.org).

Sincerely,



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Director
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Joanne Lin
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¹⁴ U.N. HIGH COMM’R FOR REFUGEES, REG’L OFF. FOR THE U.S. AND THE CARIBBEAN, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICAN AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION, 6 (2014), http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

¹⁵ Nina Lakhani, *Violent deaths in El Salvador spiked 70% in 2015, figures reveal*, THE GUARDIAN, Jan. 4, 2016, <http://www.theguardian.com/world/2016/jan/04/el-salvador-violence-deaths-murder-2015>.

¹⁶ K.J. Mariño, *US Humanitarian Group Urges Honduran Authorities to Stop Youth ‘Slaughter’ Amid Increasing Violence Records*, LATIN POST, Feb. 17, 2016, <http://www.latinpost.com/articles/115372/20160217/us-humanitarian-group-urges-honduran-authorities-stop-youth-slaughter-increasing-violence-records.htm>

¹⁷ Susan Terrio, *‘Life Ended There’: Rare interviews with the children of America’s border disaster*, POLITICO MAGAZINE, Jul. 10, 2014, http://www.politico.com/magazine/story/2014/07/children-border-detention-108788_Page5.html#.VsYSDvkrJph.