

What Child Is This?
How Immigration Courts Respond to Unaccompanied Minors

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EXECUTIVE SUMMARY

Congress has delegated to the Attorney General the primary responsibility for administering the laws governing the admission and the removal of non-citizens. In the immigration laws of the United States non-citizens are termed "aliens." Within the Department of Justice, two separate agencies exercise this delegated authority: the Immigration and Naturalization Service (INS or Service) and the Executive Office for Immigration Review (EOIR). When an alien is charged with being in the United States illegally, he or she is entitled to a removal (deportation) hearing before an Immigration Judge. Although most aliens face difficulties in defending against such charges, problems are especially acute for juveniles (aliens under 18 years of age) who are in the United States without parents or legal guardians.

Neither the Immigration Court nor the Service has a designated set of special procedures for handling cases of unaccompanied minors in removal proceedings. Rather, responding to a variety of experiences over time, the two agencies have attempted to fashion some accommodations to the unique problems posed by these aliens. Even so, many Immigration Judges and childrens-rights advocates believe that more can be done to improve the way these cases are handled.

Immigrant-rights advocates have identified four elements they believe are essential to fair treatment of an unaccompanied minor facing a removal hearing: 1) access to an attorney; 2) access to a personal representative who can act *in loco parentis*; 3) placement in an appropriate residential facility, not a detention center for delinquents; and 4) a hearing in a "child-friendly" courtroom setting.

There are 51 Immigration Courts throughout the United States, 28 of which handle cases involving unaccompanied minors. The Immigration Court's case-tracking system does not currently provide for a precise count of unaccompanied minors, and there is no clear sense of the current size of the unaccompanied minor caseload. The case-tracking system gives an approximation of 600 per year, while the Immigration Judges in those courts estimate that they see 2500 such cases a year. It is likely that the correct figure lies between these two estimates.

Despite the absence of precise figures, there is a recognition that unaccompanied minors require special attention. This paper attempts to provide some focus on the type of attention required. Specifically, the objective of this paper is to survey the practices of the Immigration Courts on the four elements identified by the advocates as essential for fair treatment of unaccompanied minors. The purpose of the survey is not simply to document current practices, but also to form a basis for recommended improvements in the way these cases could be handled.

The survey indicates that liaison judges heartily endorse the need for *legal representation*. They are far less convinced of the need for a *personal representative*, questioning whether the current law would permit such a role. Likewise, although there undoubtedly is great interest in the quality of the residential facilities for unaccompanied minors, *custody questions* involving unaccompanied minors typically are not raised in Immigration Court. Finally, although most judges make adjustments to *courtroom procedures* when juveniles are involved, there is limited interest in proposals to transform the courtroom proceeding from a formal hearing into a more casual interview setting.

As a result of the survey findings, the Immigration Court should consider several steps to improve its handling of cases involving unaccompanied minors: 1) modifying its database to identify and track cases involving juveniles, including unaccompanied minors; 2) actively assisting efforts to develop programs for pro bono legal representation; 3) pursuing one or more pilot programs to identify a possible role for a personal representative or friend of court; and 4) encouraging Immigration Judges to respond flexibly when circumstances suggest the possible need for modified courtroom procedures. Additionally, the Office of the Chief Immigration Judge should solicit advice from those judges around the country with extensive experience handling dockets involving unaccompanied minors. It should also consider replicating this survey among other groups -- the Immigration and Naturalization Service, pro bono and private attorneys, personal representatives, custodians, and juvenile aliens themselves - seeking their insights on how well the Immigration Court is responding to the challenges presented by these cases.

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