



September 2014 Tip of the Month Unaccompanied Minors and Accelerated Immigration Court Procedures

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The recent increase in the number of unaccompanied children (UAC) crossing the border has gained a lot of media attention over the last few months. In response to the crisis, the Obama administration has adopted a number of new procedures to speed up the processing time for such cases.

THE HUMANITARIAN CRISIS

The number of children crossing the border this year has more than doubled. Since October 2013, U.S. immigration authorities have apprehended approximately 63,000 children crossing the border. Previously, the majority of such children were from Mexico. However, in the past two years more than 75% of the children came from Honduras, El Salvador or Guatemala. Many of them are fleeing violence and crime. San Pedro Sula, a city on Honduras' northern coast, has the world's highest homicide rate of any city. From January to May 2014 it is estimated that more than 2,000 children were killed in San Pedro Sula. In the same period, over nine hundred children were killed in Tegucigalpa, the Honduran capital. El Salvador and Guatemala are also plagued by gang violence. A recent report by the Assessment Capacities Project (ACAPS), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively. In comparison, the war-torn country of the Democratic Republic of the Congo, from which nearly half a million refugees have fled, has a homicide rate of 28.3 per 100,000 people. The United States homicide rate is 4.8 people per 100,000. Some of the children may also be fleeing poverty, especially those coming from extremely poor rural areas in Guatemala. However, poverty is unlikely to be the biggest motivating factor -- for example, there has been no significant increase in the number of children coming to the U.S. from Nicaragua, the poorest country in the region after Haiti. Others make the journey in order to reunite with family members already in the United States.

Procedures established by the Department of Homeland Security (DHS) to process unaccompanied minors, coupled with rumors circulated by smugglers in Central America, created a perception among some Central American families that the children would not be deported even if they were apprehended by U.S. immigration authorities. DHS acknowledged that many of the children were reunited with family members in the U.S. after being caught and were not immediately deported. The Trafficking Victims Protection Re-Authorization Act (2008) prevents the U.S. government from deporting Central American children without a court hearing. By contrast, unaccompanied minors from Mexico can be immediately sent back across the border.

Once a child is apprehended crossing illegally into the United States the U.S. government begins immigration proceedings against them. The Department of Health and Human Services screens the children and provides immunizations. The Office of Refugee Resettlement assigns the children to a short term shelter. Many minors may subsequently be placed with a sponsor to await immigration proceedings. In response to the increased number of migrants crossing the border, the federal

government opened three new temporary shelters located on military bases in California, Oklahoma and Texas.

If the child is placed with a sponsor (usually a parent or other relative), the child's case will be processed in the immigration court nearest to where the sponsor lives. States receiving most of the unaccompanied minors include Texas (4,280 children), New York (3,347 children), Florida (3,181), California (3,150), Virginia (2,234) and Maryland (2,205). From January 1st to July 31st of this year Minnesota received two hundred and two unaccompanied children.

HOW IS THE U.S. GOVERNMENT REACTING TO THE CRISIS?

President Obama called the surge in unaccompanied minors and women with minor children an “urgent humanitarian situation”. He announced a new strategy to accelerate immigration cases involving child migrants and parents with children, in an attempt to deter such migrants from attempting to cross the border illegally. To achieve this, the Obama administration is making docket adjustments in immigration court and reprioritizing certain case types. The administration set processing time goals: unaccompanied minors are to appear before an immigration judge within 21 days after being placed in deportation proceedings and parents with children should have an initial hearing within 28 days. Immigration attorneys and human rights advocates criticized this acceleration in the deportation process. Unlike in criminal cases, there is no right to an attorney in immigration court, and children may struggle to find representation. The ACLU's Immigrant Rights Project has filed a lawsuit asking the federal courts to block deportation proceedings against several children until they are able to find a lawyer, citing violations of due process. Children attempting to represent themselves in immigration court face many obstacles. They may not be developmentally able to formulate requests for specific forms of immigration relief for which they may qualify. They have little knowledge of the substantive or procedural rules governing their case but must confront highly trained and experienced DHS attorneys. In addition, many, if not all of the children have little to no formal education and do not speak English.

Many of those children most in need of immigration relief, such as those facing persecution in their home countries, may be too traumatized to tell their stories or obtain legal counsel to advocate for their rights before seeing the immigration judge. They have often traveled long distances, with inadequate food and water and through harsh conditions, before being apprehended by immigration officials.

HOW THE NEW PROCEDURES ARE IMPACTING MINNESOTA

The immigration court in Bloomington has already begun to implement procedures to accelerate cases involving unaccompanied minors or parents with children. A specialty docket for unaccompanied children and families apprehended near the U.S. - Mexico border has been established, which moves those cases to the front of the line:

- **Unaccompanied minors:** Within ten days of receiving a Notice to Appear (NTA) from ORR or DHS, the Executive Office for Immigration Review (EOIR) will mail out a notice of hearing for such cases. The initial master calendar hearing will take place no later than 21 days after EOIR receives the NTA.
- **Families with children:** EOIR will schedule a hearing within 28 days of receiving the NTA from ORR or DHS
- **Other detained migrants:** EOIR will schedule a hearing within 60 days of receiving the NTA.

Additional changes include clearing one immigration judge's docket and prioritizing all UAC cases. OCC has assigned one specific attorney to represent the government in UAC cases. Once capacity has been reached, UAC cases will be given to the other two sitting immigration judges, as needed. The court has made its priorities clear: (1) unaccompanied minors; (2) detained family cases (parents with children); (3) parents with children under alternate forms of supervision; (4) detained cases for recent border crossers; and (4) everyone else. As a result, lower priority cases scheduled before Bloomington immigration judges are being pushed back indefinitely.

IS THERE HELP FOR THE CHILDREN?

The children may be eligible for a number of forms of immigration relief, including asylum and/or Special Immigrant Juvenile Status (SIJS). Asylum provides protection for people who have a well-founded fear of persecution in their home country on account of their race, religion, nationality, political opinion or membership in a particular social group. Special Immigrant Juvenile Status permits certain noncitizen children who have been abused, neglected or abandoned by one or both parents to obtain lawful permanent resident status. For more information on SIJS please see our [December 2013 Tip of the Month](#).

LOCAL EFFORTS

Many local non-profits and law schools are coming together to provide critical assistance during this crisis. The local chapter of the American Immigration Lawyers Association is organizing efforts to provide limited scope representation from a distance, as well as coordinating volunteers to provide services at the facilities near the U.S.-Mexico border. If you would like more information on how you can volunteer, please contact Gabriela Brunner at gabriela@vlnmn.org.

VOLUNTEER OPPORTUNITIES

Assistance for Unaccompanied Minors and Parents with Children in Immigration Court

Volunteer and pro bono attorneys are attempting to screen all of the children on these specialty dockets for possible relief from removal. Given the accelerated deadlines in these cases and the problems children face in finding legal representation, the assistance of pro bono volunteers is vital to insure the rights of these children are adequately protected.

If you would be interested in assisting with this effort, please contact Gabriela Brunner, VLN Resource Attorney at Gabriela@vlnmn.org or 612-752-6647.

SIJS Third Party Custody Pro Bono Project

A volunteer attorney project has recently launched to help low-income households with an SIJS eligible child access pro bono family law representation and obtain the required state court findings necessary for the child's subsequent SIJS application with USCIS. The project is a collaboration of Volunteer Lawyers Network, Faegre Baker Daniels, and Mid-Minnesota Legal Aid. Through the project, volunteer attorneys represent low-income proposed custodians of SIJS-eligible children in family court third party custody actions. The project accepts referrals from immigration legal service providers and from private immigration attorneys.

To find out more about this project, or if you are interested in becoming a volunteer, please contact Tom Walsh, VLN Resource Attorney at Tom@vlnmn.org or (612) 752-6675. **(Please also see the sidebar in VLN's September Monthly Message with information regarding an upcoming training.)**

Sources:

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