

THE CHRISTIAN SCIENCE MONITOR

Alejandra, age 7, is facing a judge alone. Is that due process?

Search for solutions

Alejandra is one of more than 87,000 undocumented immigrant children who have made court appearances since 2005 without legal representation.

By Warren Richey, Staff writer November 1, 2016



Immigrant children who come into the US alone are housed in shelters like this one in Harlingen, Texas, which is licensed to hold up to 290.

Johnny Hanson/Houston Chronicle/AP/File

Perhaps no issue divides Hillary Clinton and Donald Trump more sharply than what to do about illegal immigration. Part 3 of a five-part series on the view from the US-Mexico border.

HARLINGEN, TEXAS – There are no majestic marble columns leading to the United States immigration court here, no hint of the life-altering decisions taking place inside the nondescript building.

A young girl sits in the front row of the public seating area in Courtroom No. 4. She might be on a class trip. Her hair is neatly drawn back in two pigtails tied with purple bows that perfectly match her purple shirt. Her feet only reach three-quarters of the way to the floor. She swings her legs as the judge calls out a series of case numbers.

Suddenly, the girl is standing. Apparently she is not on a class trip. She tells the judge her name: Alejandra.

Immigration Judge David Ayala is gentle in his questioning. His tone and manner are intended to put Alejandra at ease. But there is nothing easy or comforting about this proceeding. The US government is seeking to send her back to El Salvador.

Although she was led into the courtroom with nine other juveniles, she is effectively standing before the judge alone – without the benefit of a lawyer, a parent, or even a friend.

Alejandra is seven years old.

Her plight isn't unique. This is the reality for tens of thousands of unauthorized immigrant children who were smuggled into the US in recent years in the hope of reuniting with a parent or other family member.

Most of the children were sent by parents or relatives trying to protect them from extreme gang violence, corruption, and poverty in El Salvador, Guatemala, and Honduras.

Smuggling fees to south Texas run several thousand dollars. By the time these unaccompanied children reach the US, there is no money left for anything – let alone to hire a lawyer. Many children are forced to fend for themselves in a real-life courtroom drama where the odds are stacked heavily against them.

And that's the key issue, say legal analysts: not whether these children should be allowed to remain in the US, but whether a 7-year-old – or any juvenile – can receive a fair hearing in US immigration court without the assistance of a lawyer.

The American Bar Association calls it a “nationwide due process crisis.” Others say it is a blot on the character of a country that seeks to uphold the ideal of equal justice under law.

“This is such a serious disconnect with our values as a nation,” says Juanita Molina, a migrant rights activist and executive director of the group Humane Borders in Tucson, Ariz.

“This is not the way you treat a child. For every person who comes to our shores there is the opportunity to communicate our view of the world as a nation of peace and justice,” she says. “Putting a 7-year-old in a court of law under those circumstances is immoral.”

Since 2005 more than 203,000 children ages 17 and younger have appeared in US immigration court for removal proceedings. Of those, 87,614 did so without the guidance of a lawyer, according to data maintained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University.

Having the benefit of legal counsel during an immigration hearing can be critical; a child with representation is 6.5 times more likely to win his or her hearing. During the past five years, juveniles with lawyers won 85 percent of their cases in immigration court, while those without a lawyer lost 87 percent of their cases, according to an analysis of TRAC data.

Deportation: a death sentence?

The judge gave Alejandra four months to prepare for her removal hearing. That's four months to reach out to family members, try to obtain legal counsel, and organize the facts and any legal arguments that might defeat the government's charge that the child entered the US without legal authorization and is removable.



Unaccompanied minors from Central America shortly after being smuggled into south Texas across the Rio Grande in mid-September. More than 36,700 juveniles from troubled spots in Central America arrived in the Rio Grande Valley last year, most of them will face a judge in US immigration court – many will do so without the benefit of a lawyer. Warren Richey

Many analysts familiar with the widespread violence in El Salvador, Honduras, and Guatemala say that a judicial order sending someone back to Central America – regardless of their age – might well become a death sentence. They say children with a credible fear of violence or severe mistreatment upon return to their home country might qualify for asylum in the US.

But these analysts say asserting a successful asylum claim would almost certainly require the assistance of a lawyer experienced in immigration law. To try to make such a claim alone would be an almost insurmountable assignment – even for an adult.

“I need legal representation to help me speak to defend myself,” says Sister Norma Pimentel, director of Catholic Services in the Rio Grande Valley. “How can a 7-year-old do that?”

As someone who interacts every day with women and children arriving from Central America, she says it is important to understand why they are coming to the US – and that they are not running away from the law.

“They are turning themselves in,” she says. “They are saying help me, please, I need your protection.”

A violation of due process?

That collective plea has posed a moral quandary for America: how to balance a compassionate response to a humanitarian crisis while also trying to establish a credible deterrent that will discourage parents and children in the future from attempting the dangerous trip from Central America.

In the summer of 2014, the Obama administration struggled to respond to large numbers of unaccompanied children from Central America arriving in the US. Officials appealed to Mexico to step up enforcement at its southern border, and US immigration judges started to prioritize cases involving children from Central America.



Young girl (in red) is questioned by a Border Patrol agent after arriving unaccompanied in south Texas. She claims to be 13 years old and presents a document that identifies her as Guatemalan. But agents suspect she might be Mexican and far younger than 13. Warren Richey

They created a “rocket docket” to expedite removal hearings involving children, which has made it harder for children to find a lawyer and organize an effective case, analysts say. And it has made it easier to order certain children to be removed from the US.

“Until the government recognizes the need for universal representation and allocates sufficient funding to make it a reality, it is up to the legal community to respond,” the American Bar Association said in a “humanitarian call to action” to lawyers last year.

Advocates for children who are unauthorized immigrants argue that the lack of legal counsel violates the due process requirement of the Constitution’s Fifth Amendment. It is unfair to require a child to fend for herself against a government lawyer well-trained in the intricacies of immigration law, which some suggest is second only to the US tax code in complexity.

Government lawyers have argued that unlike in criminal prosecutions, governed by the Sixth Amendment, there is no requirement that someone facing deportation be granted a court-appointed, cost-free lawyer. Everyone is entitled to a lawyer, but there is no provision requiring US taxpayers to pay for it in every legal case.

Congress passed a law in 2008 that requires that the government work “to the greatest extent practicable” to arrange lawyers willing to represent unaccompanied children in immigration court free of charge. However, that provision within that 2008 Trafficking Victims Protection Reauthorization Act is a suggestion, not a requirement.

Surge in pro-bono work

A number of groups have organized to address the issue. The ABA sponsors an organization in Harlingen called the South Texas Pro Bono Asylum Representation Project (ProBAR). Similar groups are working in immigration courts across the country.

Kids in Need of Defense (KIND), a group based in Washington, D.C., has helped arrange pro bono legal representation for more than 9,100 children. It has also trained more than 11,000 lawyers for this type of volunteer work over the past seven years.

One of the major benefits of providing legal representation to children in immigration court, analysts say, is that it helps the entire system work more efficiently.

Juveniles represented by counsel are substantially more likely to attend their final court hearing. Roughly half of juveniles with no lawyer failed to show up for their immigration court hearing. Their cases were decided in their absence, according to TRAC data of cases resolved from 2012-15.

In contrast, 98 percent of juveniles represented by counsel showed up for their final hearing during the same period, according to TRAC data.

Class-action lawsuit

A class-action lawsuit filed in 2014 asked a federal judge in Seattle to declare that requiring a child to appear in immigration court without the benefit of a free, court-appointed lawyer violates the fundamental requirement of due process.

In September, a federal appeals court threw the case out, ruling that the legal issue was within the jurisdiction of the immigration courts to decide rather than for a federal court to decide.

The three-judge panel stressed that it was not addressing the merits of the underlying case. But in a concurring opinion, Appeals Court Judge M. Margaret McKeown said that Congress and the executive branch should address the issue rather than waiting for a judicial ruling on the due process question.

"The problem demands action now," she wrote.

"The border crisis created what has been called a 'perfect storm' in immigration courts, as children wend their way from border crossings to immigration proceedings. The storm has battered immigration courtrooms crowded with young defendants but lacking lawyers and judges to handle the sheer volume of cases," she wrote.

There is only so much a dedicated immigration judge can do in the face of such a problem, she said. "Those judges may sometimes hear as many as 50 to 70 petitions in a three- to four-hour period, leaving scant time to delve deeply into the particular circumstances of a child's case."

Back in the Harlingen courtroom, a second group of juveniles enter after Alejandra's exchange with the judge.

A girl named Marianna tells Judge Ayala that she speaks Spanish and some English.

The judge asks how she learned English. She replies that her mother had been teaching her English since she was 6 years old. Marianna is 7.

"Where is your mother?" Judge Ayala asks.

"In El Salvador," the girl says.

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<http://www.csmonitor.com/USA/Politics/2016/1101/Alejandra-age-7-is-facing-a-judge-alone.-Is-that-due-process>

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