



**FLORENCE
IMMIGRANT
& REFUGEE
RIGHTS PROJECT**

January 28, 2020

Statement to the House Judiciary Committee

“Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts.”

The Fast-Tracking of Detained Unaccompanied Children to Deportation

The Florence Immigrant and Refugee Rights Project’s mission is to provide pro bono legal and social services to detained men, women, and children facing removal proceedings. In our role as a designated legal service provider that works with unaccompanied minors in Arizona, we provide Know Your Rights presentations, legal screenings, and legal referrals once children reunify. We also provide representation for unaccompanied children who have no sponsor and are detained in Arizona.

If a child is in Arizona when their Notice To Appear (NTA) is filed, the Florence Project appears in EOIR as “Friend of the Court” to assist the Phoenix Immigration Court with the special needs of the detained children’s docket. The majority of detained children will only briefly appear in Phoenix EOIR because they are in the process of being reunified to live with family in another state. As Friend of the Court, we provide information to the court about the child’s reunification case and the timeline necessary to place that child in the least restrictive setting so that the child can begin the removal process once they are with family and settled in the community.

For any child that does not have a sponsor, the Florence Project meets with the child, enters into an attorney-client agreement and provide representation for this child while they are detained in Arizona. Our clients are resilient children who have fled abuse, trafficking and persecution in their countries of origin.

In October 2019, the Department of Homeland Security and EOIR began a pilot program to fast-track the deportation of detained unrepresented unaccompanied children in Phoenix, Arizona. This pilot program is an attack on the long-standing processes and well-established body of law and guidance that protect unaccompanied alien children’s fundamental due process rights. The pilot program strips detained unaccompanied children of those protections and asks them to defend themselves alone in a courtroom against seasoned government prosecutors. This results in removal orders before a child can exercise her right to be placed in least restrictive setting, an essential protection guaranteed under federal law.

Unaccompanied Children Before EOIR Prior to October 2019

Prior to October 2019, EOIR managed the detained unaccompanied children docket with safeguards in place that aimed to respect due process, the Flores Settlement, and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The TVPRA provides unaccompanied children with the right to be placed in non-expedited 240



removal proceedings, and with further specific safeguards within that process. The TVPRA and Flores Settlement Agreement mandate that unaccompanied children be placed in the “least restrictive setting” and released from ORR custody as soon as a safe sponsor has been identified. Other Executive Office of Immigration Review Operating Procedures Memoranda provide guidance to immigration judges regarding child friendly practices involving unaccompanied children and the facilitation of pro bono legal services and encouragement of appropriate requests for continuances in the context of pro bono representation, particularly in the context of minor respondents.

Based on the law, DHS agreed that the Notice of Appear (NTA) for a child was filed 60 days after their arrival in an ORR shelter. This allowed for the sponsor of the child to move through the ORR custody and reunify with a sponsor in the “least restrictive setting.” Once reunified, the child’s NTA was filed in the venue near their sponsor.

After 60 days, if the unaccompanied child was still detained and in reunification process, the Florence Project as Friend of the Court assisted the child by notifying the Court that the child was still in ORR custody completing the reunification process. EOIR did not allow an unrepresented child to enter pleadings under 8 CFR 1240.10(c). DHS agreed to these continuances and EOIR granted continuances accordingly. The majority of children reunify outside of the jurisdiction of Arizona where ORR first detains them, and therefore such an approach is resource saving measure for the court deemed appropriate for ease of court administration until this point.

Unaccompanied Children in EOIR after October 2019

As of October 2019, DHS has been filing the NTA within days of the child’s arrival with the Phoenix Immigration Court. EOIR has permitted children exposed to trauma and abuse to be subjected to rapid proceedings that undermine current law and protections. Within three months, EOIR created over fourteen dockets fully dedicated to rapidly moving over 300 children’s legal cases without considering their special needs and protections. In those proceedings, advocates witnessed the following:

- Just last Thursday, January 23rd, 2020, a 16 year old indigenous Kiche-speaking boy from Guatemala set to reunify in two weeks, and asked to enter pleadings without an attorney ultimately ordered removed. Bypassing 8 CFR 1240.10(c), and pushing this case forward without considering due process, the Court ordered this unrepresented child removed.
- A 10 year old girl whose mother is deceased, whose father abandoned her, and who fled to the United States with her 3 sisters—two of whom are detained with her in the same facility. She began to cry when the judge asked her where her parents were at this moment. Since she is set to reunify, so it is unclear why DHS and EOIR are eager to further traumatize this child by bringing her to a Court that will not ultimately hear her case.
- DHS filed an NTA in the Phoenix Immigration Court on 10/18/2019 even though the child had reunified with his sponsor 9 days earlier and was no longer



FLORENCE
IMMIGRANT
& REFUGEE
RIGHTS PROJECT

in Phoenix, Arizona. The Court noted that there may not be jurisdiction vested given the child had left the area more than a week earlier prior to the NTA being filed. In the unbridled rush to proceed with these cases, this pilot project merely creates more procedural inefficiency for EOIR.

- An indigenous Ixil-speaking boy from Guatemala appeared in EOIR and had to communicate in barely understandable Spanish because there was no Ixil interpreter. He repeated over and over "*Quemado mi casa, quemado mi casa*"— they burnt my house. In the rush to move this child through proceedings, the Court did not pause to reset the hearing in the child's indigenous language but rather offered a very short continuance that did not address the underlying need for the child to communicate fully with the Court in his language. The child was forced to relive a serious trauma and try and express himself in language that he did not understand.

The Florence Project believes that this pilot program is meant to remove children rapidly and quietly. In its ultimate manifestation, the pilot program pushes children into court faster than they have been required in the past, overwhelms the resources of the Florence Project in order to undermine its ability provide meaningful representation, and creates a veneer of due process without any of the actual protections.

If you require any additional information, please contact me.

Sincerely,

Golden McCarthy, Esq.
Deputy Director
The Florence Immigrant and Refugee Rights Project