

# United States Senate

WASHINGTON, DC 20510-3205

May 6, 2021

Dear Chairwoman Murray and Ranking Member Blunt:

As unaccompanied children continue to seek potentially life-saving protection in the United States, it has never been more important that they have attorneys to uphold due process and ensure efficiency in their immigration proceedings. As you begin to craft the Fiscal Year (FY) 2022 Labor, Health and Human Services, Education, and Related Agencies (LHHS) funding bill, we respectfully request that you provide no less than \$300 million in funding for legal services for unaccompanied children through the Administration for Children and Families (ACF)'s Office of Refugee Resettlement (ORR).

**President Biden has made the provision of counsel for children a chief priority in his immigration agenda**, in recognition that without legal representation, the immigration system lacks fairness and due process – particularly for vulnerable children. The President's 2022 discretionary request provides \$4.3 billion to the Office of Refugee Resettlement (ORR). This funding includes the Biden Administration's specific commitment to ensuring that unaccompanied immigrant children are provided with care and services that "include expanded access to counsel to help children navigate complex immigration court proceedings."

**Federal law does not guarantee government-appointed counsel in immigration court if the person is unable to afford a lawyer.** Yet without representation, it is nearly impossible for individuals to navigate our complex immigration laws and system. This is particularly true for children and other vulnerable populations. Unaccompanied children face daunting barriers to navigating their immigration cases due to their age, lack of familiarity with immigration laws, language barriers, and prior trauma. Rapidly changing immigration policies only compound the difficulties of preparing complex immigration cases, the outcome of which could have life-or-death consequences.

Recognizing these vulnerabilities, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) directs ORR to ensure "to the greatest extent practicable" that all unaccompanied children "have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking."<sup>1</sup> Though ORR already provides funding to support legal services for children in ORR custody as well as some released children, **more than half of unaccompanied children still lack attorneys to represent them in immigration court.** Far from a novel problem, year after year many if not most unaccompanied children face immigration court alone. It is imperative that Congress meaningfully confront this systemic due process failure, which directly imperils children's safety.

Indeed, data from the Executive Office for Immigration Review (EOIR), covering the period of

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<sup>1</sup> 8 U.S.C. § 1232(b)(5).

FY 2018 and the first half of FY 2019, reveals that immigration judges were 70 times less likely to grant relief to unaccompanied children without counsel than their represented counterparts, leaving many of them vulnerable to deportation to the same dangers they fled.<sup>2</sup>

**The impact of court-appointed lawyers will help transform the U.S. immigration court system.** In addition to making proceedings fairer, increased legal representation advances the government's interest in ensuring due process and efficiency in the legal system. More lawyers for vulnerable populations dramatically reduce the government's costs for detention, enforcement operations, and court proceedings. Children who are represented by counsel are typically [more prepared to proceed in their legal cases](#). Legal counsel can also assist with identifying family or community members to whom an individual could be released. All these factors reduce the time judges spend on each case and contribute to more efficient court processing. Given that the U.S. immigration court backlog is quickly nearing 1.3 million cases,<sup>3</sup> the enhanced efficiency afforded by attorneys is needed now more than ever.

For these reasons, we urge you to appropriate no less than \$300 million to ORR for legal services for unaccompanied children, including Know Your Rights presentations and legal screenings for children in ORR custody and direct representation for children released from ORR custody. We request, as well, that you include the following language in the Committee's FY 2022 report:

*“Access to Counsel” – The Committee is concerned that the extremely low rate of representation for unaccompanied children in immigration court proceedings is compromising the fundamental fairness and integrity of the legal process. The recommendation therefore includes no less than \$300,000,000 for ORR for unaccompanied children’s legal services to expand existing programming and improve the availability and quality of legal representation. The Committee recommends that ORR, in order to facilitate the provision of qualified and independent counsel, ensure that programming is operated by non-profit organizations with experience and expertise in providing legal services to immigrant communities, and that the funding be sufficient to assign representation for the duration of the removal case (including appellate matters), inclusive of collateral representation on matters pertinent to the removal proceeding, such as state court proceedings for Special Immigrant Juvenile cases.*

Thank you for your strong support and leadership to strengthen the provision of counsel for unaccompanied children and for considering our request.

Sincerely,

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<sup>2</sup> Figures calculated based on Executive Office of Immigration Refugee (EOIR) data published by the Congressional Research Service in its report titled “Unaccompanied Alien Children: An Overview,” p. 15 (Oct. 9, 2019); <https://fas.org/sgp/crs/homesec/R43599.pdf>

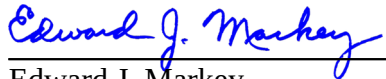
<sup>3</sup> TRAC, “Immigration Court Backlog Tool” (through Feb. 2020); [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/).



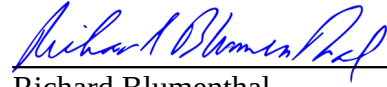
Kirsten Gillibrand  
United States Senator



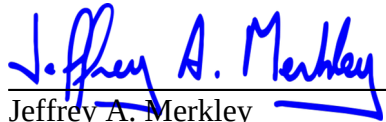
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United States Senator



Edward J. Markey  
United States Senator



Richard Blumenthal  
United States Senator



Jeffrey A. Merkley  
United States Senator



Kyrsten Sinema  
United States Senator



Cory A. Booker  
United States Senator



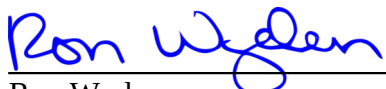
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United States Senator



Bernard Sanders  
United States Senator



Robert Menendez  
United States Senator



Ron Wyden  
United States Senator

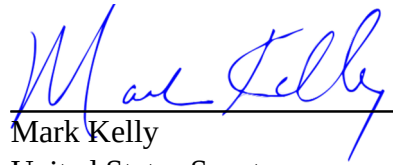


Tammy Baldwin  
United States Senator



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Elizabeth Warren  
United States Senator



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Mark Kelly  
United States Senator



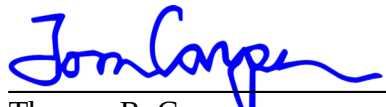
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Amy Klobuchar  
United States Senator



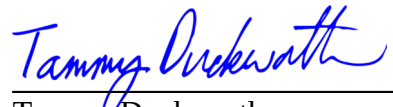
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Maria Cantwell  
United States Senator



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Thomas R. Carper  
United States Senator



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Tammy Duckworth  
United States Senator



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Tina Smith  
United States Senator



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Sherrod Brown  
United States Senator



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Raphael Warnock  
United States Senator