



Protecting the Due Process Rights of Children and Families in Deportation Proceedings

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By eight o'clock in the morning on July 31, 2014, more than thirty children ranging from two months to eighteen years old had crowded into an unused courtroom of the San Francisco Immigration Court. Younger children crouched together on the floors; some tussled over the contents of a large bucket of toys and stuffed animals, while others quietly paged through picture books donated by the San Francisco Public Library. Several mothers sat on the benches, nursing their infants and supervising their children's play. Most of the parents and guardians clutched in their hands crinkled copies of their notice to appear, the document stating the government's intention to order them deported from the United States.



Though deportation proceedings are the routine affairs of Immigration Court, this late-July docket was unique: it was the first appearance of unaccompanied minors and adults with young children whose cases had been expedited by President Barack Obama. These expedited dockets, also known as “surge” or “rocket” dockets, were created in response to the unprecedented numbers of unaccompanied children and families, predominantly from Central America, who crossed the border into the United States in the past year. Those waiting in the courtroom on July 31 came mainly from Honduras, El Salvador, and Guatemala. They had traveled to the Immigration Court in the heart of San Francisco’s Financial District from as far south as Bakersfield and as far north as Redding, and they had all arrived without attorneys.

The policy decision to expedite these cases presumed that these families and children did not have legitimate claims to immigration relief, and that their hearings should be sped up to facilitate quick and efficient deportations back to their home countries. By shortening the typical several-month-long wait for an initial hearing to a mere twenty-one days from the date

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navigate the notoriously complex immigration system. And the majority of these individuals have fled violence and neglect in their home countries so severe as to qualify them for protection from deportation. Many of the respondents qualify for asylum, a form of relief available to those who are fleeing persecution and are likely to face persecution if forced to return to their home countries. Many of the children qualify for Special Immigrant Juvenile Status, a form of relief that protects minors who have been abandoned, neglected, or abused by one or more parents.

When Bay Area advocates saw the government respond to this humanitarian crisis by obstructing children’s and families’ ability to find competent counsel, they mobilized to help secure representation and protect the due process rights of those on the expedited dockets. As a first step in the local response, The Bar Association of San Francisco (BASF) expanded its Attorney of the Day program, which for more than twenty-five years has calendared experienced immigration practitioners to offer pro bono same-day representation to immigrants facing deportation. Several judges’ calendars have been cleared and replaced almost exclusively with



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surge docket cases, and since the surge began in July, BASF has calendared up to eight volunteer attorneys each day. Though the crisis calls for an “all-hands-on-deck” mentality, the skills required to do this work effectively are specific and advanced. For example, an Attorney of the Day must be able to screen for all forms of relief that are possibly available, know what follow-up questions to ask to the information provided, and be skilled at interviewing children. Determining the eligibility for relief of a traumatized eight-year-old child makes for an emotionally charged interview that must take fewer than twenty minutes and will likely take place on an unoccupied bench in the court hallway.

Beyond expanding the Attorney of the Day program, BASF also has teamed with a consortium of immigration nonprofits and the immigration clinic at the University of San Francisco School of Law to form a local collaborative that recently was awarded city funding to provide pro bono representation for the families and children in proceedings.

Placing clients with competent counsel is an essential step, but it is just the first step in a long and complex

process. There are many logistical obstacles to representing these youth and families effectively. Sometimes it proves impossible to make contact with respondents whose phone numbers are already out of service by the time an advocate contacts them. Respondents living in rural counties, though they have strong cases that a pro bono attorney has gladly agreed to take on, cannot afford the cost of transportation to the attorney’s office. And while some foundations and local governments have allocated resources to pay for attorneys

for unaccompanied minors, fewer have recognized the similarly dire circumstances of adults with children (many of these “adults” are nineteen or twenty years old) who are also on the expedited dockets. It remains to be seen how these cases will fare before the immigration judges and what will become of those without representation who are ultimately deported back to conditions of violence in their home countries. In the meantime, advocates continue working tirelessly to defend the rights of those our system has failed.

Adina Hemley-Bronstein joined BASF’s Lawyer Referral and Information Service as the immigration surge case coordinator. Before joining BASF, she worked as a bilingual immigration paralegal at a private law firm in San Francisco, where she gained experience with consular processing, family-based petitions, deferred action for childhood arrivals, U Visas, and affirmative asylum applications.