



**Response to the Call for submissions on draft general comment No. 27  
on children's rights to access to justice and effective remedies**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

**Submitted 23 August 2024**

1. Founded in 1983, The Advocates for Human Rights (“The Advocates”) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact-finding, direct legal representation, education and training, and publication.
2. The Advocates is the primary provider of legal services to low-income victims of human rights abuses in the Upper Midwest region of the United States, last year serving more than 3000 immigration cases for people seeking asylum, unaccompanied children, trafficking survivors, and people in immigration detention.
3. The Advocates’ Immigration Court Observation Project, established in 2017, sends volunteers into the Fort Snelling Immigration Court in Minnesota (United States) to observe administrative hearings for people, including children, facing removal (deportation) from the United States. In 2024, the average age of juveniles observed in immigration court is 14. In October 2023, The Advocates published [\*Immigration Court Observation Project Issue Brief: Unaccompanied Children\*](#) (attached Annex I).
4. Based on our direct legal representation of clients and observation of juvenile cases in U.S. Immigration Court, our submission encourages the Committee to include in General comment 27 standards related to access to justice and judicial protection for children in immigration proceedings.

**Existing barriers preventing children from gaining access to justice and effective remedies  
in administrative immigration proceedings in the United States**

5. **Children face severe legal and practical barriers to accessing justice and immigration remedies.** U.S. immigration law and immigration courts fail to provide adequate protection for children, generally treating them as adults, including in removal (deportation) proceedings. U.S. immigration officials routinely use their discretion to charge unaccompanied children with immigration law violations and place them in removal proceedings before U.S. immigration judges. Immigration proceedings are adversarial administrative hearings which are not age-appropriate, trauma-informed, or adequately resourced to protect children. As a result, children are ordered deported without a full and

fair hearing to determine eligibility for protection under the Refugee Convention or other U.S. law.

6. Children face challenges in fully understanding their rights, responsibilities, and the potential pathways to legal status in immigration proceedings. Written information is not provided in child-friendly language. The court setting is intimidating, and, in our observations, children rarely ask questions. Nonetheless, the “best interest of the child” standard does not apply in immigration proceedings, and children must establish eligibility for protection from deportation under the same standards applied to adults.
7. Unaccompanied children, who are in the U.S. without a parent or legal guardian, are particularly vulnerable and need additional protection. They may have fled persecution, suffered violence during their journey, or experienced other traumatic events. They are also vulnerable to child labor, human trafficking and other exploitation. This trauma may impede their ability to understand and navigate the legal process. Our experience from observation and practice, however, is that even unaccompanied children must navigate the court system in much the same way as adults.
8. While U.S. law provides a pathway to legal status for children who have been abused, abandoned, or neglected, the law fails to provide children with help in obtaining that status. As a result, vulnerable children must manage multiple legal cases before federal agencies and state courts in a complicated system. In many cases, children must do so without support from a trusted adult. In some cases, adults who are their abusers are actively trying to prevent them from navigating the immigration system.
9. Children in U.S. immigration proceedings are held responsible for keeping track of court dates and arriving on time to hearings. Missing a hearing can result in an *in absentia* removal order and subsequent removal or challenges in reopening the case.
10. Of the juvenile docket cases observed by The Advocates in 2024, approximately 40% of unaccompanied minors have failed to appear for their first hearing. Through immigration court monitoring, The Advocates has documented a multitude of reasons that children fail to appear at their hearings: they’ve moved and didn’t get the hearing notice; an adult did not give them the hearing notice; they don’t have transportation; someone prevented them from attending (trafficking or exploitation); they are afraid of being deported and don’t understand their right to apply for relief or protection; they haven’t been able to complete an application for relief given by the judge; they don’t know that they must return; they thought they weren’t supposed to return to court without an attorney; or they don’t understand the difference between the various agencies in the U.S. immigration system and the expectations of each.
11. Immigration judges are obliged to consider “the totality of the circumstances” before issuing an *in absentia* removal order. Observers report that immigration judges often do little more than check whether a hearing notice has been returned or a change of address has been filed before ordering a child removed. While recent policy guidance (see para. 14) has resulted in immigration judges typically scheduling a new hearing if a child misses court one time, The Advocates’ court observers report that immigration judges regularly order children, including children as young as five years old, deported when they fail to appear a second time.

12. Motions to reopen a case after an *in absentia* removal order is a legal option, but there are many legal and logistical barriers for children. Most children aren't aware that they've received a removal order and aren't able to file motions without legal assistance. Some may only learn about the removal order years later as adults when remedies are foreclosed or when the order of removal is executed. If when a child is aware that they have an *in absentia* order and are able to overcome barriers to request that the case be re-opened a grant of this request is not guaranteed.
13. The U.S. Department of Justice's Executive Office of Immigration Review (EOIR), which oversees U.S. immigration courts, provides few accommodations for children. EOIR memorandums set forth guidance on accommodations, but implementation lacks funding support, and is inconsistent and deficient. Memorandums can also be easily rescinded or changed to meet new policy priorities.
14. EOIR updated their guidance regarding cases involving children with Memorandum DM 24-01, *Children's Cases in Immigration Court*.<sup>1</sup> Recommendations included judicial training on abuse/trafficking and trauma and implementing child-centered practices. For example, DM24-01 guidelines suggest that children be oriented to the courtroom in advance, even being able to sit in the judge's chair, and that the role of the various government participants be explained in advance. From our monitoring of hearings in the Fort Snelling Immigration Court, this is not happening. It's unclear if it is happening in any U.S. immigration court as implementation of the guidelines has been lacking and uneven.
15. The new DM24-01 guidelines also instruct the judge to inform children of eligible forms of relief and where to file. In our observation of unaccompanied minors in immigration proceedings, judges fail to consistently inform children of their legal rights to apply for asylum or other relief from deportation available under U.S. law. In cases in which they do provide information, it is often vague and confusing. Examples of witnessed vague information are: "You need an attorney because kids have other options, and it's complicated" or "You may file with USICS, you may file with the court."
16. In our observation, the U.S. immigration system lacks the necessary safety assurances for children. We frequently hear reports of children kicked out of a family member's home, of kids living in cars, or "couch-surfing". We hear about kids who are not attending school and working without pay. We observe signs of stress, depression, anxiety and fear.
17. The guidelines in DM 24-01 state that judges must report suspected neglect, abuse, and/or trafficking.<sup>2</sup> Immigration judges lack adequate training and often fail to identify signs of victimization. Furthermore, when immigration judges do identify these flags during a child's hearing, we generally see them handle the matter by asking the child repeated questions in open court. This can create safety risks, traumatization, and is ineffective. As a result, immigration courts do not provide safe wholistic interventions for children in high-risk situations.
18. **Absence of legal representation:** Because immigration proceedings in the U.S. are administrative proceedings, individuals lack the right to appointed counsel. Therefore, children must find an attorney if they wish to have counsel. Individuals in immigration proceedings in the U.S. who have representation are more likely to appear in court, have

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<sup>1</sup> David L. Neal, Director. [Children's Cases in Immigration Court](#). U.S. Department of Justice (December 21, 2023).

<sup>2</sup> David L. Neal, Director. [Children's Cases in Immigration Court](#). U.S. Department of Justice (December 21, 202)

their case granted, receive bond at a lower rate, and be identified as a victim eligible for additional forms of relief from deportation.<sup>3</sup> However, in the U.S. there are not enough free legal services or private attorneys available to meet the demand. Recent statistics are that seventy percent of people in immigration court proceedings are pro se;<sup>4</sup> according to EOIR, only 56% of all pending Unaccompanied Alien Child cases and 61% of UAC cases pending for more than one year have legal representation, as of March 2024.<sup>5</sup>

19. The U.S. government's failure to provide unaccompanied children with access to free legal counsel violates due process and results in fundamentally unfair hearings. In addition to leaving children without qualified assistance, the absence of accessible legal counsel increases the risks of children being scammed by fraudulent practitioners. In the U.S., Notario fraud is commonplace, as children cannot distinguish a fraudulent practitioner from a licensed attorney.
20. **Language Barriers:** Based on the information we have collected from our court monitoring, we have found that the overwhelming majority of children appearing in immigration court do not speak English. While a government interpreter is provided during court hearings, children in immigration proceedings are afforded virtually no language access in other necessary instances. If children speak a language other than Spanish, the court may be unable to access a telephonic interpreter; children may have their hearings rescheduled. Our observation data shows that children often leave the court without knowing what happened due to the lack of interpretation.
21. All court submissions, including applications for legal status and all supporting evidence and documents, must be in English. This means children must access translation services, which constitutes a significant barrier.
22. Even with translation, the proceedings are opaque to children. In the U.S., the advisal scripts in the Immigration Judge Bench Book are not written for children.<sup>6</sup> Though the guidance from EOIR is that judges use plain language, there are no standardized or required child-appropriate scripts. Some observed examples include:
  - Judges refer to a child as “respondent” rather than using their name;
  - Judges attempt to explain legal requirements in a “friendly” way, making it difficult for children to understand what is an order and what is just a suggestion.
  - Judges tell kids that immigration law is complicated and they need legal help, but provide no support to help them acquire it.
23. **Financial barriers:** The cost of hiring a private attorney can range from \$8,000-\$15,000. This is cost prohibitive for most working adults, and an impossible barrier for children. Children who are age-eligible for work authorization face the same barriers as adults and often cannot obtain a work permit either due to the particular circumstances of their case or mandatory wait times for work permit applications. Many children live far from court,

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<sup>3</sup> See, e.g., Eagly, Ingrid and Steven Shafer, [Access to Counsel in Immigration Court.pdf](#) (2016).

<sup>4</sup> [Too Few Immigration Attorneys: Average Representation Rates Fall from 65% To 30% \(syr.edu\)](#)

<sup>5</sup> [U.S. Immigration Courts: Access to Counsel in Removal Proceedings and Legal Access Programs \(congress.gov\)](#)

<sup>6</sup> In the U.S. Advisal scripts in the Immigration Judge Bench Book are pre-written statements or outlines used by Immigration Judges to inform individuals of their rights and obligations during immigration proceedings. These scripts are designed to ensure consistency and clarity in conveying essential information to those involved in the process. See <https://www.lb7.uscourts.gov/documents/15-37302.pdf>

so the cost of transportation to court can be prohibitive. In addition, qualified translation services can be expensive.

24. **Transportation barriers:** Immigration courts in the U.S. have large geographical jurisdiction and many children in immigration proceedings reside hours away from the court. Many lack the transportation and resources to physically get their immigration hearings. While it is possible to attend court via video conference technology, judicial discretion varies regarding the allowance and explanation of this technology, while many children lack the understanding and access to the required technology.

**Based on lessons learned from our evidence and practice, The Advocates kindly makes the following recommendations:**

**25. Addressing legal barriers**

- States should abstain from placing children into adversarial immigration proceedings.
- States should abstain from issuing deportation orders for children, including when they fail to appear for scheduled immigration hearings.
- States should undertake legislative and administrative measures to ensure immigration administrative proceedings are child-appropriate, trauma-informed, and accessible to children. The States must ensure that the principle of best interests of the child, as well as mandated children appropriate and trauma-informed accommodations and procedures are recognized by legislative or regulatory provisions in order to guarantee children’s legal certainty and enforceability.
- States should implement substantive measures that ensure that immigration proceedings are accessible and available for children, including developing or increasing technology tools to enhance remote options for procedures such as hearings and work with local organizations, other courts or government agencies to provide space for private connections.
- States should address any barriers that hinder children from getting the identity documents necessary to access benefits and support systems.
- Immigration judges, government attorneys, court personnel, and interpreters should receive regular training on making proceedings age-appropriate and trauma-informed, complying with the best interest of the child standard.
- Immigration judges and government attorneys with unaccompanied child cases should receive specific training on legal pathways for unaccompanied minors, signs of abuse or exploitation, child development, and other child-centered, trauma-informed practices that support due process for children in court.

**26. Addressing potential intersecting vulnerabilities**

- States should ensure the implementation of a continuous case management process for unaccompanied children to address their mental health and safety needs when releasing children to sponsors or guardians.

- States should undertake all necessary follow-up procedures to ensure sponsors and guardians of children understand and comply with any immigration responsibility, including when and where to appear in court and how to find competent legal counsel.
- States should ensure that children in removal proceedings have access to protections provided under law.
- States' legislative bodies should appropriate and allocate necessary and sufficient funds to ensure legal representation of children, especially unaccompanied children, in immigration proceedings.
- States should appropriate and allocate necessary and sufficient funds to expand language accessibility to legal procedures for children. Language interpretation should be provided at all times during legal proceedings for children who speak a language other than the one used in the courtroom.
- Courts and related State agencies should ensure that written court materials are in plain language, child-appropriate and multi-language accessible.
- States should provide, without cost, translation of documents filed by children.

#### **27. Implementing child-appropriate procedures**

- Immigration judges, government attorneys, court personnel, and interpreters should receive mandatory training on best practices for communicating with children. Judges should be required to actively verify a child's understanding during court proceedings.
- Courts should institute a program to orient children to the courtroom before their first hearing and create developmentally appropriate, multi-language accessible videos to introduce children to immigration proceedings.