

# Legal Representation: A Vital Safeguard to Protect Unaccompanied Children from Labor Exploitation

Recent media articles and investigations have documented devastating and widespread labor exploitation of unaccompanied migrant children throughout many U.S. companies and industries.<sup>1</sup> Many children have worked long hours or overnight shifts in factories producing goods or cleaning dangerous industrial equipment. Harmful conditions have led to chronic illness, the loss of limbs, and other severe injuries. These reports have garnered critical attention to the need for meaningful action by government agencies, companies, and policymakers to prevent such harms and to better protect unaccompanied children. This awareness must be met with sustained and coordinated efforts to eradicate unlawful and exploitative conditions.

In its work providing legal and social services to thousands of unaccompanied children, Kids in Need of Defense (KIND) has witnessed the fundamental role that legal representation plays not only in assisting unaccompanied children in navigating their immigration proceedings and securing humanitarian protection against dangers they fled in their countries of origin, but also in identifying and safeguarding children against other threats to their wellbeing.

This Policy Brief examines the protective benefits of legal representation for children as a vital safeguard against labor exploitation. It draws upon the experiences of KIND clients and staff to illustrate ways in which attorneys can help to identify and mitigate risks, refer children for support from appropriate providers and authorities, and aid children in achieving safety and stability in their local communities. The brief concludes with recommendations for expanding legal representation of unaccompanied children as a critical component of a holistic strategy to eradicate child labor exploitation.

## Risks Facing Unaccompanied Children Post-Release

Many unaccompanied children have fled life-threatening persecution, abuse, and other dangers in their countries of origin. After arriving to the U.S., unaccompanied children are referred to the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR), which under the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA) is responsible for providing for the child's care and custody and the identification of a safe and suitable sponsor who can care for the child during their immigration proceedings.

<sup>1</sup> See, e.g., Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. Times, Feb. 25, 2023, <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>; Katie Johnston, *'I've learned that things have a cost.' Meet the migrant children working long hours in factories and fish plants across Mass.*, Boston Globe, updated Mar. 26, 2023, <https://www.bostonglobe.com/2023/03/26/business/ive-learned-that-things-have-cost-meet-migrant-children-working-long-hours-factories-fish-plants-across-mass/>.

Most unaccompanied children are first placed in an ORR-contracted shelter, while ORR works to identify and evaluate a safe and suitable caregiver. Following release to an approved sponsor, children prepare for and attend complex immigration proceedings with serious implications for their lives and safety, often while trying to heal from severe trauma and grappling with numerous and significant life changes. Many children confront mounting stresses during this period, from acclimating to a new language, school, and community to reunifying with family members potentially after several years. Depending on the form of legal relief they are seeking many unaccompanied children are not eligible for a work permit while still in removing proceedings and awaiting adjudication of their applications. Children must often manage these challenges with limited financial or psychosocial support—a disparity that only deepens their vulnerability to exploitation. The period during and after a child's release from government care presents a critical opportunity to safeguard children's wellbeing, nourish resilience, and prevent labor exploitation by connecting children to necessary legal and social services to support them.

## Legal Representation

The TVPRA's specific protections for unaccompanied children recognize the importance of legal representation in preventing children's harm or exploitation and in helping them to navigate complex immigration procedures created principally for adults.<sup>2</sup> Specifically, the TVPRA provides that ORR must “to the greatest extent practicable” provide children with “**counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.**”<sup>3</sup> This critical support holds lifesaving potential for children, both in and outside of their immigration cases.

Currently, ORR supports a network of nonprofit legal services providers to facilitate legal representation for unaccompanied children. However, to date many if not most unaccompanied children have not had an attorney to represent them. ORR has set a goal of ensuring legal representation for 100 percent of unaccompanied children by 2027, a vital commitment that will require sustained resources and efforts by the agency and Congress to realize. This persistent due process gap not only exacerbates disparities in the outcome of children's immigration cases, but also neglects significant opportunities to identify and address the myriad risks a child may be facing, both stemming from and independent of their immigration case.

## Attorney's Role in Identifying and Preventing Labor Exploitation

Many unaccompanied children first connect with counsel through referrals from ORR after their release from government care. This professional relationship, which often begins with an introductory meeting and intake to learn more about the child and their potential legal case, provides a critical touchpoint from which to identify and address needs and risks an unaccompanied child may be experiencing.

**Developing trust and rapport.** Having fled persecution, abuse, or other threats to lives and safety in their country of origin, many children are eligible for forms of humanitarian protection in the U.S. For many children, the harms they fled may persist or be compounded once in the U.S. Circumstances such as the breakdown of living arrangements, abuse, financial insecurity, and trafficking and exploitation in employment only deepen children's vulnerability.

Despite great need, many children naturally experience significant fear of disclosing traumatic and sensitive experiences. This is especially the case for children who have survived serious harm or abuse at the hands of adults and other authority figures. During the course of regular meetings over months or years and owing to the confidential nature of the attorney-client relationship, many children gradually are able to develop deep trust and rapport with their attorney, who may serve as one of the only adults in a child's life with whom they feel safe discussing exploitation or other circumstances indicating a need for protection.

<sup>2</sup> See Cong. Rec. Senate, at S10886-87 (Dec. 10, 2008), <https://www.congress.gov/crec/2008/12/10/CREC-2008-12-10-pt1-PgS10886.pdf>.

<sup>3</sup> 8 U.S.C. § 1232(c)(5).



**Identifying risks and facilitating assistance.** During representation, children may disclose medical needs, safety risks, homelessness, abuse, situations of trafficking, or exploitative working conditions. Some of these circumstances may directly relate to a child's underlying immigration case, or as in the case of severe trafficking, exploitation, or abuse, may give rise to eligibility for additional forms of humanitarian protection. These and other challenges, such as food and housing insecurity, illness, bullying at school, or dangerous working conditions, may also indicate the need for social services support, medical care, or the involvement of other professionals or authorities. In such cases, the attorney can provide the child with information about their rights and options, referrals and resources for further assistance, and with the child's permission and where appropriate, can report needs to authorities to assist before harmful situations further deteriorate or imperil the child.

Counsel's well-developed professional relationship with the child can prove especially important to the timely identification of exploitation and the coordination of necessary supports. Children experiencing labor trafficking and other abusive or exploitative circumstances may be restricted in their ability to communicate or be forced to move between states or jurisdictions. Out of reach of others in whom they may confide, some children may reach out to their attorney for help. With the child's permission, an attorney can collaborate with other professionals to ensure the child's access to assistance where they are located.

**Access to benefits and support services.** In tandem with a child's legal case, attorneys can also help children access important support services for which they may be eligible. This could include, for example, interim assistance from the Department of Health and Human Services' Office on Trafficking in Persons (OTIP), which enables access to critical benefits, similar to those provided to refugees, for survivors of trafficking that can help stabilize a child's circumstances. These benefits include case management, food and cash assistance, health insurance, education, and housing.<sup>4</sup> Interim assistance may also help a child access the Unaccompanied Refugee Minors (URM) program, which provides for children's care with a foster family or in a group home. Absent an attorney to represent them, many children remain unaware of their eligibility for legal relief or forms of assistance created specifically for survivors of the harms they have experienced. With legal representation, if a child discloses they are being mistreated, an attorney can explain the child's rights, offer alternatives, and help counsel the child to make a decision that reflects the child's best interests.

**Access to humanitarian protection.** Without lawful immigration status, many unaccompanied children remain at risk of deportation to the same harms they fled. Traffickers, unscrupulous employers, and criminal actors frequently prey upon children's fear of removal, their age, and financial insecurity to lure or force children into exploitative conditions or to compel them to remain in them. These circumstances only compound children's trauma and heighten the risks facing them. Attorneys play a vital role in evaluating children's eligibility for legal protection, counseling children on potential options, and helping children to complete applications for relief where eligible. Such assistance frequently entails specialized experience working with survivors of harm and exploitation and in collaborating with social workers and other relevant professionals to ensure the child's immediate and long-term safety and wellbeing. For many children, legal assistance is lifesaving and both prevents deportation to danger and enables them to escape situations of harm, abuse, and exploitation in the U.S. With permanent protection, children can gain the stability needed to begin healing from trauma and to pursue long-term goals and security.

Humanitarian relief has enabled KIND clients to obtain desperately needed protection from forced labor, trafficking, and exploitation and to achieve previously inaccessible milestones such as graduating from high school, attending college, and working and living in safety.

<sup>4</sup> See Dep't of Health and Human Services, ACF, Office on Trafficking in Persons, Child Eligibility Letters <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters>.



**Access to work authorization and safe, lawful employment.** Lack of immigration status often prevents older teenagers from obtaining work authorization, which enables access to safe and lawful employment opportunities and lessens vulnerability to exploitation. Work authorization may also support children of non-working age, who frequently rely on work permits as their only form of government-issued photo identification, even where not used for work, to access basic services. For example, children may be asked to present government-issued identification to acquire a driver's license or a social security card, the latter of which may be needed to access health insurance or other critical care. Attorneys can help in timely applying for this vital benefit where children are eligible and help to mitigate the risk that children will be forced into unsafe working conditions.

## Recommendations for Increasing Legal Representation

Legal representation serves as a fundamental safeguard to protect the wellbeing and rights of unaccompanied children. This critical support can and should be leveraged as part of broad efforts to prevent child labor exploitation by ensuring that all children are provided attorneys to assist them. Accomplishing this vital goal necessitates an ongoing commitment by HHS to timely allocating funds appropriated by Congress for these children's legal services, together with congressional action to increase funding to enable the expansion of these services to all unaccompanied children and to ensure responsiveness to any future needs.

