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## Obama plan leaves child migrants adrift

After all of the public furor over the border surge last summer, the children seem to have dropped off the political map.

by [David Rogers](#)



One year later, child migrants from Central America are still paying a heavy price for President Barack Obama's decision last summer to rush them into deportation proceedings without first taking steps to provide legal counsel.

New government data this week offer a first, full-year tally for the immigration courts, and the numbers show that among the 13,451 cases completed since July 18, 2014, barely half the children had legal representation.

The picture has improved over time, but in 38 percent of the cases completed since last Christmas, the child was still without counsel. Even since mid-April, there have been an average of 100 case completions per week in which there is no record of a defense attorney.

At one level, this picture is skewed by the stubbornly high level of deportation orders issued by judges "in absentia," when the child defendant does not appear in court. But migrant rights attorneys argue that this is a Catch-22 situation: Without access to counsel, more children stay away and have no realistic chance of appeal.

Local governments, such as New York City, have stepped in to try to fill some of the holes. But Republicans in Congress are refusing to provide money sought by Obama for attorneys. And a bill introduced by Rep. Hakeem Jeffries (D-N.Y.) in March to require the Justice Department to appoint counsel remains buried in the House Judiciary Committee.

The political stalemate in Washington has driven constitutional appeals to the federal courts, but thus far, these have produced more promises than real relief.

On April 13, U.S. District Judge Thomas Zilly in Seattle ruled that the right-to-counsel claim for the children raised a genuine question of due process and deserves "an answer." But in the months since, Zilly has been largely silent even as close to 1,500 more children have had their cases completed without the benefit of a lawyer.

Indeed, after all of the public furor over the border surge last summer, the children seem to have dropped off the political map.

The press and courts are much more aggressive in addressing recent complaints about the administration's practices at family detention centers, for example. Many more children are impacted by the right-to-counsel issue, but it has none of the same visibility.

The fresh numbers this week come from the Executive Office of Immigration Review, which oversees the immigration courts from within Justice. Soon after Obama's decision last year, EOIR altered its record-keeping to keep closer tabs on those unaccompanied children from Central America most affected — as opposed to juveniles more broadly in the immigration courts.

Through the past year, POLITICO has collected these reports as a running marker — so to speak — of what the children were facing. For the first time, the new EOIR totals cover the full 12 months from July 18, 2014, through July 28 of this year.

In that period, the nation's immigration judges held a total of 29,233 master calendar hearings to arraign the children, who had crossed the Southwest border in record numbers last spring and early summer. The fast pace in the courts was at Obama's direction, and the White House hoped this get-tough approach would send a message to families back in Central America and also save its immigration reform agenda in Congress.

In fact, the number of border crossings by unaccompanied children dropped off, largely because of Mexico's increased help in intercepting migrants traveling from Central America. But the level of gang violence in the region — most especially El Salvador this year — remains a concern. Against this background, the administration recently began a new round of Spanish-speaking media announcements dubbed "Know the Facts" and targeted at families in Mexico, El Salvador, Guatemala and Honduras.

But in the same time frame, Obama's gamble on immigration reform has fallen on hard ground. And the rapid pace of the so called "rocket dockets" that he set in motion clearly overwhelmed the fragile network of pro bono lawyers and nonprofit legal aid groups available to the children.

In the first months, from July 18 to Dec. 23, 2014, for example, EOIR tallied 4,250 case completions, in which just 27 percent of the children had an attorney. By mid-April this year, that share had grown to about 40 percent. Just counting the cases completed from April through July, about 58 percent of the children impacted were assisted by counsel.

Nonetheless, even in this narrow, refined window, almost a third of the children are still having their future decided without the benefit of defense counsel. And the record continues to show that those without lawyers are most likely to receive orders of removal or feel pressured to agree to voluntary departure.

Among the cases completed since last summer, fully 57 percent resulted in removal orders or voluntary departure, according to EOIR. Overwhelmingly, children without attorneys have been most vulnerable, and of the 7,237 deportation orders since last July, 6,315 were issued in absentia.

Given the lack of federal assistance, New York City has opted to commit its own funds in a public-private partnership with charitable groups like the Robin Hood Foundation and New York Community Trust. An estimated 1,600 children have been screened thus far as they are called before the immigration judges. The goal is to establish a connection with a service provider and then seek attorneys for them.

“Because of the lack of action at the federal level, I felt we had to do something,” said Melissa Mark-Viverito, who pushed for the initiative as speaker for the New York City Council. “Now they have a fighting chance.”

Danny Alicea, a young attorney with the big immigration law firm Fragomen, Del Rey, Bernsen & Loewy, works in tandem with the council’s effort as part of a separate outreach program sponsored by the City Bar Justice Center, part of the New York City Bar Association.

“One of the great things about having this fellowship at the City Bar Justice Center is that the city bar is the go-to place. I have the capacity to recruit hundreds of lawyers,” Alicea said. But as a practical matter, he says, children are still falling through the cracks — unable to find assistance.

“Yes, the children are at least meeting with a lawyer and having a lot of their needs met by the service provider,” he said. “But there are so many children, I don’t think it’s possible at this point to say they all have a lawyer representing them.”

Just 30, Alicea is most proud of a picture of himself heading into immigration court with a 1-year-old client. “He knows one word, and it is gracias,” he said.

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