

Children of Fear: Who Speaks for New Jersey's Youngest Undocumented Immigrants?

CAREN CHESLER | JULY 26, 2016 | IMMIGRATION

Seeking political or religious asylum, fleeing threats of murder, physical and sexual abuse, and grinding poverty, some of the world's children find hope and a home here



Edwin Zepeda fled Guatemala in 2013 to join his mother in the U.S. He was granted asylum and lives in Plainfield, where he just graduated from Plainfield High School. He hopes to attend college.

Back in 2012, the Diaz family had a taxi business in Honduras, and like a lot of people in their village, they were visited one day by local gang members demanding protection money. When the family refused, gang members murdered all three taxi drivers and threatened to kill the rest of the family if they did not pay. Men with guns staked out their house. The family moved twice, and yet the gang always found them.

Fearing for their lives, 11-year old Pedro Diaz and his 17-year old sister, Maria, got on a bus with their aunt and uncle and headed for the United States. It took them 20 days and several buses to reach Mexico. Once there, they walked for about a week before reaching the U.S. border, where they were taken into custody by the U.S. Customs and Border Patrol. The aunt and uncle were immediately turned away, and the uncle wound up being murdered within weeks of arriving back in his home town in Honduras. The aunt is now believed to be in hiding.

[img-narrow:/assets/16/0518/0120]The children, however, were temporarily

placed in a group home until authorities could find their mother. They now live with her in New Jersey and have obtained green cards.

“Adults are expected to know that if they enter illegally at or near the border, they have to say, ‘I have a fear of returning. I claim asylum.’ They have to ask for asylum. If they don’t know to do that, they can be sent back. Children are not expected to know that” and are granted temporary asylum here until there is a court adjudication, said Catherine Weiss, a partner with Lowenstein Sandler LLP who does pro bono cases for Kids In Need of Defense or KIND.

Children who arrive here without parents have a unique status. While adults can face immediate deportation, children are temporarily housed in a special facility either near the border or in Chicago until a relative can be located. They then file for either asylum, claiming they are part of a group that faces persecution in their home country, or for Special Immigrant Juvenile Status, meaning they face abuse, neglect, or abandonment at the hands of a parent in their home country.

Two years ago, there was a flood of Central American children arriving at the U.S. southern border, seeking asylum from the gangs that rule the streets in their homelands. The massive influx created a backlog of cases in the courts. And those helping unaccompanied minors in New Jersey say there aren’t enough lawyers to help all the children entering the country from Central America, particularly as their numbers have grown.

And their numbers are only growing. The number of unaccompanied children entering the country reached record levels in the spring and summer of 2014, peaking at 27,000 in June 2014, but then declined sharply in winter 2014 to as low as 5,000, and remained at that level through February 2015, according to the Immigration Policy Institute — a phenomenon the Immigration Policy Institute attributed to increased enforcement, not just by the United States but by Central American and Mexican authorities, who

were rounding up children and families before they even reach the U.S. border. Prior to 2014, Mexico apprehended just 20 percent of child migrants; after the surge, it was rounding up 42 percent of them. Despite those efforts, the number of unaccompanied minors entering the country began picking up again in the Fall of 2015, according to figures from the Customs and Border Control, rising from 3,743 in January 2015 to 12,091 last November, and they've remained high since then.

As the flood of unaccompanied minors continues, the New Jersey courts can't seem to keep up. It can take years to adjudicate a case, a period in which children's lives are in limbo, and they are unable to receive affordable medical and psychological services they might be eligible for if they were here legally. When their cases finally are heard, the children still need a lawyer to help them prove to a federal judge that they were persecuted or abused, and many don't have the wherewithal to find representation.

Without a lawyer, their case could be decided in absentia, and those don't turn out well. Of the 779 hearings involving juveniles that were decided in absentia, 767 resulted in removal orders in New Jersey, according to [Transactional Records Access Clearinghouse \(TRAC\) data](#) from 2005 to March 2016.

Randi Mandelbaum, who heads up the child advocacy clinic at Rutgers Law School in Newark, estimates that just 10 percent to 15 percent of the unaccompanied minors entering the U.S. have lawyers. And many of them would be allowed to stay under federal law, given their circumstances, but because they don't have attorneys to help them navigate the system, many are deported or remain here illegally.

"These are incredibly complicated proceedings and many kids might have some form of relief, but without an attorney, they won't be able to avail themselves of that," she said. The increase prompted the Office of Refugee

Resettlement, a division of the Department of Homeland Security, to increase the number of beds it has for incoming children, from 7,900 to 8,400, and it is preparing for temporary bed space in the event that additional beds may be needed.

Why the recent uptick? The persistence of factors that drove families from their homes in El Salvador, Guatemala and Honduras, or what is known as the Northern Triangle in the first place: violence, food insecurity, and poverty. For several years, the three countries have accounted for the highest murder rates in the world, with the deaths frequently connected to organized crime and drug trafficking, according to the Immigration Policy Institute. In El Salvador, for instance, there was a truce between rival gangs in 2012-2013, but when that truce broke off in 2014, the murder rate shot up again in August 2015, to the highest level seen since the country's civil war, which ended in 1992.

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Their stories are haunting. Young boys are forced to join gangs or risk being killed. Young girls are raped and sometimes made to be wives of gang members. What often happens, according to immigration attorneys interviewed, is that the family is living in Central America and at some point, the mother leaves to come to America to make some money to support her family. Perhaps her parents are sick and need medicine, or she has a child with special needs. So she leaves her children with her parents or a sister and then something happens to the family member and the children are left unprotected. Or the mother has left her children with someone who has other children, and it turns out they can't really take care of her child, so they are turned out on the street. Weiss says her firm has about two dozen cases and has put in some 12,000 hours, and stories like these are the norm.

Edwin Zepeda, for instance, was left with an aunt in Guatemala in his early

teens when his mother fled Zepeda's father and came to America. But his father would come around every now and again and badger him for the money his mother was sending him from the States, and if Zepeda didn't hand it over, the father would beat him. The father was a former police officer, making Zepeda afraid to file a complaint.

When he was 17, his mother sent him money for a motorcycle so that he could get around more safely, but when a local drug dealer saw it, he told Zepeda he wanted it. When Zepeda refused to give it to him, the drug dealer began to beat him but Zepeda got away. The next time he saw Zepeda, the drug dealer hit Zepeda with his car, landing him the hospital for several days with injuries to his head, arm, chest and leg. He decided to file a police report, but because of that, he feared for his safety and stopped going to school and wouldn't leave the house. While recuperating, his father came by and demanded money, and when Zepeda refused to give it to him, his father grabbed his injured wrist and nearly broke it.

"He really thought there was going to be retaliation because of the police report. When he was at home trying to figure out what to do is when the incident happened with his dad," said his attorney, Kimberly Krone.

Zepeda decided to flee Guatemala in 2013 to join his mother in the U.S. Now 20, he was granted asylum and lives in Plainfield. He recently graduated Plainfield High School and hopes to attend college. For now, he is awaiting the adjudication of his green card application.

When the children arrive here, they are usually picked up at the border by Customs and Border Patrol or U.S. Immigration and Customs Enforcement (ICE), both arms of the Department of Homeland Security, and they are charged with entering the country illegally. Within 72 hours, these minors must be turned over to the Office of Refugee Resettlement, a unit of the Department of Health and Human Services, which works quickly to place

them with a parent or guardian in the U.S. That's different from adults, who remain in detention centers run by Homeland Security.

"This has been a vital protection for children," said Weiss. "We just aren't good at detaining unaccompanied children. They shouldn't be in those detention centers at all. That's why they're transferred to the Department of Health and Human Services."

By getting the children out of the Department of Homeland Security, they can also feel free to name sponsors who may not be here legally, without that sponsor facing possible deportation.

Ordinarily, their illegal entry charges would be heard by an immigration judge, but under the Trafficking Victims Protection Act, unaccompanied minors can first plead their case before an asylum officer, who can dispose of their deportation charges if he deems their asylum claims have merit. Adults are not afforded this option.

"In one case, you're sitting at a desk with an officer and having them ask questions and getting a detailed explanation of what happened and why you're afraid to go back to your country, versus the more adversarial position you're in when you're presenting a case in front of a judge. You can probably imagine those two settings are completely different. And they often have different results," said Lauren Anselowitz, an immigration attorney with Harlan York & Associates in Newark.

If they don't prevail in front of the asylum officer, they then get another bite at the apple in federal court, in front of an immigration judge.

At least that's what is supposed to happen. The reality is, some children get stuck at the border for weeks, while ORR tries to find their relatives and perform the requisite background checks. While background checks are

done, if the sponsor does not have a criminal record, the minor may inadvertently be placed with someone who does not have the child's best interest at heart. A January report by the Senate Permanent Subcommittee on Investigations of the Homeland Security Committee as well as an investigation by the Associated Press revealed that children were being placed in homes that in some instances, resulted in children being forced into hard labor. None of the attorneys interviewed for this story indicated that they'd heard of any such situations in New Jersey, though they acknowledge that federal oversight of minors, once they're placed with sponsors, is minimal.

These children have already been through the ringer in their home countries, says Harlan York, an immigration attorney in Newark, recalling one case he had in 2013 involving a 10-year-old boy who had been shot up by a local gang in Honduras, prompting the boy to flee his country with his eight-year-old sister. His mother and father were already in the U.S., and York's firm represented them at a two-hour interview with a federal asylum official in Lyndhurst. The boy told investigators that seven months earlier, he and his sister were playing soccer with some friends in the yard, when he went out to a street corner to buy some fruit. As he stood at the vendor, with two uncles and some neighbors, three "maras" or gang members came to the corner, looking for revenge against someone in the neighborhood. They suddenly opened fire. The two neighbors were killed, and the boy was shot six times.

"I'm looking at this boy and thinking, this poor little kid should be on a soccer team. Instead, he's recovering from six fresh bullet wounds," York said. "His mom and dad showed me his wounds. One was in his chest. Another in the head. It was miraculous that he lived."

The boy and his sister were granted asylum and can now apply for green cards.

Speaking anecdotally, York said a lot of the kids winding up here end up living with just their mothers because their fathers have already been victims.

“These kids are just trying to go to school or home and the gangs are trying to initiate them, and the older ones are being told either you join the gang, or we will kill you. Or they’ll get a gun in their face and be told they have to pay a death tax, or we’ll kill you. This is the stuff we’ve been working on for the last three or four years,” York said.

Despite the horrific conditions at home, not all unaccompanied minors who come here get to stay, and one of the largest reasons appears to be a lack of representation in court. From October 2004 to January 2016, only 60 percent of the 6,132 children released to sponsors in New Jersey had an attorney. Some are as young as six or seven years old.

“And when we say 60 percent, that means at some point a lawyer made an appearance. So that 60 percent is a vast overstatement,” Weiss said.

Weiss says she knows of many instances where children showed up for their ‘master calendar hearings,’ when they appear in court to give the status of their case, and their family hired a lawyer just for that appearance, because the child was just 10 or 12 years old and couldn’t understand the questions being posed to them, let alone state their defense against the charges. Many don’t even understand English.

“I have represented many, and you have my assurance that I’ve never met one who was competent to plead to immigration charges on their own, ever,” Weiss said.

Weiss had a nine-year-old girl as a client a few years ago who had escaped violence in her own family and never attended school. She didn’t know how to read or write. She knew just four letters because they were the ones in her first name. She wrote them on all of the court documents charging her with

illegally entering the country, in order to acknowledge that she had received them, but she had no idea what the paperwork said.

"It's not conceivable to me what happens to the ones who don't have representation," Weiss said.

In some cases, the minors offer to go home. It's a form of relief to their charges called "voluntary departure." In some instances, they have been deported, or flown home by the Department of Homeland Security. There are reports that some individuals were killed upon their return home, immigration lawyers say, though they say it's hard to track them once they're back in their home countries.

But the more common scenario is for their cases to be continued and continued, because immigration judges want the children to find lawyers, attorneys say. No judge wants to decide the case of a child who is unrepresented.

"In some jurisdictions they would be ordered deported if they don't show up at the first hearing. That has not typically been the practice in Newark," said Joanne Gottesman, a professor at Rutgers Law School and Director of the school's Immigrant Justice Clinic. "At least the judge who used to hear the 'surge' docket cases (before she transferred to NYC) said that her policy was to schedule the cases for another 'Master Calendar' hearing before entering an 'in absentia' removal order."

"I think the biggest issue for unaccompanied kids we've seen united with families in New Jersey is a lack of free legal services. These kids are fleeing difficult situation in their home country, and they're facing the possibility of removal, but they have no right to an appointed counsel. So they have no help navigating the system here, unless they can afford it, which is difficult for most people," Gottesman said.

Gottesman said New Jersey is lucky to have federal immigration judges who are very sensitive to the challenges facing clients, and they've been giving them adjournments to try to find lawyers. But that can't go on forever, she said.

To be sure, those with a lawyer fare better. Of the 6,132 immigration cases in New Jersey's immigration court docket as of January 2016, 3,632 had representation and 2,500 did not, according to data from the Transactional Records Access Clearinghouse (TRAC). Of the 3,632 represented, 1,418 were allowed to stay. Only 230 were issued a removal order, while 198 voluntarily left the country (1,787 are still pending). For the 2,500 not represented, only 149 were allowed to stay, while 665 have been issued removal orders, and 68 have left voluntarily (1,618 are still pending).

"You hear all the time about how a judge must make a decision to take a voluntary order of departure or issue some sort of removal order, and it's not an easy situation for the judge to be in, because no one is advocating for the child," said Moises Flores, an immigration attorney with the Jersey City office of Youman, Madeo & Fasano.

I had a minor who was 10 years old, and he looked younger than 10. I remember thinking, these children are so young," Flores said.

Legislation has been introduced in Congress to provide counsel to children, but the reality of the politics in Congress makes that change unlikely in the near term, said Lenni Benson, who founded Safe Passage Project in New York in 2006 to start recruiting and training pro bono attorneys to assist unaccompanied minors.

"Children are doing what international law requires when you seek protection: you come to the border and ask for help. In my view the vast majority of these children would not be making the journey if they were not

in danger and in need of greater stability and protection,” he said.

Benson’s organization has recruited hundreds of pro bono attorneys and is currently assisting over 540 children, but there is a need for more, he says.

Even if they find counsel, a backlog in the courts has meant it can take as long as six years to get an unaccompanied minor a green card. While the United States responded to the 2014 surge with more funding for reception and adjudication resources, so that hearings on cases involving women and children were heard within three weeks of their arrival, chronic funding gaps has meant that 53 percent of cases involving children opened in fiscal 2014 and 78 percent of those opened in fiscal 2015 were still pending as of November, according to TRAC data.

Earlier this year, the Justice Department hired four additional federal immigration judges in Newark, York said, bringing the total up to eight – the largest number he’s seen in years – but he wonders if even that will be enough.

“We’ve been waiting for a while for this to happen,” York said. “You had people being given court dates in 2019. With the new judges, some of those trials have started this year.”

Ironically, in an attempt to ease the backlog, the Obama administration tried to expedite hearings involving unaccompanied minors by stating that those cases must be scheduled for a first Master Calendar hearing within 21 days after the Immigration Court receives the child’s charging documents, yet by rushing the calendar, he made it more difficult for them to find counsel.

“That was not necessarily a good thing. The prioritization of cases has been a big problem, due-process wise,” said Krone, youth justice attorney with the Immigrant Rights Program in Newark. “Many people didn’t even know they

had hearings, because by the time the courts got their address, they would send out a notice for a hearing that would be next week.”

That’s not enough time to find, or even save up the money, for an attorney, Krone said.

“People who came from May on were basically fast-tracked, and some of them lost out on their opportunities to pursue remedies,” Krone said.

It hasn’t helped that there were some judges who immigration attorneys say were trying to stem the tide of Central Americans being granted relief, Krone said.

“There are definitely some jurisdictions where there are very negative attitudes toward giving some form of relief when it involves immigrants. There are a lot of misconceptions, that these people are making up lies and using the courts to get special immigration juvenile status,” she said, noting that Union County and Passaic County have been “challenging.”

Some of their decisions have been overturned. The most notable was a Supreme Court ruling last August involving Special Immigrant Juvenile Status that helped hundreds of immigrant children remain in the United States, if they can show the court they suffered abuse, abandonment or neglect at the hands of a parent.

The decision stemmed from two separate cases: one involving two young girls who fled El Salvador to live with their mother in Elizabeth and another involving a young man who left India and was now living with an uncle in Passaic County. The court ruled 6-0 that Family Court judges, whose job it is to do “fact finding” in these cases, need only determine that one parent had abused, abandoned, or neglected a child. Officials with the Department of Homeland Security then take the family court judge’s findings into account

when they consider the child's Special Immigrant Juvenile Status filing.

Prior to the Supreme Court ruling, some family court judges in New Jersey were requiring that children demonstrate abuse, abandonment or neglect by both parents – and that the mistreatment violated laws in their home countries — before they could be granted Special Immigrant Juvenile Status. With that status, juveniles can seek residency in the U.S.

“Family courts were refusing to make findings for any child who had a fit parent here, even though for many of them, it meant they would be deported back to the unfit parent,” said Weiss. “It was a mess. It was just a mess. But it's been reversed, and it's fixed now.”

CONGRESSIONAL