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Immigrant kids now facing speeded-up deportation proceedings under new Trump directive

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A police officer and a U.S. Border Patrol agent watch over a group of Central American asylum seekers before taking them into custody near McAllen, Texas.

Photo: The Editorial Board / JOHN MOORE / GETTY IMAGES

Eighteen Houston-area youths, including an 11-year-old, are facing speeded-up removal proceedings in immigration court requiring them to hand over complicated documentation on short notice Friday.

Most of these local unaccompanied minors from Central America received new scheduling orders in mid-November and suddenly had to deliver documentation about trauma and hardship they faced back home – evidence that normally takes months for lawyers to compile while they develop rapport with young clients, said Megan McKenna, spokesperson for Kids in Need of Defense, which represents 10 of the minors.

The young people affected by the court orders fled gang violence, survived the murder of family members or experienced abuse, abandonment or neglect, she said. Another eight youths with Friday deadlines were exposed to trauma, said Terry Cody, legal director for Catholic Charities in Greater Houston.

Normally, these children live with local sponsors or relatives while they pursue a slow, methodical process that offers them several legal options. But immigration orders last month suddenly forced these children to pick a final legal strategy, Cody said.

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KIND has 58 clients who have gotten these orders around the country. Based on self-reporting from pro bono lawyers and clinics, Catholic Legal Immigration Network Inc. in New York has documented more than 150 unaccompanied children and about 50 adults in 24 states who received the notices to act swiftly or face possible deportation, according to managing attorney Victoria Neilson.

Children who received the scheduling orders are now in danger of losing their chance at staying in the U.S., Cody said. This accelerated scheduling policy, described in a Justice Department document as “Enhanced Case Flow Processing in Removal Proceedings,” is one of more than 400 executive actions – memos, orders, rules, regulations – rolled out during Trump’s presidency that have altered the landscape for new immigrants seeking relief.

“The Trump administration has attacked the immigration system in unprecedented ways over the past four years,” said Stephen Yale-Loehr, who teaches immigration law at Cornell University. “This memo is just the latest salvo in their dying days to send people who have faced persecution back to their home countries.”

‘Unnecessary’ hearings

For all these clients, the November orders did not come from the judges assigned to their cases. Instead they came in recent weeks from the acting chief immigration judge overseeing the docket. In many instances, advocates told the Houston Chronicle, lawyers noticed boilerplate language that didn’t make sense for their particular clients, for example word-for-word references in different orders to a prior deadline that was missed: a deadline that wasn’t on their client’s schedule.

The rationale for the hurried deadlines was later outlined in a Nov. 30 memo by James R. McHenry III, director of the Executive Office for Immigration Review, that prioritized bypassing perfunctory hearings and moving the docket along efficiently so judges could focus on substantive matters.

According to Rob Barnes, spokesperson for the agency, Immigration Review “continually evaluates current processes, seeking to improve efficiencies where possible while maintaining due process.”

“This new case flow process will reduce unnecessary court appearances, increase overall case processing efficiency, maximize court resources, and save time for both the court and the parties,” Barnes said. “It will also help ensure that aliens with meritorious claims receive a hearing and a decision as expeditiously as possible.”

He noted that the process does not apply to unrepresented respondents, who will continue to appear for master calendar hearings as directed by the immigration judge.

But immigration attorneys said mounting these cases takes time.

Neilson, at the New York clinic, explained, “You can’t just say, ‘Oh, hey, tell me again about the time your mother was killed in front of you.’ It’s the sort of thing that you have to build a rapport with clients. ... It’s not just filling in boxes on a form.”

Lawyers see the sudden orders as arbitrary because they don’t take into consideration the particular circumstances of each child and the dangers they may face if deported.

Yale-Loehr, the law professor, said the Cornell students in the asylum clinic he runs panicked when they saw one of these orders for their client. In his view, “the new case processing model is trying to cram through cases faster than before and that’s causing a lot of consternation and confusion for people who are facing deportation.”

Several paths to pursue

Lawyers for unaccompanied minors can choose from several paths for a client depending on the circumstances of their clients’ lives in their home countries. They can seek special visas if a child was a crime victim or trafficking victim. They can pursue a different visa if children are granted “Special Immigrant Juvenile Status” through the state courts due to abuse, neglect and abandonment.

Asylum is another route for children who were persecuted and threatened with death, but the criteria for making a case tightened under Trump in 2018.

However, the recent orders essentially compel lawyers to decide on the spot if they want to commit to making an asylum case.

Yale-Loehr said the “enhanced case flow” policy is a part of a series of memos and executive decisions by Trump appointees aimed at making it tougher for immigrants to get relief and remain in the U.S. The most significant memos are the order to stop entries at the border during the COVID-19 pandemic, the “Remain in Mexico” edict and an order under Attorney General Jeff Sessions that said that victims of domestic violence or gang violence could not qualify for asylum. The twin goals, Yale-Loehr said, are to speed up the docket and deter people from trying to come to the U.S.

Judge Dana Leigh Marks, president emerita of the National Association of Immigration Judges, said her union was not consulted about the change. She is concerned supervising judges are issuing orders on cases that aren't assigned to them without knowing all of the facts.

The lawyers facing Friday deadlines for the 18 minors in the Houston area had limited options to pursue, but they had to hand over applications if they intend to pursue asylum. In many instances, the lawyers simultaneously requested continuances and objected to the new order as a violation of due process, said Cody from Catholic Charities.

The upshot, Cody said, is these children could face potential deportation orders in a matter of months rather than years.

“The fantasy” with the new Biden administration in January “is a reset button that happens on the 20th but that’s not likely,” Cody said. “I suspect its going to take more time than these kids have.”

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