

New York State Bar Association

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[This is the text of a letter sent to the New York congressional delegation on July 22, 2014.]

I write on behalf of the New York State Bar Association regarding the emergency funding that has been requested by the President in response to the crisis caused by the overwhelming number of children who have recently entered the country from Central and South America. It is critical that a portion of the funding be used to assure that the children are afforded counsel at the immigration hearings that are required.

We are aware that there is currently a significant debate taking place, both publicly and among the members of Congress, as to the use to be made of any funds that may be appropriated pursuant to the President's request. The Association's concern is that moneys intended to make sure that children have counsel may be reduced, or even eliminated, to pay for other existing needs. We submit that affording counsel to these children is essential if there is to be any meaning to the notion of fairness.

At the hearings, the government will be represented by an attorney and a judge will sit to hear the matter and render a decision. It is inconceivable that a child, probably with limited understanding of English, will have any concept of what is taking place. And, of course, it is the child's future that is at stake.

These proceedings would lack the sense of basic fairness we expect in legal proceedings in our country if the child were not to have counsel. The party most directly affected by the result would have no comprehension of the proceedings and no ability whatsoever to explain his or her circumstances. The only mechanism for offering any hope of a meaningful hearing is to make sure that the child is represented by an attorney.

The statistics tell the story. According to the National Association of Immigration Judges, for the year 2013, 78 percent of the children who had attorneys won the right to remain in the United States; only 25 percent of those without attorneys achieved this result (Wall Street Journal, July 16). This is a very large difference, even with the understanding that attorneys are likely to represent those children with the best chances of success.

Furthermore, not only the children benefit from the presence of lawyers. As noted by NYU Adjunct Law Professor Claire Thomas, who represents children in these proceedings, "Having lawyers makes all the difference – the cases move so much more efficiently when they have representation." (New York Law Journal, July 14).

Consequently, as Congress considers the President's request, it must make the provision of counsel to the children, who are now in the United States, a top priority.

Sincerely,

Glenn Lau-Kee