

# Representing Youth in Immigration Proceedings

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# Topics of today's training

- Background on LSC and our Pro Bono Project
- Overview of youth in the immigration system
  - Accompanied vs. unaccompanied
  - In removal proceedings vs. affirmative applicants
  - Detained vs. non-detained
- Forms of immigration relief available to youth
  - Emphasis on SIJS and asylum
- LSC's Holistic Model
- Working with trauma-affected youth

# Legal Services for Children

- Free legal and social work services for youth in guardianships, dependency, school discipline, infraction defense, and immigration
- We initiate cases for youth up to the age of 21 in the San Francisco Bay Area and ORR facilities in Northern California
- Holistic model
- Direct representation and Pro Bono Project

# Pro Bono Project

- **Training** – In person and web-based
- **Mentorship** — Mentor Attorney, Attorney of the Day, ILRC, and CGRS
- **Resources** – [Online Resource Library](#)
- **Support** — LSC social worker involvement
- **Time** — Accept a case when it fits your schedule. Full scope representation vs. discreet projects

# Immigration 101 - Terminology

- **Undocumented** – a person who does not have legal permission to be in the United States
- **Documented** – a person who has legal permission to be in the United States. Could be for a period of time or indefinitely.
- **Lawful Permanent Resident** – a person who has permission to live and work in the United States indefinitely, assuming they do not commit certain crimes or leave the country for long periods of time.
- **ICE** – Immigration and Customs Enforcement – Federal agency responsible for immigration enforcement. Can detain and deport/remove immigrants.
- **USCIS** – U.S. Citizenship and Immigration Services – handles affirmative applications for immigration benefits and relief.
- **ORR** – Office of Refugee Resettlement – Federal agency responsible for the custody of unaccompanied alien minors.

# Two groups of immigrant youth

- **Accompanied** – youth who are living with a parent or guardian in the United States
- **Unaccompanied** – youth who have immigrated to the United States alone or who do not have a parent or legal guardian in the United States to care for them
  - **Unaccompanied Alien Child (UAC)** – 6 USC § 279(g)(2)
    - Has no lawful immigration status in the U.S.;
    - Has not attained 18 years of age;
    - And: (1) no parent or legal guardian in the U.S.; or (2) no parent or legal guardian in the U.S. is available to provide care and physical custody.

## **Quiz – True or False?**

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**Illegal immigration to the United States is at an all time high since 2000.**

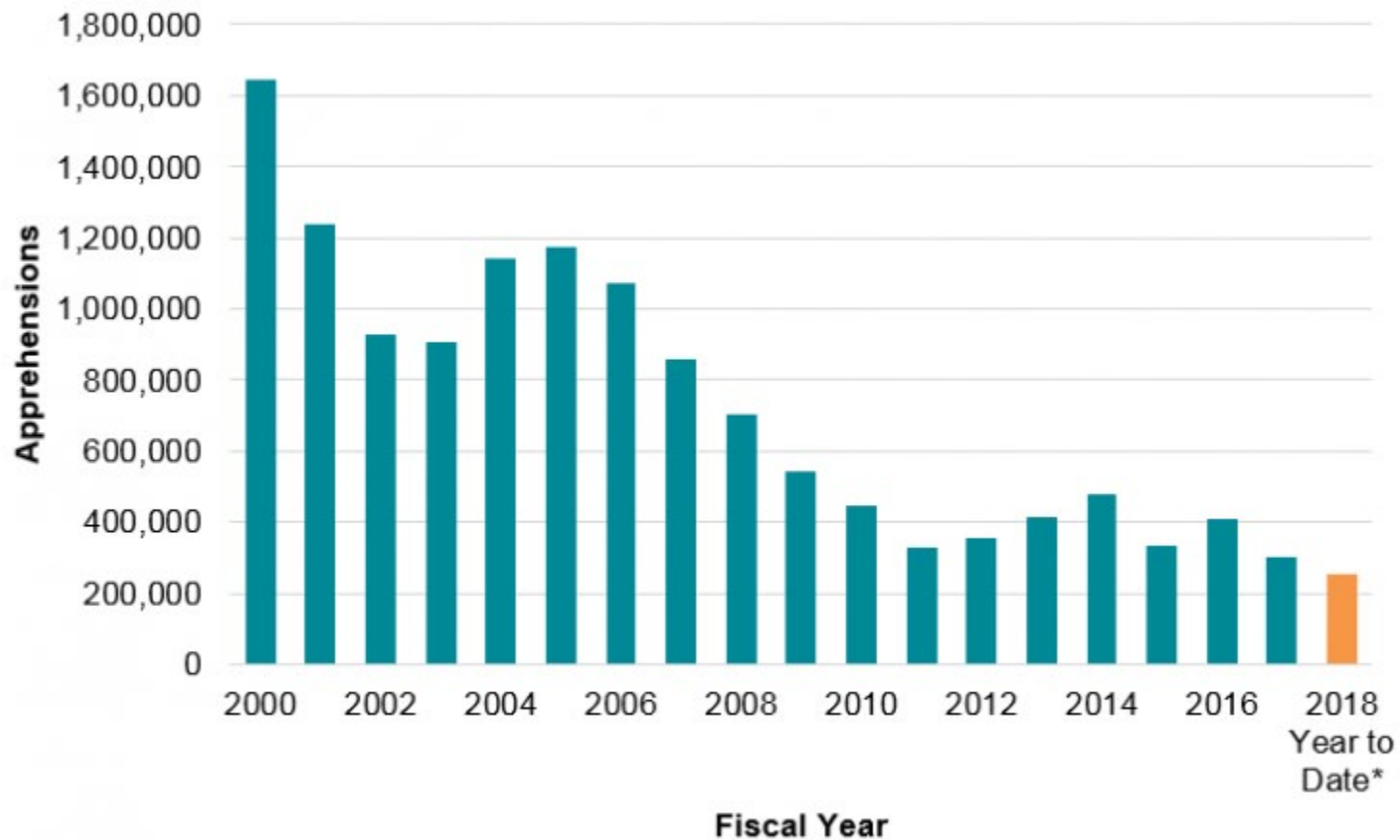


**ANSWER: FALSE**

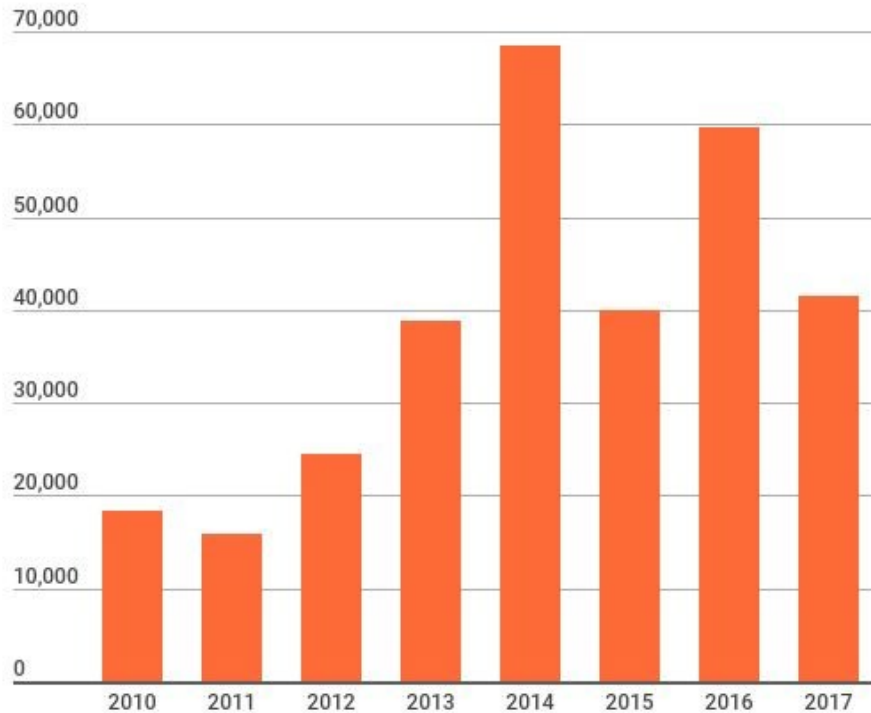


# Migration crisis?

<https://www.migrationpolicy.org/news/crisis-border-not-numbers>



## Unaccompanied Children Apprehensions Southwest Border



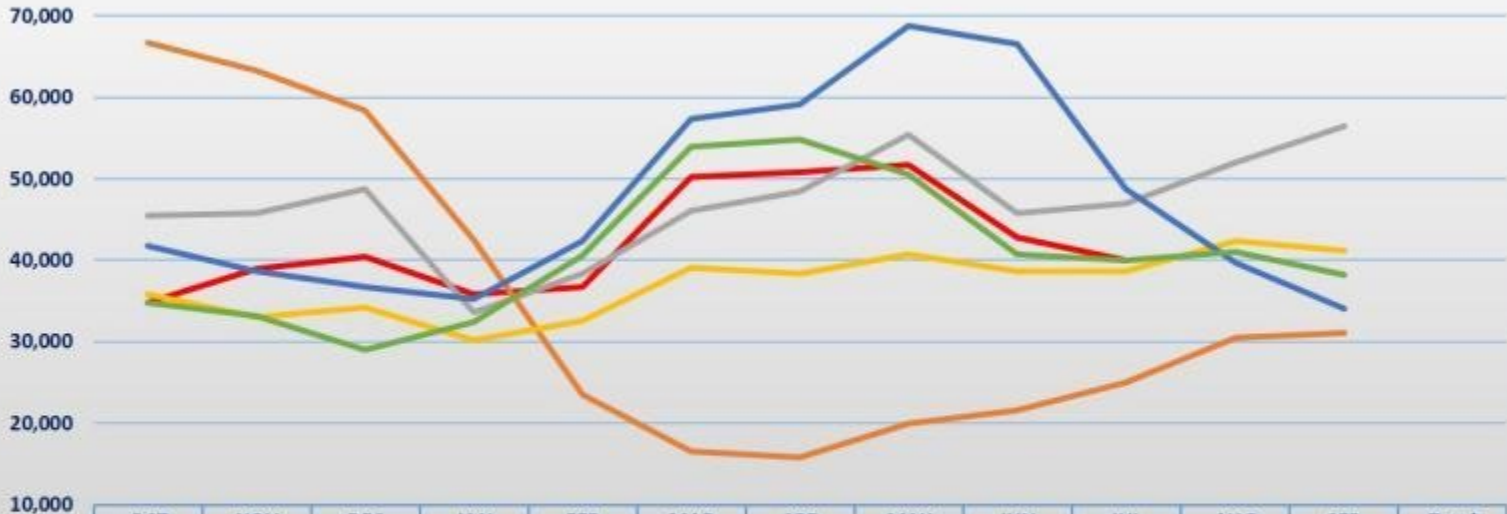
Data by fiscal year.

Source: U.S. Customs and Border Protection

# Does deterrence work?

Source: <https://www.cbp.gov/newsroom/stats/sw-border-migration>

CBP Southwest Border Total Apprehensions / Inadmissibles



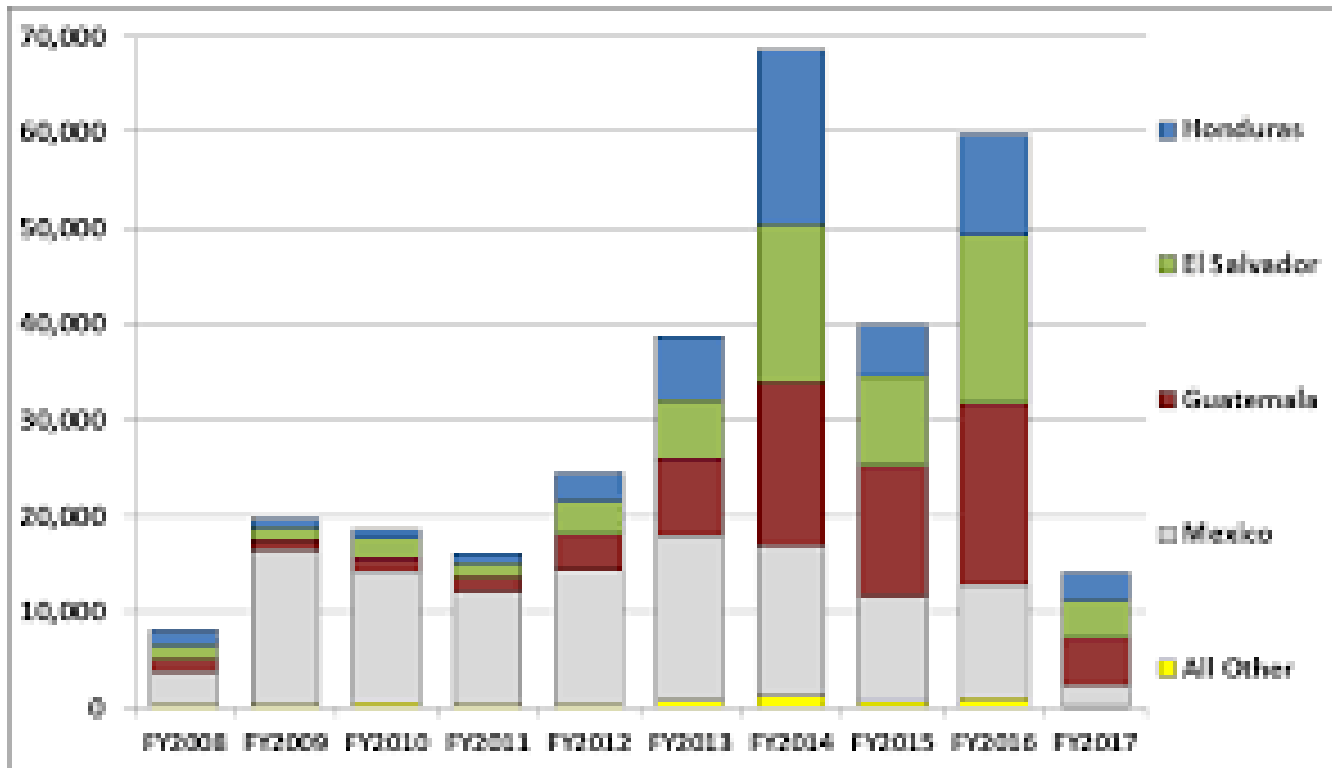
	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	Total
FY18	34,842	38,997	40,505	35,814	36,676	50,288	50,883	51,785	42,838	39,953			
FY17	66,708	63,361	58,412	42,463	23,555	16,588	15,766	19,940	21,657	25,019	30,567	31,155	415,191
FY16	45,507	45,752	48,737	33,654	38,309	46,117	48,502	55,442	45,722	46,966	51,961	56,535	563,204
FY15	35,895	33,023	34,238	30,178	32,550	39,159	38,296	40,681	38,616	38,610	42,414	41,165	444,825
FY14	41,828	38,685	36,695	35,181	42,399	57,405	59,119	68,804	66,541	48,819	39,758	34,003	569,237
FY13	34,836	33,153	29,075	32,481	40,632	54,009	54,761	50,481	40,785	39,993	41,110	38,182	489,498

# Who are our clients?

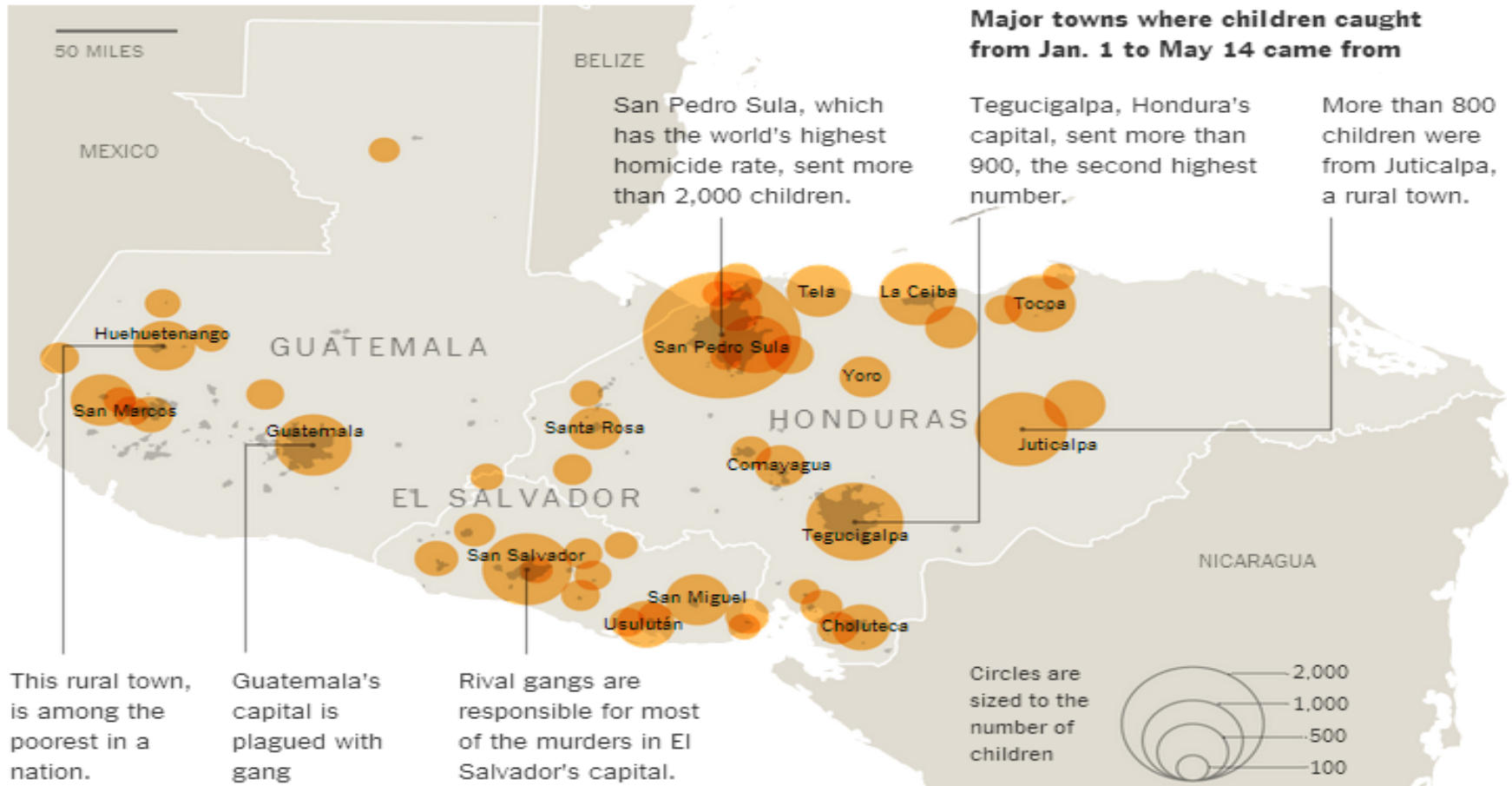


# Where are they coming from?

Source: "Unaccompanied Alien Children: An Overview" by William A. Kandel, Congressional Research Service, Jan. 18, 2017, at <https://fas.org/sgp/crs/homesecc/R43599.pdf>.



## Where are the migrant children coming from?



Source: "Children on the Run," UNHCR, 2014, at <http://www.unhcr.org/en-us/children-on-the-run.html>

# Why are children coming?

- Fleeing extreme levels of violence in home country
- Escaping abuse, neglect, abandonment
- Reunifying with parents or other family members in U.S.
- Seeking improved educational and economic opportunities

# How are children apprehended?

- **Border Apprehension** – children caught by CBP while crossing the border
  - May be first time recent arrivals – these are the majority of the unaccompanied children we see in removal proceedings
  - May be repeat crossers such as children working as drug mules or foot guides
- **Internal Apprehension** – juvenile justice-involved children referred to ICE by probation
  - May have lived in the US for many years and have mixed status families



## Quiz – True or False?

Once Immigration and Customs Enforcement (ICE) apprehends a youth, the youth will be deported from the United States and cannot legally re-enter.



A decorative graphic on the left side of the slide, consisting of a light green vertical bar and a white rounded rectangle with a green top-left corner. A thick dark blue horizontal bar spans across the top of the slide.

**ANSWER: FALSE**

# Referrals to the Office of Refugee Resettlement (ORR)

- If a UAC is detained by immigration, they will be transferred to the custody of the Office of Refugee Resettlement (ORR) within 72 hours.
- ORR is within the Administration of Children and Families (ACF) under the Department of Health and Human Services (HHS).
  - Homeland Security Act of 2002; 8 U.S.C. § 1232(b)(1)
- The minor can be placed in ORR custody anywhere in the country.
- Several different levels of detention:
  - Shelter (lowest level) – one in Contra Costa County
  - Staff Secure (high staff ratio, group homes) – one in Solano County
  - Secure (juvenile halls: only three in the country) – one in Yolo County

# Reunification and Release Process

- Children detained in ORR custody have the right to be released to a qualified sponsor while their immigration cases are pending
- Ideally, ORR works on releasing children in a timely and safe manner to an eligible sponsor
- If no sponsor, there is the possibility of the youth going into federal foster care, specifically for unaccompanied immigrant youth.

*Flores* Settlement Agreement:

[https://www.aclu.org/files/pdfs/immigrants/flores\\_v\\_meese\\_agreement.pdf](https://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf)

# Challenges facing youth in detention

- Additional challenges facing youth in prolonged detention:
  - Rapid deterioration of mental health
    - Untreated/undertreated trauma
    - PTSD, anxiety, depression
    - Detention can mimic past trauma
    - Hopelessness
  - Detention fatigue
  - Loss of educational opportunities
  - Risk of aging out of certain protections
- Logistical challenges of getting representation > see FAQs about LSC's Pro Bono Detained Cases

# Benefits of immediate advocacy for detained youth

- Mental health – there is hope!
- Increased chance of step-down or release
- If aging out – increased chance of ICE discretion
- If aged out – better bond outcomes
- Immigration relief

# Challenges facing all undocumented youth

- Cannot work legally or get Social Security Number;
- Cannot get state ID (except AB60);
- Cannot receive federal financial aid for college;
- Not eligible for most public benefits (minors can still get emergency MediCal or Healthy Families in SF)
- Unable to travel
- Face risk of deportation for lack of status; and
- Many undocumented youth experience feelings of exclusion, instability, and constant fear of deportation.

# Immigration Court

- ICE apprehension is not an automatic path to deportation—
  - ICE Processing
  - Referral to Immigration Court (Notice to Appear)
  - If eligible for any kind of legal status, they can apply for that status and if it is granted, their immigration case may be closed.
- Master Calendar Hearings vs. Individual Hearings
- Pro Bono attorneys will most likely be seeking continuances of immigration court proceedings, and eventually termination of those proceedings
- No right to an attorney in immigration court
  - Is it necessary?  
<https://www.youtube.com/watch?v=BN9t7LUf6RQ>



# NTA

- Government's burden of proof – clear and convincing evidence
- Pleadings – admit allegations? Concede removability?
- Challenge service?
- *Pereira v. Sessions* – may have grounds for a motion to terminate (or re-open and terminate if prior removal order)
- Motions to suppress

U.S. Department of Homeland Security

Notice to Appear

**In removal proceedings under section 240 of the Immigration and Nationality Act:**

Subject ID : \_\_\_\_\_ FIN #: \_\_\_\_\_ File No: \_\_\_\_\_  
DOB: \_\_\_\_\_ Event No: \_\_\_\_\_

In the Matter of:

Respondent: \_\_\_\_\_ currently residing at:

\_\_\_\_\_  
(Number, street, city and ZIP code)

\_\_\_\_\_  
(Area code and phone number)

1. You are an arriving alien.  
 2. You are an alien present in the United States who has not been admitted or paroled.  
 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You arrived in the United States at or near SAN YSIDRO, CALIFORNIA, on or about August 1, \_\_\_\_\_;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:  
212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
 Section 235(b)(1) order was vacated pursuant to:  8CFR 208.30(f)(2)  8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:  
7850 Metro Parkway Suite 320 Bloomington MINNESOTA US 55425

\_\_\_\_\_  
(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the  
(Date) (Time)

charge(s) set forth above.

RESIDENT AGENT IN CHARGE

Date: October 5, 2009

\_\_\_\_\_  
(Signature and Title of Issuing Officer)

Sioux Falls, South Dakota

\_\_\_\_\_  
(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)


# Deportation/Removal

- If a minor does not have relief and does not qualify for voluntary departure, he or she may be removed (deported).
- If a minor doesn't appear for that scheduled hearing, the Immigration Judge can order his or her deportation in absentia if the DHS (ICE) clearly proves that the minor was inadmissible and was served the Notice to Appear.
- Once a removal order is entered, a minor will be ineligible for most discretionary relief from removal for 10 years.
- Voluntary departure is a discretionary benefit of limited value
  - Sought when client wishes to repatriate, or has no other choice

## Quiz – True or False?

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If you want to immigrate to the United States legally from outside of the United States, you may apply and your application will be processed in a timely manner.



**ANSWER:  
DEPENDS, BUT VERY  
RARELY TRUE.**

# Potential Options

- **Non-immigrant visas (ex: tourist, student, work):** require resources or education in home country.
- **Immigrant visas (ex: family-based, employment based):** require an immediate relative USC or LPR / require degree and being outstanding in your field; preference system. Generally require lawful admission and maintaining lawful status. Otherwise must show extreme hardship and attend a consular interview abroad.
- **Asylum and refugee status:** asylum may not be sought abroad; refugees limited by country and numerical cap.
- **Temporary and limited relief (ex: DACA, TPS):** provide work permit and reprieve from deportation, but are always at risk of ending.
- **Other forms of humanitarian relief (ex: SIJS, T Visas, U Visas):** cannot be sought from abroad.

# Immigration Options for Youth

- SIJS
- Asylum
- T Visa
- U Visa
- DACA
- VAWA
- Family Based Visas
- Cancellation of Removal

# Special Immigrant Juvenile Status (SIJS) Background

- Created by statute in 1990 to provide a path to lawful permanent residency for certain vulnerable children
- Amended multiple times, most notably by the William Wilberforce Trafficking Victims Protection Act (TVPRA) of 2008 – broadened by adding the “one or both parent” language

# Special Immigrant Juvenile Status (SIJS) Eligibility Requirements

- 1) Is under twenty-one years of age;
- 2) Is unmarried;
- 3) Has been declared dependent upon a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody or an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.
- 4) Whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect or abandonment, or a similar basis found under State law.
- 5) For whom it has been determined in an administrative or judicial proceeding that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

8 U.S.C. § 1101(a)(27)(J)



## SIJS Continued - Dependent on a Juvenile Court

- The term “juvenile court” is a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.
- In California this includes dependency, delinquency or probate guardianships, and family court custody determinations
- Age-limitations (under 21 for immigration purposes; under 18 for delinquency and family court; probate court – currently complicated)
- This requirement makes SIJS inaccessible to clients in ORR custody in California

# SIJS Continued - Reunification not Viable

- A juvenile court must make a determination that reunification with one or both of the minor's parents is not viable due to abuse, neglect, abandonment or similar basis under state law.
- Examples:
  - Abuse: Physical, emotionally, verbal by parents or caretaker
  - Neglect:
    - Substantial risk of serious physical harm or illness
    - Not providing for basic needs
    - Forced to work full-time and not attend school
    - Subjected to dangerous conditions/journey (or unable to protect)
  - Abandonment:
    - Parent left child
    - Parent is deceased
  - Other similar basis in state law: similar to above

## SIJS Continued – Best Interests

- A court determines that it is in the young person's best interests to stay in the U.S., as opposed to return to herhome country.
- Examples of relevant factors:
  - Positive (in the US)
    - Family/friend support system
    - Emotional well-being
    - Medical and educational resources
  - Negative (in home country)
    - Lack of appropriate caretaker
    - Lack of educational opportunities
    - Violence

# SIJS Continued – Multi-Step Process

## Step 1 – State Court

- Minor must come within a juvenile court’s jurisdiction
  - In LSC pro bono cases, this is almost always through a guardianship proceeding in probate court (often the ORR sponsor is the proposed guardian)
- Obtain “predicate order” establishing SIJ eligibility
  - California has judicial council forms for the petition (JV-356; FL-356; GC-220) and the predicate order (JV-357; FL-357; GC-224)
- Maintain juvenile court jurisdiction until child has permanent residency if possible (or until they age out) – *Perez Olano*

## SIJS Continued – Step 1 (cont'd)

### Probate Court: What is a Legal Guardianship?

- Suspends parents' rights to custody of their child
  - Does NOT permanently terminate parental rights
- Places custody with another adult
- Right and responsibility to make almost all decisions affecting the care and supervision of that minor
- Determine the minor's domicile
- Provide consent for the minor's medical care
- Guide the minor's educational development
- Guide the minor's religious development
- Make any reasonable order to control the minor's conduct
- Note: guardian's powers are much more limited in AB900 (over-18) cases

# SIJS Continued – Step 1 (cont'd)

## Probate Court

- Minor must be over 12 to petition for guardianship
- Guardianship must be necessary or convenient; if contested, standard shifts to best interest of the child
- Process involves filing Judicial Council forms, providing notice, a home visit by the Court Investigator, and a brief hearing
- LSC resources for guardianship and SIJ cases:
  - Webinar trainings
  - Guardianship Manual
  - Appendix of sample forms
  - Additional guidance
  - See our online [Resource Library](#)

# SIJS Continued – Step 2 – Immigration Stage

- Submitting SIJ (Form I-360) application to USCIS with SIJ predicate order
- Waiting for client’s “priority date” to become current (visa cap)
- Terminating removal proceedings (if applicable)
- Submitting green card application (Form I-485) and work permit application (I-765)
- Evolving process
  - Previously required an interview; now usually none
  - USCIS has consolidated review of these cases
  - *May* receive a Request for Evidence (RFE) or Notice of Intent to Deny (NOID)
  - Recent denials of AB900 (over-18) cases
  - Potential risk of applying affirmatively > will be referred to ICE for prosecution if application is denied.

# SIJS Continued – Benefits of obtaining SIJS

- Client immediately eligible to apply for adjustment of status to become a permanent resident (but often subject to visa cap); citizenship eligibility five years later
- Once client becomes a lawful permanent resident they are:
  - Eligible for Social Security Number
  - Able to work legally
  - Able to travel outside of the United States (including to home country)
  - Able to obtain a regular driver's license
  - Eligible for FAFSA
  - Eligible for public benefits
- May petition for relatives once LPR, but never either parent



# Asylum

- Must be a victim of past persecution or have a well-founded fear of future persecution based on race, religion, political opinion, nationality or membership in a particular social group INA § 101(a)(42)(A)
- Persecution must be by government or group the government is unwilling or unable to control
- Cannot relocate
- Note: One-year filing deadline (after entering the U.S., though time before 18 doesn't all count, and the bar doesn't apply to unaccompanied children)
  - TVPRA § 235(d)(7)(A)

# Asylum (continued)

- Unaccompanied children may apply affirmatively with USCIS even if in removal proceedings – huge benefit
- Process:
  - Submit Form I-589 application for asylum to San Francisco Asylum Office (part of USCIS)
  - Wait for an interview
  - Prior to interview, submit declaration, supporting evidence, country conditions research, and any psychological evaluation
  - If denied > referred to immigration court

# Asylum (continued)

- Rapidly evolving policies and case law
  - First In, First Out
  - Gang-based cases
  - Domestic violence and child abuse cases
    - *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018)
  - Challenging, but there is hope!
- LSC and the pro bono attorneys we partner with have access to a wealth of resources in these cases through the Center for Gender and Refugee Studies (CGRS) at UC Hastings

# Asylum (continued)

## Benefits

- Eligible to apply for a work permit after application pending for 150 days
- Eligible to apply for adjustment of status (green card) after one year of asylum status, and citizenship four years after that
- Cash and medical benefits for first eight months of asylee status
- Job training and counseling
- May include spouse and unmarried children under 21 as derivatives on asylum application; may also petition for parents and siblings after adjustment
- Note: should not travel back to home country until becoming a U.S. citizen

# T (trafficking) Visa

- Victim of sex trafficking or labor trafficking
- Sex trafficking: a commercial sex act is induced by force, fraud or coercion or in which the person has not yet obtained 18 years of age.
- Labor trafficking: the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude or debt bondage
- Physical presence in the U.S. is on account of trafficking

# U Visa (victim of crime)

- Suffered substantial physical or mental abuse as a result of having been a victim of certain serious crimes which took place in the United States
- Possesses information concerning the crime and helpful in the investigation or prosecution
  - Must report crime to law enforcement and follow up on requests for help in the investigation or prosecution
- Process involves obtaining a certification from law enforcement and filing forms with USCIS

# Deferred Action for Childhood Arrivals (DACA)

- Created by the Obama administration in June 2012, DACA allows certain undocumented immigrants who entered the U.S. as minors to receive a renewable two year deferred action from immigration proceedings (deportation) and a work permit
- Requirements include continuous presence in the U.S. since June 2007
- No pathway to legal permanent residency/citizenship

# Violence Against Woman Act (VAWA)

- Victim of abuse by parent or step parent or child of victim of domestic violence by spouse
- Abuser is a lawful permanent resident or U.S. citizen



# Family-Based Visas

- US Citizens and Lawful Permanent Residents can apply for different family members to immigrate legally
- US Citizens can apply for:
  - Immediate family members: spouse, unmarried child under 21 (including stepchild), parent (if petitioner is over 21)
  - Unmarried son or daughter (1<sup>st</sup> pref), married son or daughter (3<sup>rd</sup> pref), brother or sister (4<sup>th</sup> pref)
- Lawful Permanent Residents can apply for:
  - Spouse and unmarried sons or daughters (2<sup>nd</sup> pref)

# Cancellation of Removal

- An undocumented immigrant who is in removal proceedings may apply for cancellation of removal if:
  - (1) he has been physically present in the United States for ten years preceding the date of the request;
  - (2) he has been a person of good moral character during those ten years (e.g., no criminal/immigration record)
  - (3) he has not been convicted of certain offenses
  - (4) that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child who is a citizen of the United States or a lawful permanent resident

# Holistic Model: Social Work Support



# Social Worker Roles

- Legal needs: attending court hearings to support the youth  
(immigration, guardianship, delinquency, dependency, etc.)
- Non-legal needs:
  - Education
  - Health
  - Referrals to community resources

# Social Workers are NOT:

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- Translators
- Primary schedulers/messengers
- Agents of the attorney (have duty to report)

# Tips for Working with Youth

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- Building Rapport
- Trauma-Informed Practice

# Building Rapport

- It takes time to build trust and become familiar with the attorney and interview setting
  - Take time to get to know your client
  - Be friendly and relaxed
  - Talk about hobbies, likes, dislikes, etc.

# Trauma-Informed Practice

- **Clients should be informed**
  - Purpose of the interview
  - Role of the interviewer
  - Length of relationship



# Trauma-Informed Practice

- Have a conversation, not an interrogation
  - “sprinkle” questions throughout the conversation
- Elicit a free narrative
  - Let client use his/her own words instead of suggesting answers
- Open-ended questions
  - “A few minutes ago you told me that Robert hurt you. How did Robert hurt you?”

# Recalling Traumatic Experiences

- Preface difficult questions
  - “I’m going to ask you something more personal/difficult/etc.
- Be aware of nonverbal cues
  - How is the client reacting during interview?
- Check in with the client and take breaks as needed

# Things to Avoid

- Rushing your client to answer questions
- Questions beginning with “Why”
  - Can be interpreted as attributing blame to the client
- Suggesting answers to your question
  - Allow client to explain in own words
  - “Tell me what you remember about...”

# Additional things to keep in mind

First time working with a lawyer

- Legal matters can feel overwhelming
- Visiting a law office can be intimidating
- Legal jargon is confusing
  - use language that non-lawyers will understand
  - written communication should be in youth's preferred language

# Next Step

Join our Pro Bono panel to begin receiving periodic emails with case and project opportunities!

<https://www.lsc-sf.org/get-involved/pro-bono-panel/>

Questions?

