

LEGAL REMEDIES AS A RESPONSE TO THE BORDER CRISIS

July 21, 2018

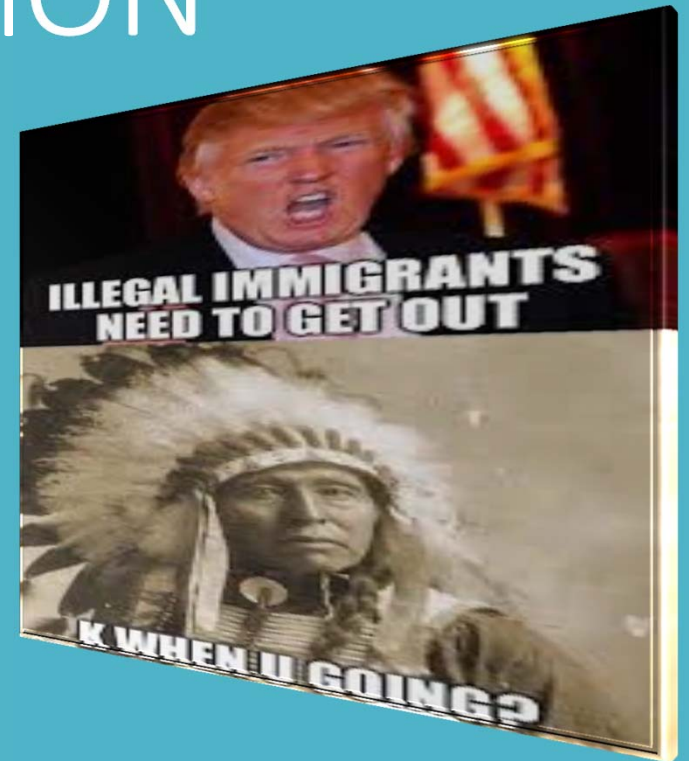


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FAMILY SEPARATION AND REUNIFICATION

What is going on?!?!



The way it used to be – before the Flores Settlement agreement



The Flores agreement

1. The government is required to release children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody.
2. If a suitable placement is not immediately available, the government is obligated to place children in the “least restrictive” setting appropriate to their age and any special needs.
3. The government must implement standards relating to the care and treatment of children in immigration detention.



Application of Flores agreement in reality

- 👤 Terms of the agreement not immediately complied with
- 👤 Any real compliance began to occur in 2003, when the Office of Refugee and Resettlement came about
- 👤 No final regulations have been issued as required



Since then...

2003: Settlement was set to sunset but stipulation agreed upon to continue until

2014: resurgence of family detention centers and detentions

Dilley, TX; Karnes, TX; Berks, PA

2015: accompanied children, including those in family detention centers deemed to be covered by Flores Settlement agreement

2018: family separation, children separation, changes in case law

Family separation

Castro-Tum

Matter of A-B-



Zero tolerance policy

- 👤 April 6, 2018 – announced by Sessions
- 👤 More than 2000 children separated from their parents and sent throughout the U.S.
- 👤 Parents separated from their children and sent throughout the U.S. to be prosecuted for criminal misdemeanors
- 👤 Immigration deterrence strategy
- 👤 Inefficient use of resources



Reunification efforts

👤 Complications along the way



Next steps and issues

- 👤 Many parents and children to reunify
- 👤 DHS current effort to reunify
- 👤 Credible fear interviews and Immigration court processes
- 👤 Bond payments
- 👤 Consultation and representation efforts



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Standard for Asylum-Immigration & Nationality Act

A refugee is a person outside of his/her country of nationality who is unable or unwilling to return due to past persecution or a well-founded fear of future persecution on account of one of the following:

- Race
- Religion
- Nationality
- Membership in a Particular Social Group
- Political Opinion

Persecution

“Infliction of suffering or harm upon those who differ”

- Beatings, rape, severe mental harm, harm to family, threats to life or freedom, female genital mutilation
- By the government or group that government is unwilling or unable to control
- Past Persecution gives rise to presumption of future persecution

Well-Founded Fear

- “Reasonable probability” of persecution
 - One in ten
- Subjective AND objective components
 - Subjective:
 - Client genuinely fears return
 - Objective:
 - Reasonable person in client’s circumstances would fear returning

Persecution

On Account Of:

Race

Religion

Nationality

Particular
Social
Group

Political
Opinion

“On Account Of”

- “At least one central reason”
 - Not the ONLY reason
- Persecutor motivated by that attribute to harm client
 - Example: Not sufficient to show you oppose gangs, or you belong to a church that opposes the gangs
 - Must show that the gangs actually care about your religion or your political opinion in opposition to them and want to harm you for that reason

Particular Social Group

- Requirements of a cognizable PSG
 - Immutable or fundamental
 - Particular
 - Socially distinct
- PSG case law is incoherent
 - Gang recruitment cases do not win
 - Sexual orientation cases do win
 - Domestic violence cases?

Matter of A-B-

- Matter of A-R-C-G- (2014)
 - BIA precedent opinion that domestic violence victims eligible for asylum
 - Recognized the PSG: “married women in Guatemala who are unable to leave their relationship”
- Matter of A-B- (2018)
 - AG Sessions vacates Matter of A-R-C-G-
 - Finds the BIA erred and the PSG is not cognizable
 - LOTS OF BAD DICTA
 - Generally claims by aliens pertaining to domestic violence or gang violence by non-governmental actors will not qualify for asylum
 - How to continue to advocate for DV cases
 - Argue other PSGs
 - Argue other grounds for asylum (e.g. feminism as a political opinion)
 - Argue for individual adjudication of cases based on evidence
 - PSG depends on country condition evidence
 - Federal court litigation – past and future
 - Center for Gender and Refugee Studies at UC Hastings

Matter of E-F-H-L-

- Original 2014 decision:
 - Asylum seekers must have a full evidentiary hearing before IJ decision
- AG Sessions 2018 decision:
 - Vacated 2014 decision
- Limited Impact?
 - INA 240(b)(4)
 - INA 240(c)(4)(B)
 - 8 CFR 1240.11(c)(3)
 - *Matter of Fefe*

Exceptions

- Safe Third Country
- One-Year Filing Deadline
- Persecution of Others
- Particularly Serious Crimes
- Danger to the Security of the U.S.
- Terrorism
- Firm Resettlement

Withholding of Removal

- Withholding of removal forbids an alien or refugee from being returned to any country where the alien's life or freedom is threatened.
- *More likely than not* that he or she will be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion if returned to his/her country of origin.
- Establishment of "clear probability of persecution," a heavier burden than the establishment of a "well-founded fear of persecution" necessary for asylum.

Withholding of Removal Under CAT

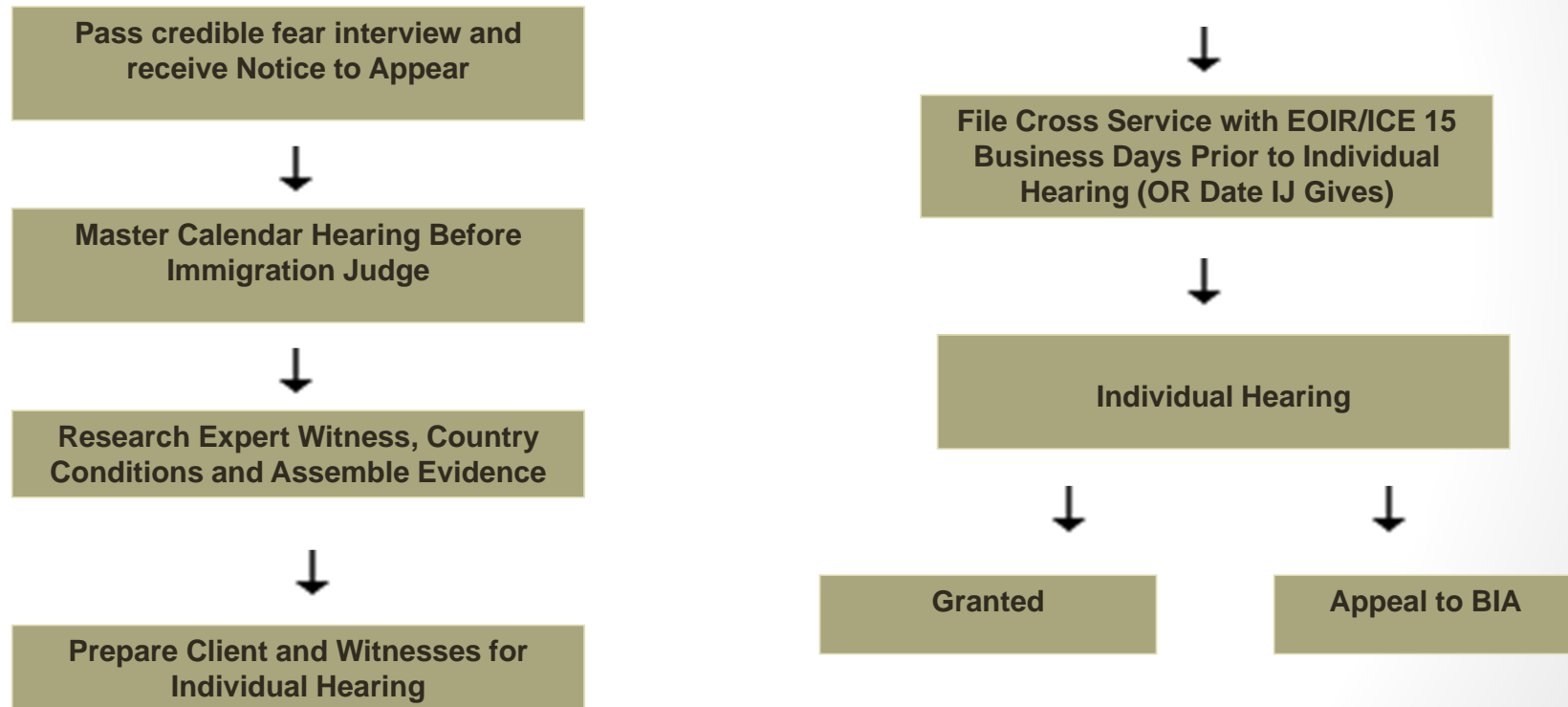
- Prohibits the return of a person to a country where it is more likely than not that the person would be subjected to torture.
- Regulations require that the harm be “inflicted by or at the instigation or with the consent of or acquiescence of a public official or other person acting in an official capacity.”
- In order to be eligible the person must:
 - Be a victim of torture.
 - Prove he/she is *more likely than not* to be tortured if removed to the proposed country of removal.

Asylum

Asylum clients generally fall into two categories:

- **Affirmative**
 - Initial application
 - Not in immigration/removal proceedings
- **Defensive**
 - Referred at the affirmative stage
 - Or already in removal proceedings (e.g. apprehension at the border)

Defensive Asylum Process



Defensive Asylum

The First Client Meeting

- Review the file
 - Intake Form
 - Notice to Appear (NTA)
 - Credible Fear Interview
- Court Records
 - Local Operating Procedures
 - Audio tapes of Master Hearing
 - Court file
- Meet with the Client
 - Get acquainted
 - Discuss CBP and credible fear interviews
 - Objectives/Scope of representation
 - Review Documents and discuss additional evidence needed

Preparing the Case

- E-28 – Attorney Representation Form
- I-589 Application for Asylum
- Client Affidavit
 - Summary of Claim
 - Meets each eligibility requirement
 - Chronology
 - Life history
 - Dates
 - Consistency
 - Persecution
 - Detailed
- **Practice Tip: Prepare a timeline with your client in the beginning and work from it as you draft the affidavit.**

Preparing the Case

Credibility

- Minor inconsistencies and minor omissions can be used to support an adverse credibility finding.
- Trier of Fact may base credibility determination on
 - Demeanor or candor
 - Vagueness or lack of detail
 - Consistency between the Applicant's/Witness's written and oral statements
 - Internal consistency of each statement
 - Consistency of each statement with other record
- Practice Tip: Cross-check all documents

Defensive Asylum – Master Hearing

Master Hearing (Arraignment)

- Appearance before Immigration Judge
- Attorney files Notice of Appearance with Court and ICE
- Plead to the charges
- Request relief
- Discuss evidence authentication
 - Motion to Authenticate
- Set Individual Hearing

Supporting Evidence

- Documentary Evidence:
 - Identity Documents
 - Proof of Past Persecution and Basis for Fear of Future Persecution
 - Medical records
 - Police reports/court records
 - Witness statements
 - Counseling records
 - Translations (See 8 CFR §1003.33)
 - Country Conditions
 - If spouse and/or child present in U.S., Establish Family Relationship

Cross Service

- **Due Date**
 - 15 days prior to individual hearing
 - OR date the IJ sets
- **See Local Operating Procedures. Usually contains:**
 - Brief
 - Designation of Witnesses:
 - Respondent
 - Expert: CV, Affidavit, In Person, or Motion for Telephonic Testimony
 - Supporting Witnesses
 - Additional Documentary Evidence
- **Delivery**
 - Hand Delivery vs. Mail
 - Original to EOIR and Copy to ICE

Trial Prep

- Working with the Dallas Immigration Judges
- Pre-trial Conference
- Prepare the Client/Witnesses
 - Demeanor
 - Vagueness/Lack of Detail
 - Consistency
 - Credibility

Defensive Asylum – The Hearing

- Rules of Court
 - Final Evidence Submission
 - Hearsay
- Opening/Closing Statements
- Direct
 - Questions from the IJ
- Cross
 - Objections
- Re-Direct
- Preserving issues for appeal
- Decision

Ethical Considerations

- **Rules**
 - Texas Disciplinary Rules of Professional Conduct
 - DOJ Professional Conduct for Immigration Practitioners
 - ABA Model Rules of Professional Conduct
- **Special considerations with Asylum Seekers**
 - Competent and Diligent Representation
 - Language Barriers
 - Cultural Differences
 - Trauma
 - Confidentiality
 - Using An Interpreter
 - Advisor

Ethical Considerations

Working with Survivors of Trauma and Sexual Assault

- Lay out a plan to help them understand process
 - Big picture; reasoning why we have to do this
 - Build rapport
 - Understanding that it is tough to discuss
 - Understand that they may be feeling guilt, shame, may respond in ways that seem inappropriate
- Help them feel safe
- How to get them to open up
- Ask open-ended questions followed by specific follow-up
- Consider scheduling counseling session afterwards

Background- Unaccompanied Minors

- Definition (UAC, UIC)
 - (A) has no lawful immigration status in the United States;
 - (B) has not attained 18 years of age;
 - (C) there is no parent or legal guardian in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody
- Apprehension of Child arrivals from Honduras, Guatemala, El Salvador, and Mexico
 - Reasons for Arrivals
 - Trafficking Victims Protection Reauthorization Act
- Legal Relief available to UIC's

Unaccompanied Alien Children Apprehensions by Country

Country	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017 YTD
El Salvador	5,990	16,404	9,389	17,512	8,526
Guatemala	8,068	17,057	13,589	18,913	12,274
Honduras	6,747	18,244	5,409	10,468	6,887
Mexico	17,240	15,634	11,012	11,926	7,234

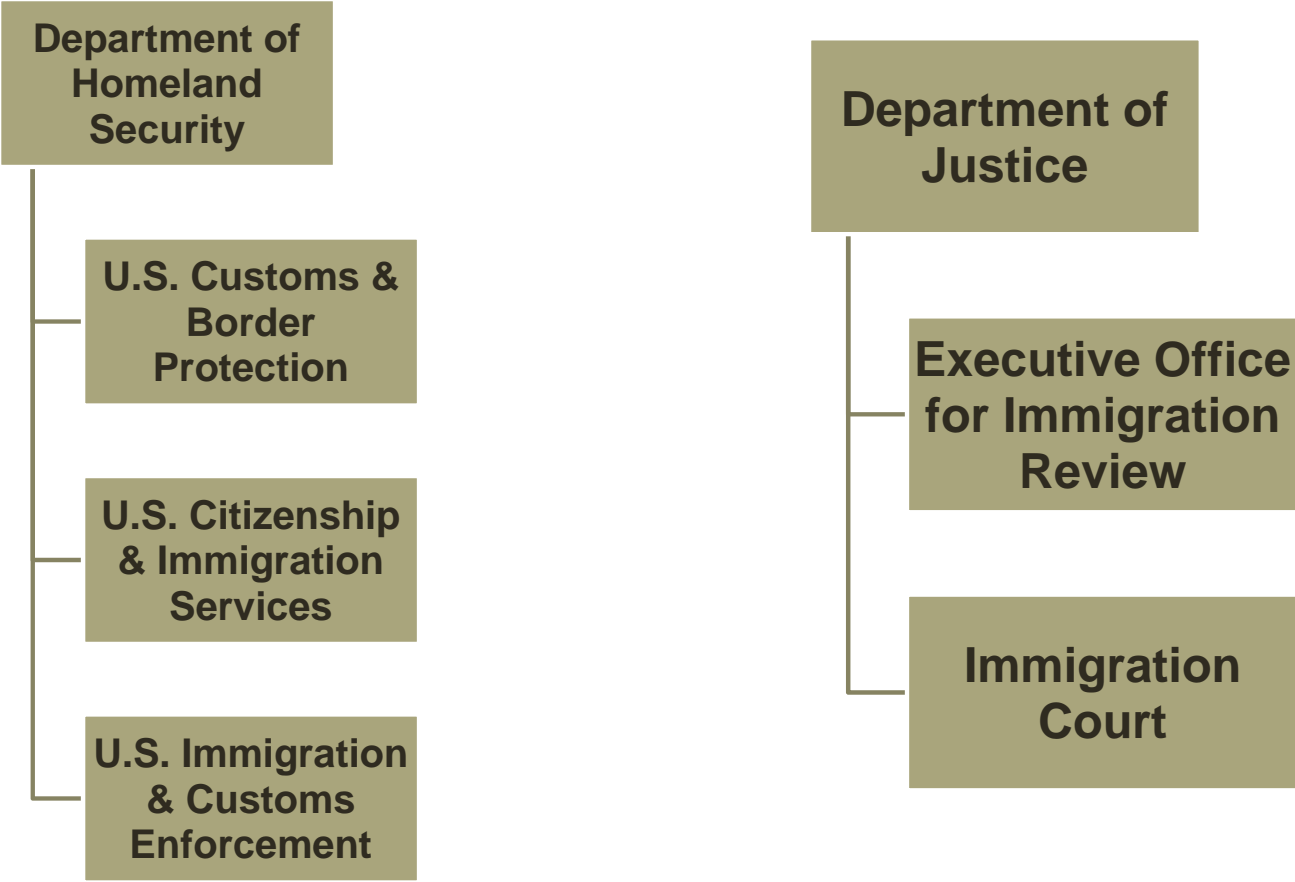
Family Units* Apprehensions by Country

Country	FY 2016	FY 2017 YTD
El Salvador	27,114	22,510
Guatemala	23,067	20,570
Honduras	20,226	19,667
Mexico	3,481	1,998

*Source: U.S. Custom and Border Protection

*FY 2016 through June 30, 2016

The Big Picture: Our Immigration System



Unaccompanied Minors: Special Immigrant Juvenile Status (SIJS)

- SIJS Requirements under the TVPRA
 - Is under 21 years of age;
 - Is unmarried;
 - Has been declared dependent upon a juvenile court or committed to or placed under the custody of an agency or department of a State;
 - Reunification with one or both parent is not viable due to neglect, abandonment or abuse, or a similar basis under state law; and
 - It is not in the child's best interest to be returned to his or her country of nationality or last residence.
- Note: SIJS is available to all children who meet the standard, not only unaccompanied minors.

Unaccompanied Minors: SIJS

- “Red Flags” to look for:
 - Parents are deceased
 - Child lived in many households (nobody wanted the child)
 - Physical, verbal sexual abuse
 - Not fed, lived “on his own” even if lived with caretaker
 - Parents/family failed to protect child from harm
 - Child was in foster care/juvenile system in US or home country
 - If child returns there’s no caretaker willing/able to care for her/him
 - Alcoholism/domestic violence in family
 - Child worked since young
 - Child stopped attending school

Unaccompanied Minors: SIJS

- Overview of the process to obtain residency:
 - State Court Order
 - USCIS SIJS Application – Form I-360
 - Current Priority Date
 - Termination of Immigration Court Proceedings
 - USCIS Adjustment of Status (Residency) – Form I-485

Step 1: Role of Juvenile Court

1. A juvenile court is defined as “any court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. 204.11(a).
 - Courts of general jurisdiction (District Courts and some County Courts at Law)
 - Family Courts
 - Probate Court (Guardianship)
 - Civil Courts
 - Juvenile Court (Delinquency Proceedings)
2. A child cannot apply to USCIS for SIJS without a “predicate” order from a juvenile court.
 - Juvenile courts should know that providing an order does not grant SIJ status.
 - Court’s role: to make factual findings based on state law about the abuse, neglect or abandonment; family reunification, and best interests of the child.

Under What Type of Proceedings Can You Get SIJS Findings in Texas?

- Declaratory Judgments
- Suit Affecting Parent Child Relationship (SAPCR)
- Adoption
- Guardianship (Capacity) Case
- Juvenile Offense Case

GOAL IS SAME: OBTAIN A PREDICATE ORDER WITH KEY FINDINGS

Declaratory Judgments v Suit Affecting Parent-Child Relationship

- Declaratory Judgments are civil remedies found under the Declaratory Judgment Act which can be found on the Civil Practice and Remedies Code , Chapter 37
 - Cons:
 - Do not provide state protection. It is only a declaration of rights or status
 - Unusual procedure to bring in some counties, unfamiliarity with procedure in most rural areas
 - Pros:
 - Do not need service or citation
 - As no service needed, it is faster.
 - Good in age out cases
- Suit Affecting Parent-Child Relationship is found under the Family Code, Title 5 and deals with subjects such as custody, child support, termination of parental rights, paternity, etc.
 - Pros:
 - More protections for children
 - May extend jurisdiction of court to a child that is 18 years old but has not graduated high school
 - More room to argue that the primary purpose is not for immigration
 - Judges familiar and comfortable with it
 - Cons:
 - Service and Citation needed
 - Appointment of Ad litem for absent parent
 - Oftentimes, longer process

Initial Documents

- **Initial documents to be filed in a DJ:**
 - Civil Case Information Sheet
 - Original Petition for Findings and Declaratory Judgment
 - Statement of Inability to Afford Payment of Court Costs or an Appeal Bond, *signed by petitioner & notarized*
 - Attorney Statement of Pro Bono/Low Bono Representation/IOLTA Cert., *signed by attorney & notarized*

Declaratory Judgments: Obtaining Predicate Order

Order and findings

- Review of SIJ definition in 8 USC 1101(a)(27)(j):
 - (1) The child is **dependent** upon the juvenile court or has been legally committed to or **placed in the custody** of an agency or department of a state or individual or entity appointed by the juvenile court
 - (2) The child's **reunification with one or both parents is not viable due to abuse, neglect, abandonment** or a similar basis found under state law
 - (3) It is not in the **best interest** of the child to be returned to her or her parents previous country of nationality or country of last habitual residence

Juvenile Court: Proving up Petition

Evidence

- May include:
 - Child's testimony
 - Child's declaration
 - Child's Birth certificate/record, *with English translation*
 - Death certificate of parent/s, *with English translation*
 - Documents from ORR (Office of Refugee Resettlement) or state child welfare case files
 - Expert evaluations or other witness statements
 - Child's birth certificate and/or other identity documents
 - Other evidence such as police or CPS reports and country conditions
- Must provide support for the court to find each element in proposed order

Declaratory Judgment- Practice Tips

- File a short brief
- Jurisdiction Issues
- County issues

SAPCR basics for the SIJS Attorney

Who can file for custody of the unaccompanied minor?

- Texas Family Code 102.003 General Standing to file suit
 - A parent of the child
 - A person, other than a foster parent who has had actual care, control and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition.
 - *See handout for others with standing to file suit*

Contents of Petition

- It **must** include the child's full name not just the initials and the child's date of birth – this includes the style of the case – **this is an exception to the E-filing rules.**
- The petition must state that the court has jurisdiction and that it is exercising jurisdiction over this minor(s)
- The names of the parents must be included
- The names of the managing conservator or guardian if one has been appointed
- The name of an alleged father or statement that the identity of the father of the child is unknown
- Statement regarding value of property owned by child
- Statement regarding what you want court to do and the grounds for doing it

102.008

Citation (TFC 102.009)

- You must serve the following person with citation or obtain a waiver of service:
 - Managing conservator;
 - Possessory conservator;
 - Person having possession of or access to the child under a court order;
 - Guardian of the person and/or estate of child;
 - Each parent who has not had rights terminated;
 - **An alleged father** unless there is a waiver of interest attached
 - Title IVD agency if the petition requests the termination of the parent-child relationship and child support rights have been assigned to IVD agency
 - Prospective adoptive parents
 - A person designated as the managing conservator in an unrevoked affidavit of relinquishment
 - **Citation may be served on any other person who has or who may assert an interest in the child**

Temporary emergency jurisdiction

- 152.204 A court of this state has emergency temporary jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

Okay so now I know the court has jurisdiction and I know what I have to put in pleading – what else do I need?

- You must file a statement of health insurance availability – even if there is no availability
- You must do a UCCJEA affidavit. This affidavit, required under 152.209, must state the child's present address or whereabouts, the places where the child has lived for the last five years, and the names and present addresses of the persons with whom the child has lived during that period.
 - It also must state whether the party in capacity as a party or witness has participated in any custody proceedings and if so identify the court and case number
 - Or if the party knows of any other proceeding that could affect the current proceeding including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions
 - Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with the child
 - **IMPORTANT** – if a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of the party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless ordered by the court

Okay now in my petition I asked for custody but what type do I ask for?

- Since all the children will either be victims of trafficking, child abuse or neglect or abandonment the appropriate request is for **sole managing conservatorship**.
- 153.004 - Specifically the court may not allow a parent to have access to a child for whom it is shown by a preponderance of evidence that there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit OR the parent engaged in conduct that constitutes an offense under various sections of the penal code.

Preparing final pleadings and proving up case

- You will need to prepare a final order in Suit Affecting Parent Child Relationship. In that order you will need to make sure you have the requisite findings:
 - The child is living in the U.S.
 - The child is under 21 years of age
 - The child is unmarried
 - Reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar basis
 - For immigration purposes this finding should include the factual basis for the finding
 - That it is not in the best interest of the child to be returned to the child's or parent's previous country of nationality or country of last habitual residence

Arguing similar basis

Provisions for defining abuse or neglect according to CPS are found in section 261.001 and 261.401. A separate hand out is available to aid you in arguing similar basis if necessary. Most of these provision would fall under the standard argument for abuse or neglect but some of the provisions may give you what you need for similar basis.

The final hearing/prove up

- Make sure to have prove – up questions prepared
- Have at least 2 copies of final order plus original for court. (after hearing get the copies certified)
- The night before or morning of the hearing file a certificate of last known address for opposing party
- Have an Austin form filled out. If you do not know the answer to something DO NOT LEAVE IT BLANK write in unknown
- Only if doing child support will you need a withholding order or a Tarrant County Record of Support Form
- The morning of court, get there before 8:30 because you will have to pull the file and take it to the bailiff of the court and let him know you would like to do a prove up. If the judge is unavailable for prove ups on that day you can go to a different Judge.

Don't confuse the court

- There is no need to bring up the SIJS in court and if you do you are likely to confuse the court and hurt your case. You are there for custody. If you bring up SIJS the judge may think you are trying to get the judge to decide an immigration issue!
- **SIJS: What Adoption and Family Law Attorneys Need to Know and How They can Help**, *American Academy of Adoption Attorneys and American Academy of Assisted Reproductive Technology Attorneys*, Karen Law and Emily Dudak Taylor, November 5, 2014.
- **See also Intersection of SIJS cases in Tennessee Courts**, Chay Sengkhounmany
- **See Also Chapter 22 Special Immigrant Juvenile Status (Family Law Portion)**
Published by HRI 2012 (last update 2008).

Step 2: USCIS -SIJS Visa Application

- Only USCIS has jurisdiction to adjudicate the I-360 application
- USCIS approval of the I-360 constitutes DHS “consent,” as required by the statutory definition of a special immigrant juvenile.
- In adjudicating the I-360, USCIS should not second-guess the juvenile court’s findings. USCIS Adjudicators should not “look beyond” the SIJS Order
- USCIS must adjudicate SIJS petitions within 180 days of filing.
- A child granted SIJS cannot later petition for his/her biological or prior adoptive parents.

I-360 Petition for SIJS Visa Application

- I-360 Filing Packet includes:
 - Cover Letter with short case summary
 - G-28 Notice of Entry of Appearance
 - I-360 Petition
 - State Court Predicate Order
 - Birth Certificate w/ English Translation
- No Filing Fee for an I-360 petition
- Interviews no longer required

Step 3: Check the Priority Date

- There is a per country quota of how many juveniles with approved SIJS petitions may become permanent residents each year
 - October 1st begins the government's fiscal year
- This quota was reached in May of 2016 for the first time for children from El Salvador, Honduras, and Guatemala, and in July of 2016 for the first time for children from Mexico
- Children get “in line” on the date their I-360 petitions are filed: that date becomes the “priority date” of the petition
- Every month the U.S. DOS updates the “Visa Bulletin” to show which priority dates are current – i.e. which individuals are to the “front of the line” and may apply for lawful permanent resident status
 - <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>
 - Final Action Dates versus Filing Dates

Employment based	All Chargeability Areas Except Those Listed	CHINA mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	01JAN12	C	01JAN12	C	C
2nd	01JAN16	15MAY13	01JAN16	22AUG08	01JAN16	01JAN16
3rd	C	01JAN12	C	15OCT06	C	01NOV15
Other Workers	C	01JAN04	C	15OCT06	C	01NOV15
4th	C	C	22OCT15	22OCT15	22OCT15	C
Certain Religious Workers	C	C	22OCT15	22OCT15	22OCT15	C
5th Non-Regional Center (C5 and T5)	C	15JUN14	C	C	C	C
5th Regional Center (I5 and R5)	C	15JUN14	C	C	C	C

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Employment based	Employment based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	1st	C	C	C	C	C
2nd	2nd	C	01OCT13	01FEB09	C	C
3rd	3rd	C	01SEP15	01JAN07	C	01JAN16
Other Workers	Other Workers	C	01JUN08	01JAN07	C	01JAN16
4th	4th	C	C	C	C	C
Certain Religious Workers	Certain Religious Workers	C	C	C	C	C
5th Non-Regional Center (C5 and T5)	5th Non-Regional Center (C5 and T5)	C	01SEP14	C	C	C
5th Regional Center (I5 and R5)	5th Regional Center (I5 and R5)	C	01SEP14	C	C	C

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Step 4: Immigration Court

- If child is in removal proceedings, goal is to terminate proceedings so that you can apply for adjustment of status (i.e. permanent residency) through USCIS
- Can request an oral joint motion from the Trial Attorney in court or request a written joint motion from ICE that you then file with the court
- At this time, our understanding is that ICE is only agreeing to terminate proceedings if the I-360 has been approved and the priority date is current
 - Prior to this, they will agree to continuances before the court
- Other issues:
 - Filing the I-485 with the court
 - USCIS RFEs for termination orders
 - Some judges scheduling cases for merits hearings

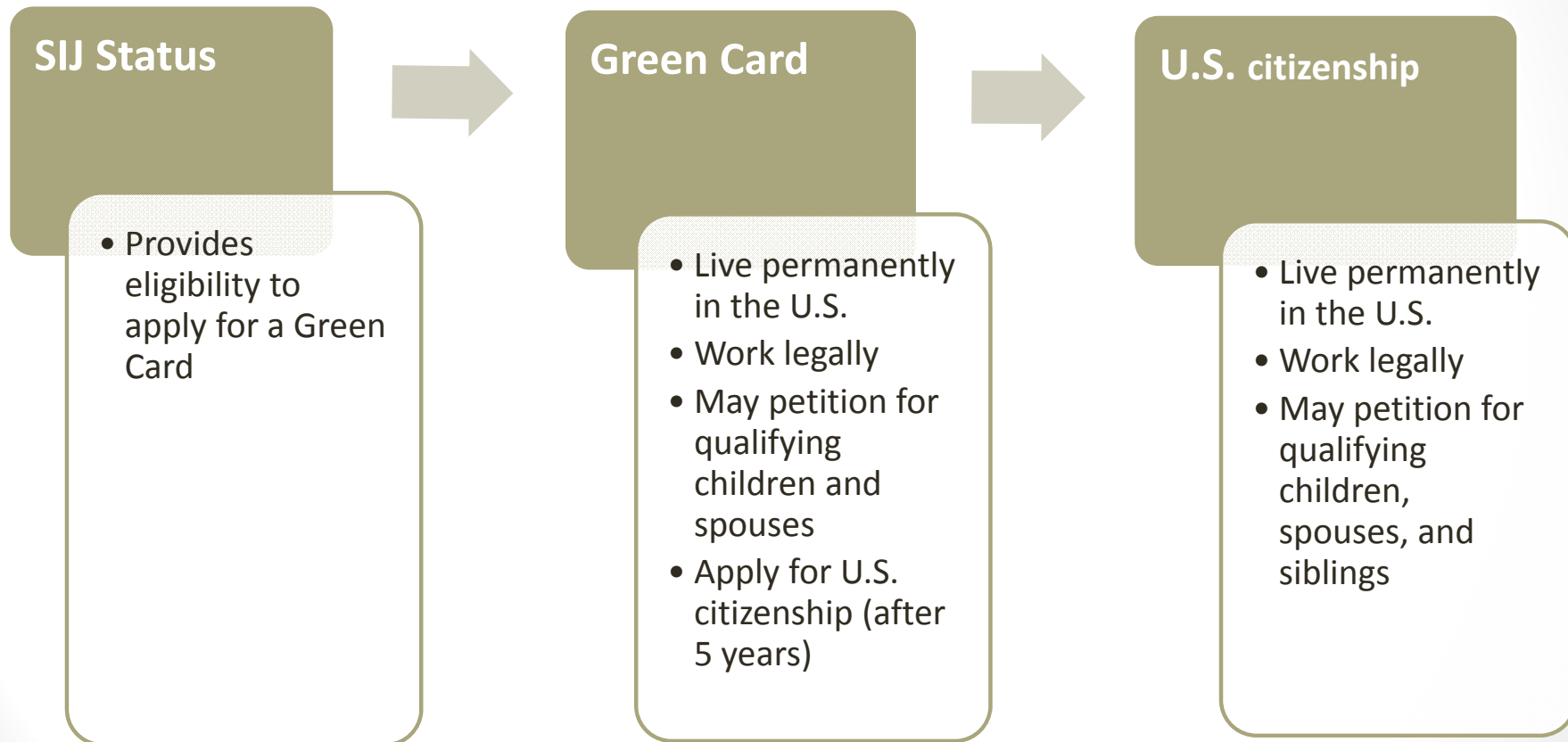
Step 5: Residency

- The I-360 and I-485 can sometimes be filed together if the priority date is current.
 - Issue: jurisdiction if the child is still in removal proceedings
- If the priority date is not current (right now for all children from Mexico, El Salvador, Honduras, and Guatemala), you must file the I-360 first and wait for the priority date to be current before filing the I-485.
- At the Adjustment of Status phase (I-485), note that SIJS petitioners have a number of inadmissibility exemptions and waivers available to them. *See* INA Sections 212, 245(h)(2)(B)
- Juvenile adjudications are not criminal convictions for immigration purposes, but may trigger conduct-based grounds of inadmissibility (i.e., drug use/abuse) and may weigh negatively in the discretionary analysis.

Current Issues

- USCIS has centralized adjudication of SIJS petitions
- Always remain aware of issues when kids are about to turn 18 years old. Although SIJS is supposed to be available until a child turns 21, as a practical matter practitioners have encountered difficulties obtaining it once a child turns 18.
- October 2016 USCIS Policy Manual
 - Led to RFEs and NOIDs
 - Juvenile court jurisdiction
 - Custody and dependency
 - Factual basis for abuse, abandonment, neglect and best interests
 - Citations to state law, not to the INA
 - Temporary dependency or placements
- Over 18 cases based on declaratory judgments

SIJ Benefits: Path to U.S. Citizenship





Immigration Relief Options

Nubia Torres, Director
Catholic Charities Dallas



The right call for all in need: **866.CCD.7500**

How can I obtain legal status?

Family Based Petitions

VAWA

U Visa

T Visa

Citizenship

DACA



The right call for all in need: **866.CCD.7500**

How can I obtain legal status?

Family Based Petitions:

Immediate Relatives
Parent of a USC
Child under 21 of a USC
Spouse of a USC

Preference Categories
1. Unmarried child over 21 of USC
2A. Spouse or unmarried child under 21 of an LPR
2B. Unmarried son over 21 of LPR
3. Married child over 21 of USC
4. Sibling of a USC



The right call for all in need: **866.CCD.7500**

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER [REDACTED]		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE (E), OR ORPHAN	
RECEIPT DATE September 25, 2000	PRIORITY DATE September 19, 2000	PETITIONER [REDACTED]	
NOTICE DATE February 5, 2009	PAGE 1 of 1	BENEFICIARY [REDACTED]	
[REDACTED]		Notice Type: Approval Notice Section: Sister or brother of U.S. Citizen, 203(a)(4) INA	

The above petition has been approved. We have sent the original visa petition to the **Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909**. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.



The right call for all in need: **866.CCD.7500**

How can I obtain legal status?

Family Based Petitions:
August 2018 Visa Bulletin (travel.state.gov)

Family-Sponsored	All Charge-ability Areas Except Those Listed	CHINA- mainland born	India	Mexico	Philippines
F1	08MAY11	08MAY11	08MAY11	01AUG97	01AUG06
F2A	22JUL16	22JUL16	22JUL16	01JUL16	22JUL16
F2B	22OCT11	22OCT11	22OCT11	01APR97	15FEB07
F3	15JUN06	15JUN06	15JUN06	01DEC95	01MAY95
F4	22DEC04	22DEC04	22MAR04	15JAN98	22APR95



The right call for all in need: **866.CCD.7500**

Victims of Domestic Violence

Violence against Women's Act
(VAWA)



The right call for all in need: **866.CCD.7500**

Violence Against Women Act (VAWA)

- **What is it?**
 - A way for immigrant victims to receive relief and a way to impede abusers from utilizing US immigration laws to inflict abuse.
- **How can someone qualify?**
 - The abuser must be a United States Citizen or Legal Permanent Resident.
 - The victim is the spouse*, child, or parent of the abuser.
 - Marriage was entered in “good-faith,” and the victim is still married or no more than 2 years divorced from abuser.
 - He/ she lived with the abuser.
 - He/ she was subjected to extreme cruelty by the citizen or resident.
 - The victim must show good moral character.

*includes common law marriage



The right call for all in need: **866.CCD.7500**

Violence Against Women Act (VAWA)

EVIDENCE USED TO PROVE THIS:

- **Proof of Legal Status of Abuser** (birth certificate, LPR card)
- **Proof of Relationship to Abuser and “bona fide” Marriage** (marriage certificates, prior divorce/death decrees, children’s records, leases, taxes, bank statements, affidavits, photos, emails, cards, travel documents, social media)
- **Proof of Abuse** (police reports, protective orders, CPS reports, medical records, counseling letters, prescriptions, affidavits)
- **Proof of Good Moral Character** (police clearance letters, church letter, school records, children’s school records, letters of recommendation)



The right call for all in need: **866.CCD.7500**

Violence Against Women Act (VAWA)

EVIDENCE USED TO PROVE THIS:

- **The VAWA testimony-** each VAWA client must submit a letter in English explaining his/her relationship with the abuser. The statement should include:
 - **Proof of Good faith marriage**
 - **Specific details of abuse (all forms)**
 - **The effect of the abuse on her and her family**
 - **Support for evidence submitted**
 - **Explanation for lack of evidence**
 - **Discretionary factors**



The right call for all in need: **866.CCD.7500**

Violence Against Women Act (VAWA)

Benefits obtained by an approved VAWA petition:

- Work Authorization
- Legal Permanent Residence
 - Never claimed US Citizenship
 - Does not have multiple EWI entrances
 - Other Inadmissibility Issues
- Public Benefits
- May petition for children (in the US and abroad)



The right call for all in need: **866.CCD.7500**

Victims of Violent Crimes

U-Visa

U Nonimmigrant Status



The right call for all in need: **866.CCD.7500**

U Nonimmigrant Status (U Visa)

- A visa granted to qualifying immigrant victims of certain crimes
 - Enables victims to report crimes against them without being further victimized through deportation
 - Leads to increased offender identification
 - Allows for availability of victim to assist in investigation and prosecution of offenders
- Created by the Victims of Trafficking and Violence Protection Act of 2000



The right call for all in need: **866.CCD.7500**

U Nonimmigrant Status (U Visa)

o Eligibility:

- The person has been a victim of qualifying criminal activity in the US
- The person has suffered “substantial harm” as a result of the qualifying criminal activity
- The person possesses information about the qualifying criminal activity
- The person has been, is being or is likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity.
- Certification from law enforcement required
 - o The certification letter is used as evidence of all of the above
 - o There does not have to be a conviction or prosecution



The right call for all in need: **866.CCD.7500**

U Nonimmigrant Status (U Visa)

QUALIFYING CRIMINAL ACTIVITIES

<ul style="list-style-type: none">•Abduction•Abusive Sexual Contact•Blackmail•Domestic Violence•Extortion•False Imprisonment•Female Genital Mutilation•Felonious Assault•Fraud in Foreign Labor Contracting	<ul style="list-style-type: none">•Hostage•Incest•Involuntary Servitude•Kidnapping•Manslaughter•Murder•Obstruction of Justice•Peonage•Perjury•Prostitution•Rape	<ul style="list-style-type: none">•Sexual Assault•Sexual Exploitation•Slave Trade•Stalking•Torture•Trafficking•Witness Tampering•Unlawful Criminal Restraint•Other Related Crimes*† <p>*Includes any similar activity where the elements of the crime are substantially similar.</p> <p>†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.</p>
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The right call for all in need: **866.CCD.7500**

U Nonimmigrant Status (U Visa)

WHAT IS SUBSTANTIAL HARM?

Factors used to determine if the abuse qualifies as “substantial”:

1. The nature of the injury inflicted
2. The severity of the perpetrator's conduct
3. The severity of the harm suffered
4. The duration of the infliction of the harm
5. The extent to which there is permanent or serious harm to the victims appearance, health, or physical or mental soundness.



The right call for all in need: **866.CCD.7500**

U Nonimmigrant Status (U Visa) Law Enforcement Certification

- **Attest to the facts that:**
 - A crime was committed
 - The petitioner was the victim
 - The petitioner possesses information about the crime
 - The petitioner is helpful in the investigation
- **A prosecution or conviction is not necessary for the law enforcement certification**



The right call for all in need: **866.CCD.7500**

U Nonimmigrant Status (U Visa) Law Enforcement Certification

- Form I-918B must be completed by:
 - Federal law enforcement agency
 - State law enforcement agency
 - Local law enforcement agency
 - Prosecutor
 - Judge
 - Other authority with responsibility for investigation and/or prosecution of qualifying crimes
 - The form must be filled out by the head of the agency or a designated person within the agency



The right call for all in need: **866.CCD.7500**

U Nonimmigrant Status (U Visa)

What is "Helpful"?

- The helpfulness can be past, present, or future
- The intent to help is sufficient
- Victim cannot refuse or fail to provide REASONABLY requested information or assistance
- There is an ONGOING responsibility to cooperate
 - Law Enforcement certification can be withdrawn at any time
- EXCEPTION – if victim is under 16 years old, they are not required to cooperate however, a parent, guardian or next friend must be able to satisfy the requirements of cooperation



The right call for all in need: **866.CCD.7500**

VAWA vs. U-Visa process at a glance:

	VAWA	U-Status/U-Visa
Application:	No police report required No dependency on law enforcement agencies Burden of evidence Must prove relationship with abuser	Police report required Dependency on LEA Wider definition of victim More qualifying crimes (not only DV) Aggressor is not required to be friend/relative
Derivatives:	Children under 21	Children under 21, Spouses, parents and siblings (in some cases), possible future derivatives
Waivers:	NO- some applicants will never be able to receive a green card	YES- Free for all (at cost), almost all applicants are eligible for a green card
Processing times:	3 months- 1 year	2.5 years - 3 years for Deferred Action
Benefits before approval:	Establishment of Prima Facie- some public assistance	None**
Benefits after approval:	Work Permit for 1 year that can be renewed	Work Permit for 4 years
Green Card:	Can apply for green card immediately (in most cases)	Can apply for green card in 3 years after approval (cannot leave US)
<p>**Note that currently there are no U-Visas available, clients can still apply but will receive "deferred action" if case is approvable. They can apply for a work permit in the meantime. This will inevitably add time that the client will need to wait for a green card.</p>		



The right call for all in need: **866.CCD.7500**

Victims of Human Trafficking

T- Visa



The right call for all in need: **866.CCD.7500**

Human Trafficking – T Visa

DEFINITION

- “The recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of **force** or other forms of **coercion**, of **abduction**, of **fraud**, of **deception**, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”
([UN Protocol](#) to Prevent, Suppress, and Punish Trafficking in Persons)
- The delivery or maintaining of persons in slave conditions



The right call for all in need: **866.CCD.7500**

Human Trafficking – T Visa

- Traffickers use FORCE, FRAUD, and COERCION to lure victims and subsequently as control mechanisms
- In order to be eligible for a T- Visa, one element that the victim must prove is that they were the victim of a “severe form of trafficking”, which is defined as trafficking through the use of “force, fraud, or coercion”.
- A victim only has to be subjected to a form of force, fraud, or coercion **once** to meet the definition of a trafficking victim. (1)
- Physical movement is not necessary for the commission of trafficking offenses
- Anyone under 18 years old used in a commercial sex act is a trafficking victim



The right call for all in need: **866.CCD.7500**

Human Trafficking – T Visa

Federal law breaks down “severe trafficking” into 2 main categories:

Sex Trafficking:

- Force, fraud or coercion is used in order to induce a person into committing commercial sex acts
- The victim is under 18 years of age

Labor Trafficking:

- “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 *involuntary servitude, peonage, debt bondage, or slavery.*”
- Law enforcement certification is important in the T-visa application



The right call for all in need: **866.CCD.7500**

Human Trafficking – T Visa

Forms of Trafficking/Slavery

- Domestic Servitude
 - Maids, Nannies, Caretakers
- Forced Labor
 - Migrant farm workers, Performers, Debt bondage, Peonage
- Sex Workers
 - Prostitution, Pornography, Sex Tourism



The right call for all in need: **866.CCD.7500**

Human Trafficking Vs. Migrant Smuggling

Human Trafficking

Consent

Victims either do not consent to their situations, or if they initially consent, that consent is rendered meaningless by the actions of the traffickers.

Transnationality

Trafficking does not have to be the physical movement of a victim

Exploitation

Individual is delivered into slavery after entering the country

Continued exploitation in order to generate revenue for the trafficker

Trafficked individual is a victim

Crime against a person

Smuggling

Consent

Migrant smuggling includes those who consent to being smuggled.

No coercion is used

Smuggling is a breach of the integrity of a nation's borders.

Transnationality

Smuggling is always transnational.

Exploitation

The individual is left free after entering the country

Smuggled individual is a law violator

Crime against the government



The right call for all in need: **866.CCD.7500**

Human Trafficking – T Visa

What is the purpose of the visa?

- To grant temporary legal status to those persons who are trafficked into the United States in order to facilitate their release and recovery
- To assist law enforcement in their ability to investigate and successfully prosecute human traffickers

What are the eligibility requirements?

1. Victim of a severe form of trafficking
2. Physically present in the United States
3. Cooperated with officials' investigating the trafficking
4. Victim would suffer extreme hardship if she were removed.



The right call for all in need: **866.CCD.7500**

Human Trafficking – T Visa

Available assistance

- Certified human trafficking victims are eligible for the same benefits as refugees
- Children are immediately eligible for benefits
 - Receive a “letter of eligibility”
- Available resources include:
 - English language training
 - Housing or shelter assistance
 - Food and income assistance
 - Employment assistance and job placement
 - Health and mental health care services
 - Assistance for victims of torture



The right call for all in need: **866.CCD.7500**

How can I obtain legal status?

Citizenship (Naturalization)

- Have been an LPR for at least 5 years and have lived in the US since becoming an LPR
- 3 years if petitioned by USC spouse and continue married to USC spouse
- In some cases, children can derive citizenship from parents

Deferred Action for Childhood Arrivals (DACA)

DACA is a temporary relief available to children who arrived in the US before age 15, graduated HS or are currently enrolled in HS, have been here since before 06/15/2007 and have no criminal background

Currently, only DACA renewals are being accepted, and no new DACA applications can be submitted



Questions?

FOR CLE CREDIT

- Please email Catherine Dunbar with the four code words (one for each presentation segment) and your licensing information (state and bar/registration number).

Catherine.Dunbar@haynesboone.com

- Accredited in Texas, California, and New York.
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