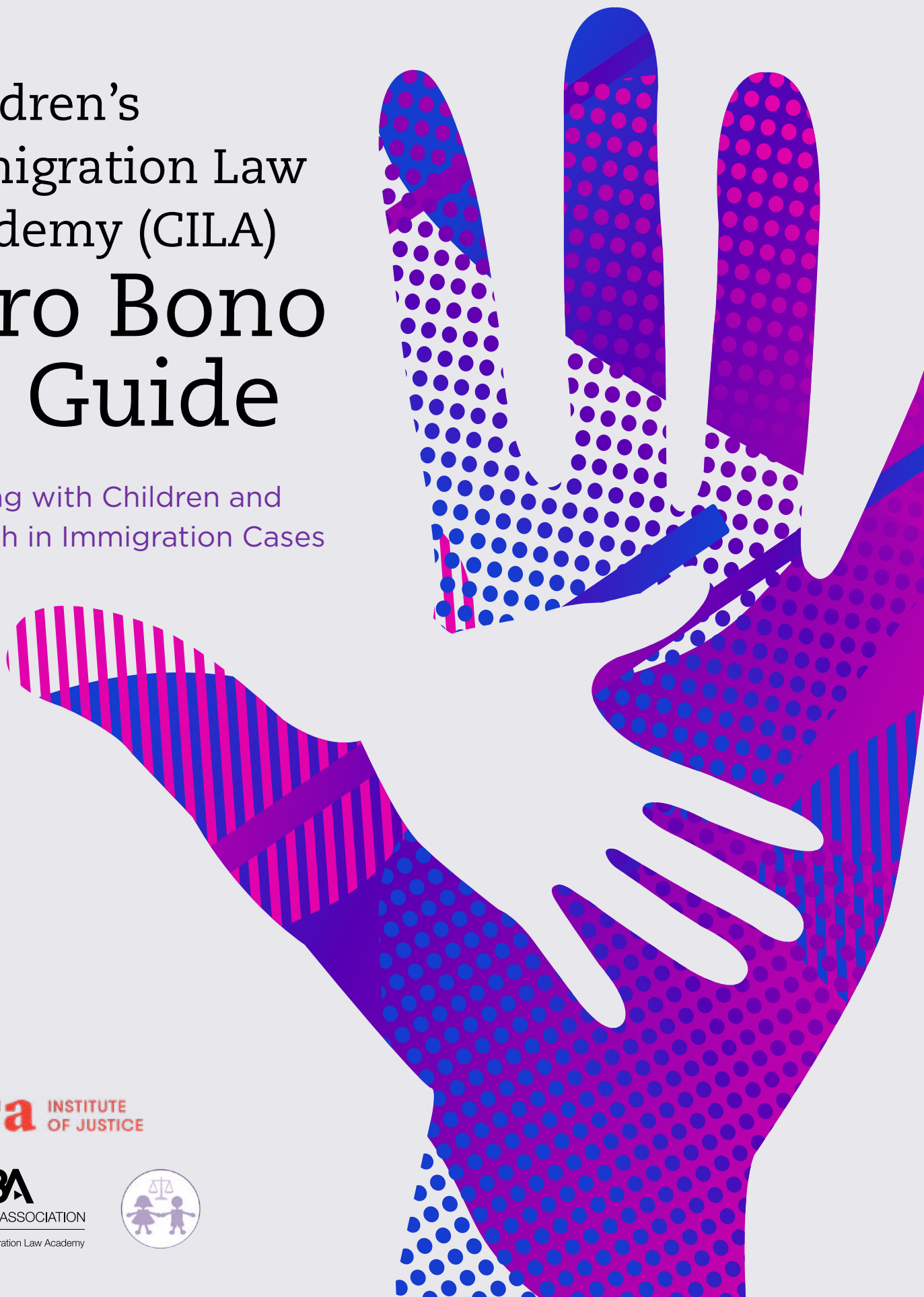


Children's Immigration Law Academy (CILA) Pro Bono Guide

Working with Children and
Youth in Immigration Cases



Vera INSTITUTE
OF JUSTICE

ABA

AMERICAN BAR ASSOCIATION

CILA Children's Immigration Law Academy



“I think of legal representation as a form of personal accompaniment; it is like embarking on a difficult journey with your client, unable to confirm the destination, but providing guidance and companionship along the way. During my practice, I always felt like that accompaniment was just as important as the legal representation itself, because without it, the representation was likely to fail. For me it was a way of supporting another human being, validating that person’s existence, and sharing that person’s story. Because at the end of the day, your client will remember how you made him or her feel, just as much as the outcome of the case.”

—MEREDITH LINSKY, DIRECTOR OF THE
ABA COMMISSION ON IMMIGRATION

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****This is not legal advice. This is for informational purposes only and should not substitute your own research and analysis. This is not comprehensive. We simply wanted to highlight some information and resources to help get you started in your pro bono representation in a child’s immigration case.****

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GLOSSARY

Common Acronyms and Forms

- A#: Alien number
- [AR-11](#): Alien's Change of Address Card (USCIS)
- CBP: Customs and Border Protection
- DHS: Department of Homeland Security
- DOJ: Department of Justice
- EAD: Employment Authorization Document
- EOIR: Executive Office for Immigration Review
- FOIA: Freedom of Information Act
- [Form EOIR-26](#): Notice of Appeal from a Decision of an Immigration Judge
- [Form EOIR-28](#): Notice of Entry of Appearance as Attorney or Representative before the Immigration Court
- [Form EOIR-33](#): Alien's Change of Address Form (EOIR)
- [Form EOIR-42B](#): Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents
- [Form G-28](#): Notice of Entry of Appearance as Attorney or Accredited Representative (DHS)
- [Form G-639](#): Freedom of Information/Privacy Act Request
- [Form G-1055](#): Fee Schedule (USCIS)
- [Form I-130](#): Petition for Alien Relative
- [Form I-192](#): Application for Advance Permission to Enter as a Nonimmigrant
- Form I-213: Report of Deportable/Inadmissible Alien
- [Form I-290B](#): Notice of Appeal or Motion
- [Form I-360](#): Petition for Amerasian, Widow(er), or Special Immigrant
- [Form I-485](#): Application to Register Permanent Residence or Adjust Status
- [Form I-589](#): Application for Asylum and for Withholding of Removal
- [Form I-765](#): Application for Employment Authorization
- Form I-770: Notice of Rights and Disposition
- Form I-862: Notice to Appear
- [Form I-912](#): Request for Fee Waiver
- [Form I-914](#): Application for T Nonimmigrant Status
- [Form I-914, Supplement A](#): Application for Family Member of T-1 Recipient
- [Form I-914, Supplement B](#): Declaration of Law Enforcement Officer for Victim of Trafficking in Persons
- [Form I-918](#): Petition for U Nonimmigrant Status
- [Form I-918, Supplement A](#): Petition for Qualifying Family Member of U-1 Recipient
- [Form I-918, Supplement B](#): U Nonimmigrant Status Certification
- HHS: Department of Health and Human Services
- ICE: Immigration and Customs Enforcement
- ICH: Individual Calendar Hearing (aka merits hearing)
- IJ: Immigration judge
- INA: Immigration and Nationality Act
- LTFC: Long term foster care
- MCH: Master Calendar Hearing
- NBC: National Benefits Center
- NOID: Notice of Intent to Deny
- NOIR: Notice of Intent to Revoke or Rescind
- NTA: Notice to Appear
- OCC: Office of the Chief Counsel
- ORR: Office of Refugee Resettlement
- OTIP: Office on Trafficking in Persons
- RFE: Request for evidence
- TA: Trial attorney – common reference to the OCC government attorney
- URM: Unaccompanied refugee minor
- USCIS: U.S. Citizenship and Immigration Services



I. INTRODUCTION

A. About CILA

The Children's Immigration Law Academy (CILA) is an expert legal resource center created by the American Bar Association (ABA). CILA's mission is to empower advocates who guide children through complex legal procedures, to do so with courage, competency, compassion, and creativity. CILA builds capacity for those working to advance the rights of children seeking protection through trainings, technical assistance, and collaboration.

CILA serves nonprofit, pro bono, and private sector legal advocates who work with children in immigration-related proceedings. CILA began operations in Houston, Texas in late 2015 in response to the thousands of children from Central America who surged across our Southern border fleeing prolific violence and abuse in their home countries and seeking humanitarian protections offered under U.S. law. Through our work, we hope to ensure more children are represented and to provide the resources and expertise needed to support those who endeavor to represent them.

Our small team of attorneys has a deep knowledge base and diverse backgrounds in child advocacy, removal defense, immigration, family, and administrative law. To learn more about our team, visit "About - Staff" on our website: <http://www.cilacademy.org/about/staff/>.

Should you or someone you know wish to make a donation to support our work, please visit: <http://www.cilacademy.org/>.

CILA Services and Resources

TRAININGS

CILA provides regular training opportunities for individuals who are working with unaccompanied children. CILA offers several in-person day-long trainings in Houston, Texas each year and four to six webinar trainings a year on varying topics. Videos of all of our webinars and select in-person trainings are available to view on the CILA website: <http://www.cilacademy.org/trainings/>.

PRO BONO

CILA hosts an online platform, *Pro Bono Matters for Children Facing Deportation*, to connect pro bono attorneys and law students with pro bono opportunities from around the country. Legal service providers post a wide range of pro bono opportunities, from short-term projects to direct representation. Available opportunities can be found at: <http://www.cilacademy.org/pro-bono/>. CILA's trainings and resources listed below additionally support the work of pro bono attorneys and law students. Moreover, CILA has a webpage dedicated to pro bono coordinators to see creative models for pro bono engagement and to get expert tips regarding running a pro bono program. CILA has a pro bono focused nationwide working group and listserv, Pro Bono Coordination for Child Immigration, that meets quarterly by video conference.

RESOURCES

CILA has a vast array of resources available to assist legal service providers, attorneys, and legal staff with their work to help unaccompanied children.

- **CILA's Website:** Resources can be found on CILA's website in the Online Library and Legal Updates pages. Additional online materials can be accessed after requesting an entry password.

- **CILA's Library:** CILA maintains an extensive legal library at our office. Attorneys are welcome to visit our office to utilize the resources. An index of the library's collection of books and materials is available to view on CILA's website.
- **Texas Unaccompanied Children's Champion's Corner:** CILA shares monthly updates via a newsletter to our working group listservs with legal updates, opportunities to connect and learn, as well as celebrations of the work of advocates. Texas advocates can sign up to receive the newsletter by joining a CILA working group (information below).

EMERGENCY RECEPTION CENTERS

CILA is available to provide training to legal service providers and volunteers at Emergency Reception Centers (ERCs) for unaccompanied children nationwide when the need arises. In the past this has happened when the population of unaccompanied children rose above the available shelter capacity and the government opened unlicensed influx facilities, or ERCs on federal land.

TEXAS SPECIFIC:

CILA WORKING GROUPS

CILA hosts three Texas-wide working groups which meet through teleconference and creates a space for advocates from around the state to connect with each other, share on-the-ground trends, and receive updates on major changes in the area of law. We host a quarterly meeting for three different issue areas: (1) Special Immigrant Juvenile status, (2) children's asylum law, and (3) detained unaccompanied children.

CILA also hosts a quarterly in-person Houston-wide working group on Special Immigrant Juvenile status attended by nonprofit, pro bono, and private immigration attorneys.

To learn more about our working groups or to join one of CILA's two listservs (Special Immigrant Juvenile status and children's asylum law), please visit: <http://www.cilacademy.org/resources/working-groups/>.

TECHNICAL ASSISTANCE

CILA provides individualized technical assistance to Texas legal advocates relating to specific case questions and issues. Requests can be made on CILA's website: <http://www.cilacademy.org/request-assistance/>.

B. How to Use this Guide

This Guide is intended to help provide a background to pro bono attorneys representing children in immigration cases. The legal definition for children facing deportation alone in immigration cases is "unaccompanied alien child." We follow the ABA's lead in using the terminology "unaccompanied child," to avoid the unintentional dehumanization of our clients. It is important to note, we use the term unaccompanied child to refer to a range of ages and developmental levels. Unaccompanied children can be toddlers, tender-age, preteen, teenagers, adolescents, and even young adults depending on their age of arrival in the U.S. and the length of their immigration case. The Guide is designed to provide introductory information and links to webinars and additional resources to explore for more detailed training.

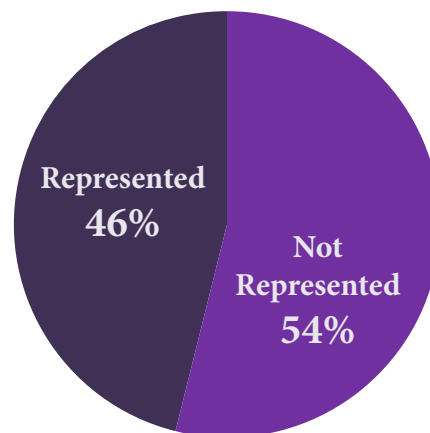
The Guide covers essential advocacy skills that go beyond the black letter of the law and has an emphasis on practical tips to help you navigate your pro bono representation. Additionally, Section III, relating to Common Forms of Relief, provides more detail regarding the most common claims for youth, which include asylum, withholding of removal, and protection under the Convention Against Torture (CAT), as well as Special Immigrant Juvenile status (SIJS) and adjustment of status than the other forms of relief (U and T visas, family-based, and Violence Against Women Act (VAWA) petitions).

Immigration law is complex, and this is not intended to be a comprehensive guide. This is not a replacement for your own research and study of the relevant issues and law involved in your case and jurisdiction. Our hope is that the Guide provides a solid starting point as you begin your pro bono representation.

What Is the Need for Pro Bono Representation of Children?

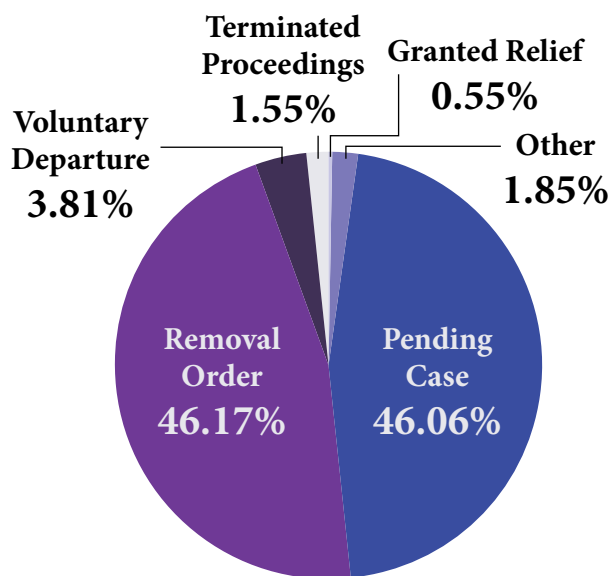
Unfortunately, children in immigration court are not entitled to free appointed legal counsel or best interest advocates like children in the juvenile or child welfare systems in the United States (U.S.). In fact, the majority of youth are facing deportation alone. [Transactional Records Access Clearinghouse \(TRAC\) Immigration](#), Syracuse University's data tool, provides information regarding juveniles' cases in removal proceedings.¹ TRAC's most recent data from 2018 to 2020 represents all juveniles (including those who are unaccompanied children and those who are with their parents or guardians), while their older data from 2005 to 2017 shows data only regarding unaccompanied children. Looking at TRAC's total data on juveniles from 2005 through February 2020, overall, 581,118 juveniles (54%) were not represented by an attorney, and 486,408 (46%) were represented.

HOW MANY JUVENILES HAVE REPRESENTATION IN IMMIGRATION COURT?



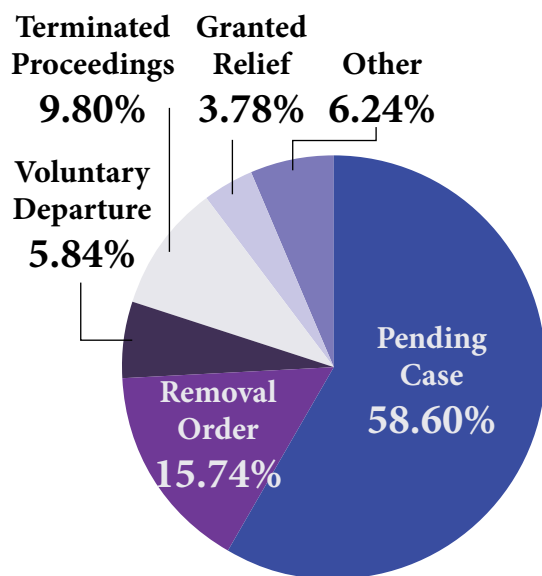
LOOKING AT THE TOTAL DATA:

What Is the Impact for a Juvenile Who Does Not Have Representation?



LOOKING AT THE TOTAL DATA:

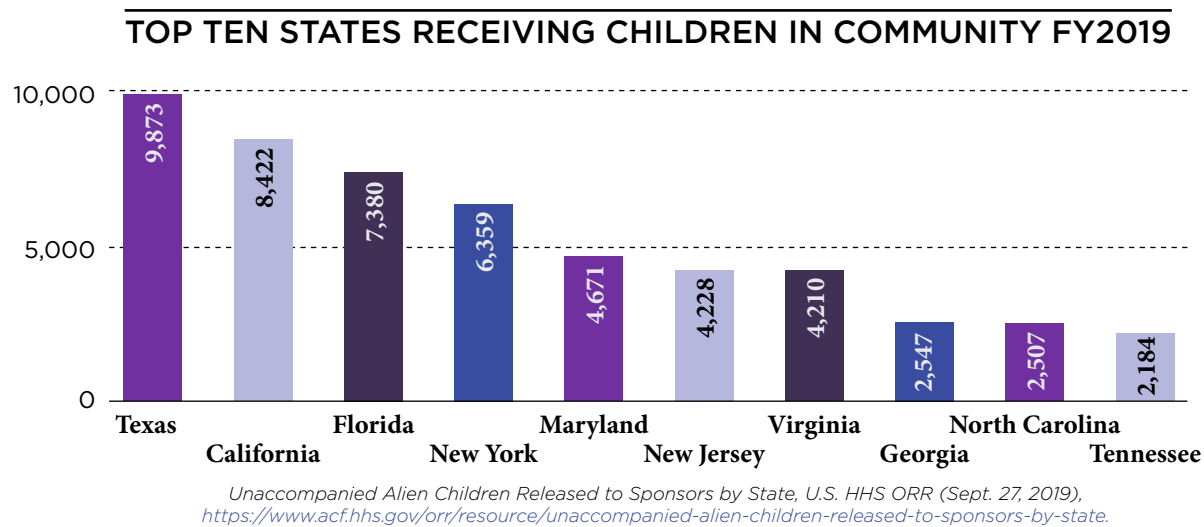
What Is the Impact for a Juvenile Who Has Representation?



¹ Transactional Records Access Clearinghouse (TRAC) data regarding juveniles in immigration court proceedings from 2005 to February 2020 covers 1,067,526 cases. Of those, 552,692 matters are currently pending before the immigration court. TRAC Immigration, *Juveniles – Immigration Court Deportation Proceedings*, Syracuse University, <https://trac.syr.edu/phptools/immigration/juvenile/> (last visited Apr. 9, 2020).

The data² shows that juveniles who have a representative are over six times more likely to be granted relief than a juvenile without counsel. Additionally, represented juveniles are also over six times more likely to have their cases terminated, which is usually a positive result in removal proceedings. Moreover, the numbers show that there are a large number of pending cases, which shows the need for additional representation for kids. Children are facing deportation in immigration courts across the U.S., including in a community near yours. We must find a way to elevate the voices of these youth by providing representation. Children should not be alone in this process.

There are many barriers to obtaining representation for children facing deportation. Federal funding, authorized by the Homeland Security Act of 2002³ and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),⁴ provides legal orientations and screenings for children who are in the custody of the Office of Refugee Resettlement (ORR), under the Department of Health and Human Services (HHS), along with representation while they are detained.⁵ Many youth, however, are released from ORR care to a sponsor somewhere in the U.S., and are set for hearings at immigration courts in their communities.



Although children may have spoken to a lawyer while they were in detention, there is no guarantee of representation in the community where they are released, especially if they are released to a different area than where their shelter was located. Additionally, many parts of the country do not have legal service providers that represent youth for free or low cost, or who are able to provide support to pro bono attorneys to help kids released in their areas.⁶ This means oftentimes youth are not represented upon release from detention unless a pro bono attorney is willing to take the case.

We thank you for your time and effort in your pro bono representation. We hope this Guide helps equip you with the knowledge and tools needed to effectively advocate for your child client.

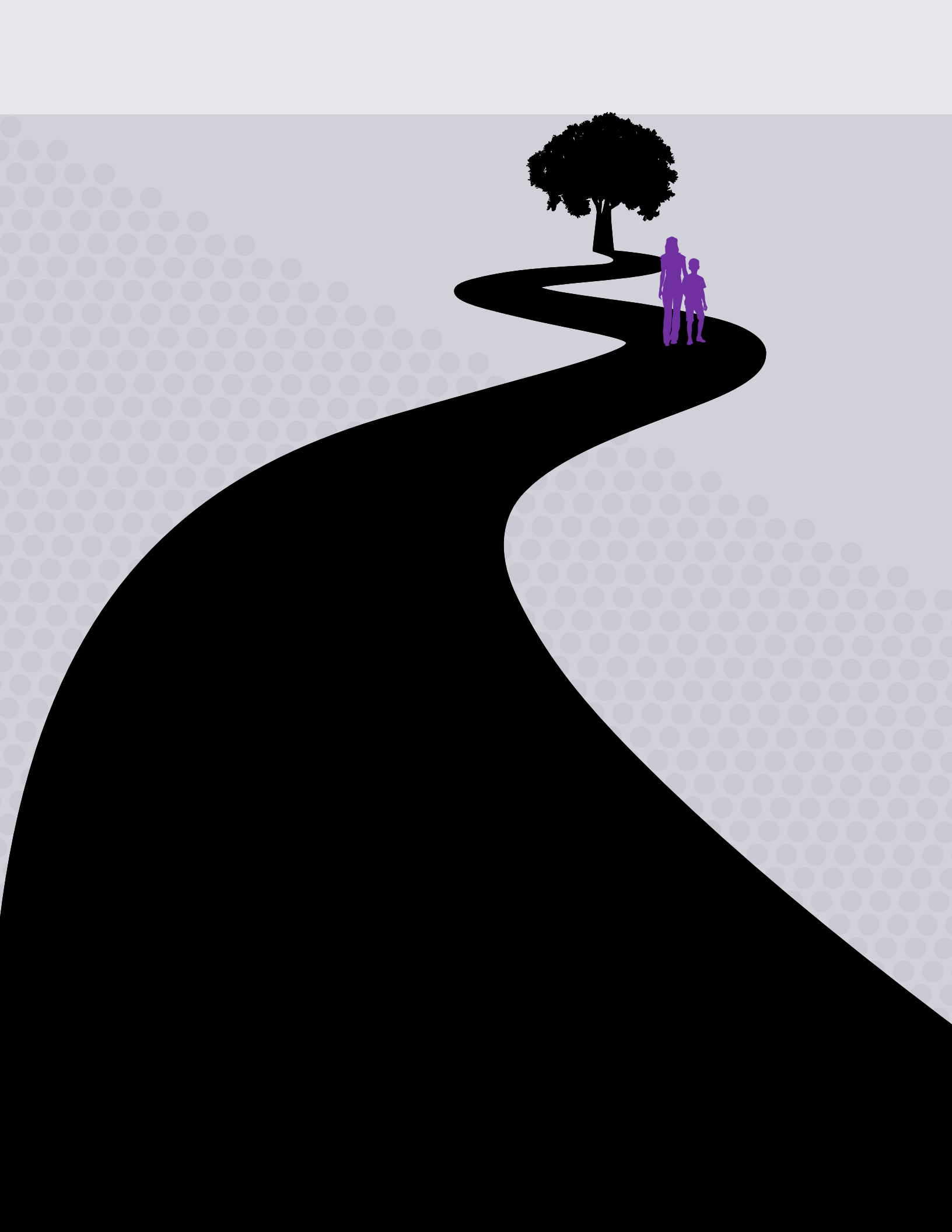
² *Id.*

³ Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (Nov. 25, 2002); 6 U.S.C. § 279

⁴ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110–457, 122 Stat. 5044, 5080 (Dec. 23, 2008); 8 U.S.C. § 1232.

⁵ There have also been reports of limitations to children’s access to representation while detained. The judge in *Lucas R. v. Azar* lawsuit authorized a class of children in the Office of Refugee Resettlement (ORR) based on the fact that “ORR blocks lawyers from representing detained children with respect to placement, non-consensual administration of psychotropic medications, or release to available custodians notwithstanding that Congress has allocated funds specifically to provide such lawyers to represent children who are or have been in ORR custody in ‘legal matters,’ including issues related to ... [placement in the least-restrictive setting].”

⁶ For a list of free legal services, search this directory by state and filter for “Removal Proceedings” and “Juveniles.” See *National Immigration Legal Services Directory*, Immigration Advocates Network, <https://www.immigrationadvocates.org/legaldirectory/> (last visited Apr. 10, 2020).



II. EFFECTIVE REPRESENTATION

A. Working with Unaccompanied Children

The migration of children and adolescents is not a new phenomenon and is not unique to the U.S. According to the United Nations, there were 272 million international migrants worldwide in 2019, and of those, 38 million were below the age of 20.⁷

In the U.S. in 2019, there were 851,508 apprehensions at the Southwest border according to data from the U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP).⁸ This figure includes 76,020 unaccompanied children; therefore, unaccompanied children accounted for approximately 11.2% of the apprehensions at the Southwest border of the U.S. in 2019.⁹ While the numbers of unaccompanied children crossing the border have declined in 2020, the needs of those who make it across the border have only become more complex.

Get to Know Unaccompanied Children in Your Area

ORR releases data regarding unaccompanied children released to sponsors per [state](#) and [county](#).

Unaccompanied Child Definition

An “unaccompanied alien child” is a child who enters the U.S. without a valid entry document and who was not accompanied by a parent or legal guardian. An unaccompanied child is defined by the Homeland Security Act of 2002 and the TVPRA as an individual (a) under eighteen years of age; (b) without lawful immigration status; and (c) with no parent or legal guardian in the U.S. available to provide care and physical custody.¹⁰

DEMOGRAPHICS OF UNACCOMPANIED CHILDREN

Currently, the majority of unaccompanied children are migrating to the U.S. from Central America, particularly Guatemala, Honduras, and El Salvador.¹¹ Primarily, teenage boys are the ones migrating.¹² Children migrate for a variety of reasons and often for multiple reasons, but certainly common reasons for migration relate to uncontrolled violence in home countries, corruption, impunity, family-based violence, gender-based violence, and gang-related violence.¹³

⁷ *International Migrant Stock 2019*, U.N. Department of Economic and Social Affairs (Sept. 2019), https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationStock2019_TenKeyFindings.pdf.

⁸ *Southwest Border Migration FY 2019*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019> (last modified Nov. 14, 2019). The government fiscal year for 2019 began October 1, 2018 and ended on September 30, 2019.

⁹ *Id.*

¹⁰ See *supra* notes 3-4.

¹¹ Data from FY 2019 shows that 45% of unaccompanied children migrated from Guatemala, 30% from Honduras, 18% from El Salvador, 2% from Mexico and <5% from other countries. See *Facts and Data*, ORR, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data> (last reviewed Mar. 12, 2020).

¹² Data from FY 2018 shows that 72% of unaccompanied children were over 14 years of age and over 71% were boys. *Id.* ORR also releases monthly data regarding unaccompanied children who are detained and released from ORR.

¹³ See Paulina Villegas, *Detentions of Child Migrants at the U.S. Border Surges to Record Levels*, N.Y. Times (Oct. 29, 2019), <https://www.nytimes.com/2019/10/29/world/americas/unaccompanied-minors-border-crossing.html>.

What Happens When Unaccompanied Children Arrive in the United States?

Most often, children are apprehended by CBP. Unaccompanied children from contiguous countries (i.e., unaccompanied children from Mexico and Canada) must be screened within 48 hours for claims of persecution, trafficking, and fear of trafficking, as well as willingness to withdraw their application and voluntarily return home.¹⁴ Voluntary returns must be processed within 48 hours. DHS must transfer unaccompanied children from non-contiguous countries and those from Mexico who qualify to ORR generally within 72 hours.¹⁵

In 2019, there was much news coverage of the abhorrent conditions in border patrol facilities such as the one in Clint, Texas where reports of conditions for both children and adults shocked the conscious of many Americans.¹⁶ These reports echoed similar reports made in other facilities in the Rio Grande Valley in 2013.¹⁷

CBP officers record their interview notes on Form I-213, *Record of Deportable/Inadmissible Alien* and issue a Notice to Appear (NTA), an official charging document, asserting any violations of immigration law against the children. Officers should also serve Form I-770, *Notice of Rights and Disposition* when the child is apprehended. Since unaccompanied children are entitled to speak to an immigration judge in removal proceedings, Immigration and Customs Enforcement (ICE) will then file the NTA with the immigration court, initiating removal proceedings for the unaccompanied children. Next, the immigration court will mail out hearing notices with required court dates for the child to attend court. There are many instances in which you might find that one of these steps was missed (i.e. failure to file the NTA with court, failure to serve Form I-770) or lacking in due process (i.e. copying and pasting incorrect information on a child's I-213). See Section IV.B. to learn more about what to expect in immigration court.

Once in ORR's care, the agency will work to place the youth with a sponsor to facilitate reunification, commonly with a parent or other close family member. If there is no option to reunify with a sponsor, the child will remain in ORR care via transfer to a long-term foster care (LTFC) and/or unaccompanied refugee minor (URM) program if the child qualifies for immigration relief. Children who do not qualify for immigration relief and have no reunification option are repatriated to their home country. ORR shelters are spread across the U.S. with a large concentration found in the Rio Grande Valley along the border of Texas with Mexico. At ORR, a child goes through an assessment involving a biographic intake, medical exam, and mental health evaluation. If the child turns 18, the unaccompanied child might be transferred to ICE detention to be detained with adult immigrants on the youth's birthday.¹⁸

To Learn More About Unaccompanied Children in Immigration Detention

Check out CILA's [blog post](#) on the topic: *Frequently Asked Questions: Who Regulates the Detention of Children Facing Deportation?*

¹⁴ Unaccompanied children from contiguous countries are processed differently than other unaccompanied children. See TVPRA 2008, *supra* note 4.

¹⁵ *Id.* There is an exception to the 72-hour requirement during "exceptional circumstances."

¹⁶ See Simon Romero, Zolan Kanno-Youngs, Manny Fernandez, Daniel Borunda, Aaron Montes, and Caitlin Dickerson, *Hungry, Scared and Sick: Inside the Migrant Detention Center in Clint, Tex.*, N.Y. Times (July 6, 2019), <https://www.nytimes.com/interactive/2019/07/06/us/migrants-border-patrol-clint.html?module=inline>.

¹⁷ See Guillermo Cantor, PhD, *Hieleras (Iceboxes) in the Rio Grande Valley Sector*, American Immigration Council (Dec. 2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/hieleras_iceboxes_in_the_rio_grande_valley_sector.pdf.

¹⁸ This is currently an issue in litigation in the case *Garcia Ramirez v. ICE*. See *ICE Unlawfully Detains Immigrant Youth: Federal Court Ruling*, National Immigrant Justice Center (NIJC) (July 2, 2020), <https://immigrantjustice.org/press-releases/ice-unlawfully-detains-immigrant-youth-federal-court-ruling>. Check out NIJC's [website](#) for updates regarding the case.

Foundational Sources of Law Impacting Unaccompanied Children's Rights

| SOURCE OF LAW | NOTES |
|---|---|
| <p><i>Flores Settlement Agreement</i></p> | <ul style="list-style-type: none"> • 1984: Advocates sued INS over their policy to release unaccompanied children only to a parent and legal guardians and over the detention conditions of children, who were strip-searched, placed with unrelated adults, and deprived recreation and education • 1997: Settlement approved improving standards for detention, release, and treatment of minors in immigration custody <ul style="list-style-type: none"> - Must be detained in “least restrictive setting” - Apprehension—Safe and sanitary facilities and transfer out within 3 days - Custody—Must be placed in state licensed facility although it does contemplate secure facilities in some cases with the option to request bond - Policy favoring release—including release to non-parent relatives and other placements with a sponsor agreement |
| <p><i>Homeland Security Act of 2002</i></p> <p>Codified as to ORR at 6 U.S.C. § 279</p> | <ul style="list-style-type: none"> • Transferred the responsibility of custody of unaccompanied children from “legacy” INS to ORR • Led to the creation of the child advocate program: “ensuring that the interests of the child are considered in decisions and actions relating to the care and custody” • Defined “unaccompanied alien child” |
| <p><i>William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008</i></p> <p>Codified at 8 U.S.C. § 1232</p> | <ul style="list-style-type: none"> • Asylum protections for unaccompanied children <ul style="list-style-type: none"> - Safe third country bar does not apply to unaccompanied children - One-year filing deadline does not apply to unaccompanied children - Initial jurisdiction of an unaccompanied child's application is with an asylum officer • Expedited removal protections <ul style="list-style-type: none"> - Treatment of children from contiguous countries - Safe repatriation of children - Placement in removal proceedings - Care and custody of unaccompanied children - Safety and suitability assessments for custodians - Access to counsel - Child advocates • Expanded protections and eligibility for Special Immigrant Juvenile Status |

Sample Checklist of What to Do Before Your First Client Meeting

- Review the information you have in the client file.
- If you are working with a nonprofit organization as a pro bono attorney, review all materials provided by the nonprofit organization.
- Do some research regarding the country your client is from so you have some background and context. Consider how you plan to represent the child with cultural competency and with a trauma-informed approach.
- Learn more about Cultural Competency with CILA's Guide: *Cultural Competency and Humility When Representing Unaccompanied Children*.
- Learn more about working with survivors of domestic violence and child abuse, trauma-informed lawyering, interviewing techniques in the following sections of this Guide. See Sections II.B.-C.
- Consider case strategy and summarize your client's options.
 - This may require some legal research and familiarization with your client's immigration options. The resources in this Guide should provide some background and a starting point to get to know the relevant law.
 - Think about how you will explain this information and the immigration process to your client in language appropriate to your client's age and developmental stage.
 - Use a case strategy matrix or other tool to help keep track of legal and factual elements. CILA has case theory and evidence matrix charts for SIJS and asylum posted on CILA's website on the *Additional Resources* [page](#).¹⁹
- Prepare any documents you will need signed at your first meeting.
- Draft a list of questions to ask your client based on your case file review and initial case strategy.
- Create a meeting agenda taking into consideration your trauma-informed stance. Review the sample first meeting checklist below for ideas.
- Offer the client a choice in meeting times among those you have available and make sure the client has directions and a plan for transportation, parking, child care, etc. during the meeting. When working with a child client, you may often be communicating with a parent or caregiver about some of these details. However, many adolescent and teenage clients are able to communicate and arrange meetings as well and it is empowering to give them a voice in the process.
- Be sure to arrange an interpreter, if needed, for your meeting whether in person or through a telephonic interpretation system, as appropriate. See Section II.D. for tips regarding working with an interpreter.
- Check in with the client the day before the meeting to make sure they have all of the information they need to be present at the meeting.
- Make sure any office staff knows to expect them in person or possibly receive a phone call if they are having trouble finding the office and that other staff has a trauma-informed stance as well.

¹⁹ If you would like to access these resources and do not have the password, please contact CILA at cila@abacila.org.

Sample Checklist for Your First Client Meeting

- Remember your trauma-informed stance: start by building rapport and giving your client signals of warmth and safety. Consider bringing items to break the ice, like music, games, coloring books, or toys.
- Be curious: try to get to know your client and connect on a more personal level. Ask about your client's interests, daily life, etc.
- Remember that the client may have never met a lawyer before or been provided a voice in this process, and that their cultural context for law enforcement, lawyers, and adults may be different than yours.
- Be patient, kind, and practice empathetic listening skills. *See Section II.C.*
- Introduce anyone in the room including interpreters, associates, legal staff, or interns.
- Review what you are going to be talking about in the meeting, how long it will last, and let the client know that they can ask for a break at any time to use the restroom or get some water.
- Review your role.
 - This is a good time to ensure your client knows you are there to help.
 - Discuss your duties of confidentiality to help put your client at ease. Do not forget to go over any exceptions to confidentiality that may exist in your jurisdiction. For example, in Texas all professionals including attorneys are mandatory reporters of child abuse.
 - If you have a computer or are going to take notes, explain why and let the child know the rules about confidentiality apply to the notes as well.
 - Remind the client that you do not work for the government, the court, the ORR shelter, or anyone other than them.
- Set clear expectations—what your client can expect and what you expect from your client, including any client obligations (being honest, appearing for court, etc.). For example, *see Section IV.B.* for your client's obligations while in removal proceedings.
- Sign documents.
- Review the file and information you have already received with your client.
- Discuss strategy options including any pertinent deadlines.
- Emphasize the need to stay in communication, and make sure you have the best contact information for your client and alternative methods of contact.
- Make a plan for next steps in the case.
- Try to end the interview on a lighter note, away from the substance of the meeting. If the client was emotional or had to discuss anything hard to talk about, remind them of their strength and bravery. This will help your client transition into the rest of their day.

Know Your Rights

Review with your client their rights if they are stopped by the police, ICE, or other law enforcement. Additionally, your client may need this information in case their family or sponsor are picked up by ICE. Several organizations have great Know Your Rights (KYR) resources.

- [KYR](#) wallet cards issued by Immigrant Legal Resource Center (ILRC)
- [KYR](#) immigrants' rights issued by American Civil Liberties Union (ACLU)
- [KYR](#) for children and youth issued by National Immigrant Justice Center (NIJC)
- [KYR](#) information on ICE raids issued by Kids in Need of Defense (KIND)
- [KYR](#) information in Mayan Mam issued by the International Mayan League

Filing a Civil Rights Complaint with the Department of Homeland Security

If a DHS employee (i.e., a CBP or ICE officer or U.S. Citizenship and Immigration Services (USCIS) adjudicator) violated your client's civil rights or civil liberties, your client may want to consider making a Civil Rights Complaint with the DHS Office for Civil Rights and Civil Liberties (CRCL).

Check out CILA's blog post: *Keeping the Government Accountable: Upholding Civil Rights and Due Process for Unaccompanied Children*, October 2019. The blog post will help provide more information about the process and gives tips on how to screen for these issues in your case. It is always important to ask the right questions! Unfortunately, violations have been occurring at the border. A DHS Office of Inspector General (OIG) July 2019 [report](#) highlighted problems occurring when children were held at CBP holding facilities, such as overcrowding, prolonged detention, and lacking access to showers and limited access to change clothes.

Links to Learn More About WORKING WITH UNACCOMPANIED CHILDREN

- Check out CILA's 101 [webinar](#): *Introduction to Working with Unaccompanied Children* (1 hour, 54 minutes). The webinar covers: a Profile of an Unaccompanied Child; Legal Protections for Unaccompanied Children [beginning at 29:08]; and The Current System of Apprehension, Detention, Release and Representation of Unaccompanied Children [beginning at 1:04].
- Check out this [flowchart](#), to learn more about the process unaccompanied children go through upon entry into the U.S. and which agencies are involved in the process.
- Check out CILA's Guide on Stakeholder's Relations: *Who's Who in the Unaccompanied Children World? A Guide to Identifying and Working with Stakeholders*.
- Read the Council on Foreign Relations' article *U.S. Detention of Child Migrants*, January 30, 2020.

B. Trauma-Informed Lawyering

Working with Survivors of Domestic Violence and/or Child Abuse

Oftentimes domestic violence and/or child abuse is a common thread of children's stories. You will hear histories that include children who have suffered abuse by a parent; witnessed abuse between their parents; suffered threats and/or sexual violence in their home country, by gang members for instance; or experienced violence on the journey to or after arriving in the U.S. Understanding how these experiences have impacted your child client and their families will help you become a better advocate for them.

"Domestic violence (also called intimate partner violence (IPV), domestic abuse or relationship abuse) is a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship."²⁰ Abuse can take many forms including controlling behavior, fear tactics, physical and sexual violence, coercion, threats, emotional or financial abuse, etc.²¹ According to the [Children's Hospital of Philadelphia Research Institute's Center for Injury Research and Prevention](#), "[c]hild maltreatment (both abuse and neglect) is often linked with [intimate partner violence], and encompasses any act or failure to act on the part of a parent or caregiver which results in harm to the child, including serious physical or emotional harm, sexual abuse or exploitation, or death."²² In addition to child abuse often co-occurring with other domestic violence at home, "[a] child can be an indirect victim of [intimate partner violence] as a witness and still face the serious consequences of the abuse."²³

²⁰ *What is Domestic Violence?*, National Domestic Violence Hotline, <https://www.thehotline.org/is-this-abuse/abuse-defined/> (last visited Apr. 10, 2020).

²¹ *Id.*

²² *Domestic Violence and Child Abuse*, Children's Hospital of Philadelphia Research Institute, <https://injury.research.chop.edu/violence-prevention-initiative/types-violence-involving-youth/domestic-violence-and-child-abuse#.Xj-WqzFKiM9> (last visited Apr. 10, 2020).

²³ *Id.*

A common question by outsiders to this work is why a person would stay in a situation where there is domestic violence. It is important to know that the individual facing the abuse is in the best position to know when and whether they should leave the situation. It is a complicated decision to make. The [National Coalition Against Domestic Violence](#) (NCADV) says, “[a]busers repeatedly go to extremes to prevent the victim from leaving. In fact, leaving an abuser is the most dangerous time for a victim of domestic violence.”²⁴ NCADV goes on to explain,

[a] victim’s reason for staying with their abusers are extremely complex and, in most cases, are based on the reality that their abuser will follow through with the threats they have used to keep them trapped; the abuser will hurt or kill them, they will hurt or kill the kids, they will win custody of the children, they will harm or kill pets or others, they will ruin their victim financially - - the list goes on.²⁵

When working with a child, sometimes due to age or cultural differences, a child may have a different perception of the abuse and this may be something that has to be defined and explained to the child. Depending on the age of your client, it may be helpful to use [power and control wheels](#) to discuss the issues with your client.²⁶

Many children have suffered abuse in their home country, but if a child is currently in an abusive situation, check in regarding the client’s safety during their representation. For example, ask your client questions such as if their phone number is a number where you can leave a voicemail and if your client has a safe place to receive mail. If your client is currently in a situation involving domestic violence, you can help your client by encouraging them to make a safety plan and working with them to create the plan.²⁷ Additionally, remember your ethical responsibilities, including in some states, the mandatory duty to report child abuse. See [Section II.E](#). Also, you can share the hotline numbers included in this resource and research other local sources to assist your client.

Childhood abuse and neglect can have short-term and long-term consequences impacting a child physically and mentally.²⁸

Important Resources

[National Child Abuse Hotline:](#)

1-800-4-A-CHILD (1-800-422-4453)

[National Domestic Violence Hotline:](#)

24/7 phone line where advocates are available to talk in more than 200 languages 1-800-799-SAFE (7233) and TTY 1-800-787-3224.

[Casa de Esperanza’s](#) 24/7 National DV Hotline: 1-800-799-7233

[Loveisrespect](#), a resource for teens experiencing dating abuse, that includes a peer advocate 24/7 hotline 1-866-331-9474, text (LOVEIS to 22522*), and chat tool.

²⁴ *Why do Victims Stay?*, The National Coalition Against Domestic Violence (NCADV), <https://ncadv.org/why-do-victims-stay> (last visited Apr. 10, 2020).

²⁵ *Id.*

²⁶ The [National Center on Domestic and Sexual Violence](#) provides several wheel adaptations that could be useful to discuss these issues with your client. Take a look at the various wheels to see what is most relevant to your client’s particular situation.

²⁷ View National Domestic Violence Hotline’s website for information regarding different types of safety plans. *What is a Safety Plan?*, National Domestic Violence Hotline, <https://www.thehotline.org/help/path-to-safety/> (last visited Apr. 10, 2020). See also *Personalized Safety Plan*, NCADV, <https://ncadv.org/personalized-safety-plan> (last visited Apr. 10, 2020). See also *What is a Safety Plan?*, National Child Abuse Hotline (June 18, 2016), <https://www.childhelp.org/wp-content/uploads/2014/07/CH-Safety-Plan.pdf>.

²⁸ *Impact of Child Abuse & Neglect*, Child Welfare Information Gateway, <https://www.childwelfare.gov/topics/can/impact/> (last visited Apr. 10, 2020).

Toxic stress can be caused by experiencing ACEs [adverse childhood experiences], including child maltreatment. It can change an individual's brain architecture, which can cause the person's stress response system to be triggered more frequently and for longer periods of time and place him or her at an increased risk for a variety of physical and mental health problems, including cardiovascular disease, depression, and anxiety (National Scientific Council on the Developing Child, 2014). Trauma-informed approaches, however can help improve outcomes for individuals affected by toxic stress, and there is evidence that social and emotional support (e.g., consistent parenting practices, community supports) can alleviate its effects (U.S. Department of Health and Human Services [HHS], Administration for Children and Families [ACF], 2017).²⁹

The effects of the abuse or neglect may impact your representation because it may affect your working relationship with your client and/or how your client can communicate their story with you and/or a decision maker in an interview or hearing. Frequently, it is necessary to have a forensic evaluation conducted by an expert to fully explain how your client's past is impacting their physical and/or mental health.

The Significance of a Trauma-Informed Approach

Many of our clients have experienced past trauma. This could be trauma that occurred in the client's home country, on their journey to the U.S., or even once in the U.S. based on a particular experience, being detained, or separation from family.

Signs of trauma vary person to person, and will also depend on your client's age.³⁰ According to [The National Child Traumatic Stress Network](#),

[t]raumatic reactions can include a variety of responses, such as intense and ongoing emotional upset, depressive symptoms or anxiety, behavioral changes, difficulties with self-regulation, problems relating to others or forming attachments, regression or loss of previously acquired skills, attention and academic difficulties, nightmares, difficulty sleeping and eating, and physical symptoms, such as aches and pains. Older children may use drugs or alcohol, behave in risky ways, or engage in unhealthy sexual activity.

For children in immigration proceedings, there are additional factors to consider when employing a trauma-informed approach including potential difference in language, power dynamics, adjustment to a new culture, placement of your client (i.e. detained, released to family, released to non-family), and potential lack of trust.³¹

Often the nature of our work requires us to work with clients as they recount prior trauma because it directly relates to the case. Employing a trauma-informed approach to your representation is essential because it is ethically necessary³² and because it is important to treat clients with respect and compassion.

29 Child Welfare Information Gateway. (2019). *Long-term consequences of child abuse and neglect*. Washington DC: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Children's Bureau, https://www.childwelfare.gov/pubPDFs/long_term_consequences.pdf.

30 *Trauma Informed Care for Children Exposed to Violence Tips for Agencies working with Immigrant Families*, Office of Juvenile Justice and Delinquency Prevention, https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/programs/safestart/TipSheetFor_ImmigrantFamilies.pdf (last visited Apr. 10, 2020).

31 Many of the concepts in this section were presented in a CILA Boot Camp training by team members from the Trauma and Grief Center at Texas Children's Hospital/Baylor College of Medicine, *Exploring Trauma and Grief in Children and Teens*, presenters Maria X. Maldonado-Morales, LCSW, MPH and Guadalupe Garcia, LPC, Sept. 25, 2019.

32 [Rule 1.1 of the American Bar Association \(ABA\) Model Rules of Professional Responsibility](#) addresses competence and mandates that "a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." [ABA Model Rule 1.3](#) states that "a lawyer shall act with reasonable diligence and promptness in representing a client." This Model Rule is further explained in comments, which state that "a lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."

Our goal is to reduce re-traumatization of our clients while we work with them on their case.

It is important to remember that “[a]though many immigrant and refugee youth have experienced adversity and hardship, first and foremost, they are people who have also drawn on significant internal and external strengths to have survived their past experiences.”³³ In practice, it can be best to apply a strengths-based approach. “[A] strengths-based approach focuses on growth and development and recognizes that acknowledging strengths can build resilience and promote healing. The simple act of identifying and drawing attention to children’s strengths can promote resilience”³⁴

TIPS FOR PRACTICING TRAUMA-INFORMED LAWYERING³⁵

Build trust with your client:

- Build rapport with your client. Get to know their interests and who they are on a personal level.
- Help your client feel comfortable. For example, if possible, try to create an environment where it will be comfortable to talk. Maybe this will be a private room or a room with windows and an easy exit.
- Set the tone from the beginning of a meeting. Be welcoming and friendly by offering water or coffee, for example.
- Think about your language. Use language such as “we” or “us.” For example, “We will work together on this.”
- Go over confidentiality and your role as your client’s attorney.
- Use empathetic listening skills. See Section II.C.

Communicate clearly with your client:

- Use basic language that is child-friendly and age appropriate.
- Set expectations from the beginning. For example, give your client an idea of how long the meeting will last so they know there is an end time to talking about the difficult subject. In addition, offer your client a roadmap of the legal case, including a timeline, to the extent you can.
- Inform your client about what is needed to have a successful working relationship, such as being on time to meetings and being honest in communications, for instance. Let your client know of any consequences of not meeting these expectations. For example, if the client is 30 minutes late to an hour meeting, explain that you will only be able to meet for 30 minutes. Keep in mind that some of these expectations are likely new for your client due to the child’s age and/or cultural differences.
- Set boundaries with your client and be clear about your role. For example, this may be important when referring your client to other community resources such as a counselor or medical resources.
- Explain why you need certain information and how it will help your client’s case. For example, explain the importance of including details when your client recounts their story.

³³ Miller, K. K., Brown, C. R., Shramko, M., and Svetaz, M. V. (2019). *Applying Trauma-Informed Practices to the Care of Refugee and Immigrant Youth: 10 Clinical Pearls*. *Children (Basel, Switzerland)*, 6(8), 94, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6721394/pdf/children-06-00094.pdf>.

³⁴ *Id.*

³⁵ Many of these ideas were represented in Torture Abolition and Survivors Support Coalition (TASSC) International and CLINIC’s webinar, *Developing a Trauma-Informed Consciousness for Legal Practitioners*, Presenter Caitlin Tromiczak, LICSW-C, LCSWC, Moderator Helen Chen, Esq. (Oct. 23, 2019), <https://cliniclegal.org/training/archive/developing-trauma-informed-consciousness-legal-practitioners>. Watch this informative webinar to learn more about trauma-informed lawyering.

Empower your client:

- View your client as a survivor rather than a victim.
- Identify and express your client's strengths.
- Keep in mind that certain behaviors exhibited by your client may be what has served your client well in the past.³⁶
- Help your client exercise control.
 - Give your client some options in the process when you ask your client to talk about difficult subjects. For example, give the client options of how to provide information to you and when.
 - Ask your client if they are willing to share their story.
 - Give your client the option to prepare for the meeting or not prepare. For instance, if you are helping your client with a declaration about a traumatic past event, you can offer the option to write their story in advance or not. For some, this may take some pressure off from recounting details on the spot. On the other hand, writing the story down may be overwhelming for some clients.

³⁶ “[Y]outh who have experienced trauma use coping mechanisms to manage chronic stress. These coping mechanisms may have even been adaptive and even necessary for survival in prior circumstances, especially for youth who have experienced extreme violence. However, under less life-threatening circumstances, the coping mechanisms that have served the youth well in the past may create difficulties in the new environment.” Miller, Brown, Shramko, Svetaz, *supra* at 3.1.

Give your client space when talking about tough subjects:

- Prepare your client in advance that you will be talking about difficult topics. Acknowledge that this can be hard.
- Start the conversation with something more light-hearted.
- Try to connect and learn about your client's interests.
- Take the necessary time to listen to your client.
- Observe your client for any signs that your client is getting overwhelmed, starting to get agitated or anxious, or withdrawing from the conversation.
- If the conversation becomes too much for your client, then take a break. Also, you may want to help ground your client, bringing your client back from the past memory to the present. Noting the date, time, and place where you are can be helpful, in addition to affirming to the client that they are safe in your office. See II.C. for more grounding techniques.
- Pace your meetings and offer breaks.
- Offer time to stretch, walk around, or use a stress ball.
- End the conversation with gratitude and by recognizing your client's strengths.
- Keep in mind that you may have to go over details several times if your client has an impaired memory, which can result from experiencing trauma. This may require additional meetings to gather more details.
- It may sometimes help to put situations in general terms. For example, if you are making the recommendation to engage in counseling and/or get a mental health evaluation, you may want to explain that engaging in counseling is common in the U.S. Acknowledge that there may be a stigma around it in your client's culture, but counseling is acceptable and common here. Further explain and emphasize how counseling and/or a mental health evaluation could be important for your client's case and that this is something you generally recommend to all of your clients so they do not feel singled out.

SECONDARY TRAUMATIC STRESS

Secondary traumatic stress (aka compassion fatigue) is a common and natural response to exposure to someone else's trauma, injustices, accounts of violence, and other frightening circumstances. "Secondary traumatic stress is the emotional duress that results when an individual hears about the firsthand trauma experiences of another."³⁷ There is a growing acknowledgment of the occurrence of secondary traumatic stress for attorneys, and as such there are more resources available to help as well.³⁸ Experiencing secondary traumatic stress could result in changes in your behavior which can come through in many ways, such as irritability, tearfulness, numbness, hypervigilance, sleep disturbance, and nightmares.³⁹ It is

³⁷ *Secondary Traumatic Stress*, The National Child Traumatic Stress Network, <https://www.nctsn.org/trauma-informed-care/secondary-traumatic-stress> (last visited Apr. 10, 2020).

³⁸ See William C. Silverman, *How to Identify and Address Secondary Trauma*, The National Law Review (Feb. 6, 2019), <https://www.natlawreview.com/article/how-to-identify-and-address-secondary-trauma>; Jeena Cho, *When caring costs you: Lawyers can experience vicarious trauma from work*, ABA Journal (Feb. 1, 2020), <https://www.abajournal.com/magazine/article/when-caring-costs-you-lawyers-can-experience-vicarious-trauma-from-work>.

³⁹ See Christina Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, ABA (Sept. 1, 2015), https://www.american-bar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/.

important to take care of yourself and seek support and help if you are experiencing these types of changes. Reach out to friends, family, colleagues, or a counselor. Check in with yourself for signs of vicarious trauma, take breaks, and pace yourself. Consider the strategies for prevention and intervention outlined in The National Child Traumatic Stress Network's *Secondary Traumatic Stress: A Fact Sheet for Child-Serving Professionals*.

Important Resources

- Research any available local mental health referrals for counseling services.
- In most states, you can dial [211](#), to find out about local services such as access to food, housing, and health clinics. Available 24/7, confidential, in 180 languages.
- Texas Children's Trauma & Grief Center provides [resources](#) to help children experiencing grief.
- [National Human Trafficking Hotline](#): 1-888-373-7888, text (233733), and chat. Available 24/7 in more than 200 languages.
- [National Suicide Prevention Lifeline](#): 1-800-273-8255 (Eng.), 1-800-628-9454 (Esp.), 1-800-799-4889 (deaf + hard of hearing), and chat. Confidential, 24/7.

Links to Learn More About TRAUMA-INFORMED LAWYERING

- Check out CILA's 101 [webinar](#): *Trauma Informed Lawyering with Unaccompanied Children* (1 hour, 27 minutes).
- Check out U.S. Department of Health and Human Services Administration for Children & Families *Resources Specific to Immigrant or Refugee Populations*.
- Check out the [ABA's Communicating with Youth who Have Experienced Trauma \(Part 2\)](#), Eliza Patten, JD, CWLS and Talia Kraemer, JD, November 1, 2014.
- Check out Casa de Esperanza's *Trauma Informed Principles Through a Culturally Specific Lens*, Josie Serrata, PhD and Heidi Notario, MA.
- Check out Tend, *Tools to Reduce Vicarious Trauma/Secondary Trauma and Compassion Fatigue*, Tasha Van Vlack, November 3, 2017.
- Check out the [webinar series](#) created by Houston Immigration Legal Services Collaboration ([HILSC](#)) and member organizations (Tahirih Justice Center, Justice for Our Neighbors, CILA) and Rosalie Hyde, LCSW (Houston Galveston Trauma Institute). The series *Mental Health Evaluations for Immigrant Clients: From your First Interview to the Merits Hearings* covers topics such as listening to client's stories with a trauma-informed lens and setting up forensic evaluations. The webinars are posted on CILA's website.

Links to Learn More About WORKING WITH SURVIVORS OF DOMESTIC VIOLENCE AND/OR CHILD ABUSE

- Check out [NCADV's](#) website with numerous resources and various hotlines.
- Check out National Domestic Violence Hotline's website on [Help a Friend or Family Member](#) including information on helping a teen. Their [resource page](#) also includes several resources for teens specifically.
- The NW Network works to end abuse for LGBTQ individuals and provides helpful [resources](#) on their website.

- Check out the American Academy of Child & Adolescent Psychiatry's *Trauma and Child Abuse Resource Center*.
- Check out Casa de Esperanza's resource *Latina Immigrant Women and Children's Well-Being and Access to Services After Detention*, Laurie Cook Heffron, PhD, LMSW, Josie V. Serrata, PhD, and Gabriela Hurtado, PhD, 2018.

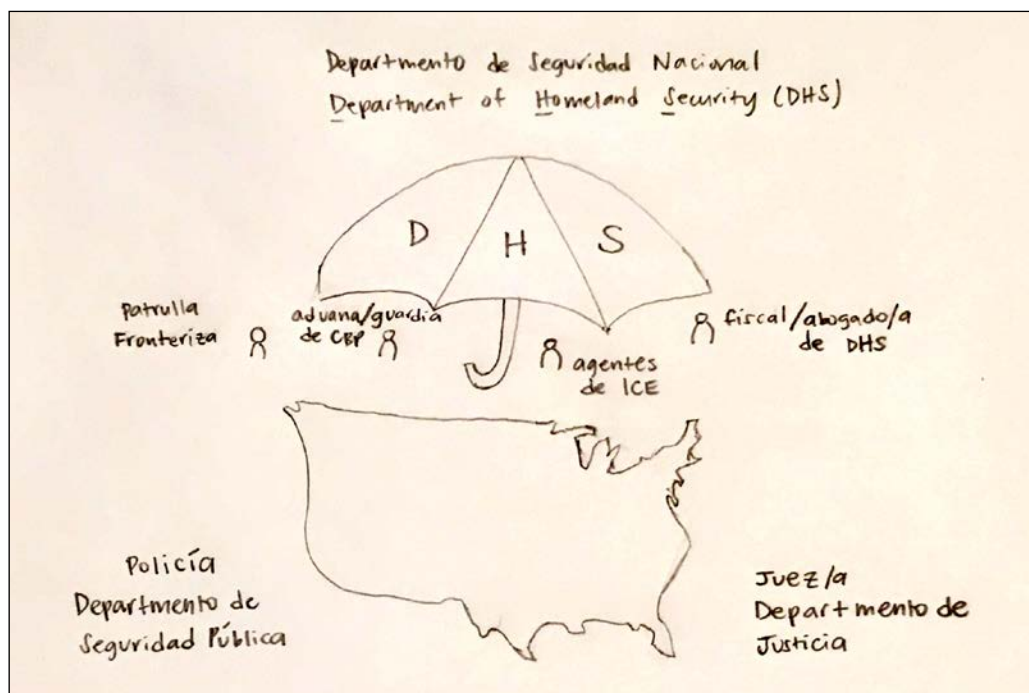
C. Interviewing Tips and Strategies

Tips and Strategies to Effectively Interview Children⁴⁰

- **Consider Key Factors When You Plan Your Interview:**

- **Child's age:** Use age-appropriate language when communicating with your client. This may require more advance preparation than an interview you would have with an adult. Think about what you need to communicate and how you can do so in a way that is simple and easy to understand.

Visuals can be very helpful, so you might consider bringing paper you can draw on. You might use it to explain the agencies involved and the legal process in their case, or to craft a timeline of events in the child's life or a family tree. **Example:** Below is an example of a drawing you can use to explain some of the agencies involved in immigration matters to a child. CILA based this example off of a visual provided to us by South Texas Pro Bono Asylum Representation Project (ProBAR).



This drawing shows that DHS houses border patrol (patrulla fronteriza) and customs/guard (aduana de CBP/guardia) both in CBP, ICE agents (agentes de ICE), and the government attorney (fiscal/abogado/a de DHS). It shows that the immigration judge (juez/a) is under the Depart-

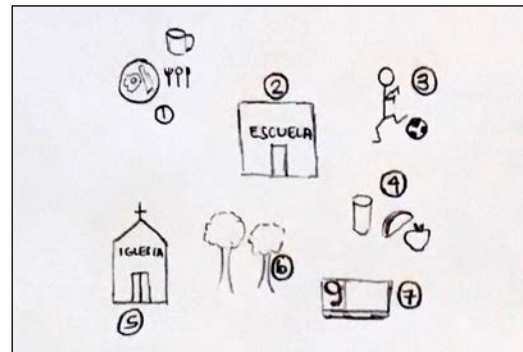
⁴⁰ Many of these ideas were represented in CILA's Boot Camp Training *Child Interviewing Techniques*, presenters Melissa Davila, MSW, KIND and Valeria Olmedo, LMSW, The Young Center for Immigrant Children's Rights, Sept. 25, 2019.

ment of Justice (DOJ) (Departamento de Justicia) and that the police/public security department (policía/Departamento de Seguridad Pública) is also separate from DHS. To see an example of a drawing showing who will be present in immigration court, please refer to Section IV.B.

- **Child's developmental stage (emotionally and mentally):** Keep this in mind when deciding what to discuss, how to bring up topics, and what you can cover in a meeting.

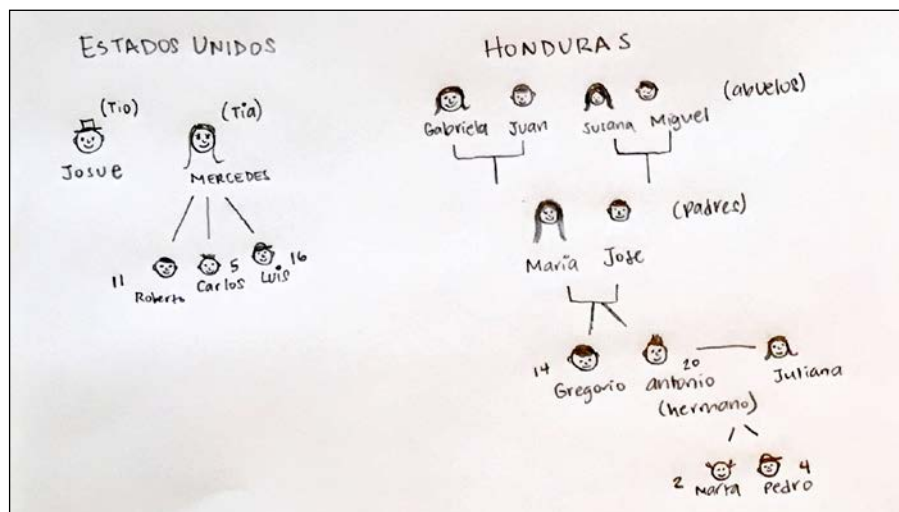
Younger children often like to draw, but many times this technique works with older children as well, and you might consider having paper and crayons on hand so that your client can draw a picture and then tell you about it. You might ask your client to draw pictures of how they used to spend an average day in their home country, for instance. This can help you learn about your client and their life, and later, you can use the same technique to gain more information that will pertain to their potential legal relief. Another option is to provide your client with playdough or something else to fidget with while you talk.

Example: To the right is an example of a drawing from hypothetical client, Gregorio. In the drawing, Gregorio drew his typical day noting he usually: (1) eats breakfast; (2) goes to school (escuela); (3) plays soccer; (4) has lunch; (5) goes to church (iglesia) after school; (6) spends time outside; (7) and then goes to bed.



You could also ask your client to draw a family tree with pictures where you or your client can draw little faces or stick people as you review the family members in the child's life. This can help you lead into other questions to get to know more about your client's life. You can add onto the family tree notes regarding the youth's family members' ages and relationships.

Example: Another drawing, below, from hypothetical client Gregorio shows a family tree. The drawing shows his grandparents (abuelos), parents (padres), and his brother (hermano) and his brother's wife and kids, who still live in Honduras. He also drew pictures of family members he has in the U.S. (Estados Unidos) including his aunt and uncle (tía and tío) and his cousins. He included some of their ages in the drawing.



- **Child’s cognitive ability:** Consider this particularly when thinking about the questions you want to ask and the information you need to gather. You may need to check for understanding, by asking the same question in different ways, for example. Use language that is child-friendly, and consider creative analogies for tougher concepts that you need to explain. For example, legal service providers have explained court proceedings to children as analogous to a soccer game, identifying the different “teams” (the client/attorney and the government) and the “umpire” (the judge).
- **Any trauma history:** Prior trauma can have an ongoing impact on children which may affect their ability to communicate and concentrate and impact other aspects of their behavior. Overall, this could affect the quality of an interview. Practice a trauma-informed approach by being aware of the implications of trauma as well as how you can help your client feel more at ease. *See Section II.B.*
- **Interview location:** Consider the interview location, and try to make this a private, comfortable space in which the child feels safe. If you are meeting at your law firm’s office, consider rooms without large interior windows and spaces with comfortable seating like a couch or carpeted flooring.
- **Empathetic Listening:**
 - Listen carefully.
 - Be patient. Long pauses are okay.
 - “Think of yourself as a mirror. Repeat the speaker’s thoughts and feelings back to them.”⁴¹
 - At times, express understanding as your client speaks.
 - Be open, not judgmental. Listen without projecting your perspective and opinions onto your client.
- **Grounding Techniques:**
 - Let the child fidget with a pipe cleaner or other toy.
 - Let the child color, draw, or play with playdough.
 - Try out the 5-4-3-2-1 Grounding Technique.⁴²
 - Practice breathing exercises with your client.⁴³
- **Important Tips to Remember:**
 - Employ a trauma-informed approach during your interviews. *See Section II.B.*
 - Take the time to build trust with your client. Trust building may take more than one meeting.
 - Be warm, friendly, and personable.
 - Remember your ethical duties. Try to learn your client’s wishes for their case, even if communication is limited due to age. *See Section II.E.*
 - If working with a young child, get on the level of the child physically. Sit on the floor and play with the child as they talk.
 - Honesty is essential. Remind your client to tell the truth.
 - Remind your client that it is okay to say “I do not know.”

⁴¹ *Empathetic Listening Going Beyond Active Listening*, MindTools, <https://www.mindtools.com/CommSkill/EmpathicListening.htm> (last visited Apr. 9, 2020).

⁴² *See* Sara Smith, BSW, *5-4-3-2-1 Coping Technique for Anxiety*, University of Rochester Medical Center’s Behavioral Health Partners Blog (Apr. 2018), <https://www.urmc.rochester.edu/behavioral-health-partners/bhp-blog/april-2018/5-4-3-2-1-coping-technique-for-anxiety.aspx>.

⁴³ *See How to Teach Your Child Calm Breathing*, Anxiety Canada, https://www.anxietycanada.com/sites/default/files/calm_breathing.pdf (last visited Apr. 9, 2020).

- Let your client know that it is okay to say “I do not want to talk about that.”
- Remind your client that it is always okay to say “I do not understand” and to ask questions.
- Oftentimes, a client may say, “You know the information already.” It can be helpful to explain the importance of hearing their story directly from them in their own words, and that this helps you prepare their case and that it is important because it is their story.
- Remember to check in with your client to see how they are doing from time to time. Offer breaks.
- Read body language and facial expressions. Offer help to deal with any distress they are experiencing during the interview. Perhaps at this time introduce a grounding technique.
- Thank your client for their participation.

Links to Learn More About INTERVIEWING CHILD CLIENTS

- View Stanford’s Center for Health Education and UT-RGV excellent four part short [video series](#) on trauma-informed interviewing techniques which provides examples of what to say when interviewing immigrant children: *Trauma-informed Techniques for Interviewing Immigrant Children*.
- Read Society for Research in Child Development’s [Questioning Unaccompanied Immigrant Children: Lessons from Developmental Science on Forensic Interviewing](#), October 25, 2019.
- Read the ABA article, [Representing Child Abuse Victims: Forensic Interviewing Tips](#), Claire Chiamulera, November 16, 2017.
- Read *The New Yorker*, [“An Immigration Attorney on What it’s like to Represent Small Children Taken from their Parents,”](#) Alexandra Schwartz, June 19, 2018.

D. Working with Interpreters and Translators

Tips for Success when Working with Interpreters and Translators

- Remember your ethical duties when working with an interpreter and/or translator. *See Section II.E.*
- Prepare the interpreter/translator for the task.
- Ensure expectations and roles are clearly communicated and identified for both the interpreter and your client.
 - The interpreter should be a neutral party, rather than a family member or friend.
 - The interpreter should interpret exactly what you say and not answer questions themselves or add commentary.
- If possible, in-person interpretation is best.
- Interpretation takes time. Plan accordingly.
- Confirm that both the interpreter and child can understand each other.
- Use simple, clear language. Use short sentences.
- Speak slowly and pause as you go.
- Give your client opportunities to take breaks.
- Speak directly to your client. Give your client eye contact and engage with your client rather than the interpreter.
 - Make sure the setup of the room helps facilitate dialogue directly with your client.
- Review confidentiality with your client and the interpreter/translator.
 - Ask the interpreter/translator to sign a statement regarding confidentiality and your client to sign a release.
- Keep in mind you that you will likely need signature(s) and/or statements from the interpreter/translator regarding accuracy of interpretation if they are helping with any immigration forms or other documents that will be formally submitted.
 - For instance, see [Immigration Court Practice Manual](#) Ch. 3.3(a).

Links to Learn More About WORKING WITH INTERPRETERS AND TRANSLATORS

- Check out CILA's [webinar](#): *Making Interpretation Seamless: Best Practices for Attorneys* (59 minutes).
- Read Telelanguage's *Working with an Interpreter: 11 Tips to Success*, Kimberly Scamman, April 21, 2017.
- Check out Ayuda's *Working with Interpreters Outside of the Courtroom: A Guide for Attorneys*, 2016.

E. Ethical Considerations

Considering ethical duties is a daily aspect of any attorney's practice, but there are several ethical issues that may uniquely arise when working with children and when doing pro bono work. The Guide will address some of the most common ethical issues that come up when representing youth in pro bono cases.

First, it is important to know that attorney conduct is regulated by the Federal Rules of Practitioner Conduct when practicing before the Executive Office for Immigration Review (EOIR) (immigration court) or USCIS.⁴⁴ It is also important to be aware of ethical rules in the state where you are licensed and practicing. The below chart will point primarily to the [ABA Model Rules of Professional Conduct](#) as an example and guide for how to address some of these common ethical questions.

| COMMON ETHICAL QUESTIONS OR SCENARIOS | WHERE TO LOOK FOR GUIDANCE |
|---|---|
| Can I represent a child? Bottomline answer: Yes. | <ul style="list-style-type: none">• In re Gault, 387 U.S. 1 (1967)—juvenile justice• ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States—Section III.H. Right to Attorney |
| How do I represent a child? Do I represent the child's wishes or best interest? Bottomline answer: the child's wishes. | <ul style="list-style-type: none">• Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer<ul style="list-style-type: none">- (a) "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued."• Rule 1.14 Client with Diminished Capacity<ul style="list-style-type: none">- (a) "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."- Comment 1: "For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."• Rule 1.4 Communications• Rule 2.1 Advisor• ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States – Section V.A. The Attorney's Role |

⁴⁴ See 8 C.F.R. §§§§ 1292.3, 292.3, 1003.101, and 1003.102. See also Immigration Court Practice Manual Ch. 10.4. Also, be aware of the McHenry EOIR Policy Memorandum (PM) 19-06, *Internal Reporting of Suspected Ineffective Assistance of Counsel and Professional Misconduct*, Dec. 18, 2018.

| COMMON ETHICAL QUESTIONS OR SCENARIOS | WHERE TO LOOK FOR GUIDANCE |
|--|---|
| <p>Can I share information with a 3rd party?</p> <ul style="list-style-type: none"> • I was referred the case from a non-profit organization and we continue to communicate about the case. • I am working with an interpreter or translator. • How can we keep information confidential and under privilege? | <ul style="list-style-type: none"> • Rule 1.6 Confidentiality of Information • Rule 1.4 Communications <ul style="list-style-type: none"> - Has the client given informed consent? See 1.0(e) for the definition of “informed consent.” • Rule 5.3 Responsibilities regarding nonlawyer assistance • TIP: Is there a Memorandum of Understanding regarding the working relationship between the attorney and organization? • TIP: Do you have a confidentiality agreement with the interpreter/translator? Do you have a release from your client? |
| <p>What does representation cover?</p> | <ul style="list-style-type: none"> • Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer <ul style="list-style-type: none"> - What is reasonable? - Has the client given informed consent? • TIP: It is important to define the scope of representation, including whether it will include appellate work. This becomes even more important when only working on a discrete part of a case. |
| <p>I am new to immigration law, what are my obligations to learn the law?</p> | <ul style="list-style-type: none"> • Rule 1.1 Competence • Rule 1.3 Diligence |
| <p>I found out the child I represent was abused by their parent; do I have to report this to child protective services?</p> | <ul style="list-style-type: none"> • Look to state law, does the state where you practice or where you are licensed have a duty to report? Is this mandatory? • Consider questions relating to privilege and confidentiality as well. <ul style="list-style-type: none"> - Rule 1.6 Confidentiality • TIP: If your state has a mandatory duty to report, it helps to talk with your client about this at the beginning of representation and include language regarding this in your engagement letter. Explain what abuse is and your obligations to report. |

| COMMON ETHICAL QUESTIONS OR SCENARIOS | WHERE TO LOOK FOR GUIDANCE |
|--|---|
| My client asked me to keep something important from the immigration court, what do I do? | <ul style="list-style-type: none"> • Rule 3.3 Candor toward the Tribunal • Rule 1.6 Confidentiality |
| I would like to represent the child and their parent in state court, is that okay? | <ul style="list-style-type: none"> • Rule 1.7 Conflict of Interest: Current Clients • Rule 1.8 Conflict of Interest: Current Clients: Specific Rules • Rule 1.9 Duties to Former Clients |
| When is withdrawal allowed? | <ul style="list-style-type: none"> • Rule 1.16 Declining or Terminating Representation • Rule 1.3 Diligence • NOTE: Keep in mind many nonprofit organizations do not have capacity for a case to be given back to them. |

If you think it is necessary to have a best interest opinion in the case, contact The [Young Center](#) for Immigrant Children's Rights (The Young Center) to [refer](#) a child for the appointment of a child advocate. This is particularly helpful, for example in challenging cases and cases that involve very young children. [EOIR Policy Memorandum \(EOIR PM\) 20-03](#) describes when a child advocate can be appointed. "This authority to appoint a child advocate exists only for 'child trafficking victims and other vulnerable unaccompanied alien children'—not for all UAC."⁴⁵ The Young Center provides examples on their website of vulnerable children it may be appointed to serve including: "children who have been abused, infants who are the subject of international custody battles, children who have developmental disabilities, young girls who want to live with their traffickers, those who have lost their parents to violence, and more."⁴⁶

If you have an ethics question, after reading your state's ethics rules, comments, and opinions, then consult with others you trust on the matter including a pro bono coordinating attorney, if there is one at the organization who referred the case to you. Many state bars have an ethics hotline who you can contact for assistance, which is a very helpful tool. Also, look for other helpful resources in your area. For instance, you can reach out to CILA if you are in Texas.

Links to Further Support Your Knowledge of ETHICAL ISSUES IN CHILDREN'S CASES

- Check out CILA's [101 webinar: Ethical Representation for Unaccompanied Children](#) (1 hour, 11 minutes).
- View CILA's [webinar: Sticky Issues: Ethical Challenges in Representing Unaccompanied Children](#) (1 hour, 33 minutes). This webinar also points to relevant Texas Disciplinary Rules of Conduct.
- Read Markkula Center for Applied Ethics at Santa Clara University 2018: [A Framework for Ethical Decision Making](#), 2018.

⁴⁵ *Child Advocates in Immigration Proceedings*, [EOIR PM 20-03](#) (Nov. 15, 2019).

⁴⁶ *Child Advocate Program*, The Young Center for Immigrant Children's Rights, <https://www.theyoungcenter.org/child-advocate-program> (last visited Apr. 10, 2020).

- Review the [*ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*](#), August 2018.
- Learn about Cultural Competency with CILA's Guide: [*Cultural Competency and Humility When Representing Unaccompanied Children*](#).
- Read Lowenstein Sandler's Memorandum: [*Ethical Obligations in Representing Children Without Capacity in Immigration Proceedings*](#), December 13, 2018.
- Check out CILA's Practice Advisory [*Ethical Considerations in Discussing Social Media with your Client and Practical Tips: How to Discuss Social Media with Child Clients*](#) by Sarah Howell, LMSW posted on CILA's website under [*Additional Resources*](#).



III. COMMON FORMS OF RELIEF

A. Asylum

If your client is afraid to return to their country of origin, it is important to discuss the option to apply for asylum. Asylum is a common form of potential relief in many youth's cases because many children are fleeing violence in their country or other dangerous conditions. There are many reasons children flee to the U.S. and many reasons they fear going home. These reasons are often intersecting.⁴⁷ The root causes of migration could include targeted violence because of the child or their family's race or ethnicity, religion, sexual orientation, political opinion, refusal to become a gang member or a girlfriend of a gang member, sexual violence or child abuse, or because their parent or caregiver suffered harm. There are many reports on the general conditions in many countries around the world. Every child has a unique story. It is important to discuss these matters in detail, and the option of asylum as a potential form of relief.

Form I-589, Application for Asylum and for Withholding of Removal is the correct form to use to apply for asylum. Additionally, an asylum applicant may be able to seek employment authorization while their claim is pending after a waiting period has passed.⁴⁸ An asylum seeker can file for an employment authorization document (EAD) using *Form I-765, Application for Employment Authorization*.

Eligibility Requirements

To be eligible for asylum, an individual must be physically present in the U.S. and meet the definition of a refugee under the Immigration and Nationality Act (INA) § 101(a)(42)(A). The INA defines a refugee as:

[a]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

INA § 101(a)(42)(A). Therefore, to be eligible, an individual must be:

- Unable or unwilling to return to their home country because they
- Either suffered past persecution OR have a well-founded fear of future persecution
- Perpetrated by the government OR an entity the government cannot or will not control
- On account of (nexus) one of the five protected grounds:
 - Race
 - Religion
 - Nationality
 - Membership in a particular social group (PSG)
 - Political opinion (affirmative or imputed)

⁴⁷ See United Nations High Commissioner for Refugees (UNHCR) Report, *Children on the Run*, <https://www.unhcr.org/en-us/children-on-the-run.html> (last visited Apr. 10, 2020).

⁴⁸ On June 26, 2020, DHS issued a [final rule](#) changing asylum seekers' ability to seek employment authorization. The rule goes into effect on August 25, 2020. In general, the rule changes the amount of time asylum seekers must wait before initially applying for an employment authorization document and limits those who are eligible for work authorization.

- Additionally, the individual must merit favorable discretion and must not be subject to any bars to asylum.⁴⁹

Asylum Key Sources of Law

- INA § 208; 8 U.S.C. § 1158
- INA § 101(a)(42)(A); 8 U.S.C. § 1101(a)(42)(A)
- INA § 209; 8 U.S.C. § 1159 (adjustment of status)
- 8 C.F.R. § 208.13
- Case Law—BIA decisions, Circuit Courts of Appeals decisions, Supreme Court decisions
- Persuasive Authorities:
 - Other Circuit Court decisions
 - International law—Treaties
 - [UNCHR Handbook on Procedures and Criteria for Determining Refugee Status & Guidelines on International Protection](#)
- Field Manuals and Agency Guidelines:
 - [CBP Field Manual](#) (2006 FOIA)
 - [CBP Use of Force Policy, Guidelines, and Procedures Handbook](#) (CBP Office of Training and Development) (May 2014)
 - [CBP National Standards on Transport, Escort, Detention, and Search](#)
 - [USCIS Adjudicator's Field Manual](#)
 - [USCIS Policy Manual](#) (replacing the Field Manual, section by section)
 - USCIS Asylum Division [Affirmative Asylum Procedures Manual](#)
 - [Immigration Court Practice Manual](#)
 - Asylum Officer Basic Training Course Lessons Modules

There are **several grounds of ineligibility** to filing for asylum.

- Previous Asylum Application: If an individual previously applied for and was denied asylum, they cannot reapply unless there are changed circumstances.⁵⁰ This also applies to unaccompanied children.
- Safe Third Country: This is not applicable to unaccompanied children. Typically, an individual can be removed to a country other than their own, in which the U.S. has a bilateral or multilateral agreement, if the individual's life or freedom would not be threatened on account of one of the five protected grounds in that country. Additionally, the individual must have access to a full and fair proce-

⁴⁹ On June 15, 2020, DHS and DOJ published a [proposed rule](#) *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review* in the Federal Register. 85 FR 36264. The proposed rule seeks to vastly change asylum and withholding of removal protections. At the time of publishing, there was no related final rule; however, it is important to check for changes to the law. Additionally, CILA has a resource entitled *Asylum Law Under Attack: What is the Impact on Unaccompanied Children?* posted on the [Additional Resources page](#) of CILA's website that you can check for more information regarding changes to asylum law.

⁵⁰ INA § 208(a)(2)(C)-(D); 8 U.S.C. § 1158(a)(2)(C)-(D).

dures to determine asylum or other protection within that country.⁵¹

- **One Year Filing Deadline:** Generally, asylum applications must be filed within one year after the date the individual arrived in the U.S.⁵² However, the one-year filing deadline is not applicable to unaccompanied children.⁵³

There are also **several bars** to obtaining asylum.⁵⁴

- **Persecution of Others:** An individual who participated in persecution of others on account of one of the five grounds is barred from obtaining asylum.⁵⁵
- **Particularly Serious Crime Conviction:** An individual who was convicted of a particularly serious crime is barred from obtaining asylum.⁵⁶
- **Nonpolitical Crime:** If there is reason to believe an individual committed a serious non-political crime outside of the U.S., the individual is barred from obtaining asylum.⁵⁷
- **Danger to U.S. Security:** If there are reasonable grounds that an individual is a danger to U.S. security, then the individual will be barred from obtaining asylum.⁵⁸
- **Terrorism-Related Grounds:** An individual can be barred from obtaining asylum based on terrorism-related grounds.⁵⁹
- **Firm Resettlement:** Asylum is barred if an individual firmly resettled in another country prior to arriving in the U.S.⁶⁰

51 INA § 208(a)(2)(A), (E); 8 U.S.C. § 1158(a)(2)(A), (E).

52 INA § 208(a)(2)(B); 8 U.S.C. § 1158(a)(2)(B).

53 INA § 208(a)(2)(E); 8 U.S.C. § 1158(a)(2)(E). However, be mindful of the possibility of losing the unaccompanied child designation if the child turns 18 or is reunified with a parent or legal guardian.

54 In July 2019, a new asylum bar was introduced barring asylum protection for individuals who crossed the Southern border on or after July 16, 2019, if they transited through a third country en route to the U.S. unless they sought and were denied asylum in one of the countries through which they traveled on the way to the U.S. The bar also did not apply to victims of severe forms of trafficking as defined in 8 C.F.R. § 214.11 or individuals who “transited en route to the United States through only a country or countries that were not parties to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol, or the CAT.” Following the [interim final rule](#) issued in July, litigation ensued. In June 2020, the federal District Court for the District of Columbia [ruled](#) in *CAIR Coalition v. Trump* and *I.A. v. Barr*, “that the interim final rule, Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019) is VACATED.” The Court [found](#) that the “Defendants unlawfully promulgated the rule without complying with the APA’s notice-and-comment requirements” and that the proper remedy was to vacate the rule. More information regarding the cases can be found on ACLU’s [website](#) and CAIR Coalition’s [website](#). At the time of publishing, the rule regarding the transit bar was vacated and not in effect. It is always important to check for changes to the law. Additionally, CILA has a resource entitled *Asylum Law Under Attack: What is the Impact on Unaccompanied Children?* posted on the [Additional Resources page](#) of CILA’s website that you can check for more information regarding changes to asylum law.

55 INA § 208(b)(2)(A)(i); 8 U.S.C. § 1158(b)(2)(A)(i).

56 INA § 208(b)(2)(A)(ii); 8 U.S.C. § 1158(b)(2)(A)(ii).

57 INA § 208(b)(2)(A)(iii); 8 U.S.C. § 1158(b)(2)(A)(iii).

58 INA § 208(b)(2)(A)(iv); 8 U.S.C. § 1158(b)(2)(A)(iv).

59 INA § 208(b)(2)(A)(v); 8 U.S.C. § 1158(b)(2)(A)(v).

60 INA § 208(b)(2)(A)(vi); 8 U.S.C. § 1158(b)(2)(A)(vi).

How the MPP Program is Impacting Unaccompanied Children

- **What is MPP?** Migrant Protection Protocols (MPP) also known as the “Remain in Mexico” program.
- **What happens in the program?** Asylum seekers on the Southern border must wait in Mexico while their claims are adjudicated.
- **When did it begin?** The program was implemented in January 2019.
- **Does it directly apply to unaccompanied children?** No.
- **Has it affected unaccompanied children?** Yes. There are [instances](#), when children are separated from their family members at the border, and the children are processed as unaccompanied children while their family member waits for court in Mexico, through the MPP program, making reunification much more difficult. Other children have separated from parents and entered by themselves after being in the MPP program as a family.
- **What has been the result of the program?** Numerous human rights abuses. Human Rights First has issued a [report](#) and published a [database](#) regarding this.

BURDENS OF PROOF

An applicant has the burden to prove they are a refugee as defined by the INA.⁶¹ If an applicant proves they have suffered past persecution, then it is also presumed that they have a well-founded fear of persecution on that same basis.⁶²

Then it becomes the government's burden to rebut that presumption by showing by the preponderance of the evidence that, "[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality" or "[t]he applicant could avoid future persecution by relocating to another part of the applicant's country of nationality."⁶³ Internal relocation must be *reasonable*.⁶⁴ In determining reasonableness, factors such as "whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographic limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties" should be considered.⁶⁵

CREDIBILITY

Credibility is always at issue in an asylum case. The decision maker will determine your client's credibility by their statements in the I-589 application, declaration, and evidence in the package submitted. Statements given during any testimony in immigration court or during an asylum interview will also be assessed to determine your client's credibility. Consistent truthful statements are imperative. An applicant's "own testimony in an asylum case may be sufficient, without corroborative evidence, to prove a well-founded fear of persecution where that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his fear."⁶⁶

It is also important to know there are significant consequences if it is determined that your client has "knowingly made a frivolous application."⁶⁷ In this situation, the applicant will be permanently ineligible from any immigration benefit under the Act, except withholding of removal.⁶⁸ "[A]n asylum application is frivolous if any of its material elements is deliberately fabricated."⁶⁹

Common Issues Impacting Unaccompanied Children

ONE-YEAR DEADLINE

Generally speaking, applicants must submit an asylum application within one year of entry into the country;⁷⁰ however, the one-year rule does not apply to unaccompanied children.⁷¹ If a child loses status as an unaccompanied child, then they also lose this exception. Therefore, it is best practice to submit the asylum application within one year of entry, and if at all possible, before the unaccompanied child turns 18.

⁶¹ 8 C.F.R. § 208.13(a).

⁶² 8 C.F.R. § 208.13(b)(1).

⁶³ 8 C.F.R. § 208.13(b)(1)(i)-(ii).

⁶⁴ 8 C.F.R. § 208.13(b)(3). See also USCIS Refugee, Asylum and International Operations (RAIO) Directorate – Officer Training module for children's claims states, "[i]t is generally not reasonable to expect a child to internally relocate by himself or herself; however, you should examine whether circumstances show that internal relocation would be reasonable." RAIO Directorate, *RAIO Combined Training Program Children's Claims Training Module*, USCIS (Dec. 20, 2019), at 51-52, https://www.uscis.gov/sites/default/files/files/nativedocuments/Childrens_Claims_LP_RAIO.pdf; see also UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/09/08 (Dec. 22, 2009), <https://www.unhcr.org/50ae46309.html>.

⁶⁵ 8 C.F.R. § 208.13(b)(3).

⁶⁶ *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

⁶⁷ INA § 208(d)(6).

⁶⁸ *Id.*

⁶⁹ 8 C.F.R. § 1208.20. See also *Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007).

⁷⁰ INA § 208(a)(2)(B); 8 U.S.C. § 1158(a)(2)(B).

⁷¹ INA § 208(a)(2)(E); 8 U.S.C. § 1158(a)(2)(E).

If your child client is not designated as an unaccompanied child or loses the unaccompanied child designation and misses the one-year deadline for the asylum application, then it is important to consider whether there are any exceptions that fit. The exceptions to the one year filing rule include “the existence of changed circumstances” (e.g., change in country conditions or a change in the applicant’s circumstances) or “extraordinary circumstances relating to the delay.”⁷² One example of “extraordinary circumstances” in the asylum regulations is a “[l]egal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the 1-year period after arrival.”⁷³ It is important to argue age and competency as an extraordinary circumstance as reason for the delay if this situation arises. For more information on the one-year deadline, read ILRC’s Practice Advisory *Unaccompanied Children and the One-Year Filing Deadline*.

WHAT IS PERSECUTION?

Persecution can take many forms and is something that is determined by case law so research is important to make factual comparisons. Persecution could be physical harm, such as beatings, kidnappings, sexual harm, torture, forced labor, or emotional harm or harm to one’s psychological or emotional health such as threats or bigotry. Depending on your Circuit Court of Appeals jurisdiction, threats without other harm can sometimes be considered past persecution but it is important to consider the surrounding circumstances to prove that it rises to the level of persecution.⁷⁴ An individual could also experience persecution as a result of family members or caregivers being harmed or witnessing others who are close to them being harmed. Also, consider any ongoing emotional trauma or effects of the persecution such as Post Traumatic Stress Disorder (PTSD) symptoms or a diagnosis of a mental health disorder. Persecution can sometimes also be in the form of economic harm. “Nonphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution.”⁷⁵

⁷² INA § 208(a)(2)(D); 8 U.S.C. § 1158(a)(2)(D). See also 8 C.F.R. § 208.4(a)(4)-(6).

⁷³ 8 C.F.R. § 208.4(a)(5)(ii).

⁷⁴ See, e.g., *N.L.A. v. Holder*, 744 F.3d 425, 431 (7th Cir. 2014) (“This court has declared, however, that credible threats of imminent death or grave physical harm can indeed be sufficient to amount to past persecution, provided they are credible, imminent and severe.” (citation omitted)); *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 208 (9th Cir. 2019) (“We have been most likely to find persecution where threats are repeated, specific, and ‘combined with confrontation or other mistreatment.’” (citation omitted)); *Qorane v. Barr*, No. 17-60394 (5th Cir. 2019) (“We have previously treated death threats as a question of future—not past—persecution.” (citation omitted)).

⁷⁵ *Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007).

Where Should I File the Asylum Application?

An unaccompanied child's I-589 asylum application should be filed with USCIS. This protection was provided for in the TVPRA and allows unaccompanied children to go through a non-adversarial process by interviewing with an asylum officer.

If the unaccompanied child is also in removal proceedings, then you will also likely want to file a copy of the USCIS filing receipt with the immigration court and seek a continuance for USCIS to have time to process the application.

If a child either turned age 18 or reunified with a parent, then there is debate on who has jurisdiction to decide the child's asylum case. At publishing of this Guide, USCIS follows the "[Kim Memo](#)" from May 2013 regarding procedures for asylum applications filed by unaccompanied children. (USCIS issued the "[Lafferty Memo](#)" in May 2019 reversing the "Kim Memo"; however, USCIS was enjoined from applying the Lafferty Memo as result of litigation in *J.O.P. v. DHS*. Therefore, the "Kim Memo" is still in effect.) Essentially, if a child was already designated an unaccompanied child and that designation is still in place when the application is filed, then the Asylum Office will adopt that decision without further inquiry.

Whereas, immigration judges are bound by a different policy regarding jurisdiction in unaccompanied children's cases as reflected in [Matter of M-A-C-O-](#), 27 I&N Dec. 477 (BIA 2018). According to *Matter of M-A-C-O-*, "[a]n Immigration Judge has initial jurisdiction over an asylum application filed by a respondent who was previously determined to be an unaccompanied alien child but who turned 18 before filing the application." 27 I&N Dec. 477 (BIA 2018).

EXPERIENCING HARM AS A CHILD

Whether an adult or child, the cumulative harm of an individual seeking asylum should be considered when determining whether they had past persecution.⁷⁶ Therefore, it is important to raise each harm your client suffered.

According to the United Nations High Commissioner for Refugees' (UNHCR) *Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*:

[w]hile children may face similar or identical forms of harm as adults, they may experience them differently. Actions or threats that may not reach the threshold of persecution in the case of an adult may amount to persecution in the case of a child because of the mere fact that s/he is a child. Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered capacities may be directly related to how a child experiences or fears harm.⁷⁷

Moreover, many courts have acknowledged that children experience events differently than adults; therefore, the age of a victim is important when determining if the child suffered past persecution. "[A]ge can

⁷⁶ "An alien who suffered repeated beatings and received multiple handwritten anti-Semitic threats, whose apartment was vandalized by anti-Semitic nationalists, and whose son was subjected to degradation and intimidation on account of his Jewish nationality established that he has suffered harm which, in the aggregate, rises to the level of persecution as contemplated by the Immigration and Nationality Act." [Matter of O-Z- & I-Z-](#), 22 I&N Dec. 32 (BIA 1998).

⁷⁷ See UNHCR, *supra* note 57; see also RAIO Directorate *supra* note 57 at 44-48.

be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution.”⁷⁸ It is important to make this point in arguments.

HUMANITARIAN ASYLUM

If an applicant suffered past persecution but does not have a well-founded fear of future persecution, the decision maker has discretion to grant asylum if the applicant suffered severe past persecution⁷⁹ or if the applicant shows that there is a reasonable possibility that they may suffer other serious harm⁸⁰ upon removal.⁸¹ An applicant must still be able to prove the other requirements for asylum including nexus to a protected ground.

If your client suffered past persecution, it is best practice to include an alternative argument for humanitarian asylum in briefing to protect the record. **TIP:** Typically, you do not want to make an argument only for humanitarian asylum because if your client suffered past persecution, then it is the government’s burden to rebut the presumption of a well-founded fear of future persecution.

WELL-FOUNDED FEAR OF FUTURE PERSECUTION

An applicant must show based on the objective and subjective evidence that “a reasonable person in his circumstances would fear persecution.”⁸² It is important to note that the standard for a well-founded fear is not “more likely than not;” in fact, if there is a 1 in 10 chance that the event would happen, then this is enough to show a well-founded fear.⁸³ As you can see, this burden is quite low compared to burdens of proof in other types of cases.

The applicant also does not have to show they would be “singled out individually for persecution.” It is enough to show a “pattern or practice . . . of persecution of a group of persons similarly situated to the applicant” if the persecution is on account of one of the five protected grounds and they show that they are included in the group of persons so “fear of persecution upon return is reasonable.”⁸⁴

WHO IS THE PERSECUTOR: THE GOVERNMENT OR A PRIVATE ACTOR?

When talking with your client, it is important to understand from your client whom they fear and who is the persecutor. Is it the government or an employee of the government? Is it someone else like a gang member or family member? Or does your client fear both the government and a private (non-governmental) actor? If your client fears a private actor, then the question becomes whether the government in their country of origin is able and willing to control the persecutor. Here, country conditions reports and perhaps a country conditions expert become important because you must establish that the government is unable or unwilling to control the persecutor. Country conditions reports and articles showing evidence of corruption, impunity, pervasive problems, lack of enforcement, and other government-involved criminal acts and violence are important to prove this element.

⁷⁸ *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007). See also *Jorge-Tzoc v. Gonzales*, 435 F.3d 146 (2d Cir. 2006); *Abay v. Ashcroft*, 368 F.3d 634 (6th Cir. 2004); *Liu v. Ashcroft*, 380 F.3d 307 (7th Cir. 2004); *Mendoza-Pablo v. Holder*, 667 F.3d 1038 (9th Cir. 2012). See also RAO Directorate, *RAIO Combined Training Program Definition of Persecution and Eligibility Based on Past Persecution*, USCIS (Dec. 20, 2019), at 16, https://www.uscis.gov/sites/default/files/files/nativedocuments/Persecution_LP_RAIO.pdf.

⁷⁹ See *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). See also unpublished opinions *A-A-O-*, AXXX XXX 913 (BIA Apr. 4, 2019) (reversed denial of humanitarian asylum to Nigerian respondent who was physically and sexually assaulted by multiple men); *C-M-J-*, AXXX XXX 286 (BIA Feb. 21, 2019) (remanded to consider humanitarian asylum for Guatemalan respondent who experienced abuse by her father).

⁸⁰ See *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012).

⁸¹ 8 C.F.R. § 208.13(b)(1)(iii).

⁸² *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

⁸³ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

⁸⁴ 8 C.F.R. § 1208.13(b)(2)(iii).

The Attorney General's certified decision *Matter of A-B-* issued in June 2018 included dicta attempting to change this standard to *complete helplessness* of the government, but the standard remains the same. To be successful in a case involving a private actor, you must be able to show that the government is unable or unwilling to control the persecutor.

Following the issuance of *Matter of A-B-*, DHS implemented new expedited removal policies (which do not apply to unaccompanied children since they are entitled to go through removal proceedings rather than expedited removal procedures) based on *Matter of A-B-*. The ACLU and Center for Gender and Refugee Studies (CGRS) filed a lawsuit to stop implementation of these policies in a case called *Grace v. Whitaker* in which the D.C. District Court found several policies to be arbitrary, capricious and in violation of the immigration laws as applied to the credible fear process. While this case applies to a different process, the arguments can still be used in cases before the Asylum Office and immigration court.⁸⁵

NEXUS AND MIXED MOTIVES

Nexus is the connection between the persecution/harm feared and the protected ground. It is the “why,” the “because of,” the “on account of.” You must prove the connection; how your client knows or believes the past persecution or feared persecution is because of the protected ground.⁸⁶ The persecutor can have mixed motives for causing harm to the applicant. The law requires that one of the five protected grounds “be at least one central reason for persecuting the applicant.”⁸⁷

CRAFTING A PSG

Generally, a PSG delineation requires:

- Members of the group share an immutable characteristic⁸⁸
- The group must be defined by particularity⁸⁹
- The group must be socially distinct within the society in question⁹⁰

If you are in immigration court, then you must “clearly indicate” before the immigration judge “the exact delineation of any particular social group(s) to which she claims to belong”⁹¹ or generally it cannot be considered on appeal by the Board of Immigration Appeals (BIA). Even if you are filing the application with USCIS, it is best practice to delineate the PSGs. When proposing that your client suffered or fears future harm based on a PSG, it is important to protect the record. In order to do this, you may want to delineate several PSGs for the decision maker to consider. It is important to brief them all to support your arguments.

⁸⁵ See Karen Musalo, *New Guidance to IJs and AOS pursuant to Grace v. Whitaker*, LexisNexis Legal News Room (Jan. 14, 2019), <https://www.lexisnexis.com/legalnewsroom/immigration/b/insidenews/posts/new-guidance-to-ijs-and-aos-pursuant-to-grace-v-whitaker>.

⁸⁶ “[S]ome evidence of it [the persecutor’s motive], direct or circumstantial” is required. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

⁸⁷ INA § 208(b)(1)(B)(i); 8 U.S.C. § 1158(b)(1)(B)(i).

⁸⁸ *Matter of Acosta* defines this as “a characteristic that either is beyond the power of the individual members of the group to change or is so fundamental to their identities or consciences that it ought not to be required to be changed.” 19 I&N Dec. 211 (BIA 1985).

⁸⁹ “The group must also be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective.” *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).

⁹⁰ *Matter of M-E-V-G-* clarifies “that literal or ‘ocular’ visibility is not required” and that “a group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.” 26 I&N Dec. 227 (BIA 2014).

⁹¹ *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018). See also *Cantarero-Lagos v. Barr*, No. 18-60115 (5th Cir. 2019).

| COMMON ISSUES IN CHILDREN'S CASES THAT MAY LEAD TO AN ASYLUM CASE | INFORMATION AND CASE LAW TO CHECK OUT AND RESEARCH FURTHER. THIS IS NOT COMPREHENSIVE AND ONLY A STARTING POINT. |
|---|--|
| Family-Based Claims | <p>Family-based PSGs were long-considered a quintessential PSG until an Attorney General certified decision <i>Matter of L-E-A-</i>, 27 I&N Dec. 581 (A.G. 2019) was decided in July 2019. After this decision, PSGs based on family are more difficult but certainly not impossible and should be presented so the issue can be determined on a case by case basis and to preserve the record for appeal.</p> <p>Catholic Legal Immigration Network (CLINIC) has issued a helpful Practice Pointer regarding tips on how to practice after <i>Matter of L-E-A-</i>.</p> |
| Domestic Violence & Child Abuse Claims | <p>Child abuse PSGs historically track domestic violence cases, but there is not clear case law like there is for partner violence.</p> <p>Attorney General certified decision <i>Matter of A-B-</i>, 27 I&N Dec. 316 (A.G. 2018) decided in 2018 set back years of progress in domestic violence cases and overruled <i>Matter of A-R-C-G-</i>, 26 I&N Dec. 388 (BIA 2014), which found “married women in Guatemala who are unable to leave their relationship” as a cognizable PSG. There has still been some success in cases where past harm was related to domestic violence so arguments should still be raised.</p> <p>Claims may also be formulated as gender-based claims. Additionally, remember to raise all potential arguments you have. Sometimes these cases include facts that make political opinion a viable protected ground in addition to raising the PSG argument.</p> <p>Review NIJC’s <i>Practice Advisory: Applying for Asylum After Matter of A-B-</i>, January 2019 (with emphasis on Seventh Circuit law).</p> |
| Gender-Based Claims | <p>In <i>Matter of Acosta</i>, 19 I&N Dec. 211 (BIA 1985), the BIA found that gender alone may form the basis for a PSG.</p> <p>In <i>Matter of Kasinga</i>, 21 I&N Dec. 357 (BIA 1996), the BIA found that gender, along with other characteristics, may form the basis for a PSG. The BIA recognized “young women who are members of the Tchamba-Kunsuntu Tribe of northern Togo who have not been subjected to female genital mutilation, as practiced by that tribe, and who oppose the practice” as a PSG.</p> <p>Unpublished BIA decisions remand for the courts to consider whether gender + nationality is a cognizable PSG: <i>Y-M-L-</i>, AXXX XXX 294 (BIA Sept. 10, 2019) regarding women in Guatemala; <i>X-G-C-D-</i>, AXXX XXX 474 (BIA Dec. 11, 2018) regarding women in Mexico.</p> |

| COMMON ISSUES IN CHILDREN'S CASES THAT MAY LEAD TO AN ASYLUM CASE | INFORMATION AND CASE LAW TO CHECK OUT AND RESEARCH FURTHER. THIS IS NOT COMPREHENSIVE AND ONLY A STARTING POINT. |
|---|--|
| Gang-Related Claims | <p>There is a lot of negative case law regarding gang-related PSGs so it will be important to know those cases and try to raise different arguments and distinguish your facts. There are also some positive cases, so it is important to make the necessary arguments.</p> <p><i>Matter of S-E-G-</i>, 24 I&N Dec. 579 (BIA 2008)—“Neither Salvadoran youth who have been subjected to recruitment efforts by the MS-13 gang and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang’s values and activities nor the family members of such Salvadoran youth constitute a ‘particular social group.’”</p> <p>Unpublished cases with PSGs relating to being a witness: <i>M-S-</i>, AXXX XXX 870 (BIA Sept. 27, 2019) and <i>D-R-M-</i>, AXXX XXX 606 (BIA July 16, 2019). See also <i>Henriquez-Rivas v. Holder</i>, 707 F.3d 1081 (9th Cir. 2013). <i>Martinez v. Holder</i>, 740 F.3d 902 (4th Cir. 2014)—found that the “proposed particular social group of former MS-13 members from El Salvador is immutable” and remanded on this basis.</p> <p>Additionally, remember to raise all potential arguments you have. Sometimes these cases include facts that make religion or political opinion a viable protected ground. See unpublished case <i>V-R-F-</i>, AXXX XXX 637 (BIA May 31, 2019)—where the successful protected ground was religion.</p> <p>Consider analogous arguments when looking at case law. For instance, has the court in your jurisdiction found a PSG when there has been resistance to another group or practice in other countries, such as resistance to the FARC?⁹²</p> |
| LGBTQ Claims | <p><i>Matter of Toboso-Alfonso</i>, 20 I&N Dec. 819 (BIA 1990) - The BIA found that sexual orientation may form the basis for persecution on account of a PSG.</p> |

⁹² See NIJC’s *Practice Advisory: Applying for Asylum After Matter of A-B-*, updated Jan. 2019 which explores this strategy idea on page 20 and references Seventh Circuit law.

TIPS WHEN CRAFTING A PSG

- When thinking about how to delineate your PSG, consider why the applicant was targeted. Consider all PSG delineations.
- Do not define the group by the harm suffered.
- Common PSGs relating to children include: family-based claims, domestic violence/child abuse claims, gender-based claims, and gang-related claims. Do not limit yourself to these, but it helps to have a starting point.
- Look for ways to frame your case based on an *established* PSG based on case law.
- Remember you can (and likely should) propose several PSGs. It is also okay to propose several delineations of a PSG.
- Also, look for ways to frame your case based on one of the other four protected grounds (i.e., nationality, race, political opinion, and/or religion). PSG is the broadest protected ground so there is more room to make an argument, but it is often more challenging to be successful on this basis. Therefore, it is important to consider if another protected ground also applies.

TIPS TO DEVELOP AN ASYLUM CASE

Know the Facts:

- Review the file. Do your due diligence to check the facts. Consider conducting Freedom of Information Act (FOIA) requests or reviewing the court's file, if applicable.
- Conduct research regarding your client's country of origin to have context for your meetings and to support their case. For example, conduct research on issues and trends that shed light on the risks and potential harms your client faces in their country of origin.
- Meet several times to develop rapport and trust with the child.
- Draft a declaration with the child.

Develop the Legal Theory:

- Is there past persecution?
 - What harm has your client suffered?
- Does your client have a well-founded fear of persecution?
 - What specifically is your client afraid will happen to them?
- Who is the actor involved in the harm or potential harm? A governmental actor or a non-governmental actor?
- Why was your client targeted? Why was your client specifically at risk for harm?
- What is the protected ground?
 - If PSG, what is that exactly?

TIPS TO DEVELOP AN ASYLUM CASE

Drafting the Application:

- Be prepared to file the I-589 and all submissions as soon as you can.
- Look at [USCIS's website](#) for the current I-589 application and instructions. Be sure to read the instructions. They are helpful!
- Do not leave any aspect of the application blank. Use N/A, None, and Unknown as relevant. Additionally, if you indicate you are including an attachment, do not forget it. See USCIS's instructions. You do not want USCIS to return the application for being *incomplete*.
- If you need extra space, simply include this information in an attached addendum. You can use one of the government's forms or type this up on your own. Make sure your addendum has the client's name, A#, signature, and date and be clear about what question you're answering.⁹³
- Double-check the application after finishing to confirm it is in final form.
 - Review the application a final time with your client to confirm information.
 - Ensure no aspect of the application is blank.
 - Ensure you checked the box to also apply for withholding of removal under the Convention Against Torture (CAT) on the front page to preserve this option for your client. To learn more about Withholding of Removal and CAT relief, *see* Section III.B.
 - Ensure the application is signed and dated by the applicant and person who prepared the application.
 - Ensure you have attached all documents you indicated you would attach.
 - Remember everything must be in English and contain any necessary interpretation and translation certificates.⁹⁴

Drafting the Client's Declaration:

- This should be a statement signed and dated by your client.
- Honesty is paramount as your client's credibility will be assessed.
- The statement should provide details regarding the basis of their asylum claim regarding any past harm your client suffered and what they fear will occur if they return. Consider supporting each element of asylum (e.g., why is your client afraid? who does your client fear? why is your client particularly at risk?) The statement should be detailed enough to instill confidence in the decision maker of the credibility of the facts, but not so detailed as to set your client up for inconsistent testimony later. This document requires a balancing act and how you draft it may depend on the individual client's ability to recall certain kinds of detail.
- Remember the statement must be submitted to the Asylum Office or immigration court in English and contain any necessary interpretation and translation certificates.⁹⁵

⁹³ See I-589 instructions. *I-589, Application for Asylum and for Withholding of Removal*, USCIS, <https://www.uscis.gov/i-589> (last reviewed/updated Feb. 14, 2020).

⁹⁴ See *Immigration Court Practice Manual* Ch. 3.3(a), App. H.

⁹⁵ *Id.*

TIPS TO DEVELOP AN ASYLUM CASE

Developing the Supporting Evidence: You will want to gather as much supporting evidence as possible to verify your client's testimony and familiarize yourself with the specific requirements under the Real ID Act.⁹⁶ As relevant, consider the following documentary evidence to support your client's story:

- What documents does your client have to prove identity such as a birth certificate, passport, ORR documentation, etc.?
- What documents can your client gather regarding other individuals on which your client's case is premised, such as a birth certificate, death certificate, marriage or divorce papers, etc.? (E.g. if your client's case is based on their maternal grandfather's death, try to obtain their mother's birth certificate and grandfather's death certificate to establish the familial relationship and substantiate his death and circumstances surrounding the death.)
- Are there news articles to show that your client or their family suffered harm?
- Are there health records to support the harm your client suffered? This could be physical health or mental health records including counseling records.
- Are there school records to show that the child was missing school or struggling in school or getting help from a teacher or counselor?
- Can you get death certificate(s) to show that the death(s) your client informs you of occurred?
- Are there police reports to verify your client's story? If not, what were the barriers to making a police report? Is there evidence to show that as well? (E.g. statements, country conditions evidence, expert statements, etc.)
- Can you get statements from friends, neighbors, family, witnesses to corroborate your client's story?
- Is there evidence to support that your client's family owned a business that was being extorted?
- Is there evidence to support that your client or their family was involved in a political party? Evidence regarding the party's goals? Party membership cards/certificates? Pamphlets regarding the party?
- Is there evidence to support that your client was a member of that religion? Baptism or communion photos or certificates? Evidence of other religious participation?
- Is there evidence to show your client's race/ethnicity whether perceived by others or as your client personally identifies?

⁹⁶ See Immigration Equality, *Asylum Manual*, <https://immigrationequality.org/asylum/asylum-manual/immigration-basics-real-id-act/> (last visited Aug. 6, 2020).

TIPS TO DEVELOP AN ASYLUM CASE

Country Conditions Evidence: Include articles and country-specific reports to support your main points. For example, consider:

- Past persecution/well-founded fear of persecution: Is there evidence to support that the type of harm your client suffered or is afraid of occurs within the country?
- Is there evidence to support that there is impunity or corruption within the country?
- Nexus and protected ground:
 - Is there evidence to support why your client was targeted?
 - What were the persecutor's statements to your client?
 - Is there evidence to support members of that political party were targeted for harm?
 - Is there evidence to support members of that religion were targeted for harm?
 - Is there evidence to show that business owners were targeted for extortion?
 - Is there evidence to show that your client was persecuted or could be persecuted as an indigenous person?
- Internal relocation:
 - Is there evidence to show that the harm your client suffered or is afraid of is widespread in the country?
 - Is there evidence to show that your client's country of origin is small?
- If you are making a humanitarian asylum argument based on *other serious harm*, is there additional evidence you should submit to make that argument?

Country Conditions Experts:

- Is there an expert that can opine on any country conditions relevant to your client's claim and thereby strengthen your case?

Forensic Evaluations:

- If your client suffered past persecution, it may help to get a forensic evaluation to document any past trauma your client suffered; a physical evaluation to document any signs of beatings or torture such as scars, other injuries or female genital mutilation; or a mental health evaluation to assess the psychological impact of trauma.
- If you need help locating a physician to conduct a forensic evaluation, contact [Physicians for Human Rights](#) to request a forensic evaluation.

BENEFITS OF AN APPROVED ASYLUM APPLICATION

There are many benefits to being granted asylum. For instance, benefits include authorization to work,⁹⁷ the ability to seek derivative status for certain family members,⁹⁸ a pathway to adjustment of status, and then

⁹⁷ "If you are granted asylum you may work immediately. Some asylee choose to obtain Employment Authorization Documents (EADs) for convenience or identification purposes, but an EAD is not necessary to work if you are an asylee." *Asylum*, USCIS, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum> (last reviewed/updated Aug. 29, 2019).

⁹⁸ INA § 208(b)(3); 8 U.S.C. § 1158(b)(3); 8 C.F.R. § 208.21.

citizenship. After one year in the U.S., an asylee can apply for lawful permanent residency (a green card) using [Form I-485, Application to Register Permanent Residence or Adjust Status](#).⁹⁹ Generally, a lawful permanent resident can apply for U.S. citizenship after five years; however, an asylee can apply for citizenship after four years as a lawful permanent resident.¹⁰⁰ Asylees are also eligible for other services and benefits for a limited period through ORR. View the [ORR website](#) for more information regarding these benefits.

Links to Help You with YOUR CLIENT'S ASYLUM CASE

- Check out CILA's 101 [webinar: Introduction to Asylum for Unaccompanied Children](#) (56 minutes).
- View CILA's resource: *Asylum Law Under Attack: What is the Impact on Unaccompanied Children?* posted on the [Additional Resources page](#) on CILA's website for more information regarding recent changes in asylum law.
- Use CILA's Asylum Case Theory and Evidence Matrix chart posted on the [Additional Resources page](#) on CILA's website to help you stay organized and create a case strategy.
- Contact [CGRS](#) for a copy of their *Children's Asylum Manual*, other helpful country conditions, and expert documentation.
- Read the USCIS's Refugee, Asylum and International Operations (RAIO) Directorate – Officer Training module for children's claims: *RAIO Combined Training Program Children's Claims Training Module*, December 20, 2019.
- Review the [Safe Passage Project Asylum Manual: A Step-by-Step Guide for Safe Passage Project Pro Bono Attorneys](#), December 13, 2018, NY.
- Check out the [Self Help Asylum Guide: Seeking Protection in the United States 2020](#) created by University of Maine's School of Law's Refugee and Human Rights Clinic, Penn State Law Center for Immigrants' Rights Clinic, Immigrant Legal Advocacy Project, and THRIVE International Programs.
- Review NIJC's [Basic Procedural Manual for Asylum Representation Affirmatively and In Removal Proceedings](#), June 2019, IL.
- Consult NIJC's list of [Resources for Asylum Claims Based on Membership in a Particular Social Group](#).
- For more country conditions information on El Salvador, Guatemala, and Honduras, review Temple University Beasley School of Law and Washington Office on Latin America (WOLA)'s [Annotated Table of Contents](#). The Annotated Table of Contents includes resources covering topics such as state complicity and small business owners fleeing persecution.
- Check out Immigration Equality and Midwest Immigrant and Human Rights Center's *Preparing LGBTQ and HIV Asylum, Withholding and CAT Claims Manual (Asylum Manual)*.
- If your client was approved, check out this information regarding benefits for asylees: USCIS webpage [Benefits and Responsibilities of Asylees](#) and [Family of Refugees and Asylees](#).

⁹⁹ INA § 209(b); 8 U.S.C. § 1159(b).

¹⁰⁰ *Id.* INA § 316(a); 8 U.S.C. § 1427(a); 8 C.F.R. § 209.2.

B. Withholding of Removal and Protection Under the Convention Against Torture

Withholding of removal and protection under the CAT¹⁰¹ are similar to asylum since they are fear-based claims and the applicant also uses the [Form I-589, Application for Asylum and for Withholding of Removal](#) to apply for the relief. However, the claims have significant differences in eligibility requirements and potential benefits.

First and foremost, these are defensive claims so only an immigration judge can adjudicate these claims, not the Asylum Office. That said, it is good practice to check the box on the front page of the Form I-589 to also “apply for withholding of removal under the Convention Against Torture” to protect your client’s options. If the Asylum Office denies your client’s asylum application, the case will be referred to immigration court.¹⁰² If this box was not checked or, when you review the I-589, it does not properly address questions about torture, then you should consider submitting supplemental filings with the court to provide this information.

These are also mandatory forms of relief. There is no discretion for the decision maker like there is in asylum; if the requirements are met, your client is eligible.

Overall, there are more benefits to winning asylum than withholding of removal or protection under the CAT because winning asylum can lead to lawful permanent residency and ultimately citizenship. There is no equivalent pathway to citizenship for withholding of removal or protection under the CAT. However, these forms of relief can be a critical protection for applicants who are otherwise barred from asylum. For instance, neither withholding of removal or protection under the CAT require the applicant to file within one year of entry.¹⁰³

For children’s cases in particular, guidance used in asylum cases to look at the case from the perspective of a child can also be argued to apply to children’s withholding of removal and CAT cases. *See* [Section III.A.](#) regarding resources for children’s based asylum cases.

The information below will cover the differences and similarities between withholding of removal under the INA and protection under the CAT (withholding of removal under the CAT and deferral of removal under the CAT).

Withholding of Removal Under the INA

APPLYING FOR RELIEF

According to 8 C.F.R. § 1208.3(b), “[a]n asylum application shall be deemed to constitute at the same time an application for withholding of removal” Therefore, when an I-589 application is filed, a withholding of removal claim will also be considered for a decision.

Withholding of Removal under the INA Key Sources of Law

- [Article 33 of the 1951 Convention on the Status of Refugees](#)
- [INA § 241\(b\)\(3\); 8 U.S.C. § 1231\(b\)\(3\)](#)
- [8 C.F.R. § 208.16](#)

101 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

102 8 C.F.R. § 208.14(c)(1); USCIS, *Affirmative Asylum Procedures Manual*, Pt. II.N.2.b. (May 2016), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AAPM-2016.pdf>. Additionally, if your client is in removal proceedings and the immigration judge redetermines your client’s unaccompanied child status (because the child turned 18 or reunified with a parent prior to filing the asylum application), then the judge may assert jurisdiction over the case per *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018).

103 While the one-year filing deadline is not applicable to unaccompanied children, this becomes important if a youth’s unaccompanied child status is redetermined by an immigration judge.

ELIGIBILITY REQUIREMENTS

Like with asylum, you must be able to show past persecution or a well-founded fear of future persecution with a connection/nexus to one of the five protected grounds: race, religion, political opinion, nationality, or PSG. Generally, the protected ground must be one central reason for the persecution—the same standard applied in asylum, except in the Ninth Circuit, where the standard lessons to “a reason”¹⁰⁴ rather than “one central reason.”¹⁰⁵ If you are able to prove past persecution, the burden shifts to the government to rebut that presumption. The burden of proof for the possibility of future persecution is higher for withholding of removal than asylum. In withholding of removal, there must be a clear probability, or more likely than not, that that your client will suffer future persecution.

COMPARING THE BARS OF ASYLUM, WITHHOLDING OF REMOVAL UNDER THE INA, WITHHOLDING OF REMOVAL UNDER THE CAT, AND DEFERRAL OF REMOVAL UNDER THE CAT

As the below chart illustrates, there are more bars to asylum than there are to withholding of removal, which sometimes leaves this form of relief as the only potential option.

| BAR | ASYLUM | WITHHOLD- ING OF REMOVAL UNDER INA | WITHHOLD- ING OF REMOVAL UNDER CAT | DEFERRAL OF REMOVAL UNDER CAT |
|--|--------|---|---|--|
| One Year filing deadline | X | | | |
| Firm resettlement | X | | | |
| Prior denial of an asylum application by EOIR | X | | | |
| Safe Third Country | X | | | |
| Persecutor of others | X | X | X | |
| Terrorism | X | X | X | |
| Nazi persecution or genocide | X | X | X | |
| Convicted of a particularly serious crime* | X | X | X | |
| Commission of serious non-political crime outside the U.S. | X | X | X | |
| Danger to the security of the U.S. | X | X | X | |

¹⁰⁴ *Barajas-Romero v. Lynch*, 846 F.3d 351, 358 (9th Cir. 2017).

¹⁰⁵ *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010).

BENEFITS OF AN APPROVED CLAIM FOR WITHHOLDING OF REMOVAL UNDER THE INA

If granted, a removal order will simultaneously be issued and withheld, meaning that your client will not be deported. This approval will not lead to permanent residency and citizenship, but the individual will be able to apply for an EAD. This claim is country-specific so if there is more than one potential country of removal, then you must prove withholding for each country. There is no option to have derivatives, so each individual must have their own application for withholding. Unlike asylum, there is no option to bring family to the U.S. after a grant on this basis. There is no right to travel and reenter the U.S. This claim has limited benefits, but it does provide your client with protection and ability to stay in the U.S., which can be very important when your client is facing severe injury and/or death upon return to their country of origin.

Protection Under the Convention Against Torture

The U.S. is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT or Convention). The U.S. signed the Convention in 1988 under President Ronald Reagan, ratified it in 1994, and it was codified into U.S. law in 1998. Article 3 of the CAT includes a non-refoulement provision, “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹⁰⁶

There are two relating claims for relief: withholding of removal under the CAT and deferral of removal under the CAT. Withholding of removal under the CAT is a more secure form of relief than deferral of removal, but deferral of removal has no bars so depending on the circumstances, it is sometimes a necessary option for clients. The requirements are the same for both claims, but the bars and benefits differ. See above chart.

APPLYING FOR RELIEF

As stated above, to apply for either withholding or deferral of removal under the CAT, you should check the box on the front page of the Form I-589.

ELIGIBILITY REQUIREMENTS

An important distinction between CAT cases and asylum is that in CAT cases, there is no requirement to connect the harm to one of the five protected grounds (nexus). In a successful CAT claim, you must prove it is more likely than not¹⁰⁷ that your client will face torture. This standard will not be met if the circumstances giving rise to torture are speculative or generalized. Rather, you must address each link in the chain of events that would lead to torture with facts and evidence that each link is more likely than not. Torture is defined as severe pain or suffering that is either physical or

Protection under the Convention Against Torture Key Sources of Law

Withholding of Removal under the CAT:

- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)

- [8 C.F.R. § 208.16](#)

- [8 C.F.R. § 208.18](#)

Deferral of Removal under the CAT:

- [8 C.F.R. § 208.17](#)

- [8 C.F.R. § 241.4\(b\)\(3\)](#)

¹⁰⁶ See *supra* note 95 at art. 3.

¹⁰⁷ In the Seventh Circuit, they consider more likely than not in terms of “a substantial risk” rather than in the quantitative sense reflecting the language of the Convention itself rather than the regulations. See *Arrazabal v. Lynch*, 822 F.3d 961 (7th Cir. 2016).

mental.¹⁰⁸ The BIA has defined torture as “an extreme form of cruel and inhuman treatment” and not lesser forms.¹⁰⁹ Harm should be considered in the aggregate so all forms of harm your client fears should be raised and argued.

According to 8 C.F.R. § 208.18(a)(1):

Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

When breaking this down and looking at other aspects of “torture” in the regulations, the requirements include:

- **What?** An act—severe pain or suffering—that is either physical or mental
- **Intent?** That is intentionally inflicted
- **Why/Purpose?** For such purposes as listed above (i.e., “obtaining from him or her or a third person information or a confession,” etc.) or something similar
- **By Whom?** The act was done by OR at the instigation of whom OR with the consent or acquiescence of a public official or other person acting in an official capacity
- **ALSO** Act is against a person in offender’s custody or physical control¹¹⁰
- **NOT** Act is not arising out of a lawful sanction¹¹¹

Looking at the *by whom?* question a little closer, it is important to know that the actor can be either a government actor or a non-governmental actor, but there must be some involvement by the government. This could be any type of public official—low or high level, local, state or federal public official, etc.¹¹²

Generally, “acquiescence of a public official” is more difficult to prove than the standard seen in asylum—unable or unwilling to protect. The regulations require: the official “must prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.”¹¹³ Awareness includes actual knowledge and willful blindness.¹¹⁴ It depends on case law and which Circuit Court of Appeals you are in to see how this is assessed.

The BIA case *Matter of O-F-A-S-* looked at the issue of when a person acts “in an official capacity” and found that cases should be analyzed by whether the person was acting “under the color of law” as seen in cases under the Civil Rights Act.¹¹⁵ This is a fact-intensive inquiry and both direct and circumstantial

¹⁰⁸ See *supra* note 95 at art. 1. See also 8 C.F.R. § 208.18(a).

¹⁰⁹ *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002).

¹¹⁰ This is a requirement included in the regulations but not in the CAT itself. The Ninth Circuit has reversed denials of CAT on this basis. See *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 788 (9th Cir. 2004); *Azanor v. Ashcroft*, 364 F.3d 1013, 1019–20 (9th Cir. 2004).

¹¹¹ For instance, the death penalty is a lawful sanction; therefore, this is not considered torture. However, under 8 C.F.R. § 208.18(a)(3), “a government cannot exempt itself from obligations under the CAT by defining acts that would constitute torture as lawful forms of punishment.” Case law research will be important in cases with this issue.

¹¹² In Footnote 3 of *Matter of O-F-A-S-*, the Board of Immigration Appeals (BIA) notes that “public official” is not defined by the CAT or regulations and the “common meaning may include any person in a government position. The term therefore extends beyond law enforcement officers and could apparently encompass other government workers such as teachers and postal workers.” 27 I&N Dec. 709 (BIA 2019).

¹¹³ 8 C.F.R. § 208.18(a)(7).

¹¹⁴ The BIA case *Matter of S-V-* required “willful acceptance” to meet acquiescence but this has been largely rejected by Circuit Courts of Appeals, which instead condone the “willful blindness” standard. 22 I&N Dec. 1306 (BIA 2000).

¹¹⁵ *Matter of O-F-A-S-*, 27 I&N Dec. 709 (BIA 2019).

evidence should be considered when determining if the individual was a “rogue official” or acting “in an official capacity.”¹¹⁶

BUILDING THE CASE

According to the regulations, the burden of proof is on the applicant and all evidence relevant to the possibility of future torture shall be considered. “The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.”¹¹⁷

The regulations also provide a non-exhaustive list of evidence to consider, none of which are individually determinative, including evidence of:

- Past torture
- That the applicant could relocate to another part of the country and not be tortured
- Gross, flagrant, or mass violations of human rights within the country of removal
- Relevant information regarding country conditions

8 C.F.R. § 208.16(c). Therefore, it is important to consider all potential evidence that could show your client will more likely than not be tortured in the potential country of removal. Usually generalized country conditions evidence alone is insufficient to meet an applicant’s burden of demonstrating the individualized risk of torture necessary to win a CAT claim.¹¹⁸

CONSIDER WHEN PREPARING A CASE

- Does the I-589 application include the necessary information regarding the torture your client fears?
- Are you asking your client the pertinent questions when drafting the declaration to support a CAT case?
- Does your documentary evidence help prove each element of a CAT case?
 - Evidence of any past harm, torture, threats done to your client and/or family members
 - Statements from community members, neighbors, family, etc.
 - Documentary support showing related human rights abuses by the government of their country? Torture committed by government officials? Evidence of corruption? Impunity?
 - Country conditions expert statement to help make a connection between the general country conditions evidence to your client
- Are you asking your client and/or witness(es) the pertinent questions in testimony?

116 “In sum, the key consideration in determining if a public official was acting under color of law is whether he was able to engage in tortuous conduct because of his government position or if he could have done so without any connection to the government. Issues to consider in making this determination include whether government connections provided the officer access to the victim or his whereabouts or other identifying information; whether the officer was on duty and in uniform at the time of his conduct; and whether the officer threatened to retaliate through official channels if the victim reported his conduct to authorities.” *Id.*

117 8 C.F.R. § 208.16(c).

118 See *Pieschacon-Villegas v. Att’y Gen.*, 671 F.3d 303, 312–13 (3d Cir. 2011); *Lin v. U.S. Dep’t of Justice*, 432 F.3d 156, 160 (2d Cir. 2005).

MAKING THE ARGUMENT THAT AGE MATTERS IN CAT CASES

- You can look to international guidance to make the argument that age matters in CAT cases. The U.N. Committee Against Torture interprets and monitors the CAT. General Comments Nos. 2¹¹⁹ and 4¹²⁰ have helpful language to make the argument that age matters. If gender is an important factor in your case, the General Comments also provide helpful language regarding this issue.
- For example, you could make the argument that similar to asylum, where a lesser harm experienced by a child could be considered persecution comparatively to an adult, argue that a lesser act should be considered torture for a child, even if it would not for an adult.
- Keep in mind that torture can be either physical or mental severe pain or suffering. 8 C.F.R. § 208.18(a)(4) covers what constitutes torture for mental pain or suffering—including a threat of imminent death or a threat that another person will be subject to death, severe physical pain or suffering. Again, you may want to make an analogous argument using guidance from asylum cases. In asylum cases, there is support that a child, because of age, will react differently than an adult when a caregiver or close family member suffers harm. Also, remember to argue and show by any available documentary evidence any ongoing or lasting psychological impact.

Check out CILA's resources listed below to help you further strategize and support your case with documentary evidence.

Withholding of Removal Under the CAT & Deferral of Removal Under the CAT

The requirements for withholding of removal under the CAT and deferral of removal under the CAT are the same.¹²¹ As the above chart regarding bars illustrates, the difference between withholding of removal under the CAT and deferral of removal under the CAT is that there are no bars to relief for deferral of removal; whereas, there are bars for withholding of removal under the CAT.¹²² See above chart for information relating to bars for withholding of removal under the CAT.

BENEFITS OF AN APPROVED CLAIM FOR WITHHOLDING OF REMOVAL UNDER THE CAT

The benefits and limitations for withholding of removal under the CAT are the same as they are for withholding of removal under the INA. See above.

BENEFITS OF AN APPROVED CLAIM FOR DEFERRAL OF REMOVAL UNDER THE CAT

Similar to withholding of removal under the INA and withholding of removal under the CAT, if deferral of removal is granted, a removal order will be issued.¹²³ Simultaneous with the grant, the removal order will be deferred. This approval will not lead to permanent residency and citizenship. The individual can

119 General Comment No. 2 states, “[t]he protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status . . .” U.N. Committee against Torture, *General Comment No. 2 on implementation of article 2 by States parties*, CAT/C/GC/2 (Jan. 24, 2008), https://tbinternet.ohchr.org/_layouts/15/treaty-bodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11.

120 General Comment No. 4 states, “severe pain or suffering cannot always be assessed objectively. It depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on each individual, taking into account all relevant circumstances of each case, including the nature of the treatment, the sex, age, and state of health and vulnerability of the victim and any other status or factors.” U.N. Committee against Torture, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, CAT/C/GC/4 (Sept. 4, 2018), https://www.ohchr.org/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf.

121 8 C.F.R. § 208.17(a).

122 *Id.* 8 C.F.R. § 208.16(d).

123 8 C.F.R. § 208.17.

apply for an EAD, but it will not be automatically granted. Discretionary factors such as good moral character, positive contributions, ties to the U.S., economic necessity, dependent family members, etc. are considered when making a decision on the EAD. Deferral of removal can be terminated by a motion from the government or if the Secretary of State receives diplomatic assurances.¹²⁴ Additionally, an individual is not exempt from detention despite an approval on this basis.

Similar to withholding of removal under the INA and withholding of removal under the CAT, a claim for deferral of removal is country-specific so if there is more than one potential country of removal, then you must prove deferral of removal for each country. There is no option to have derivatives so each individual must have their own application for deferral of removal, and there is no option to bring family after receiving an approval on this basis. There is no right to travel and reenter the U.S.

Therefore, this is a more precarious and limited form of relief than withholding of removal under the INA and withholding of removal under the CAT, but it can be an important option for protection for your client if there are barriers to alternative forms of relief.

Links to Help You with YOUR CLIENT'S WITHHOLDING OF REMOVAL OR CAT CASE

- Check out CILA's [webinar](#): *Overview of Withholding of Removal and Protection under the Convention Against Torture for Unaccompanied Children* (60 minutes).
- Review CILA's resources [Case Evidence List](#) and [Developing Your Case Chart](#) which are linked under the webinar *Overview of Withholding of Removal and Protection under the Convention Against Torture for Unaccompanied Children* posted on CILA's website. They are also found on CILA's [Additional Resources page](#).
- Check out Immigration Equality and Midwest Immigrant and Human Rights Center's *Preparing LGBTQ and HIV Asylum, Withholding and CAT Claims Manual* ([Asylum Manual](#)).
- Take a look at ILRC's practice advisory [Qualifying for Protection Under the Convention Against Torture](#), Aruna Sury, April 2020.

C. Special Immigrant Juvenile Status and Adjustment of Status

Special Immigrant Juvenile Status (SIJS) is an immigrant visa available for juveniles who need protection from a state court because of abuse, neglect, or abandonment by a parent. The question of whether the juvenile has been abused, neglected, or abandoned (or a similar basis under state law) must be determined by a state court with jurisdiction over the care and custody of children.

There are three key phases of a SIJS case: obtaining a custody or dependency order from a state court, then submitting the Special Immigrant Juvenile petition for a decision from USCIS, and then applying for lawful permanent residence (either with USCIS or the immigration judge). Keep in mind that you will likely need to be barred in the state where the state court order is obtained, although you can be barred in any state to petition with USCIS or appear in immigration court.

¹²⁴ 8 C.F.R. § 208.17(d).

THREE PHASES OF A SIJS CASE



SIJS Eligibility Requirements: The applicant must:¹²⁵

- Be physically present in the U.S. when they apply for SIJS;
- Be unmarried through the adjudication of the SIJS petition;
- Be under 21 on the date of filing [Form I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#);
- Have a valid state court order with certain determinations;
- Have USCIS consent (in the form of approval of the I-360) to adjust status;
- And, if in ORR custody, may also require specific consent from the Secretary of HHS.

Special Immigrant Juvenile Status and Adjustment of Status Key Sources of Law

- INA § 101(a)(27)(J); [8 U.S.C. § 1101\(a\)\(27\)\(J\)](#)
- [8 C.F.R. § 204.11](#)
- USCIS Policy Manual Volume 6 Immigrants - [Part J Special Immigrant Juveniles](#)
- Administrative Appeals Office (AAO) Adopted Decisions:
 - [Matter of D-Y-S-C-](#), Adopted Decision 2019-02 (AAO Oct. 11, 2019)
 - [Matter of A-O-C-](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019)
 - [Matter of E-A-L-O-](#), Adopted Decision 2019-04 (AAO Oct. 11, 2019)
- INA § 245(h); [8 U.S.C. § 1255\(h\)](#) (adjustment of status)
- [8 C.F.R. § 245.1\(e\)\(3\)](#) (adjustment of status)
- USCIS Policy Manual Volume 7 Adjustment of Status - Part F Special Immigrant-Based (EB-4) Adjustment - [Chapter 7 Special Immigrant Juveniles](#) (adjustment of status)
- William Wilberforce Trafficking Victims Protection Reauthorization Act ([TVPPRA](#)) of 2008; [8 U.S.C. § 1232](#)

***** State law also impacts SIJS eligibility, often in the areas of child welfare, family law, and juvenile justice law, so this will vary per jurisdiction. This will require research and preparation outside the scope of this Guide as the Guide focuses on issues that are nationally applicable.*****

¹²⁵ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

Phase 1: State Law Portion: Obtain State Court Order

For USCIS to grant SIJS, there are five requirements for the state court order. The order must:¹²⁶

1. Be valid;
2. Contain a judicial determination about custody or dependency;
3. Include a determination about parental reunification;
4. Contain a best interest determination; and
5. Warrant DHS consent by providing the factual basis for the determinations made under state law, either in the court order or other documents submitted to the court.

VALID COURT ORDER

In order for a court order to be valid, it must be issued under state law.¹²⁷ Determinations in the state court order should be based on state law. **TIP:** Therefore, arguments in pleadings should only be based on state law, not immigration law.

Additionally, the state court must have continuing jurisdiction during the filing of the petition through adjudication of the petition.¹²⁸ There are exceptions to this rule, for instance, if a petitioner is adopted or placed in permanent guardianship or if a petitioner was subject to a valid order that was later terminated based on age before or after filing the SIJS petition.¹²⁹ If a petitioner relocates, USCIS may not require a new state court order unless the petitioner is no longer living with the placement from the court order. In that case, a new court order may be necessary or additional evidence must be provided to show continuing jurisdiction.¹³⁰

STOP!

Before filing anything in state court be sure to read the **USCIS Policy Manual** on SIJS and identify the state laws upon which your state court order will be based.

JUDICIAL DETERMINATION ABOUT CUSTODY OR DEPENDENCY

The state court order must include a determination about either custody or dependency.¹³¹ There must be a state law basis for the custody or dependency determination.¹³² The state court order should not be temporary or expire before the child reaches the age of majority.¹³³ Every state's laws regarding custody and dependency are different so be sure to identify the laws that apply in the state where you are obtaining a state court order. Some states have statutes that are specific to SIJS. **Keep in mind:**

- **Custody:**
 - The state court order must include both legal and physical custody.
 - If custody is granted to an individual, the name of that individual should be included.
- **Dependency:**
 - The state court order must declare dependency OR legal commitment/placement under the cus-

¹²⁶ *Id.*

¹²⁷ *USCIS Policy Manual* Vol. 6, Pt. J, Ch. 2.C.

¹²⁸ *USCIS Policy Manual* Vol. 6, Pt. J, Ch. 2.C.4.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *USCIS Policy Manual* Vol. 6, Pt. J, Ch. 2.C.1.

¹³² When you submit the I-360 packet to USCIS, the state law basis for the custody or dependency determination can be shown by either the order or in the evidence submitted to obtain the state court order. See *USCIS Policy Manual* Vol. 6, Pt. J, Ch. 3.A.4.

¹³³ *USCIS Policy Manual* Vol. 6, Pt. J, Ch. 3.A.2.

tody of a state agency, department, entity, or individual.

- *Matter of E-A-L-O*- requires intervention by the state court through determination on care/custody and/or child welfare services.¹³⁴ Child welfare services could include psychiatric, educational, occupation, medical or social services, protection against domestic violence or human trafficking, or other supervision by a court or a court-appointed entity.

JUDICIAL DETERMINATION ABOUT PARENTAL REUNIFICATION

The judge must also determine that reunification with a parent is not possible.¹³⁵ This should be based on a determination of abuse, neglect, or abandonment (or a similar basis under state law) by that parent. Reunification cannot be possible until the child ages out of the court's jurisdiction. Termination of the parent's rights is not required.¹³⁶

The USCIS Policy Manual provides information regarding determining parentage and states in a footnote, "[i]n circumstances where the judge does not make a final determination on parentage or makes a determination as to alleged or purported parentage, the order will not meet the statutory requirements for SIJ classification."¹³⁷

JUDICIAL DETERMINATION ABOUT BEST INTEREST

The best interest of a child is regularly considered in custody or dependency proceedings, but the best interest finding here is a little different. Here, the emphasis is on best interest of the child regarding placement specifically. There must be a judicial determination that it is not in the best interest of the child to be returned to the country of nationality or last habitual residence of the petitioner or her parents.¹³⁸ This typically fits within the traditional best interest analysis done by the judge in child welfare and custody proceedings. According to the USCIS Policy Manual, "USCIS generally defers to the court on matters of state law and does not go behind the state court to reweigh evidence and make independent determinations about the best interest of the juvenile and abuse, neglect, abandonment, or a similar basis under state law."¹³⁹

WARRANT DHS CONSENT

The Secretary of DHS must consent to the grant of SIJS.¹⁴⁰ This involves a question of whether the state court order was bona fide and sought to protect the child from abuse, abandonment, or neglect and was not solely for an immigration benefit.¹⁴¹ To meet this requirement, the order should state the factual basis for the legal determinations made under state law. If the order does not provide a factual basis, when you submit the petition packet to USCIS, this can be evidenced by other state court documents such as the petition, evidence submitted, court transcript or if not available, an affidavit by the attorney or client summarizing what was submitted to the court.¹⁴²

134 *Matter of E-A-L-O*-, Adopted Decision 2019-04 (AAO Oct. 11, 2019).

135 INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

136 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.2.

137 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2, note 20.

138 INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c)(6).

139 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2. Moreover, the USCIS Policy Manual goes on to say, "if for example the court places the child with a person in the United States pursuant to state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent. The analysis would not change even if the chosen caregiver is a parent." USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.3.

140 INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

141 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.D.

142 USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.A.3.

TIPS TO OBTAIN THE STATE COURT ORDER

Be familiar with your state's laws regarding custody and dependency. Talk to family, child welfare, or juvenile law practitioners. Draft your documents in the form locally accepted in the court you will enter.

Include references to state law, not immigration law.

It may help to have a "findings" section in the order to ensure there is a place to include determinations regarding parental reunification and best interest.

Learn about/initiate service of process. You will need to serve the respondents in the case, typically the parents of the child, and possibly other individuals. Oftentimes, one or both of the parents will be living abroad. This may present unique challenges that should be navigated using the rules of service in your state and any applicable international treaties.¹⁴³

Gather evidence to show the judge that there was abuse, neglect, and/or abandonment by one (or both) of the child's parents. Evidence could include medical records, school records, an affidavit by the child, and affidavits from the petitioner or others who know about the harm the child suffered.

Research the issues and consult available resources on SIJS to double check that you have everything you need to move forward to obtain the state court order. Read the USCIS Policy Manual on SIJS before going to state court (not after!).

Prepare yourself and your client for a hearing in state court to obtain a final order. Request a court reporter so you can obtain a court transcript of the hearing. After the hearing, obtain a certified copy of the final order to submit to USCIS.

Common Issues

DEATH AS ABANDONMENT OR NEGLECT

It is sometimes viable to argue that the death of a parent results in constructive abandonment or neglect because the parent failed to plan for that scenario and the child was left without provision or care, if the parent did not have a will or sufficient resources. It is important to tie this to neglect and/or abandonment as defined in your state's law. The USCIS's Policy Manual states, "[t]he fact that one or both parents is deceased is not itself a similar basis to abuse, abandonment or neglect under state law. A legal conclusion from the state court is required that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law."¹⁴⁴

PARENTAGE

The establishment of parentage can be complex, especially when you are looking to the laws of the country where a child was born. Oftentimes, parents in your case may not be married or otherwise subject to

¹⁴³ For example, you may need to consider the Hague Service Convention or Inter-American Convention on Letters Rogatory. A helpful starting point for research is the DOJ website. See *Service Requests*, DOJ, <https://www.justice.gov/civil/service-requests> (last updated Oct. 31, 2019). If you are practicing in Texas, you may want to consult Burta Rhoads Raborn Inns of Court Team 4's decision tree on *How to Serve the Respondent Successfully* posted on CILA's website under *Additional Resources*, <http://www.cilacademy.org/resources/additional-resources/>.

¹⁴⁴ USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.A.1.

presumptions of parentage under the laws of your state. Additionally, some clients may have other relatives on their birth certificate in the absence of a father. Be sure to review the child's birth certificate for both a mother and father. USCIS notes that if the parent who has mistreated the child is not on the child's birth certificate, they will look to the order for a determination of parentage of that person. If the identity of the father is unknown, you may be able to make findings against an unknown father.¹⁴⁵

EXAMPLE SIJS CASE STUDY: COMPARING APPROACHES IN TEXAS AND WASHINGTON

Hypothetical Case Facts:

Samuel's biological father abandoned Samuel and his mother, Juliana, when Samuel was a newborn baby. After they were abandoned, Juliana suffered from extreme mental illness, though never formally diagnosed. About five years ago, Juliana was hit by a car, and she died as a result of the injuries she sustained. Samuel grew up with his great-grandmother and his little brother, Cristian Leonardo. Samuel's great-grandmother is in her seventies. Samuel's uncles supported the family with money. When Samuel was about thirteen years old, he started having problems with gang members. Samuel was beaten up frequently, and the gang told Samuel that if he did not join them, he would be killed.

Approach in Texas

ADDITIONAL FACT: Samuel is currently residing in Houston in the care of his uncle, Jose. Samuel would like to remain with his uncle.

Samuel needs a custody order. His uncle Jose would be able to file for legal conservatorship of Samuel after six months of taking care of Samuel. He would file a "Suit Affecting the Parent Child Relationship" (SAPCR). He would need to serve Samuel's father with notice of the lawsuit. If there is no way to determine the father's whereabouts, he can use service of citation by publication which requires the appointment of an attorney ad litem to ensure the father cannot be found. As the basis for the SAPCR, Jose would show that it is in Samuel's best interest for Jose to have sole managing conservatorship because his father abandoned him and his mother neglected and abandoned him before she passed away. The court would find that there was no possibility of reunifying with his deceased and estranged parents, and that it was not in his best interest to return to live with his elderly great-grandmother who could not protect him from the gangs.

Approach in Washington

ADDITIONAL FACT: Samuel is currently residing in Seattle in the care of his aunt, Maria. Samuel would like to remain with his aunt.

Samuel can file a petition for dependency. In Washington, any person may file a petition to seek dependency for the child so the child can self-petition for dependency. He would need to serve his father with notice of the lawsuit. Service must comply with any relevant treaties regarding service of process for the country of Samuel's father. Service of process by an alternative means, including by publication is possible if it is allowed by the court. If Samuel does not know his father's current whereabouts, this is a likely option to complete service. In the petition, Samuel would seek dependency because his father abandoned him and his mother neglected and abandoned him before she passed away. The court would find that there was no possibility of reunifying with his deceased and estranged parents, and that it was not in his best interest to return to live with his elderly great-grandmother who could not protect him from the gangs.

¹⁴⁵ See Administrative Appeals Office (AAO) non-precedential decisions: [Matter of A-S-F-D-](#), ID #2118258 (AAO Dec. 27, 2018); [Matter of A-V-F-D-](#), ID# 2118279 (AAO Dec. 27, 2018); [Matter of E-R-F-D-](#), ID# 2118354 (AAO Dec. 27, 2018); [Matter of N-A-F-D-](#), ID# 2118313 (AAO Dec. 27, 2018).

Phase 2: USCIS Portion: File for Special Immigrant Juvenile Status (I-360)

Once the state court order is obtained, the child can file a petition for an immigrant visa under the SIJS classification. The child can apply for SIJS by filing Form I-360 with USCIS.¹⁴⁶

FILING THE PETITION

Form I-360 is the required form for applying for SIJS. The I-360 is used for several types of immigration relief so be sure to only fill out those portions of the form relevant to SIJS.

To also show eligibility for SIJS, in addition to the form, it is important to also include the following information:¹⁴⁷

- Cover letter detailing how the client meets the eligibility requirements
- Certified copy of the state court order
- Proof of age—commonly done with a birth certificate

CILA has resources available to review as guidance for filling out the I-360: *Form I-360 Review Guidance* and *I-360 Contents Checklist and Where to File* handout found on CILA's website on the [Additional Resources](#) page.

The petition will be adjudicated at the National Benefits Center (NBC).¹⁴⁸ It is possible for the NBC to schedule an interview regarding the petition at a local field office, but currently this rarely occurs. The law requires USCIS to adjudicate the petition within 180 days; however, this is not enforced and processing is typically slower.¹⁴⁹ Processing times are not published so there is no clear expectation for processing time. After reviewing the petition and supporting evidence, USCIS may issue: an approval, denial, Request for Evidence (RFE), or Notice of Intent to Deny (NOID).

OPTIONS IF YOUR CLIENT RECEIVES A RFE, NOID, OR DENIAL

- If your client receives a RFE → The notice will give a timeframe to respond to provide additional information and/or documentation. The timeframe will not exceed twelve weeks.¹⁵⁰
- If your client receives a NOID → The deadline to respond cannot exceed 30 days.¹⁵¹
- If your client receives a denial¹⁵² → There are options to appeal. Your client can appeal to a federal court or the AAO.¹⁵³ Additionally, there is the option to file a motion to reopen or motion to reconsider with USCIS.

IMPACT OF AN APPROVED SIJS PETITION

Benefits:

- Approved SIJS provides a pathway to apply for permanent residence and then citizenship.

¹⁴⁶ 8 C.F.R. § 204.11(b).

¹⁴⁷ 8 C.F.R. § 204.11(d).

¹⁴⁸ According to the USCIS website, “[s]tarting on November 1, 2016, USCIS will centralize the Special Immigrant Juvenile (SIJ) program. This means SIJ-based Form I-360 petitions and Form I-485 applications will primarily be adjudicated at one location, the National Benefits Center (NBC),” <https://www.uscis.gov/archive/uscis-centralize-processing-special-immigrant-juvenile-cases> (last reviewed/updated Nov. 1, 2016). To learn more about the NBC, visit the USCIS website, <https://egov.uscis.gov/office-locator/#/nbc> (last visited Apr. 9, 2020).

¹⁴⁹ See *supra* note 4 at Section 235(d)(2); 8 U.S.C. § 1232(d)(2).

¹⁵⁰ 8 C.F.R. § 103.2(b)(8)(iv).

¹⁵¹ *Id.*

¹⁵² USCIS Policy Manual, Vol. 6, Pt. J, Ch. 5.

¹⁵³ 8 C.F.R. § 103.3. Consult the USCIS AAO Practice Manual if you plan to appeal to the AAO. See AAO Practice Manual, USCIS (Mar. 2019), <https://www.uscis.gov/aao-practice-manual>.

Limitations:

- SIJS provides a lawful status for the child, but the child is still in “limbo” until the child obtains residency. SIJS alone, without adjustment of status, does not constitute relief from removal. See more information below regarding how an approved SIJS petition impacts children in removal proceedings.
- SIJS does not grant work authorization.
- SIJS does not grant re-entry to the U.S. if the child leaves. There is no option for travel.
- Child must remain unmarried until the child obtains permanent residency.
- Neither parent of the SIJS petitioner can obtain immigration status through their child.¹⁵⁴

CLIENT IN REMOVAL PROCEEDINGS AND HAS PENDING SIJS PETITION

You may find yourself in immigration court with a client who either has a pending SIJS petition or an approved SIJS petition awaiting visa availability to adjust status. Immigration judges do not have jurisdiction to make decisions about the SIJS petition, or to adjust status until there is a visa available (see more below). If there is no other relief before the immigration judge (like asylum), the most prevalent procedural option in most jurisdictions is a motion to continue or to place the case on the status docket¹⁵⁵ until the SIJS petition is adjudicated by USCIS or a visa becomes available to adjust status. Current guidance gives more authority to immigration judges to grant a continuance or place a case on the status docket when a I-360 petition is pending for a decision with USCIS rather than when a I-360 has been approved. In that situation, the judge often indicates the priority date is too remote and it will take too long for a visa number to become available. You may have to return to court several times to seek a continuance. For more about this topic, CLINIC has an excellent *Practice Advisory: Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018).

TIP: Emphasize to the immigration judge that SIJS is a humanitarian form of relief and that a state court judge determined that it is not be in the child’s best interest to return to their home country. Additionally, see Section **IV.B**. Introduction to Immigration Court for more information regarding motions to continue and the status docket in immigration court. Also check out CILA’s [blog post](#) *Certification, Backlogs and Visa Retrogression: Advocating for SIJ beneficiaries to remain in the US to adjust status*.

Phase 3: File for Adjustment of Status

Once a child has an approved I-360 petition, the child is eligible to apply for lawful permanent residence. However, the child may apply for adjustment of status only once a visa number is available. The child should apply using USCIS [Form I-485](#), *Application to Register Permanent Residence or Adjust Status*.

Resources for Responding to a RFE, NOID, or Denial

[CLINIC Index of Unpublished Administrative Appeals Office Decisions on Special Immigrant Juvenile Status](#)

[ILRC Practice Advisory Responding to Inappropriate RFEs and NOIDs in Special Immigrant Juvenile Status cases](#)

[CILA Webinars](#)

- *Responding to Common SIJS RFEs, NOIDs, and NOIRs, Arguments for Appealing Denials to the AAO and Options for Federal Court Appeals*
- *Immigration Legal Research and AAO Appeals*

¹⁵⁴ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

¹⁵⁵ Keep in mind, not all immigration courts utilize status dockets; therefore, this may not be an option in some courts.

There is a filing fee¹⁵⁶ associated with Form I-485, but a fee waiver¹⁵⁷ using [Form I-912, Request for Fee Waiver](#) can be filed with USCIS. Additionally, there are some inadmissibility grounds that do not apply to Special Immigrant Juveniles or that may be waived.¹⁵⁸

WHERE SHOULD MY CLIENT FILE THE APPLICATION?

If the child is not in removal proceedings, then the child should file this application with USCIS. The child should file this application with USCIS if they are not in removal proceedings, or if they are in removal proceedings but are considered an “arriving alien” (entered through a port of entry).¹⁵⁹ If the child is not considered an “arriving alien” and is in removal proceedings which have not been dismissed, then the child should file the application with the immigration court. Also check out CILA’s [blog post](#) on the topic *Adjusting Without Jurisdiction: A Cautionary Tale*.

WHEN SHOULD MY CLIENT FILE THE APPLICATION?

If a visa number is available, then the child can file the I-485 with the I-360 to USCIS for concurrent processing. However, for the most common countries of origin (Mexico, Honduras, El Salvador, and Guatemala), visa numbers may not currently be available due to backlogs.

HOW DO I KNOW IF A VISA NUMBER IS AVAILABLE?

Check your client’s I-360 Receipt Notice from USCIS to find your client’s priority date, the date USCIS received the petition. This is the date you use when checking the Visa Bulletin for visa availability. Special Immigrant Juveniles fit into the 4th preference employment-based (EB-4) category. The Department of State (DOS) issues a [Visa Bulletin](#) monthly to show available visas. You should check the Visa Bulletin regularly to see if there has been any movement in visa availability and whether a visa number is available for your client.

Additionally, every month USCIS publishes a [Filing Chart](#) regarding when USCIS will begin accepting applications for that particular country. It does not necessarily align with the information in the DOS’s Visa Bulletin. For instance, even if a visa number is not available according to the Visa Bulletin, USCIS may still accept the application. It varies each month, which requires monitoring of these sources. When filing in immigration court, you must always wait for a visa to become available under the DOS Visa Bulletin.

For an example of how to do this, watch CILA’s 101 [webinar](#): *Introduction to Special Immigrant Juvenile Status* (49 minutes)—this discussion begins at timestamp 32:05.

IS THERE AN AGE LIMIT FOR SIJS-BASED ADJUSTMENT OF STATUS?

According to the USCIS Policy Manual, “[t]here is no age limit for SIJ-based applicants for adjustment of status. In cases where an SIJ petitioner is under 21 years of age on the date of proper filing of the SIJ petition, USCIS does not deny an SIJ-based adjustment application solely because the applicant is older than 21 years of age at the time of filing or adjudication of the Form I-485.”¹⁶⁰

¹⁵⁶ G-1055, *Fee Schedule*, USCIS, <https://www.uscis.gov/g-1055> (last reviewed/updated Feb. 15, 2020).

¹⁵⁷ *Additional Information on Filing a Fee Waiver*, USCIS, <https://www.uscis.gov/feewaiver> (last reviewed/updated Feb. 19, 2020).

¹⁵⁸ See INA § 245(h); 8 U.S.C. § 1255(h); 8 C.F.R. § 245.1(e)(3).

¹⁵⁹ See 8 C.F.R. § 1.2.

¹⁶⁰ USCIS Policy Manual, Vol. 7, Pt. F, Ch. 7.

SIJS-BASED ADJUSTMENT OF STATUS ELIGIBILITY REQUIREMENTS

To be eligible for adjustment of status, your client must:

- Have an approved I-360 petition;
- Have no bars to adjustment;
- Be admissible or qualify for a waiver; and
- Merit a favorable exercise of discretion.

APPROVED I-360 PETITION

At this stage, if the adjustment of status application is sent to USCIS, they will verify continued eligibility for SIJS, which means it is possible that a I-360 could be revoked. There are some grounds for automatic revocations, including: marriage of the petitioner, reunification by court order, or reversal of best interest determination by the court.¹⁶¹ If the revocation is not automatic but USCIS finds that the applicant is no longer eligible for SIJS, USCIS will send a Notice of Intent to Revoke (NOIR).

If the adjustment of status application is being submitted to the immigration court, the court does not have authority to re-adjudicate the SIJS petition.

NO BARS TO ADJUSTMENT—WHAT BARS TO ADJUSTMENT APPLY TO SPECIAL IMMIGRANT JUVENILES?

The only applicable bar for adjustment of status for Special Immigrant Juveniles is the terrorist-related bar.¹⁶²

IS THE CHILD ADMISSIBLE OR DOES THE CHILD QUALIFY FOR A WAIVER?

To be eligible for adjustment of status, the child must be admissible. Grounds of inadmissibility are reasons why a person can be refused admission and/or removed from the U.S. including on health-related grounds, economic grounds, criminal grounds, etc.

There are certain grounds of inadmissibility that are inapplicable to Special Immigrant Juveniles and so will not affect their admissibility for their application for adjustment of status.¹⁶³ No waiver is necessary.

INADMISSIBILITY GROUNDS THAT ARE INAPPLICABLE TO SPECIAL IMMIGRANT JUVENILES (NO WAIVER NECESSARY)

INA § 212(a)(4) Public charge

INA § 212(a)(5)(A) Labor certification

INA § 212(a)(6)(A) Aliens present without admission or parole

INA § 212(a)(6)(C) Misrepresentation, including false claim to U.S. citizenship

INA § 212(a)(6)(D) Stowaways

¹⁶¹ 8 C.F.R. § 205.1(a)(3)(iv).

¹⁶² INA § 245(c)(6); 8 U.S.C. § 1255(c)(6).

¹⁶³ INA § 245(h)(2)(B); 8 U.S.C. § 1255(h)(2)(B); 8 C.F.R. § 245.1; USCIS Policy Manual, Vol. 7, Pt. F, Ch. 7.

INADMISSIBILITY GROUNDS THAT ARE INAPPLICABLE TO SPECIAL IMMIGRANT JUVENILES (NO WAIVER NECESSARY)

INA § 212(a)(7)(A) Immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document

INA § 212(a)(9)(B) Aliens unlawfully present

Many grounds of inadmissibility which do apply to Special Immigrant Juveniles can be waived¹⁶⁴ with the submission of [Form I-601](#), *Application for Waiver of Grounds of Inadmissibility* and accompanying evidence. There are more generous waivers for Special Immigrant Juveniles seeking adjustment of status than the regular waivers of inadmissibility grounds. The standard for the SIJS-specific waiver is whether it should be granted “for humanitarian purposes, family unity, or when it is otherwise in the public interest.”¹⁶⁵

INADMISSIBILITY GROUNDS THAT ARE APPLICABLE TO SPECIAL IMMIGRANT JUVENILES BUT WAIVABLE (USING FORM I-601)

INA § 212(a)(1) Health-related grounds

INA § 212(a)(2)(D) Prostitution and commercialized vice

INA § 212(a)(2)(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution

INA § 212(a)(2)(G) Foreign government officials who have committed particularly severe violations of religious freedom

INA § 212(a)(2)(H) Significant traffickers in persons

INA § 212(a)(2)(I) Money laundering

INA § 212(a)(3)(D) Immigrant membership in a totalitarian party

INA § 212(a)(3)(F) Association with terrorist organization

INA § 212(a)(5)(B) Unqualified physicians

INA § 212(a)(5)(C) Uncertified foreign health care workers

INA § 212(a)(6)(B) Failure to attend removal proceedings

INA § 212(a)(6)(E) Smugglers

INA § 212(a)(6)(F) Subject of civil penalty

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

INADMISSIBILITY GROUNDS THAT ARE APPLICABLE TO SPECIAL IMMIGRANT JUVENILES BUT WAIVABLE (USING FORM I-601)

INA § 212(a)(6)(G) Student visa abusers

INA § 212(a)(7)(B) Nonimmigrants

INA § 212(a)(8) Ineligible for citizenship

INA § 212(a)(9)(A) Certain aliens previously removed

INA § 212(a)(9)(C) Aliens unlawfully present after previous immigration violations

INA § 212(a)(10) Miscellaneous grounds (polygamists, unlawful voters, etc.)

There are also some inadmissibility grounds that apply to Special Immigrant Juveniles that cannot be waived under the SIJS-specific waiver, but they may be waivable under a different statutory authority.¹⁶⁶ The [USCIS Policy Manual](#), Vol. 9 provides additional information on waivers.

INADMISSIBILITY GROUNDS THAT ARE APPLICABLE TO SPECIAL IMMIGRANT JUVENILES BUT NOT WAIVABLE UNDER SIJS-SPECIFIC WAIVER

INA § 212(a)(2)(A) Conviction¹⁶⁷ of certain crimes

INA § 212(a)(2)(B) Multiple criminal convictions, aggregate sentences 5 years or more

INA § 212(a)(2)(C) Controlled substance traffickers (anyone who the Attorney General has “reason to believe” is a trafficker (i.e., does not require a “conviction” in adult court or a juvenile delinquency disposition)

INA § 212(a)(3)(A) Entrance to engage solely, principally, or incidentally in unlawful activity, particularly espionage.

INA § 212(a)(3)(B) Terrorist activities

INA § 212(a)(3)(C) Serious adverse foreign policy consequences

INA § 212(a)(3)(E) Participants in Nazi persecutions, genocide or the commission of any act of torture or extrajudicial killing

¹⁶⁶ See [USCIS Policy Manual](#), Vol. 7, Pt. F, Ch. 7, note 28.

¹⁶⁷ The [USCIS Policy Manual](#) states, “[f]indings of juvenile delinquency are not considered criminal convictions for purposes of immigration law.” [USCIS Policy Manual](#), Vol. 7, Pt. F, Ch. 7. The Manual goes on to say, “[h]owever, certain grounds of inadmissibility do not require a conviction. In some cases, certain conduct may be sufficient to trigger an inadmissibility ground. Furthermore, findings of juvenile delinquency may also be part of a discretionary analysis.” *Id.* It is important to read the Manual further if your client has any criminal history or arrests and explore the issue. Based on INA § 245(h)(2)(B); 8 U.S.C. § 1255(h)(2)(B) and INA § 212(h); 8 U.S.C. § 1182(h) non-waivable bars do not include the portion “related to a single offense of simple possession of 30 grams or less of marijuana.”

MERITS EXERCISE OF FAVORABLE DISCRETION

In addition to ensuring the applicant meets all requirements to file, the USCIS officer will also determine if the individual merits favorable discretion in approving the application or not.¹⁶⁸

TIP: Always include positive discretionary factors in your evidence and testimony for adjustment of status.

FILING THE ADJUSTMENT OF STATUS APPLICATION

The application packet should include:¹⁶⁹

- Form I-485, *Application to Register Permanent Residence or Adjust Status*
- Appropriate fee OR [Form I-912, Request for Fee Waiver](#)
- Copy of the receipt or approval notice (Form I-797) for the applicant's SIJS petition (unless the applicant is filing the petition together with Form I-485)
- Two passport style photos
- Copy of government issued identity document with photograph (if available)
- Copy of birth certificate
- [Form I-693, Report of Medical Examination and Vaccination Record](#) completed by a civil surgeon—Check USCIS's website to [find a doctor](#).
 - **TIP:** Do not get the medical examination done immediately. Check out [USCIS's Special Instructions](#) regarding Form I-693 and the [USCIS Policy Manual](#) Volume 8, Part B, Chapter 4 regarding this issue to ensure results are valid and timely.
- Certified police and court records of juvenile delinquency findings, criminal charges, arrests, or convictions (if applicable)
- Form I-601, *Application for Waiver of Grounds of Inadmissibility* (if applicable). This form also has a fee so you should include it in the request for a fee waiver, if necessary.

Additionally, an applicant has the option to seek an EAD by filing [Form I-765, Application for Employment Authorization](#) and/or a travel document by filing [Form I-131, Application for Travel Document](#).

Juvenile Records

State laws often prioritize the confidentiality of juveniles' delinquency records, but it is important to keep in mind how USCIS will address the issue when adjudicating an application for adjustment of status.

The [USCIS Policy Manual](#) Vol. 7, Pt. F, Ch. 7 provides important information regarding what USCIS is looking for if the youth has juvenile delinquency. For example, the Manual states:

- “[A]n adjustment applicant must disclose all arrests and charges. If any arrest or charge was disposed of as a matter of juvenile delinquency, the applicant must include the court or other public record that establishes this disposition.”
- “In the event that an applicant is unable to provide such records because the applicant's case was expunged or sealed, the applicant must provide information about the arrest and evidence demonstrating that such records are unavailable under the law of the particular jurisdiction.”

¹⁶⁸ See [USCIS Policy Manual](#), Vol. 7, Pt. F, Ch. 7.

¹⁶⁹ *Id.* See *Checklist of Required Initial Evidence for Form I-485 (for informational purposes only)*, USCIS, <https://www.uscis.gov/i-485Checklist> (last reviewed/updated Sept. 10, 2018).

FILING THE APPLICATION WITH USCIS

At the time of publication, adjustment of status applications filed with USCIS should be filed with the Chicago Lockbox address and will be adjudicated by the NBC. If necessary, an interview will be scheduled for the applicant at a local field office. The application could either be approved or denied by USCIS.

If the application is denied, an applicant can appeal to the AAO, file a motion to reopen/reconsider, or re-apply at a later time. It is also possible for USCIS to issue a NTA and initiate removal proceedings for the child. If this occurs, the child can renew their I-485 application before the immigration court.

FILING THE APPLICATION IN IMMIGRATION COURT

If the child is in removal proceedings, then the court will decide their application for adjustment of status. In this situation, the applicant should:

- Provide an appropriate fee OR request to waive I-485 filing fee and biometrics fee. See Chapter 3.4 of the [Immigration Court Practice Manual](#) for instructions.
- Submit the immigration judge's order waiving fees along with a copy of the I-485 and [pre-hearing instructions](#) to the Texas Service Center.
- Once the Texas Service Center issues a Receipt Notice, you can submit a copy of that along with the adjustment of status packet you have prepared to the immigration court.
 - You can also use the Receipt Notice to file for an EAD with USCIS. This is important if there is a lengthy time period before your client's individual hearing.
- The USCIS Service Center will issue a biometrics appointment notice. Your client must attend the appointment.
- Before the individual hearing, it is recommended that you follow up with the Office of Chief Counsel (OCC) to ensure that the background check has been completed before the individual hearing.
- At the individual hearing, the immigration judge will adjudicate the I-485 application packet.
- Following the hearing, if the application is approved, follow the [post-order instructions](#) to assist your client in obtaining a green card which is processed by USCIS.
- If the application is denied, your client can appeal to the BIA, but that is the last level of appeal. There is no option to appeal to federal court.

IMPACT OF AN APPROVED¹⁷⁰ APPLICATION

| RIGHTS OF LAWFUL PERMANENT RESIDENCY | RESPONSIBILITIES OF LAWFUL PERMANENT RESIDENCY |
|---|--|
| Live and work permanently in the U.S. | Maintain a current address with USCIS |
| Leave and return to the U.S. under certain conditions | ObeY all federal, state, and local laws |
| Attend college or join the U.S. Armed Forces | Pay federal, state, and local income taxes |
| Apply for citizenship once eligible (after 5 years) | Register with the Selective Service if a male between 18 and 26 years of age |
| Petition for certain relatives (not parents) | Maintain lawful immigration status |

Links to Help You with YOUR CLIENT'S SPECIAL IMMIGRANT JUVENILE CASE

- Check out CILA's 101 [webinar: Introduction to Special Immigrant Juvenile Status](#) (49 minutes).
- Watch CILA's [webinar: Responding to Common SIJS RFEs, NOIDs, and NOIRs, Arguments for Appealing Denials to the AAO and Options for Federal Court Appeals](#), June 2019 (1 hour, 30 minutes).
- Review CILA's blog post [Analysis of SIJS updates to the USCIS Policy Manual](#), December 11, 2019 to get an overview of changes made to the USCIS Policy Manual regarding SIJS in 2019.
- Use CILA's SIJS Case Theory and Evidence Matrix chart posted on CILA's website on the [Additional Resources page](#) to help you stay organized and create a case strategy.
- Read the CLINIC and ILRC Practice Alert [SIJS Policy Updates and Proposed Regulations](#), November 2019 regarding updates.
- Learn more about SIJS and filing for adjustment of status with ILRC's [Humanitarian Forms of Relief Part II: Asylum & SIJS](#), Veronica Garcia, August 2019 and [Changes to the Form I-485, Application for Adjustment of Status](#), January 2018.
- View CILA's flowchart [Petition for Special Immigrant Juvenile Status Across Systems](#) to see a visual of the course of a SIJS case through the different stages which can be helpful in explaining the process to your client.
- Learn more about visa availability with CILA's resource [Quick Reference Guide – SIJ Status and EB-4 Immigrant Visa Availability](#), April 2018.
- Read ILRC's Practice Advisory [What are the Immigration Consequences of Delinquency?](#), Rachel Prandini, March 2020 if delinquency is an issue in your case.

¹⁷⁰ *Rights and Responsibilities of a Green Card Holder (Permanent Resident)*, USCIS, <https://www.uscis.gov/green-card/after-green-card-granted/rights-and-responsibilities-a-green-card-holder-permanent-resident> (last reviewed/updated July 15, 2015).

D. U and T Visas

U Visas

Generally, U visas are available for victims of certain crimes who are helpful to law enforcement or other authorities in the investigation or prosecution of the criminal activity. If you think your client is eligible to file for a U visa, this is something to explore more closely. This Guide only gives an overview of the option for relief to get you started.

U Visa Key Sources of Law

- INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U)
- INA § 212(d)(14); 8 U.S.C. § 1182(d)(14) (inadmissibility waiver)
- INA § 214(p); 8 U.S.C. § 1184(p)
- INA § 245(m) 8 U.S.C. § 1255(m) (adjustment)
- 8 C.F.R. § 212.17
- 8 C.F.R. § 214.14
- 8 C.F.R. § 245.24 (adjustment)
- Victims of Trafficking and Violence Protection Act of 2000 (TVPA) and reauthorizations
- Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) and reauthorization

ELIGIBILITY REQUIREMENTS

To be eligible for a U visa, an individual must meet the following criteria:¹⁷¹

- A victim of a designated crime (qualifying crime) that occurred in the U.S. or violated U.S. law
- Cooperation with law enforcement or other government authorities investigating or prosecuting the criminal activity
 - Possesses information about the crime
 - Has been, is being, or is likely to be helpful in investigation or prosecution
- Suffered “substantial physical or mental abuse” as result of crime
- Applicant is admissible or eligible for a waiver

A victim can be the direct victim, or at times an indirect victim.¹⁷²

The law provides for designated criminal activities that can serve as a qualifying crime. The list includes:

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal re-

¹⁷¹ INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U).

¹⁷² See 8 C.F.R. 214.14(a)(14); Federal Register, Vol. 72, No. 179, 53016-53017 (Sept. 17, 2007) regarding indirect and bystander victims.

strait; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting . . . attempt, conspiracy, or solicitation to commit any of the above mentioned crimes¹⁷³

The criminal activity can include “one or more of the following or any similar activity in violation of Federal, State, or local criminal law,” so the advocate must identify the designated criminal activity and law that was violated.¹⁷⁴

Keep in mind that if the victim is under age 16, then “the parent, guardian, or next friend” of the child may meet the requirements for cooperation.¹⁷⁵

FILING THE U VISA PETITION

- **Certification of Helpfulness:** After assessing eligibility for your client, one of the first steps is to get a signature from a certifying agency on the required [Form I-918](#), Supplement B, *U Nonimmigrant Status Certification*. This form certifies your client’s possession of information relating to the criminal activity, as well as helpfulness and cooperation with authorities. The certifying agency can be a local, state, or federal judge, law enforcement agency, or prosecutor for instance.¹⁷⁶

- **TIP:** This can sometimes be a difficult process so it may be best to talk with local advocates for any feedback regarding where to start when asking for a signature. Of course, you will be limited by the facts of the case so ensure you have relevant documents regarding your client’s situation so you can effectively advocate for a signature.

It is important to remember that if you get the I-918 Supplement B signed, the certification only lasts 6 months after the signature, meaning you will need to file the U visa petition before the certification expires.¹⁷⁷

- **Necessary Forms:** In addition to the I-918, Supplement B, you will need to file the primary form for the petition, [Form I-918](#), *Petition for U Nonimmigrant Status*. If your client has any derivatives, you need to file [Form I-918](#), Supplement A, *Petition for Qualifying Family Member of U-1 Recipient* for each qualifying family member. The [USCIS website](#) provides a checklist of suggested evidence of what to send with your petition. If your client has inadmissibility grounds at issue, you should also file [Form I-192](#), *Application for Advance Permission to Enter as a Nonimmigrant* to apply to waive those grounds of inadmissibility.
- **TIP:** USCIS has begun rejecting I-918 petitions with blank spaces. Heed the advice on the [USCIS website](#) regarding the issue. Also, review [ASISTA’s Practice Advisory](#) on the issue.
- **Derivatives:** A principal petitioner who is under age 21 may petition for a spouse, children, parents, and unmarried siblings under age 18.¹⁷⁸ A principal petitioner who is age 21 or older may petition for a spouse and children.¹⁷⁹
- **Wait Times:** There is a cap on the number of principal petitioners (not derivatives) that can be granted a U visa each year.¹⁸⁰ The cap is 10,000, and far more individuals than that apply annually.¹⁸¹ USCIS has created a waitlist for eligible petitioners, who are waiting on a final decision and relief. If placed

173 INA § 101(a)(15)(U)(iii); 8 U.S.C. § 1101(a)(15)(U)(iii).

174 *Id.*

175 8 C.F.R. § 214.14(c)(2)(ii).

176 8 C.F.R. § 214.14(a)(2)-(3).

177 8 C.F.R. § 214.14(c)(2)(i).

178 INA § 101(a)(15)(U)(ii)(I); 8 U.S.C. § 1101(a)(15)(U)(ii)(I).

179 INA § 101(a)(15)(U)(ii)(II); 8 U.S.C. § 1101(a)(15)(U)(ii)(II).

180 INA § 214(p)(2); 8 U.S.C. § 1184(p)(2).

181 *Id.*

on the waitlist, the petitioner may be granted deferred action or parole and can apply for employment authorization while waiting for a final decision and a visa to become available. It also takes a long time to simply be placed on the waitlist and receive deferred action. According to USCIS's [website](#), processing time for Form I-918s pending before the Vermont Service Center are currently taking 4.5 years. However, as a result of the growing number of petitions, the waiting time estimate for an individual who recently applied, is much longer.¹⁸² Based on USCIS data, as of September 2019, there were 151,758 total petitions pending for a decision.¹⁸³

BENEFITS OF AN APPROVED U VISA PETITION

If your client is successful, then they are eligible for employment authorization and lawful non-immigrant status for four years.¹⁸⁴ After three of the four years in U visa status, they can apply for lawful permanent residency.¹⁸⁵ Derivatives are also eligible for the same benefits.¹⁸⁶

CLIENT IN REMOVAL PROCEEDINGS AND HAS PENDING U VISA

If your client is in removal proceedings and has a pending U visa, you will likely want to file a motion for a continuance while your client is waiting for a decision on the U visa. *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012) and *Matter of Mayen*, 27 I&N Dec. 755 (BIA 2020) are two important cases to consult in addition to *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018) when drafting your motion for a continuance. Moreover, see Section IV.B. Introduction to Immigration Court for more information regarding motions to continue in immigration court. You may also want to review [ASISTA's Practice Advisory](#) issued following *Matter of Mayen*. It is also important to know; however, that a client can seek a U visa while abroad. If the U visa petition is approved, then the individual would have to consular process to enter the U.S.

T Visas

Generally, T visas are available for victims of severe forms of sex or labor trafficking. If you think your client is eligible to file for a T visa, this is something to explore more closely. This Guide only gives an overview of the option for relief to get you started.

ELIGIBILITY REQUIREMENTS

To be eligible for a T visa, an individual must:¹⁸⁷

- Be a victim of a severe form of trafficking in persons
- Be physically present in the U.S. on account of trafficking
 - **TIP:** Any exit from the U.S. after trafficking may affect eligibility.
- Have complied with any reasonable request for assistance in the investigation of trafficking or be less than 18 years of age
 - **TIP:** It is common that the trafficking victim has not made a report of the trafficking, and you can

182 Once placed on the waitlist for approval, the wait time has been estimated by some to be as long as eleven years. See *U Visa Certification Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers*, NIWAP/Legal Momentum at p. 12 (Nov. 11, 2019), <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/U-Visa-Toolkit-for-Judges-11.11.19-final.pdf>.

183 *Number of Form I-918, Petition for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status Fiscal Years 2009-2019*, USCIS, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2019_qtr4.pdf (last visited Apr. 10, 2020).

184 8 C.F.R. § 214.14(c)(6)-(7), (g)(1).

185 INA § 245(m); 8 U.S.C. § 1255(m); 8 C.F.R. § 245.24.

186 8 C.F.R. §§ 214.14(f), 245.24(g).

187 INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T); 8 C.F.R. § 214.11(b).

help facilitate making a report. You could consider reporting to a Human Trafficking Task Force, Regional Federal Bureau of Investigation, ICE Homeland Security Investigations, or Department of Labor office, or local law enforcement agencies. For a child under 18 years of age, this is not required so you will need to assess whether or not to report in your particular case. The possibility of having more derivatives may be a consideration when making this decision. See below for more information. Additionally, reporting the trafficking and seeking assistance with [Form I-914](#), Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* could help you assess the strength of the case.

- Demonstrate that they would suffer extreme hardship involving unusual and severe harm upon removal
- Applicant must be admissible or eligible for a waiver

T Visa Key Sources of Law

- INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T)
- INA § 214(o); 8 U.S.C. § 1184(o)
- INA § 212(d)(13); 8 U.S.C. § 1182(d)(13) (inadmissibility)
- INA § 245(l); 8 U.S.C. § 1255(l) (adjustment)
- 8 C.F.R. § 212.16
- 8 C.F.R. § 214.11
- 8 C.F.R. § 245.23 (adjustment)
- 8 C.F.R. § 1214.2
- 28 C.F.R. § 1100.35
- Victims of Trafficking and Violence Protection Act of 2000 (TVPA) and reauthorizations
- Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) and reauthorization

Severe forms of trafficking can either be sex trafficking or labor trafficking.

Sex Trafficking: “[S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”¹⁸⁸ Furthermore, “[t]he term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”¹⁸⁹

Labor Trafficking: Can be “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, peonage, debt bondage or slavery.”¹⁹⁰

¹⁸⁸ 22 U.S.C. § 7102(11)(A).

¹⁸⁹ 22 U.S.C. § 7102(12).

¹⁹⁰ 22 U.S.C. § 7102(11)(B).

Common forms of severe trafficking that affect youth include: sex trafficking (18 U.S.C. § 1591), forced labor (18 U.S.C. § 1589), and involuntary servitude (18 U.S.C. § 1592).

FILING THE T VISA APPLICATION

- **Necessary Forms:** You must provide evidence that your client meets all of the eligibility requirements for a T visa.¹⁹¹ [Form I-914, Application for T Nonimmigrant Status](#) is the primary form used for this application. If your client has any derivatives, you need to file [Form I-914, Supplement A, Application for Family Member of T-1 Recipient](#) for each qualifying family member. If applicable, you may also file [Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons](#) or other evidence can also suffice to support that you have complied with any reasonable request to assist law enforcement.¹⁹² The [USCIS website](#) provides alternative example evidence that can be used. If your client has inadmissibility grounds at issue, you should also file [Form I-192, Application for Advance Permission to Enter as a Nonimmigrant](#) to apply to waive those grounds of inadmissibility.
- **Derivatives:** A principal petitioner who is under age 21 may petition for a spouse, children, parents, and unmarried siblings under age 18.¹⁹³ A principal petitioner who is age 21 or older may petition for a spouse and children.¹⁹⁴ Additionally, there are more categories for derivatives of a T visa if there is a present danger of retaliation because of the principal's "escape from the severe form of trafficking or cooperation with law enforcement."¹⁹⁵
- **Wait Times:** The amount of T visas that can be issued each year for principal applicants is capped at 5,000.¹⁹⁶ To date, this cap has not been met so there is no waiting period other than USCIS's processing time.¹⁹⁷
- **OTIP letter:** If you see evidence that the youth has an Office on Trafficking in Persons (OTIP) letter this does not mean the child has a T visa or is necessarily eligible for a T visa. A child can receive an OTIP letter even if the child was trafficked outside the U.S.; whereas, a T visa requires trafficking that occurred in the U.S., or that the applicant is present in the U.S. on account of the trafficking. Having an OTIP letter can prove beneficial for a child because it can be used as evidence of T visa eligibility and it qualifies the child for certain benefits.¹⁹⁸

BENEFITS OF AN APPROVED T VISA APPLICATION

Individuals who have received a T visa approval are eligible for lawful status and employment authorization for four years.¹⁹⁹ For principals, the EAD is automatically given without the need to file [Form I-765, Application for Employment Authorization](#), but derivatives must file Form I-765 to get work authorization.²⁰⁰ After three years, the principal and any derivatives can apply for adjustment of status to get a

191 You might want to check out the USCIS informational checklist of required initial evidence found on USCIS's webpage. See *I-914, Application for T Nonimmigrant Status*, USCIS, <https://www.uscis.gov/i-914> (last reviewed/updated Mar. 16, 2020).

192 Unlike the certification required in U visa cases, this form is not required in order to secure a T visa, though it can be very helpful.

193 INA § 101(a)(15)(T)(ii)(I); 8 U.S.C. § 1101(a)(15)(T)(ii)(I).

194 INA § 101(a)(15)(T)(ii)(II); 8 U.S.C. § 1101(a)(15)(T)(ii)(II).

195 INA § 101(a)(15)(T)(ii)(III); 8 U.S.C. § 1101(a)(15)(T)(ii)(III); 8 C.F.R. § 214.11(a)(3), (k)(1)(iii).

196 INA § 214(o)(2); 8 U.S.C. § 1184(o).

197 *Number of Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status Fiscal Years 2008-2019*, USCIS (Jan. 14, 2020), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2019_qtr4.pdf.

198 Learn more about Office on Trafficking in Persons (OTIP) eligibility letters on the HHS webpage. See *Eligibility Letters*, HHS OTIP, <https://www.acf.hhs.gov/otip/victim-assistance/eligibility-letters> (last reviewed Feb. 23, 2020). Additionally, you can view a HHS webinar on the topic once a month online. See

Monthly Webinars: Responding to Child Victims of Trafficking, HHS OTIP, <https://www.acf.hhs.gov/otip/resource/monthlywebinars> (last reviewed Mar. 5, 2020).

199 8 C.F.R. §§ 214.11(c)(1)-(2), (d)(9), (d)(11), 245.23.

200 8 C.F.R. § 214.11(d)(11), (k)(10).

green card.²⁰¹ T visa recipients are also eligible for some public benefits.²⁰²

Links to Help You with YOUR CLIENTS' U AND T VISA CASES

- Check out CILA's 101 [webinar](#): *Options for Child Survivors of Crimes, Including Trafficking* (43 minutes).
- Check out ILRC's Practice Advisory *Humanitarian Forms of Relief Part I: U, T, VAWA*, Veronica Garcia, June 2019.
- Review ILRC's Practice Advisories *Identifying Humanitarian Forms of Relief For Derivatives – U Non-immigrant Status*, Veronica Garcia, December 2019 and *A Guide to State Laws on U Visa and T Visa Certifications*, Alison Kamhi and Sarah Lakhani, April 2020.
- ASISTA has a [resource library](#) with information regarding U visas and T visas amongst other topics and offers [technical assistance](#) to members with case-specific questions. Also review, Asista's Practice Pointer: *What If You Do Not Receive an RFE or Denial Notice?*, 2020.
- Read CLINIC's U Visa Updates: *New U Visa Law Enforcement Resource Guide and ICE Stay of Removal Policy for U Visa Petitioners*, August 9, 2019.
- Consult NIJC's [U visa flowchart](#) and *NIJC Pro Bono Attorney Manual on Immigration Relief for Crime Victims: U visas*, March 2017, IL.
- Check out the DOJ [webpage](#) regarding Human Trafficking Key Legislation and DOS's [webpage](#) *International and Domestic Law* from the Office to Monitor and Combat Trafficking in Persons.
- Review the Coalition to Abolish Slavery and Trafficking's (CAST) *General Tips for T Visas for Victims of Severe Forms of Trafficking in Persons*, April 2018.

E. Family-Based Cases and VAWA Self-Petitions

Family-Based Cases

Family-based immigration is the primary form of immigration in the U.S.²⁰³ United States citizens²⁰⁴ and lawful permanent residents²⁰⁵ can petition for certain family members to gain legal status in the U.S. and become lawful permanent residents. When reviewing family-based immigration options, they can be broken down into immediate relatives and family preference categories, which are reviewed further below. It is important to screen your client to see if they have a family-based option to get a green card. This Guide provides a general overview of this potential option to get you started.

²⁰¹ 8 C.F.R. § 245.23.

²⁰² See *Victims of Human Trafficking: T Nonimmigrant Status*, USCIS, <https://www.uscis.gov/humanitarian/victims-human-trafficking-and-other-crimes/victims-human-trafficking-t-nonimmigrant-status/victims-human-trafficking-t-nonimmigrant-status> (last reviewed/updated May 10, 2018).

²⁰³ See *How the United States Immigration System Works*, American Immigration Council (Oct. 2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/how_the_united_states_immigration_system_works.pdf.

²⁰⁴ To learn more about family-based immigration options for United States citizens, view USCIS's webpage on the topic. See *Family of U.S. Citizens*, USCIS, <https://www.uscis.gov/family/family-us-citizens> (last reviewed/updated Mar. 23, 2018).

²⁰⁵ To learn more about family-based immigration options for lawful permanent residents, view USCIS's webpage on the issue. See *Family of Green Card Holders (Permanent Residents)*, USCIS, <https://www.uscis.gov/family/family-green-card-holders-permanent-residents> (last reviewed/updated July 14, 2015).

Family-Based Cases Key Sources of Law

- INA § 101(b); 8 U.S.C. § 1101(b) (definition of “child”)
- INA § 201; 8 U.S.C. § 1151 (worldwide level of immigration)
- INA § 203(a); 8 U.S.C. § 1153(a) (preference allocation for family-sponsored immigrants)
- INA § 212(a); 8 U.S.C. § 1182(a) (classes of “aliens” ineligible for visas or admission)
- INA § 245; 8 U.S.C. § 1255 (adjustment of status)
- 8 C.F.R. § 204 Subpart A (immigrant visa petitions)
- 8 C.F.R. Part 245 (adjustment of status)
- USCIS Policy Manual, Volumes 7 - Adjustment of Status, 8 - Admissibility, 9 - Waivers

WHO QUALIFIES FOR A FAMILY-BASED VISA?

Immediate Relatives: There are an unlimited number of visas available for immediate relatives, so immediate relatives typically do not have to wait for a visa (except for processing times).²⁰⁶

A U.S. citizen can petition for the following immediate relatives:

- A spouse²⁰⁷
- Unmarried children under age 21 of U.S. citizen
- Parents of U.S. citizen, if the U.S. citizen petitioner is at least 21 years old

Family Preference Categories: The U.S. gives preference to certain family relationship categories²⁰⁸ over others, ranking them F1-F4, with F1 being the top priority.

- F1: unmarried sons and daughters (over age 21) of U.S. citizens
- F2: A) Spouses²⁰⁹ and minor children of lawful permanent residents
B) Unmarried sons and daughters over age 21 of lawful permanent residents
- F3: Married sons and daughters of U.S. citizens and their spouses and minor children
- F4: Brothers and sisters of U.S. citizens and their spouses and minor children, if the U.S. citizen petitioner is at least 21 years old

As you may be able to tell from the lists above, neither U.S. citizens or lawful permanent residents can petition for grandparents/grandchildren, aunts/uncles, in-laws, or cousins. Lawful permanent residents cannot petition for their married children, parents, or siblings.

TIP: It is important to screen your client for a potential family-based immigration option. For instance, it is important to know if your client:

- Has a mother or father who became a lawful permanent resident or U.S. citizen
- Has a step-parent²¹⁰ who is a lawful permanent resident or U.S. citizen

²⁰⁶ INA § 201(b)(2)(A)(i); 8 U.S.C. § 1151(b)(2)(A)(i).

²⁰⁷ 8 C.F.R. § 204.2(a)(1).

²⁰⁸ INA § 203(a); 8 U.S.C. § 1153(a).

²⁰⁹ 8 C.F.R. § 204.2(a)(1).

²¹⁰ According to INA § 101(b)(1)(B); 8 U.S.C. § 1101(b)(1)(B) a child can be a stepchild “whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.”

- Married a U.S. citizen²¹¹
- Has a U.S. citizen sibling (F4)

FILING A FAMILY-BASED PETITION FOR A VISA

- **Wait Times:** The total number of family-based preference visas is capped at 480,000 each fiscal year.²¹² Additionally, there are some limits per preference category²¹³ and each country can have roughly 7% of the number of visas each year.²¹⁴ This creates a longer waitlist for those in the least preferred categories, as well as longer waitlists for individuals from certain countries like Mexico. The number of family-based visa petitions filed per year far exceeds the cap causing long waitlists for a visa.²¹⁵
- **Snapshot of the Process:**
 - Step 1: Submit [Form I-130, Petition for Alien Relative](#) to USCIS²¹⁶ to petition for a visa for a family member. This places the beneficiary into their eligibility group of either immediate relative or family preference category. Once approved, those placed in a family preference category are placed on a waitlist and given a priority date, the date the petition was received by USCIS. If they are an immediate relative, the applicant can go to step 2 immediately after receiving an approval of the I-130. If they are not an immediate relative, there will be a waiting period. The DOS issues a Visa Bulletin²¹⁷ each month, which is an updated waitlist based on priority date per country.
 - Step 2: To get a visa, the individual can file [Form I-485, Application to Register Permanent Residence or Adjust Status](#) to USCIS²¹⁸ or consular process by going to the Consulate's office in their home country to apply for a visa using [Form DS-260, Immigrant Visa Electronic Application](#).²¹⁹ When determining whether an individual can adjust status by applying with USCIS or if they will need to consular process, the answer often stems on where the individual is located, when they filed their I-130 petition, whether the individual entered with inspection or not, their eligibility group, and whether they have any other inadmissibility issues or not.
- **Potential Need for a Waiver of Inadmissibility:**
 - Grounds of Inadmissibility: There are many grounds of inadmissibility including unlawful presence, criminal issues, public health issues, misrepresentation/fraud, smuggling, prior removal orders, etc. which must be explored when your client is applying for lawful permanent residency. Drug offenses for instance are generally not waivable except if the offense was for marijuana, and there was only a single offense for simple possession of 30 grams or less.
 - Unlawful Presence: It is important to know how your client entered the U.S. (via a port of entry or between ports of entry) and the number of entries your client has had. Unlawful presence is not accrued until after reaching the age of 18.

²¹¹ Note that marriage will disqualify your client for SIJS relief.

²¹² INA § 201(c)(1)(A)(i); 8 U.S.C. § 1151(c)(1)(A)(i).

²¹³ INA § 203(a); 8 U.S.C. § 1153(a).

²¹⁴ INA § 202(a)(2); 8 U.S.C. § 1152(a)(2).

²¹⁵ Read more about the numbers and wait times in CLINIC's article. Charles Wheeler, *Backlogs in Family-Based Immigration: Shedding Light on the Numbers*, CLINIC, (Mar. 1, 2019), <https://cliniclegal.org/resources/family-based-immigrant-law/backlogs-family-based-immigration-shedding-light-numbers>.

²¹⁶ To find out more information regarding the process of filing a Form I-130 with USCIS, you may want to read USCIS's webpage on the topic. See *I-130, Petition for Alien Relative*, USCIS, <https://www.uscis.gov/i-130> (last reviewed/updated Feb. 27, 2020). The Department of State (DOS) also provides information on their webpage regarding this part of the process. See *Immigrant Visa Process*, DOS, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html> (last visited Apr. 10, 2020).

²¹⁷ The DOS Visa Bulletin is issued each month on DOS's website. See *The Visa Bulletin*, DOS, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Apr. 10, 2020).

²¹⁸ To find out more information regarding the process before USCIS, you may want to read USCIS's webpage on the issue. See *Green Card for Family Preference Immigrants*, USCIS, <https://www.uscis.gov/greencard/family-preference> (last reviewed/updated Jan. 11, 2018).

²¹⁹ To find out more information regarding consular processing, visit the DOS's webpage on the issue. See *Immigrant Visa Process*, DOS, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/step-2-begin-nvc-processing.html> (last visited Apr. 10, 2020).

- * If a child unlawfully entered the country one time, then the child may be able to consular process. A waiver is required if the youth accrued unlawful presence.
- * If a child entered the U.S. more than one time, you must then know how long the child stayed in the U.S. after entering. If the child entered the country illegally, stayed longer than one year, and then left the country and re-entered, the child will be subject to the “permanent bar.”²²⁰ It is commonly referred to as the “permanent bar” because it cannot be waived with a waiver, but the bar can be overcome by staying outside of the U.S. for ten years and then applying for permission to re-enter the U.S.

- **Waivers:** Sometimes an individual can file a waiver to waive a ground of inadmissibility. Some of the forms used to file for a waiver include [Forms I-601A, Application for Provisional Unlawful Presence Waiver](#), [Form I-601, Application for Waiver of Grounds of Inadmissibility](#), or [Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal](#) depending on the circumstance. This chart gives a quick break-down of instances when you would use each of these particular forms. You would need to consult instructions and guidance for how to file each of them and for a full list of instances when you can use Form I-601.

| FORM I-601A, APPLICATION FOR PROVISIONAL UNLAWFUL PRESENCE WAIVER | FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY (EXAMPLE LIST) ²²¹ | FORM I-212, APPLICATION FOR PERMISSION TO REAP- PLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL |
|---|--|---|
| Previous unlawful presence INA § 212(a)(9)(B) <u>ONLY</u> | Previous unlawful presence INA § 212(a)(9)(B) | Previously removed INA § 212(a)(9)(A) |
| | Immigration Fraud and misrepresentation INA § 212(a)(6)(c) | Unlawfully present after previous immigration violations INA § 212(a)(9)(C) |
| | Certain criminal grounds INA § 212(a)(2) | |
| | Health-related grounds INA § 212(a)(1) | |
| | Immigrant membership in totalitarian party INA § 212(a)(3) | |
| | Smuggling INA § 212(a)(6)(E) | |
| | Subject to civil penalty INA § 212(a)(6)(F) | |

²²⁰ INA § 212(a)(9)(c); 8 U.S.C. § 1182(a).

²²¹ See the Form I-601 instructions for further guidance on use of the I-601 to waive inadmissibility grounds. I-601 Application for Waiver of Grounds of Inadmissibility, USCIS <https://www.uscis.gov/i-601>, (last reviewed/edited Feb. 27, 2020).

CLIENT IN REMOVAL PROCEEDINGS AND HAS PENDING FAMILY-BASED VISA PETITION

If your client is in removal proceedings and has a pending family-based visa petition, you will likely want to file a motion for a continuance while your client is waiting for a decision on their petition. *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) and *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018) are important cases to consult when drafting your motion for a continuance when your client's case is in this procedural situation. Additionally, see Section IV.B. Introduction to Immigration Court for more information regarding motions for a continuance in immigration court.

Moreover, it is important to know there are instances when your client can seek adjustment of status before the court, and other times when the client does not qualify for adjustment of status and must instead go through consular processing. **TIP:** If your client will need to consular process, but is currently in removal proceedings and has no other legal claim for relief, your client may want to consider the option of voluntary departure. It is important for your client to resolve their removal proceedings before leaving the country to consular process. Voluntary departure²²² can be a tricky subject so it is important to study this option and review it carefully with your client, but if your client follows the voluntary departure instructions, this can be a better option than getting a removal order. This will be up to your client.

Violence Against Women Act Self-Petitions

The Violence Against Women Act (VAWA)²²³ provides a way for an abused spouse, child, or parent to self-petition for legal status when they have suffered abuse by a U.S. citizen or lawful permanent resident family member. Despite the name, protection is available to both females and males and to adults and children. A child can self-petition directly or be a derivative on an abused parent's petition.

According to *Casa de Esperanza*, an organization dedicated to working with Latin@s in the U.S. and to end domestic violence, there are additional tactics abusive partners sometimes take to assert control over their immigrant partners including isolation, threats, intimidation, manipulation regarding getting immigration status, economic abuse, and threatening the potential loss of their children if authorities are called. Due to this particular susceptibility for abuse, the option to self-petition through VAWA is critical. This Guide provides a general overview regarding VAWA self-petitions to get you started if this is an option for your client.

VAWA Self-Petitions Key Sources of Law

- INA § 101(a)(51); 8 U.S.C. § 1101(a)(51)
- INA § 204(a); 8 U.S.C. § 1154(a)
- INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) (cancellation of removal)
- 8 C.F.R. § 204.1
- 8 C.F.R. § 204.2
- Violent Crime Control and Law Enforcement Act of 1994 (VAWA) and reauthorizations

²²² See Immigration Equality, *Asylum Manual*, <https://immigrationequality.org/asylum/asylum-manual/immigration-basics-voluntary-departure/> (last visited Aug. 6, 2020). See also *Practice Advisory Voluntary Departure: When the Consequences of Failing to Depart Should and Should Not Apply*, American Immigration Council (Dec. 21, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/voluntary_departure_when_the_consequences_of_failing_to_depart_should_and_should_not_apply.pdf.

²²³ To learn more about the relevant legislation and regulations relating to VAWA, review the DOJ Office on Violence Against Women's *Legislation and Regulations* webpage.

VAWA ELIGIBILITY REQUIREMENTS

An individual can self-petition if they are the victim of battery or extreme cruelty committed by:²²⁴

- A U.S. citizen or lawful permanent resident spouse or former spouse
- A U.S. citizen or lawful permanent resident parent
- A U.S. citizen son or daughter

Therefore, a child (unmarried and under age 21)²²⁵ can be a direct self-petitioner or a derivative on a parent's VAWA petition.

In addition to a qualifying familial relationship (as listed above), other eligibility requirements for self-petitioners include:²²⁶

- Suffered battery or extreme cruelty by U.S. citizen or lawful permanent resident family member (one of the qualifying familial relationships listed above)
 - Additionally, parents can file if their U.S. citizen or lawful permanent resident spouse abused their child
- Resides (or resided) with the abusive individual
- If the child is petitioning based on abuse of a parent, the child must reside in the U.S.
- If familial relationship is based on marriage, the marriage must have been entered in good faith and not solely for immigration purposes
- Individual must be person of good moral character (if a child is self-petitioning, this requirement only applies to children over age 14 because younger children are presumed to be persons of good moral character)

VAWA self-petitioners may be able to seek waiver of certain inadmissibility grounds. There are also specific inadmissibility exceptions for VAWA self-petitioners including being present without admission or parole (INA § 212(a)(6)(A)(i)),²²⁷ and public charge (INA § 212(a)(4)(E)(i)),²²⁸ where a waiver is not necessary.

FILING THE VAWA SELF-PETITION

- **Confidentiality:** Self-petitions should be filed with the Vermont Service Center. Congress has created some important confidentiality protections for individuals with pending or approved U, T, and VAWA self-petitions to protect individuals.²²⁹ This is important for safety reasons. See Section II.B.
- **Necessary Forms:** *Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant* is used to file for VAWA.²³⁰ If the abuser is a U.S. citizen, then the applicant can concurrently file *Form I-485, Application to Register Permanent Residence or Adjust Status* for adjustment of status. If the abuser is a lawful permanent resident, then the individual will have to wait for their priority date to become current prior to filing for adjustment of status. It will be important to check the DOS Visa Bulletin to see if their priority date is current. See Section III.C.

²²⁴ INA § 204(a); 8 U.S.C. § 1154(a). See also *Questions and Answers: Battered Spouses, Children and Parents under the Violence Against Women Act (VAWA)*, USCIS, <https://www.uscis.gov/humanitarian/battered-spouse-children-parents/questions-and-answers-battered-spouses-children-and-parents-under-violence-against-women-act-vaawa> (last reviewed/updated July 15, 2015).

²²⁵ Children can also file if they are between the ages of 21-24 if they can demonstrate that abuse was the main reason for delay in filing the petition. See INA § 204(a)(1)(D)(v); 8 U.S.C. § 1154(a)(1)(D)(v).

²²⁶ INA § 204(a); 8 U.S.C. § 1154(a); 8 C.F.R. § 204.2.

²²⁷ INA § 212(a)(6); 8 U.S.C. § 1182(a)(6).

²²⁸ INA § 212(a)(4); 8 U.S.C. § 1182(a)(4).

²²⁹ INA § 239(e); 8 U.S.C. § 1229(e); 8 U.S.C. § 1367.

²³⁰ 8 C.F.R. § 204.2.

A petitioner must submit evidence to show they meet the requirements for a VAWA self-petition (and adjustment of status when filing the I-485). The USCIS website has an informational [checklist](#) of evidence to provide with the petition. After filing an I-360, unless there is an issue, an individual should get a prima facie notice, which can be used to obtain some public benefits.

BENEFITS OF AN APPROVED VAWA SELF-PETITION

An individual who has an approved I-360 VAWA self-petition or is a derivative of an approved petition will be eligible for an EAD. **TIP:** Even if your client is too young to work, it is oftentimes a good idea to go ahead and file the Form I-765 for an EAD because this can serve as a helpful ID for the child.

If your client has an approved I-360 but does not have legal status because they are in a preference category as a spouse or child of a lawful permanent resident so there is a waiting period for their visa priority number to become available, then they may be placed in deferred action to allow them to stay in the U.S. while waiting to adjust status. The timing of being able to get a green card will vary depending on whether your client's abusive family member was a lawful permanent resident or U.S. citizen.

CLIENT IN REMOVAL PROCEEDINGS

If your client is in removal proceedings, then your client would want to consider VAWA Cancellation of removal as a form of relief in immigration court. When determining whether to file a VAWA case before USCIS or VAWA cancellation of removal in immigration court, it is going to depend on the facts of the case. There are certain instances when a youth can qualify for VAWA cancellation of removal but not VAWA. The eligibility requirements for VAWA cancellation of removal include:²³¹

- Has been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent (or a parent of a child who either currently or previously was battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse);
- Has been physically present in the U.S. for a continuous period of at least three years;
- Has been a person of good moral character;
- Is not admissible or deportable based on certain grounds; and
- Can show that removal would result in extreme hardship to the applicant, their child, or their parent.

It is also important to know that there is a 4,000 cap per year for those who can be approved for VAWA cancellation of removal.²³² Your client can file for VAWA cancellation of removal by filing [Form EO-IR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents](#) and other necessary documents with the immigration court.

Links to Help You with YOUR CLIENTS' FAMILY-BASED IMMIGRATION AND VAWA CASES

- Check out CILA's 101 [webinar: Family-Based Immigration and VAWA for Unaccompanied Children](#) (44 minutes).
- [Family-Based Cases](#): If you are representing a LGBTQ client who is seeking a petition on marriage, you may want to review ILRC's Practice Advisory [Family-Based Petitions for LGBTQ Couples: Considerations When Documenting a Bona Fide Marriage](#), Em Puhl, January 2020. Also, review ILRC's Chapter 1: [Qualifying Family Relationships and Eligibility for Visas](#), September 2017.
- [Waivers](#): CLINIC provides several [resources](#) pertaining to preparing an extreme hardship waiver, December 9, 2018.

²³¹ INA § 1229b(b); 8 U.S.C. § 1229b(b).

²³² INA § 1229b(e)(1); 8 U.S.C. § 1229b(e)(1).

- Inadmissibility Grounds: Review some of ILRC's Practice Advisories: *How to Analyze Public Charge Inadmissibility with Case Examples and Answers*, Em Puhl, Sarah Lakhani, and Brown, December 16, 2019. *Public Charge Exemptions and Considerations*, Em Puhl and Sarah Lakhani, December 17, 2019. *Understanding Unlawful Presence Under INA § 212(A)(9)(B) and Waivers of Unlawful Presence*, I-601 and I-601A, March 2019. Read CLINIC's *The Public Charge Final Rule: FAQs for Immigration Practitioners*, last updated January 30, 2020.
- VAWA: Check out ILRC's Practice Advisory *Humanitarian Forms of Relief Part I: U, T, VAWA*, Veronica Garcia, June 2019.
- VAWA Cancellation of Removal: Learn more about VAWA cancellation of removal by reading American University Washington College of Law, NIWAP, and Legal Momentum's *VAWA Cancellation of Removal*, Rebecca Story, Cecilia Olavarria, and Moira Fisher Preda, 2015.



IV. PRACTICAL POINTERS

A. Research Tips

There are many sources of law governing immigration matters. Consult these primary and secondary sources of law to get you started in your research. [A full chart with links to resources can be found on CILA's website.](#)

SOURCES OF LAW

Main Statute: Immigration and Nationality Act (INA) codified in Title 8 of the U.S. Code

Title 8 of the Code of Federal Regulations (C.F.R.) as well as other titles, contain provisions relating to immigration. Title 6 contains the functions of the Office of Refugee Resettlement (ORR).

Most judicial decisions relating to immigration come from federal Courts of Appeals. There are also U.S. Supreme Court decisions relating to immigration.

Administrative decisions are decided in immigration courts and at USCIS/the Asylum Office.

When immigration court cases are appealed, they go to the Board of Immigration Appeals (BIA). The Attorney General can also certify cases to himself.

Precedent BIA Case [List & Chart](#)

Non-precedent BIA Cases: via FOIA; available by paid subscription through [Immigrant & Refugee Appellate Center](#)

When cases are appealed from USCIS, they go to the Administrative Appeals Office (AAO).

[Precedent AAO Decisions](#)

[Non-Precedent AAO Decisions](#)

International Law – Treaties

United Nations (UN) Convention & 1967 UN Protocol Relating to the Status of Refugees

Universal Declaration of Human Rights (right to seek asylum)

UNHCR Handbook and Guidelines

The Supreme Court in *INS v. Cardoza-Fonseca*, stated that the UNHCR Handbook “provides significant guidance.”

Immigration attorney conduct is regulated by the Federal Rules of Practitioner Conduct when practicing in front of USCIS or EOIR.

8 C.F.R. §§§§ [1292.3](#), [292.3](#), [1003.101](#), and [1003.102](#). See also Immigration Court Practice Manual Ch. 10.4.

SOURCES OF LAW

Field Manuals and Agency Guidelines

CBP Field Manual

USCIS Policy Manual

Adjudicator's Field Manual (many parts superseded by the USCIS Policy Manual)

Affirmative Asylum Procedures Manual

Asylum Officer Basic Training Course Lesson Modules

[Immigration Court Practice Manual](#)

[Immigration Judge Bench Book](#)

[EOIR Operating Policies and Procedures Memorandum \(OPPM\)](#)

DHS and DOJ Memoranda

Links to Help GET YOU STARTED IN YOUR RESEARCH

- Check out CILA's 101 [webinar: Research Tips and CILA Resources](#) (36 minutes).
- As mentioned above, CILA has an extensive [chart](#) on our website listing helpful resources to help get you started in your research.
- Check out Georgetown Law Library's [Immigration Law \(U.S.\) Research Guide](#).
- Review the [Ninth Circuit Immigration Outline](#) prepared by the Office of Staff Attorneys of the United States Courts for the Ninth Circuit, January 2020.
- View HILSC's webpage [Legal Resources, by Subject Matter](#).
- Check out the ILRC's compilation of resources: [Unaccompanied Immigrant Children Resources](#), September 2014.
- Be aware of EOIR's [Virtual Law Library](#) and though now archived, the [Immigration Judge Bench Book](#).
- Access the USCIS site for links to helpful [Legal Resources](#), including handbooks and guides used by immigration officers in performing their job.

B. Introduction to Immigration Court

Immigration court is known as the Executive Office for Immigration Review (EOIR). The EOIR is an agency within the DOJ. EOIR states its mission “is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation’s immigration laws.”²³³

Immigration courts are Article II courts under the Executive Branch. Immigration judges are hired by the DOJ. Judicial authority is delegated by the Attorney General. Immigration judges have less judicial independence because they are under the Executive Branch.²³⁴

²³³ See *About the Office*, DOJ Executive Office for Immigration Review, <https://www.justice.gov/eoir/about-office> (last updated Aug. 14, 2018).

²³⁴ Notably, the ABA, American Immigration Lawyers Association (AILA), Federal Bar Association, and the National Association of Immigration Judges (NAIJ) have all jointly advocated for change so that the immigration court is not under the Executive Branch. See *ABA Urges Congress to create separate immigration courts*, ABA (July 2019), <https://www.americanbar.org/news/abanews/aba-news-archives/2019/07/aba-urges-congress-to-create/>. See also *2019 Update Report Reforming the Immigration System*, ABA (Mar. 2019), https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf.

Removal Proceedings

Removal proceedings²³⁵ are conducted to determine whether a person is subject to removal from the U.S.²³⁶ Except for bond hearings, jurisdiction vests with the immigration court when the charging document is filed.²³⁷ The most common charging document in an immigration case is the Notice to Appear (NTA). For jurisdiction to properly vest, the NTA must be filed with the immigration court by DHS ICE after service on the individual respondent.²³⁸

A case before the EOIR is styled as “In Matter of [Respondent’s Name]” and references the Alien Number (A#). You will find your client’s A# on the NTA. When you are in court, your client’s case will typically be called by the last three digits of the A#. Hearings are held in person, by video conference, or telephone conference.²³⁹ Hearings by video conference or telephone conference raise many concerns including due process issues, particularly when working with children.²⁴⁰ There is advocacy you can do to seek for the hearings to be in person and strategies you can employ if this is an issue in your case. There are several resources available on this issue.²⁴¹ Hearings are generally open to the public,²⁴² except:

- If a judge has agreed after the respondent expressly requests that the hearing be closed
- Hearings involving abused children or abused spouses unless the abused spouse agrees to open them to the public
- Information that is considered subject to a protective order and was filed under seal

The immigration judge electronically records hearings.²⁴³ The official file created by the immigration court containing the documents relating to respondent’s case is called the record of proceedings (ROP). Case hearings are transcribed if and when appealed to the BIA. If you need a copy of prior court recordings, then request a copy of the recording from the immigration court, and you will typically be provided

Key Tools & Contacts

Use the ICE [Online Detainee Locator System](#) if you need to find an adult who is detained. You may search by A# or biographical information. This could come up if your child client’s sponsor is detained or if your child client turns 18 and is detained.

Call the EOIR automated hotline at **1-800-898-7180** to determine case status, case date, etc. You will need to enter your client’s A# to hear information regarding your specific case. You can also access the same information through the [EOIR online portal](#).

Find your [local immigration court](#) on EOIR’s website.

Find your [local DHS Office of the Principle Legal Advisor](#) on ICE’s website.

235 For more information regarding removal proceedings, see INA § 240(b)(4)-(5); 8 U.S.C. § 1229a(b)(4)-(5). See also C.F.R. §§ 1240.10, 1240.15.

236 INA § 240(a); 8 U.S.C. § 1229(a).

237 8 C.F.R. §1003.14.

238 INA § 239; 8 U.S.C. § 1229(a)(1); 8 C.F.R. §§ 1003.13, 1003.14, 1003.15.

239 INA § 240(b)(2); 8 U.S.C. § 1229a(b)(2); 8 C.F.R. § 1003.25(c).

240 See *Video Immigration Hearings Deny Children’s Right to Fair Proceedings*, The Young Center for Immigrant Children’s Rights (Feb. 21, 2020), <https://www.theyoungcenter.org/stories/2020/2/21/video-immigration-hearings-are-a-threat-to-childrens-right-to-fair-proceedings>. See also Amanda Robert, *Video teleconference program for immigrant children ‘is contrary to the American pursuit of justice,’ ABA says*, ABA Journal (March 5, 2020), <https://www.abajournal.com/news/article/aba-president-calls-for-end-to-new-video-teleconference-program-for-unaccompanied-children>.

241 For example, CILA has some relevant resources posted on our website under *Additional Resources*, <http://www.cilacademy.org/resources/additional-resources/>.

242 8 C.F.R. §§§§§ 1003.27, 1003.31(d), 1003.46, 1208.6, 1240.10(b), 1240.11(c)(3)(i).

243 8 C.F.R. § 1240.9; Immigration Court Practice Manual Ch. 4.10.

with a CD.²⁴⁴ You may also request to review the court's physical file, but will need to do so at the immigration court. A common reason to request a copy of the ROP is if your client represented themselves *pro se* in a hearing before you began representation, or if there was prior counsel.

TYPES OF HEARINGS: BOND HEARINGS, MASTER CALENDAR HEARINGS, INDIVIDUAL CALENDAR HEARINGS

Bond Hearings: Bond hearings are very common in adults' cases. In children's cases, these are less common and usually take place as *Flores*²⁴⁵ bond hearings or *Saravia* hearings.

Master Calendar Hearings (MCH): Generally, MCHs run on a docket. You may be at court for a couple of hours waiting for your case to be called, but your hearing will likely be pretty short (approximately 5–15 minutes). Immigration Court hearings do not typically run in the order of the names listed on the docket. It depends on the judge, but frequently cases with attorneys will go first. This sometimes occurs in a first-come first-served order. These hearings cover more procedural matters such as taking pleadings and scheduling. MCHs are important because this is often your client's first appearance before an immigration judge, and the path of the case is set. Even though MCHs are typically short and procedural in nature, it is important to be prepared because an immigration judge can still issue a removal order at a MCH. This may occur, for example, if your client does not appear, abandons an application by not being prepared, or does not have any viable relief.

Typically, at a first MCH, the following will take place:

- Immigration judge will provide advisals²⁴⁶ to the respondent
- Immigration judge will likely ask your client some basic questions: name, birthdate, current address, best language, if they would like you to represent them, etc.
- Respondent will plead to the NTA
- Immigration judge will designate a country of removal (where your client will be removed to if ultimately denied relief)
- Respondent will indicate what relief will be sought and applications (or proof of filing applications with USCIS) should be submitted if not already done so in advance
- Immigration judge will schedule the next court date, either another MCH or an Individual Calendar Hearing (ICH)

The *Immigration Court Practice Manual* has helpful information regarding how to do pleadings in immigration court.²⁴⁷ Review this section in advance of your MCH.

The immigration judge may expect any application(s) for requested relief to be filed at a MCH, or in advance of the next MCH. It is important to review the ROP if your client has attended one or more hearings *pro se* in order to understand what deadlines the immigration judge has set, and what you should be prepared to file when you first appear as counsel. If the immigration judge has set a deadline you cannot meet as new counsel on a case, this raises challenges. You can file a written motion for a continuance explaining the need for more time, but it is also important to know the judge could deny the continuance and find that your client abandoned the option for relief for not meeting their deadlines (even if you

244 *Immigration Court Practice Manual* Ch. 1.6(c)(iii)(A).

245 Rachel Prandini and Alison Kamhi, *Practice Alert on Flores v. Sessions*, Immigrant Legal Resource Center (July 2017), https://www.ilrc.org/sites/default/files/resources/flores_v_sessions_practice_alert_final.pdf.

246 EOIR has used video advisals in some immigration courts and posted the advisory videos online. See *Proactive Disclosures*, DOJ, <https://www.justice.gov/eoir/proactive-disclosures> (last updated Sept. 17, 2019). See also TRAC Immigration, *EOIR Training Materials for New Immigration Judges*, Syracuse University, <https://trac.syr.edu/immigration/reports/211/>.

247 See *Immigration Court Practice Manual* Ch. 4.15, Apps. L (Sample Written Pleading), M (Sample Oral Pleading).

recently came onto the case) so generally, deadlines are very important to meet. The immigration judge could also either continue the matter to another MCH so an application (or proof of filing applications with USCIS) can be submitted or the immigration judge may schedule an ICH and provide a due date (aka call up date) for any applications to be filed with the court in advance of the ICH.

Oftentimes, a client will have more than one MCH. If you need a continuance in your case, you may file a written motion in advance or orally seek a continuance at the time of your MCH. Generally, it is best practice to file a written motion so you receive a written order.

Individual Calendar Hearings (ICH): Generally, an ICH is your client's merits hearing. This is a hearing set specifically for your client to appear at that specific date and time; it is not run on a docket. This is the time designated for the judge to hear your client's testimony, consider evidence (submitted in advance), and for the judge to make a ruling on your client's case. Usually, your client will only have one ICH. The length of an ICH varies per case, judge, and jurisdiction, but commonly an ICH will last 2–4 hours (sometimes longer). An ICH can be described as a mini-trial on your case.

Typically, at the ICH, the following will take place:

- The immigration judge will talk with you at the beginning to go over submissions. The immigration judge will make any decisions about any pending motions and enter evidence into the record.
 - Any applications, exhibits, motions, witness list, and criminal history chart (if applicable) should be filed in advance.
 - Be prepared to raise any objections to the government's evidentiary submissions or motions, if applicable.
- Be prepared to give an opening statement in case the immigration judge gives you this opportunity.
- The respondent will testify. The immigration judge will have the opportunity to ask your client questions.
- The government attorney will cross examine your client.
- You will have the opportunity for re-direct.
- Any other witnesses you may have can testify, including experts. The judge may allow for telephonic testimony in some cases. This requires a motion for telephonic testimony to be filed in advance of the hearing. The government attorney can cross examine each of your witnesses, and you can ask questions on re-direct.
- The government attorney has the opportunity to present witnesses, but this often does not happen. If a witness is presented, you will have the opportunity to conduct cross examination.
- Be prepared to give a closing statement in case the immigration judge gives you this opportunity.
- The immigration judge will likely make an oral decision. Sometimes the judge will continue the case if the judge wants to see something specific or may set the case to another hearing to make a decision. Sometimes the judge will issue a written decision.
- The immigration judge will ask if you wish to reserve your client's right to appeal. This only preserves your client's option to appeal. This does not mean your client appealed the case. There is a separate process for that through the BIA.

LIFE OF A CASE

If denied before the immigration judge and your client chooses to appeal the case, this is the trajectory the case may take. The Circuit Courts of Appeals and Supreme Court can choose whether to hear the appeal or not. Timing of the appeal is important, as you must file a Notice to Appeal with the BIA within 30 days of the immigration judge's decision.



PLAYERS PRESENT IN IMMIGRATION COURT

Immigration judge: An immigration judge shall administer oaths, receive evidence, and interrogate, examine, cross examine the respondent, and any witnesses.²⁴⁸

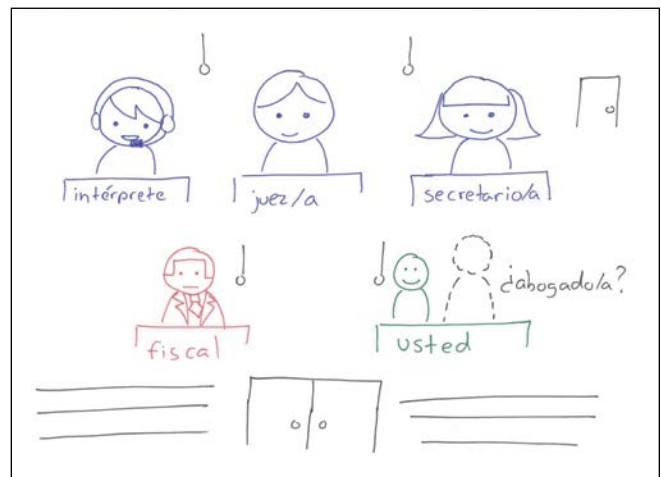
Government attorney: The government's interests are represented by OCC²⁴⁹ attorneys in cases before the EOIR. This will be your opposing counsel (commonly referred to as trial attorney (TA)) in immigration court. The OCC is part of ICE,²⁵⁰ an agency of the DHS.

Respondent: The respondent is your client.

Interpreter: Currently, government-paid interpreters are available in immigration court.²⁵¹

Court clerk: An EOIR employee will serve as a court clerk to assist the judge in clerical matters during court proceedings.

Example: The visual to the right provided by ProBAR is a great example of how to explain immigration court proceedings to a child through a drawing, so that the child can better understand what to expect. From left to right and top to bottom, the drawing shows the interpreter (intérprete), judge (juez/a), court secretary/clerk (secretario/a), government attorney (fiscal), the child respondent (usted) and outline to show possibly an attorney will be by their side (¿abogado/a?). You can use this drawing or a similar one to explain the process to your client, but reassure your client you will be by their side at any court proceedings.



A WORD ABOUT INTERPRETATION IN IMMIGRATION COURT

While interpreters are provided in immigration court, practically speaking, in many courts, only Spanish interpreters are available at MCHs unless the respondent seeks a continuance to have an interpreter or files a motion for an interpreter for a language other than Spanish in advance. At the first MCH, the

²⁴⁸ INA § 240(b); 8 U.S.C. § 1229a(b).

²⁴⁹ Office of the Principal Legal Advisor Field Locations, DHS U.S. Immigration and Customs Enforcement (ICE), <https://www.ice.gov/contact/legal>, (last reviewed/updated Aug. 26, 2019).

²⁵⁰ Immigration and Customs Enforcement is also in charge of enforcement of immigration law including identification, arrest, detention, bond management, and removal through Enforcement and Removal Operations (ERO) as well as investigations through Homeland Security Investigations.

²⁵¹ Providing interpreters in immigration court is currently in dispute. See *The U.S. Commission on Civil Rights Denounces Replacement of Interpreters with a Video at Immigrants' First Immigration Hearing*, U.S. Commission on Civil Rights (July 19, 2019), <https://www.usccr.gov/press/2019/Immigration-Interpreter-Statement.pdf>.

immigration judge commonly asks the respondent for their best language. Then, the court is on notice regarding interpreter needs for the ICH.

SPECIAL COURT GUIDANCE FOR CASES INVOLVING CHILDREN

There are some special considerations for the immigration court when the respondent is a child. First, it is important to know “the Immigration Judge shall not accept an admission of removability from an unrepresented respondent who is incompetent or under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend; nor from an officer of an institution in which respondent is an inmate or patient”²⁵² Therefore, if an immigration judge accepted an admission of removability from a child who previously appeared alone, this should not have happened and could be the basis of an appeal, objection, and/or motion to terminate proceedings. You may also want to consult these sources in detail to see how you can best advocate for your client.

- [Immigration Court Practice Manual Ch. 4.22 Juveniles](#)
 - “(c) Courtroom orientation. — Juveniles are encouraged, under the supervision of court personnel, to explore an empty courtroom, sit in all locations, and practice answering simple questions before the hearing. The Department of Health and Human Services, Office of Refugee Resettlement, provides orientation for most juveniles in their native languages, explaining Immigration Court proceedings.”
 - “(d) Courtroom modifications. — Immigration Judges make reasonable modifications for juveniles. These may include allowing juveniles to bring pillows, or toys, permitting juveniles to sit with an adult companion, and permitting juveniles to testify outside the witness stand next to a trusted adult or friend.”
- [EOIR Operating Policies and Procedures Memorandum \(OPPM\) 17-03](#)
 - Applies to any case involving an unmarried individual under the age of 18, regardless of whether meets unaccompanied child definition (as respondent or third-party witness)
 - Should employ “age-appropriate” procedures
 - “Best interest of the child” cannot be used as a legal standard—concept alone cannot be used to provide legal basis for granting relief or protection
 - Notes that children may require more frequent breaks than adults due to emotional and physical reasons
 - Seems to indicate judges should use same standards when evaluating testimony of children and adults

TIPS TO CHECK THE RECORD

- When working with your client, you will interview your client to determine the facts of the case. It is also a good idea to do your due diligence and check those facts and gather more information by conducting a FOIA request(s) and/or reviewing the immigration court’s file.
- The Alien File (A file) is located in a centralized Alien/File Central Index system, shared within the agencies of the DHS (e.g., CBP, ICE, and USCIS). The immigration court’s file is separate and different from the A file.
- It is good practice, to do a FOIA to USCIS to obtain the A file. This will help you know what information DHS has regarding your client. If you are wanting particular information regarding your client’s

²⁵² 8 C.F.R. § 1240.10(c).

entry into the country, it is advisable to do a FOIA request to CBP.

- If your client is in removal proceedings and has had activity before the immigration court prior to your representation (i.e., previously represented by other counsel or went to a hearing *pro se*), then it is a good idea to do a FOIA to EOIR so you can see what documents the court has in its file. Alternatively, you could make an appointment to review the court file with EOIR, in the immigration court where the case is being heard.
- To submit a FOIA request, generally you will need to file a [Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative \(DHS\)](#) and can use [Form G-639, Freedom of Information Act/Privacy Act Request](#). Check out [USCIS's website](#) regarding how to make a FOIA request with USCIS and other agencies.

PRESENTING EVIDENCE IN IMMIGRATION COURT

It is important to know that the Federal Rules of Evidence do not apply in immigration court. Instead, evidentiary rules are governed by the INA, and local rules through the Immigration Court Practice Manual. The strict rules of evidence are not applicable in removal proceedings.²⁵³ The sole test for admission of evidence is relevance and fundamental fairness.²⁵⁴ The question for the judge is what weight to give the evidence submitted. Also, although hearsay is admissible, its admission must be probative and not fundamentally unfair.²⁵⁵ You may want to consult the Immigration Judge Bench Book (Tools → Guides → Evidence) to see how judges have been advised to consider evidentiary issues.²⁵⁶

A WORD ABOUT DUE PROCESS IN IMMIGRATION COURT

Your client has Constitutional due process rights in immigration proceedings. Your client has the right to an opportunity for a full and fair hearing.²⁵⁷ Evidence can be excluded or suppressed on due process grounds in removal proceedings if its use is not fundamentally fair.²⁵⁸ You may make an objection based on Fourth and Fifth Amendment violations. To prevail in a due process challenge to the exclusion of evidence, the respondent must show both (1) that he was denied a reasonable opportunity to be heard on his evidence and (2) that there was resulting prejudice. Therefore, in practice, if you are unable to submit certain evidence, make a proffer of evidence. That way, the probative value of the evidence is on the record and you may have a better chance of success upon appeal because you have a basis for your argument of prejudice.

²⁵³ *Matter of DeVera*, 16 I&N Dec. 266, 268 (BIA 1977).

²⁵⁴ *Matter of Ponce-Hernandez*, 22 I&N 784 (BIA 1999); *Matter of Toro*, 17 I&N Dec. 340 (BIA 1980).

²⁵⁵ *Bustos-Torres v. INS*, 898 F.2d 1053 (5th Cir. 1990). 8 C.F.R. §§ 1240.7(a) and 1240.46(c) provide that an immigration judge “may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.”

²⁵⁶ See *Immigration Judge Bench Book (Archived)*, EOIR, <https://www.justice.gov/eoir/archived-resources> (last updated May 8, 2018).

²⁵⁷ *Matter of M-D-*, 23 I&N Dec. 540 (BIA 2002).

²⁵⁸ See *Matter of Garcia-Flores*, 17 I&N 325 (BIA 1980) (“Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation.”)

Before Your First Case in Immigration Court

As a representative, you must register with the EOIR before your first appearance in immigration court. You may start this process by filling out an online form and complete the process by appearing at a specified location to show identity documents so your identification can be verified. This is a requirement to represent a client before EOIR. Visit EOIR's [website](#) to register.

It is important to familiarize yourself with the Immigration Court Practice Manual, available on EOIR's website, prior to representing your client so you are acquainted with the local rules of the court. The Immigration Court Practice Manual has important information such as court deadlines, sample documents, and pleadings. Each immigration judge has their own style, rhythm, and particularities, so it is best practice to observe court, and hopefully the immigration judge assigned to your case, in advance of your first appearance.

TIP: Since court calendars vary, you may call the immigration court and speak to the clerk to find out which days in a given period there will be MCHs so you know when you can observe. You do not need to ask permission to observe hearings since they are open to the public. You may also want to reach out to local attorneys to see if you can observe an ICH. While these are technically also open to the public, you should ask the attorneys of record in advance so they have time to consult with their client regarding the request.

COMMON IMPORTANT FORMS IN IMMIGRATION COURT

Form EOIR-28, *Notice of Entry of Appearance as an Attorney or Representative before the Immigration Court*

Form EOIR-33/IC, *Alien's Change of Address Form/Immigration Court*

Form I-862, *Notice to Appear (NTA)*

Form I-213, *Report of Deportable/Inadmissible Alien*

To represent your client in immigration court, you will need a signed [Form EOIR-28, Notice of Entry of Appearance as an Attorney or Representative before the Immigration Court](#) for your client so you can enter your appearance. This may be submitted online or in court. If there has been a prior representative, you will need to file a motion to substitute counsel. As noted in the Immigration Court Practice Manual, the E-28 should be printed on light green paper.

PREPARING YOUR CLIENT FOR IMMIGRATION COURT

Your client has certain rights and responsibilities in removal proceedings, and it is important to go over this information with your client in advance of any court appearances. Frequently, at your first MCH, the immigration judge will ask you if you have reviewed with your client their rights and responsibilities and ask if they can waive a reading of the advisals. This reading by the immigration judge is frequently waived for a respondent with counsel.

It is advisable to go over this information at the beginning of your representation with your client to ensure the information is conveyed and your client is informed.

YOUR CLIENT'S RIGHTS IN REMOVAL PROCEEDINGS

- Representation at no expense to the government²⁵⁹
- List of pro bono legal services should be provided to respondent²⁶⁰
- Reasonable opportunity to examine the evidence against the respondent²⁶¹
- Opportunity to present evidence²⁶²
- Opportunity to cross-examine witnesses presented by the government²⁶³
- To a complete record of the testimony and evidence²⁶⁴
- To accurate interpretation²⁶⁵
- To appeal if case is denied²⁶⁶
- Detained respondent should be notified that they may communicate with the consul or diplomatic officer of their country²⁶⁷
- Constitutional due process rights

While immigrants have the right to counsel in removal proceedings, counsel will not be provided by the government. This also applies to children, and as a result many children and adult respondents go forward in immigration removal proceedings without an attorney by their side.

YOUR CLIENT'S OBLIGATIONS IN REMOVAL PROCEEDINGS

- A respondent must tell the truth. These are formal proceedings and your client will be sworn under oath and will be subject to the penalty of perjury if they lie. Additionally, there are immigration consequences for not disclosing or misrepresenting information.²⁶⁸
- A respondent must be present in court. If your client is not present, an *in absentia* removal order will likely be issued against your client.²⁶⁹
- A respondent must notify court of any changes in address or phone number within 5 days on [Form EOIR-33/IC](#), *Alien's Change of Address Form/Immigration Court*.²⁷⁰ The form must be printed on light blue paper.²⁷¹

Child respondents are required to be present in court.²⁷² Otherwise, an *in absentia* removal order could be issued, which presents grave consequences. An immigration judge may waive the presence of a child respondent at a hearing.²⁷³ If providing a waiver, this must be clearly stated on the record or in a written order.

259 INA § 240(b)(4)(A); 8 U.S.C. § 1229a(b)(4)(A).

260 8 C.F.R. §§ 1003.61, 1240.10(a).

261 INA § 240(b)(4)(B); 8 U.S.C. § 1229a(b)(4)(B).

262 *Id.*

263 *Id.*

264 INA § 240(b)(4)(C); 8 U.S.C. § 1229a(b)(4)(C).

265 *Immigration Court Practice Manual* Ch. 4.11. Also, note there is no right to translation of documents at the government's expense. See 8 C.F.R. § 1240.5.

266 8 C.F.R. § 1240.10(a).

267 8 C.F.R. § 1236.1, Article 36 of the [Vienna Convention on Consular Relations](#).

268 For example, if it is determined your client made a frivolous application for asylum, then your client could be permanently ineligible for any immigration benefits. INA § 208(d)(6); 8 U.S.C. § 1158(d)(6).

269 The Immigration and Nationality Act permits an immigration judge to order a person removed *in absentia* if the government establishes by clear, unequivocal and convincing evidence that proper written notice was provided and that the person is removable. INA § 240(a)(5)(A); 8 U.S.C. § 1229a(a)(5)(A). See also 8 C.F.R. § 1003.26(c).

270 8 C.F.R. § 1003.15(d)(2); *Immigration Court Practice Manual* Ch. 2.2(c).

271 See *Immigration Court Practice Manual* Ch. 11.2(f).

272 Children not in proceedings should not be brought to court. If child disrupts a hearing, the hearings "may be postponed with the delay attributed to the party who brought the child." *Immigration Court Practice Manual* Ch. 4.12(c)(iii).

273 Immigration judges should adhere to requirements of 8 C.F.R. § 1003.25 to determine whether to waive a child's appearance at a hearing.

REVIEWING AND EXPLAINING THE NTA AND I-213

A NTA is the most common charging document.²⁷⁴ It contains identifying information such as your client's name, A#, etc. It contains the government's factual allegations against your client and the government's charges against your client. Check the document to determine if service was properly conducted. Talk with your client regarding the NTA, assess for errors, and determine if you will concede service or not and how you will plead.

Form I-770, *Notice of Rights and Disposition*, must be provided to each child upon apprehension, and informs the child of their rights during the initial processing interview typically conducted by CBP or ICE.²⁷⁵ Failure to comply with the regulation may be grounds for terminating proceedings.²⁷⁶

Form I-213, *Record of Deportable/Inadmissible Alien* is an important document in removal proceedings because it typically forms the basis for the government's allegations against your client. This is a record of the apprehending officer, commonly a CBP officer. It contains biographical information about your client and any statements made by your client. Check your client's documents for this form. If your client does not have a copy of it, you may be able to request a copy from the TA in advance of your court date or at the hearing. If you did a USCIS FOIA request, the I-213 will likely be in your FOIA results. If you receive the I-213 the day of your court hearing, you may want to reserve any objections to the document for your next hearing to provide time for you to review it with your client. There are commonly errors and you will want to get this corrected, make appropriate objections, and/or possibly move to suppress the I-213 and terminate proceedings.²⁷⁷

²⁷⁴ INA § 239(a); 8 U.S.C. § 1229(a) sets out what is required in the Notice to Appear (NTA).

²⁷⁵ Pursuant to 8 C.F.R. § 236.3(h), DHS must provide Form I-770 to all children, including children apprehended with their parents. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language they understand. Furthermore, if the child accepts voluntary departure after asking for a hearing or if the child is allowed to withdraw their application for admission, the government must give the child a new I-770.

²⁷⁶ See Helen Lawrence, Kristen Jackson, Rex Chen, Kathleen Glynn, *Practice Advisory Strategies for Suppressing Evidence and Terminating Removal Proceedings for Child Clients*, produced for the Vera Institute of Justice's Unaccompanied Children Program (Mar. 2015), 4-5, <https://helenlawrencelaw.com/wp-content/uploads/2015/03/Suppression-Termination-PA-without-Appendices.pdf>, <https://helenlawrencelaw.com/wp-content/uploads/2015/03/Suppression-Termination-PA-Appendices.pdf>.

²⁷⁷ See *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988) ("Absent any indication that a Form I-213 contains information that is incorrect or was obtained by coercion or duress, that document is inherently trustworthy and admissible as evidence to prove alienage and deportability.") See also *Matter of Amaya*, 21 I&N Dec. 583 (BIA 1996) ("Although under 8 C.F.R. § 242.16(b) (1996), an Immigration Judge may not accept the admission to a charge of deportability by an unaccompanied and unrepresented minor under the age of 16, the regulation does not preclude an Immigration Judge from accepting such a minor's admissions to factual allegations, which may properly form the sole basis of a finding that such a minor is deportable.")

COURTROOM KNOW YOUR RIGHTS – BEFORE MCH

| Who's going to be there: | What's going on: | What's going to happen: |
|--|---|---|
| <ul style="list-style-type: none"> • The judge, government attorney, clerk, and interpreter will also be in court. There will also be a gallery of people behind your client. • Explain the roles of each person who will be there. • If your client needs an interpreter, advise them to pick up the headphones on the table to hear the interpreter. Emphasize the importance of letting you know right away if they cannot hear or understand the interpreter. | <ul style="list-style-type: none"> • Stand when the judge enters out of respect. • No gum, no hats, etc. out of respect. • Explain that more than one case will be heard since the case is scheduled on a docket. • The judge may speak to the child individually or as part of a group. • Go over the layout of the room and where they will sit for the hearing. | <ul style="list-style-type: none"> • The judge may ask your client some questions such as: Name? Birthdate? Address? Who are you here with? Do you want this person to represent you? Are you in school? Where do you go to school? • The judge may take pleadings and accept any application(s). Go over the NTA with your client in advance and what they can expect for the hearing. |

COMMON MOTIONS IN IMMIGRATION COURT

• Continuance:

- Seeking a continuance is common in children's cases because oftentimes a child needs more time to pursue a court order in state court or to wait for adjudication of their asylum or SIJS application before USCIS.
- Good cause must be shown to grant a motion for a continuance.
- *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018) provides guidance regarding factors considered when deciding whether to grant a continuance when collateral relief is pursued.

• Status Docket:

- EOIR issued [PM 19-13](#) on the *Use of Status Dockets* on August 16, 2019 and lists three categories of cases that may be placed on a status docket: 1) one in which an immigration judge is required to continue the case pursuant to binding authority in order to await the adjudication of an application or petition by USCIS, (2) one in which the immigration judge is required to reserve a decision rather than complete the case pursuant to law or policy, or (3) one which is subject to a deadline established by a federal court order.

* **TIP:** Best practice may be to file a motion to continue and concurrently ask for the case be placed on the status docket.

• Administrative Closure:

- Administrative closure removes a case from an immigration judge's active calendar, thereby temporarily pausing the proceedings. The case does not go away altogether, but no future hearings will be set until either party moves to re-activate the case by filing a motion to re-calendar or to terminate proceeding. An immigration judge can administratively close a matter even if one of the parties objects.

- In children's cases, administrative closure has historically been sought for Special Immigrant Juveniles unable to adjust their status due to the visa backlog. However, the Attorney General's decision in the certification of *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), has all but eliminated administrative closure in immigration court unless there is regulatory or federal judicial settlement authority for administrative closure, which typically apply only to non-citizens who have been in the U.S. since the 1990s. One notable exception is for those seeking T nonimmigrant status pursuant to The Victims of Trafficking and Violence Prevention Act. Implementing regulation at 8 C.F.R. § 1214.2(a). The decision overturns *Matter of Avetisiyan*, 25 I&N Dec. 668, 692 (BIA 2012).
- For additional guidance, see the American Immigration Counsel and ACLU's [Practice Advisory Administrative Closure Post-Castro-Tum](#), issued June 14, 2018 and updated October 22, 2019.

- **Termination:**

- Termination is the conclusion of removal proceedings altogether. An immigration judge's grant of termination is final unless successfully appealed. Proceedings may be terminated by an immigration judge upon the request or motion of either party. If granted, termination may be without prejudice and DHS may file the same charges at a later time. In children's cases, termination has been sought for a variety of reasons including DHS's failure to properly serve the NTA, meet its burden, or properly issue Form I-770.
- For additional guidance, see the Vera Institute of Justice's Unaccompanied Children Program's [Practice Advisory Strategies for Suppressing Evidence and Terminating Removal Proceedings for Child Clients](#), Helen Lawrence, Kristen Jackson, Rex Chen, and Kathleen Glynn, March 2015.

COURTROOM KNOW YOUR RIGHTS – BEFORE ICH

| Who's going to be there: | What's going on: | What's going to happen: |
|--|--|--|
| <ul style="list-style-type: none"> • The judge, government attorney, clerk (sometimes present and sometimes not), and interpreter will also be in court. • Explain the roles of each person who will be there. • Hearings are open to the public, but often there will not be other people there for an ICH. • If your client needs an interpreter, advise them to pick up the headphones on the table to hear the interpreter. Emphasize the importance of letting you know right away if they cannot hear or understand the interpreter. | <ul style="list-style-type: none"> • Stand when the judge enters out of respect. • No gum, no hats, etc. out of respect. • Explain how this hearing differs from the MCH. It is set for a specific date and time for your client's case to be heard. • Go over the layout of the room and where they will sit for the hearing. | <ul style="list-style-type: none"> • The judge will make a decision(s) on any pending motions and enter the evidence into the record. • Your client will testify. The judge will have the opportunity to ask your client questions and the government attorney will cross examine your client. You will have the opportunity for re-direct. • The government attorney has the opportunity to present witnesses, and you will have the opportunity for cross examination. • The judge will likely make a decision in the case. • The judge will ask if either party wishes to reserve the right to appeal. |

TALKING WITH YOUR CLIENT ABOUT THEIR RIGHT TO APPEAL

At the end of an ICH, the immigration judge will ask both parties if they wish to reserve the right to appeal the decision made in the case. It is important to know, if you respond affirmatively, this does not mean you have appealed your client's case. There is a separate process for that. The appeal must be filed in writing to the BIA within 30 days of the judge's order. Answering affirmatively while in court simply means you have reserved your client's right to appeal so that your client has the option to file an appeal. Because this is discussed at the ICH, it is important to talk with your client before the ICH about the option to appeal. This will help ensure your client does not get confused at the end of the hearing and understands the process and their options for any next steps in their case. Generally, it is best practice to answer "yes" to this question presented by the judge, to reserve your client's right to appeal and preserve their option to appeal. Even if you talked with your client about this in advance and they do not want to appeal, they may change their mind and you do not want to foreclose their option to appeal. However, that said, there may be times when you answer this question with a "no," as is often the case for a client who is detained and no longer wishes to be.²⁷⁸ In that case, you may want to have your client provide a written signed statement regarding their decision to not appeal for your own records.

²⁷⁸ For example, there are instances when a detained client does not wish to appeal because they do not want to be detained any longer. If they are denied, they wish to be removed as soon as possible. In that case, if you answer "yes" you wished to reserve their right to appeal, your client will have to remain detained for at least the 30-day appeal window, whereas, if you indicate "no," it is possible they could be removed much sooner.

Links to Learn More About HOW TO PRACTICE IN IMMIGRATION COURT

- Check out CILA's 101 [webinar](#): *Introduction to Removal Proceedings for Unaccompanied Children* (1 hour).
- Read CILA's resource *How to Prepare for an Individual Hearing: Different Practitioners' Perspectives* posted on CILA's website on the [Additional Resources page](#) to learn more about how to prepare for a merits hearing.
- Take a look at the Safe Passage Project's [Representing Noncitizen Youth in Removal Proceedings](#), 2018-2019, NY.
- Review the U.S. DOJ, EOIR, Fact Sheet: [Executive Office for Immigration Review: An Agency Guide](#), December 2017.
- Review Appleseed Network Immigration Collaborative's [Getting Off the Assembly Line: Overcoming Immigration Court Obstacles in Individual Cases](#), 2016.
- Read CLINIC's Practice Advisory [Rules of Evidence in Immigration Court Proceedings](#), Rebecca Scholtz and Michelle Mendez, March 13, 2020.
- Learn more about Notices to Appear in American Immigration Council and Penn State The Dickinson School of Law's Practice Advisory [Notice to Appear: Legal Challenges and Strategies](#), February 27, 2019.
- For motions guidance check out the Vera Institute of Justice's Unaccompanied Children Program's Practice Advisory [Strategies for Suppressing Evidence and Terminating Removal Proceedings for Child Clients](#), Helen Lawrence, Kristen Jackson, Rex Chen, and Kathleen Glynn, March 2015.
- Check out ILRC's Practice Advisory [Representing Clients at the Master Calendar Hearing](#), December 2018.
- Read ILRC's Practice Advisory [Obtaining Office of Refugee Resettlement Records for Clients who were Detained as Children](#), Andrew Craycroft, November 2019.
- Learn more about how to do FOIAs with ILRC's [A Step-By-Step Guide to Completing FOIA Requests with DHS](#), December 2019 and American Immigration Council's [FOIA for Immigration Lawyers](#), updated February 2017.

C. Introduction to USCIS and the Asylum Office

Representation before USCIS and the Asylum Office

TIPS FOR PRACTICING BEFORE USCIS

- Familiarize yourself with the USCIS Policy Manual including [Volume 1 - General Policies and Procedures](#).
- You will need a signed [Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative](#) to represent a client before USCIS and/or the Asylum Office.
- If your client is scheduled for an interview, you must bring your own interpreter.
 - See USCIS Policy Memorandum (PM-602-0125.1), *The Role and Use of Interpreters in Domestic Field Office Interviews*, January 17, 2017.
 - For asylum cases, see [8 C.F.R. § 208.9\(g\)](#) regarding details about providing your own interpreter.

- As the attorney, you will not be permitted to speak on behalf of your client while the officer asks your client questions during the interview. You may be given the opportunity to ask follow up questions at the end, which can be useful to bring out additional information or to clarify something. You may also have the opportunity to make a closing statement.
 - You may take notes of the proceedings, and if you believe your client is being asked to respond to an inappropriate question or sign something inadvisable, you are allowed to indicate that you are advising your client not to answer or sign.
- Make sure you have your bar card, if applicable, and a form of government identification if the USCIS officer wishes to inspect it prior to beginning the interview.

Key Tools & Contacts

- Search all USCIS forms using this [link](#) to find the application your client needs.
- Find the USCIS [Fee Schedule](#), instructions on how to pay [USCIS Fees](#) and how to file for a [Fee Waiver](#), when available and applicable.
- Your client must keep USCIS up to date with their [current address](#). Check out USCIS's website to find out how to do this.
- USCIS provides [case processing times](#) regarding some applications it processes. Check the timeframes to get a better idea of wait times.
- Use this link to find a [USCIS office](#).
- Find information to prepare for a [Biometric Services Appointment](#).
- Use this link to access [USCIS's online Self Service Tools](#) including making a [case inquiry](#).
- Explore [USCIS's Contact Center](#) options.
- Consider reaching out to the [Ombudsman's office](#) for case assistance, if needed.

ASYLUM OFFICE – SAMPLE ASYLUM INTERVIEW CHECKLIST

Working with an Interpreter:

- Obtain the services of an interpreter for the interview. The government does not provide an interpreter!
 - If you are working with a nonprofit organization, who referred you the case, check with them regarding finding an interpreter. It is likely best to try and secure pro bono interpretation whenever possible.
- Remind a less-experienced interpreter to interpret verbatim and not in the third person. *See Section II.D.* for more guidance and tips on how to work with an interpreter.
- Practice with the interpreter prior to the interview, and make sure the applicant can communicate effectively with them.
- Let the interpreter know that the government will have someone on the phone listening for correct interpretation at the interview.

ASYLUM OFFICE – SAMPLE ASYLUM INTERVIEW CHECKLIST

Supplementing Documents/Correction to Asylum Application:

- Take an original and two copies of any supplemental documents to the interview, and provide them to the asylum officer. If you mailed any supplemental documents in advance of the interview, take an extra copy to the interview in case the mailed copy did not make it into the file. Also bring any proof of mailing.
- If there are numerous documents, make an index, tab the documents, and highlight relevant portions of documents for the asylum officer.
- Remember that all non-English documents must be translated into English, and you must include a certificate of translation.
- If you need to make corrections to the application, take a letter documenting the changes and two copies for the asylum officer, and provide this before the interview begins.

Preparing Your Client for the Interview:

- Provide your client with a copy of the application and their declaration.
- Ask your client to review dates/events if they are able to do so.
- Review the application and declaration with your client and note any changes.
- Conduct mock interviews with your client, with someone playing the role of the interpreter if the interpreter is not available.
- Explain the setup of the desk, etc. in the office of an asylum officer.
- Explain the role of those who will be in the room at the time of the interview.
- Explain that both you and the asylum officer will take notes during the interview.
- Remind your client to tell the truth, to listen carefully to the asylum officer's questions, and only answer the questions asked.
- Let your client know it is okay to ask for a break to go to the bathroom or rest a moment. It is okay to show emotion. It is also okay to ask the officer to repeat a question, let the officer know when they do not understand a question, and respond with "I do not know" or "I do not remember."
- Instruct your client to wait for the interpreter to finish talking before responding.

ASYLUM OFFICE – SAMPLE ASYLUM INTERVIEW CHECKLIST

Attorney Preparation/Conduct for Interview:

- Bring any original documents to the interview for inspection by the officer.
- Bring your identification and, if applicable, your bar card.
- Ask the interpreter to bring their identification as well.
- Make a list of key points. If the asylum officer does not cover this information in their questioning, ask your client these questions related to these points when you are given time to do so at the end of the interview.
- After follow-up questions of your client if necessary, ask the officer whether they see any outstanding issues or problem areas. Offer to address these with additional evidence if possible.
- Take detailed notes of the interview as it will not be videotaped or recorded by the government.
- Prepare an oral and, if possible, written closing statement. Summarize for the officer why the applicant is eligible for asylum and deserves to be granted asylum. Note that some but not all asylum officers are lawyers. Your summary is particularly helpful in cases where the officer would like to grant relief but needs your help in finding a legal basis for doing so.

Post Interview:

- Let your client know the interview has concluded and thank them.
- Explain to your client what happens next, specifically, that the asylum officer will make a decision to either grant asylum or refer the case to an immigration judge.
- Ask your client how they are feeling. Encourage them to inform a family member or friend if the interview experience has been especially traumatic.

ADDITIONAL INFORMATION RELATING TO DIFFERENT TYPES OF RELIEF

- **Special Immigrant Juvenile Status:**

- Review USCIS's webpage on [Special Immigrant Juveniles](#).
- If necessary, review [USCIS's Questions and Answers: Appeals and Motions](#).

- **Adjustment of Status before USCIS:**

- Read USCIS's website about getting a [Green Card based on Special Immigrant Juvenile Classification](#). Read more information about getting a [green card](#).
- Check out USCIS's Adjustment of Status [Filing Charts](#).
- Consult the Department of State [Visa Bulletin](#).
- If necessary, review [USCIS's Questions and Answers: Appeals and Motions](#).

- **Representation before the Asylum Office:**

- Read USCIS's information regarding the [Affirmative Asylum Process](#).
- If your client has applied for asylum before USCIS, you can find use the [USCIS Service and Office Locator](#) to find the closest asylum office and related information.
- Check out USCIS's guidance on [Preparing for your Asylum Interview](#).
- Review the potential [Types of Asylum Decisions](#) including a grant or referral to immigration court.

- **U Visa:**

- Review USCIS's webpage regarding [Victims of Criminal Activity: U Nonimmigrant Status](#).
- Review USCIS's [Resources for Victims of Human Trafficking and Other Crimes](#).

- **T Visa:**

- Refer to USCIS's webpage regarding [Victims of Human Trafficking: T Nonimmigrant Status](#).
- Review USCIS's [Resources for Victims of Human Trafficking and Other Crimes](#).

- **VAWA Self-Petition:**

- Review USCIS's [Questions and Answers: Battered Spouses, Children and Parents Under the Violence Against Women Act \(VAWA\)](#).
- Explore USCIS's information [Green Card for VAWA Self-Petitioner](#).

- **Family-Based Claims:**

- Review USCIS's webpage regarding options for [Family of U.S. Citizens](#).
- Take a look at USCIS's webpage regarding options for [Family of Green Card Holders \(Permanent Residents\)](#).