



LITIGATION FOR UNACCOMPANIED CHILDREN: UPDATES AND FOUNDATIONAL CASES

National Immigration Litigation Alliance
in collaboration with Children's Immigration Law Academy
January 2022

CILA-NILA Partnership



Provide trainings, resources and technical assistance (Texas) related to appellate and litigation practice



Some emphasis on matters originating within Fifth Circuit



Posted trainings include:

- *Ready to Win—Moving Beyond Trying Cases at the IJ Level*
- *Introduction to Federal Court Practice Parts I and II*
- *Advanced Immigration Legal Research*
- *Legal Writing*
- *Litigating SIJS Delay Cases: Mandamus and APA*
- *Attorneys Fees Under the Equal Access to Justice Act*
- *Winning at the BIA*
- *Niz-Chavez, Pereira, and Notices to Appear*
- *Nuts and Bolts of Habeas Corpus Petitions Challenging Immigration Detention*
- *Administrative Procedures Act (APA) Actions after SIJS Denials*
- *Petitions for Review and Judicial Stays of Removal to the 5th Circuit 101*
- *Filing Administrative Claims for Wrongful Conduct*

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**Trainings –
Live and Recorded**



**Resources –
Practice
Advisories &
Templates**



**Texas –
Technical Assistance,
Legal Writing
Technical Assistance**



National Immigration Litigation Alliance

Immigrant justice through the courts

Impact Litigation	Strategic Assistance	Co-Counseling
<p>Ending A-File FOIA Processing Delays</p> <p>Ending USCIS' Blank Spaces Policy</p> <p>Securing Oath Ceremonies During Pandemic</p> <p>Exposing CBP Policies for Expelling Mothers and Newborns/Children</p> <p>Securing Damages for Separated Families</p>	<p>One-on-one timely strategic assistance through our membership program (emails, telephone, video)</p> <p>Pleading review for members</p> <p>Practice advisories</p> <p>Presentations</p>	<p>Accepted on a case-by-case basis</p> <p>Types of cases include PFRs, affirmative APA suits, FOIA suits, damages, habeas petitions & more!</p> <p>Co-counsel agreement clearly sets out roles and responsibilities</p> <p>Attorney testimonials on our website</p>



Rescission of an in absentia removal order

- *Rodriguez v. Garland*, 15 F.4th 351 (5th Cir. 2021)
 - Court held that the lack of a date and time on a Notice to Appear is a basis for rescinding an in absentia order
 - A subsequent Notice of Hearing with date and time does not satisfy the notice requirement in this context
 - BIA ruled to the contrary in *Matter of LaParra*, 28 I&N Dec. 425 (BIA 2022), and this decision applies outside of Fifth Circuit
 - There is no time limit for filing a motion to rescind an in absentia order for lack of notice

Rescission of an in absentia removal order

- *Spagnol-Bastos v. Garland*, 19 F.4th 802 (5th Cir. 2021)
 - Court held that individuals forfeit their right to notice by failing to provide a viable mailing address
 - In turn, a person who forfeits his right to notice cannot seek to reopen removal proceedings and rescind an in absentia order for lack of notice
 - Court distinguished *Rodriguez*, noting that the petitioner in that case did provide a viable mailing address

Asylum

- *Kholyavskiy v. Mukasey*, 540 F.3d 555 (7th Cir. 2008)
 - Jewish child from former Soviet Union mistreated from age 8-13
 - Other children urinated on him, pulled down his pants, had a dog attack him, beat him
 - Past persecution: court held that BIA erred in failing to consider the child's age or the impact of this mistreatment on a child of that age
 - To qualify as past persecution, amount of harm to a child may be less than that to an adult

Special Immigrant Juvenile status & EADs

- *Godinez, et al. v. U.S.DHS, et al.*, No. 20-00828-CV-W-GAF (W.D. Mo. Feb. 10, 2021)
 - Case addressed whether individuals granted SIJ status are parolees for purposes of employment authorization documents
 - Court issued a decision on government's motion to dismiss
 - Government argued that 8 U.S.C. § 1255(h) deems SIJs as paroled only for adjustment of status
 - Court disagreed; held that Congress intended SIJs to be paroled for humanitarian purposes and thus for purposes of EAD under 8 C.F.R. §275a.12(c)(11)
 - Parties then settled the lawsuit

Special Immigrant Juvenile status & EADs

- *L.F.O.P. v. Mayorkas*, No. 21-cv-11556-TSH (D. Mass. filed Sept. 21, 2021)
 - Case addresses whether USCIS' policy of refusing to issue EADs to SIJs is unlawful
 - Case filed in September 2021 as putative class action covering Massachusetts
 - Government has sought a stay on basis that USCIS is considering a new process for finding SIJs eligible for an EAD
 - No decision from the court yet
 - Reportedly, USCIS may issue a memo on this in the near future



ANY
QUESTIONS
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CILA's Pro Bono Platform

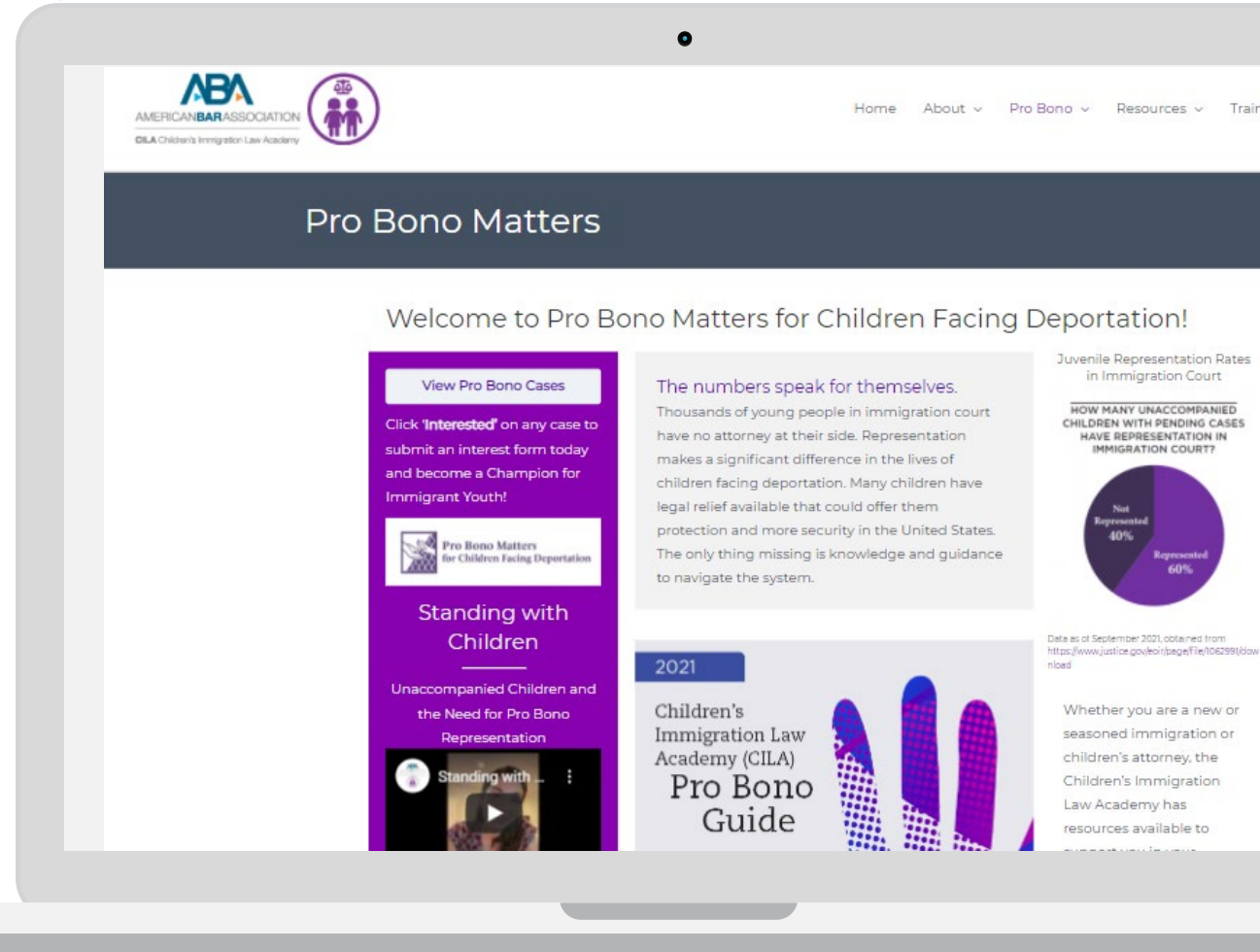


Pro Bono Matters for Children Facing
Deportation



Help more children have
representation!

Visit CILA's Platform



Thank You for Joining Us!

Please complete the **Feedback [survey](#)**. Fill out the **CLE Credit [survey](#)** for Texas CLE credit or a letter of attendance.

Texas Folks – Reach out to CILA for CILA/NILA technical assistance.

Handout for today's webinar will be sent in follow up email!

[CILA - NILA Trainings Available Here](#)