



CIL
A



LITIGATION FOR UNACCOMPANIED CHILDREN: HOT BUTTON ISSUES & CURRENT LITIGATION

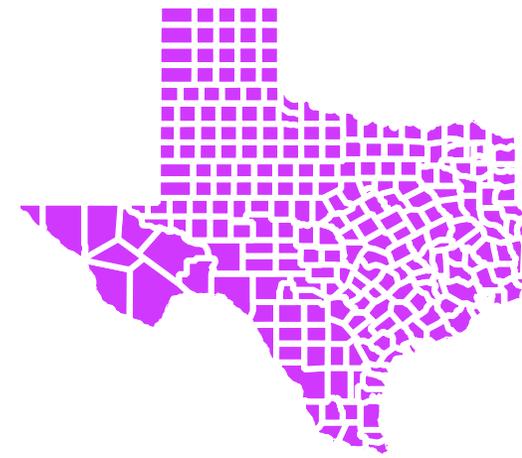
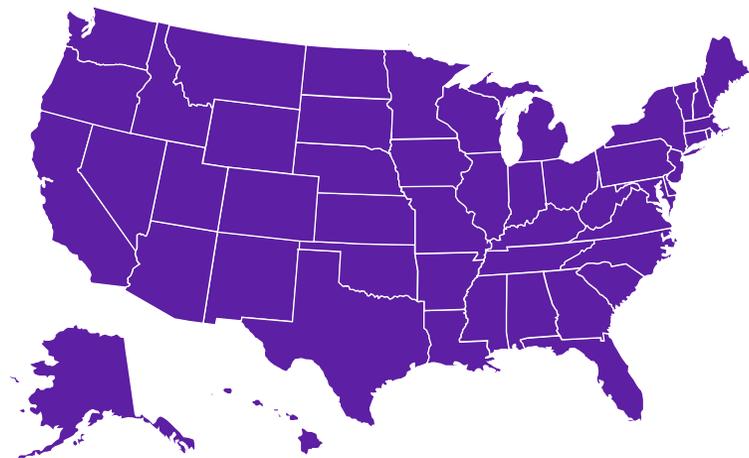
National Immigration Litigation Alliance
in collaboration with Children's Immigration Law Academy
April 2022





CILA's Services

Nationwide & in Texas



Resources



Pro Bono Matters for Children Facing Deportation



Technical Assistance



Collaboration through Working Groups



Trainings



Support at emergency shelters



Texas Specific Trainings & Resources



Social Work Program



Pro Bono Initiatives



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>



CILA NILA Partnership



**Trainings –
Live and Recorded**



**Resources –
Practice
Advisories &
Templates**



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

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*

Request CGRS Technical Assistance

CGRS advances the human rights of asylum seekers through litigation, policy advocacy, and technical assistance (TA) and training to attorneys.

Through its TA program, CGRS provides free expert consultation to attorneys and organizations representing asylum seekers, including strategy development, sample briefs, unpublished decisions, country conditions evidence, and expert witness affidavits.

To request assistance, report an outcome, or find an expert:

- For new cases, visit <http://cgrs.uchastings.edu/assistance>
- For existing cases, email CGRS-TA@uchastings.edu with your CGRS Case Number if you have follow-up questions

Denials of SIJ Petitions due to State Court Authority to Reunify 18- to 20-year-olds

- *W.A.O. v. Jaddou*, No. 2:19-cv-11696 (D.N.J. final settlement approval granted Apr. 20, 2022)
 - Case involved class action on behalf of individuals who received SIJ findings from a New Jersey state court between their 18th and 21st birthdays and then submitted SIJ petitions which were denied, delayed, revoked, or questioned.
 - Final settlement approval provides agreement that USCIS will not apply challenged policy (since eliminated per AAO decision) and includes assistance to unidentified potential class members and class members in removal proceedings or with existing removal orders.

Challenges to CDC orders under 42 U.S.C. § 265

- *Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022)
 - Court narrowed a district court preliminary injunction in a challenge to the CDC’s COVID-19 order, issued pursuant to 42 U.S.C. § 265, on expulsions of “covered” noncitizens at the border.
 - Under the narrowed preliminary injunction, DHS cannot expel class members to countries where they face a likelihood of persecution or torture.
 - However, there is no longer an injunction against expulsions of class members in the United States or expulsion without the opportunity to apply for asylum.
 - The CDC announced that the COVID-19 expulsion order will terminate on May 23, 2022; however, it’s unclear whether the process will change in May.

Challenges to CDC orders under 42 U.S.C. § 265

- *Texas v. Biden*, No. 4:21-cv-0579, _ F. Supp. 3d _ (N.D. Tex. 2022)
 - Court preliminarily enjoined changes to the CDC's Title 42 order, which exempted unaccompanied minors from the process.
 - The Court found the exemption of UMs was arbitrary and capricious because the change in policy was not justified by the record in the case.
 - Under the preliminary injunction, defendants may not apply a *categorical* exemption for UMs; however, DHS still can exercise discretion with regard to any individual.
 - This decision does not address or impact relief under *Huisha-Huisha*.
 - This decision does not impact the announced termination of the Title 42 process; however, a subsequently filed lawsuit challenges the termination.

Failure to serve NTA on a parent or guardian

- *B.R. v. Garland*, 26 F.4th 827 (9th Cir. 2022)
 - Court held that DHS can cure improper service of a notice to appear, including failure to serve an adult to whom a juvenile is released from custody, absent a showing of prejudice.
 - If noncitizen did not receive proper service of the NTA, consider:
 - Was service perfected before substantive proceedings began?
 - Did the improper service cause prejudice?
 - Did the improper service involve an egregious regulatory violation?

Failure to serve NTA on a parent or guardian

- *Flores-Chavez v Ashcroft*, 362 F.3d 1150 (9th Cir. 2004)
 - Requires service on an adult in cases beyond those covered by 8 C.F.R. § 103.8(c)(2)(ii) – where child under 18 years old is released from detention into care of an adult.
 - Ninth Circuit specific
 - Still good law after *B.R. v. Garland*
 - Remember original context of *Flores-Chavez*: a motion to rescind an in absentia removal order.

Individuals departing prior to a final order

- *Romero v. Sec’y, DHS*, 20 F.4th 1374 (11th Cir. 2021)
 - Court held that an individual who departed the United States *prior to* issuance of an in absentia deportation order did not self-execute that later-issued in absentia order.
 - Because the order was not executed, DHS could deport the individual under the prior order after she re-entered the United States (i.e. without new removal proceedings).
 - This holding conflicts with decisions of the Fifth and Seventh Circuits and a cert petition is pending at the U.S. Supreme Court.
 - For clients in this situation, beware of reinstatement!

Matter of A-B- I, 27 I&N Dec. 316 (AG 2018)

Issued in 2018 by AG Sessions

- Overruled *Matter of A-R-C-G-* based on perceived defects in its analysis of the PSG “married women in Guatemala who are unable to leave their relationships”
- Discussed other elements of asylum and included harmful dicta on viability of gang/DV claims generally

Matter of A-B- III, 28 I&N Dec. 307 (AG 2021)

Issued in 2021 by AG Garland

- Fully vacates *A-B- I* and *A-B- II* in light of pending rulemaking
- Acknowledges some harmful aspects of *A-B- I*: sweeping dicta and “condoned/completely helpless” test

Directs adjudicators to not apply the decisions in pending or future cases; *A-R-C-G-* and other pre-*A-B- I* precedent control

Current State of the Law

- “A vacated decision has no precedential effect whatsoever.” *Durning v. Citibank, N.A.*, 950 F.2d 1419, 1424 n.2 (9th Cir. 1991).
- Adjudicators should not be relying on *A-B- I* or *A-B- II*
 - Note: AG Garland also vacated *Matter of A-C-A-A- I*, 28 I&N Dec. 84 (AG 2020) and *Matter of L-E-A- II*, 27 I&N Dec. 581 (AG 2019)
- Until a final rule is issued, *A-R-C-G-* is valid precedent

Jaco v. Garland, 24 F.4th 395 (5th Cir. 2021)

- Held that its earlier decision *Gonzales-Veliz v. Barr*, 938 F.3d (5th Cir. 2019) is still good law and that a group defined by “unable to leave” is impermissibly circular
- Noted that even if *Gonzales-Veliz* not valid, *A-R-C-G-* not entitled to deference
- The Court rejected parties’ joint request to vacate the decision based on reopening at the BIA and denied petition for rehearing en banc, so the decision stands

Post-Jaco Strategies

- Foreground other legal theories not involving unable to leave PSG
 - If case has already been briefed on appeal, file 28(j) letter
- Pursue remand with OIL, see [Gupta memo](#)
- File MTR at the BIA
- Seek prosecutorial discretion
- Reach out to CGRS if you're interested in amicus support or to talk through legal strategy
 - For new cases, fill out request at <http://cgrs.uchastings.edu/assistance>
 - For existing cases, email cgrs-TA@uchastings.edu and include your CGRS case number



ANY
QUESTIONS
?



CILA's Pro Bono Platform

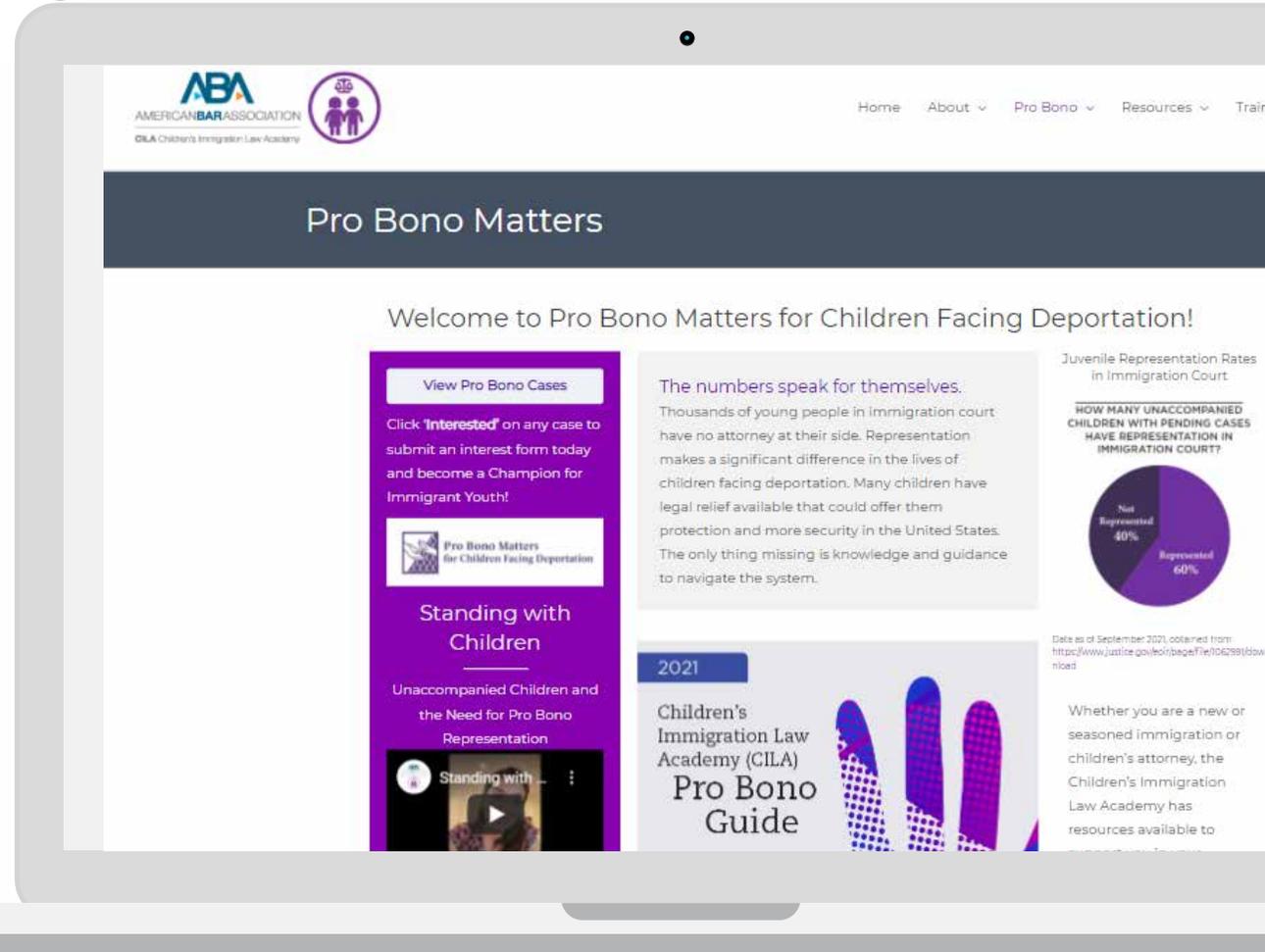


Pro Bono Matters for Children Facing
Deportation



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.

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](#)

