Resources and Strategies for Quality Representation of Immigrant Clients Involved in Child Welfare

April 10, 2019
Presentation Structure

- Introduction
- Representing Immigrant Children
- Representing Immigrant Parents
- Permanency Planning Across National Boundaries
- Judicial Perspective
Varied Legal Status of Immigrants in U.S.

- Citizen
- Lawful Permanent Resident
- Temporary Visa
- Undocumented
Key Statistics: Immigrant Children and Children of Immigrants

- There are 70 million children under age 18 in the U.S.
- 26% (more than 18 million) live with at least one immigrant parent
- Nearly 16 million of these children were born in the U.S.
- More than 5 million children in the U.S. have at least one undocumented parent
  - 79% are U.S. citizens
  - 19% are undocumented
  - 2% are lawfully present non-citizens

From: Migration Policy Institute, Frequently Requested Statistics on Immigrants and Immigration in the United States (2016)
Case Example: Sara

Sara came to the United States from the Philippine as a child with her mother, Nicole. Neither Sara nor Nicole have lawful status here.

Sara is now 14 years old. She attends school regularly and has never had any contact with immigration authorities.

Six months ago, Sara’s mother’s new boyfriend moved into the home. Three months ago, he started making sexual advances towards Sara. Sara’s grades plummeted and she started missing school.

When the school counselor reached out to Sara, she learned what had been happening. The counselor made a Child Protective Services (CPS) report and Sara was removed from Nicole’s home and placed with an aunt, with whom Sara has a close relationship. Sara’s aunt also lacks immigration status.
Sara’s Case Plan

**Placement**


**Services**

- Eligible for state, local, or other programs?
- Community resource advocacy

**Immigration Relief**

- Awareness of immigration relief options
- Build relationships with immigration experts
Immigration Relief

U Visa? SIJS?

• Within child attorney office
• Within agency
• With immigration attorney/firm

Referrals to immigration experts

Legislative change

• See Cal. Welf. & Inst. § 10609.97 (requiring that state agency annually provides guidance on best practices and facilitates an exchange of info among counties on assisting eligible children in juvenile court cases in applying for SIJS, T visas, U visas, and VAWA self-petitions).
Case Example: Tomas & Ana

After his father was killed by a gang in Guatemala, four year-old Tomas traveled to the United States with his mother, Lizette. They were stopped at the border, then released and issued Notices to Appear in Immigration Court. An Immigration Judge subsequently issued in absentia removal orders for each of them when they did not appear for proceedings.

Tomas is now 11 years old and has a six-year-old sister, Ana, who was born in the U.S. Ana’s father left the family soon after Ana’s birth. Lizette is detained when U.S. Immigration and Customs Enforcement (ICE) raids her workplace and picks up any employee who cannot provide evidence of lawful immigration status. ICE asks if anyone needs to make plans for children in their care before being detained. Scared that Tomas could be detained as well, Lizette does not tell ICE about her children.

When Lizette fails to pick up the children from school, the school calls Lizette’s emergency contact—a family friend named Marta. Marta has agreed to take care of the children if Lizette is ever detained or deported as a “contingency plan.”

Marta begins caring for Ana and Tomas but quickly becomes overwhelmed because she has her own children and has started serving as a contingency caregiver for one other child as well. She tries to find Lizette in immigration detention but cannot track her down. Ultimately, Marta calls CPS and asks the agency to place Ana and Tomas in foster care while their mother is in immigration detention.
Tomas & Ana’s Case Plan

Permanency plan
- Reunification with mother in U.S. or in Guatemala
- Support from consulate and other providers
- ICE Custody Programs Division

Services
- Trauma of sudden separation from mother, possible removal from caregiver, departure from country of birth

Immigration Relief
- Mixed status family
ICE Resources

Detention and Removal of Alien Parents or Legal Guardians
https://www.ice.gov/parental-interest

https://locator.ice.gov – To find a detained parent, use Alien Number & country of birth or exact name, country of birth, and date of birth

Detention Reporting Information Line (DRIL):
1-888-351-4024
About the Center for Family Representation (NYC)

- Interdisciplinary: Every client is assigned an attorney and social worker.
- Holistic: Our clients can be referred in-house to our immigration, criminal defense, or housing units.
This is a novel and developing area of law, practice, and procedure

A holistic practice (or referral sources) is important now more than ever
X entered the United States from Venezuela on a tourist visa in June 2016 with her two young children ages 5 and 9, and her husband. They remained in the U.S. beyond their 6 month authorization because in Venezuela they were extorted, threatened, and assaulted by dangerous gang members, X’s husband returned to Venezuela in December 2016 to tie up loose ends with the family businesses. In August 2017, X’s husband was murdered by gang members in Venezuela.
Hypothetical Continued

X began a new relationship with Julio, a United States Citizen. She and the children moved in with Julio and he became like a stepfather. A domestic violence dynamic ensued. One night, after consuming alcohol, X and Julio fought and were both arrested.

The Administration for Children’s Services (“ACS”) took the children and placed them in non-kinship foster care and commenced dependency proceedings. X was released from jail the next morning but was picked up by Immigration and Customs Enforcement at her next criminal court hearing. Julio eventually absconded. While detained by ICE, X testified in ACS’s investigation against Julio, which resulted in a finding of neglect and order of protection against Julio.
ICE Detention

- Still have Parental Rights, including visitation, and right to participate in court hearings
- Motion for Writ of Production (to court hearing)
- ICE and ACS (the agency) have guidelines to effectuate visitation w/ children (especially if pursuant to court order of visitation)
- ICE DETAINEE LOCATOR: locator.ice.gov
- ICE NYC FIELD OFFICE: (212) 264-4213
U Visa

- Lawful temporary status for victims of “qualifying crimes”
- Eligibility for permanent residence
- Derivative benefits for qualifying relatives
  *Requires certification by law enforcement official (includes Family Court Judges and the Agency)

Parent can apply as indirect victim (even if child is USC)
Naturalization

• Requires Good Moral Character for 5 year period.
• Commission of, or conviction for unlawful acts that adversely affect reflect upon GMC
  • Orders of Protection may cause immigration to deny applications as a matter of discretion.
  • Violation of Orders of Protection is a deportable offense
  • Arrests/Orders of Protection or event the existence of the family court case may be a reason for a non-citizen to wait to file for citizenship at a later date
Protecting Parental Rights and Promoting the Best Interest of Children
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THE CONVENTION ON THE RIGHTS OF THE CHILD (THE CRC)

Article 3
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
ISS-USA: WHO WE ARE AND WHAT WE DO

Mission

ISS-USA’s mission is to mobilize a domestic and international network of legal and social work professionals to efficiently connect vulnerable children, adults and families separated by international borders to the services and support they need.
WHERE WE WORKED 2018
HOW ISS-USA CAN SUPPORT YOUR WORK ACROSS BORDERS

▪ FACILITATION OF:
  Cross border family team meetings, post-adoption reunification, or court appearances:

▪ COORDINATION OF:
  travel arrangements for relocation or visitation, home studies in non-Hague cases, protective service alerts for vulnerable children or adults, family conflict mediation, community resource surveys, reintegration and repatriation planning and services

▪ OBTAINING:
  birth, death and marriage certificates

▪ DELIVERY OF:
  legal documents, and personal correspondence

▪ PROVISION OF:
  expert technical assistance on a wide range of topics and training on topics related to international and interjurisdictional child welfare and protection
THE ROLE OF THE PARENT’S ATTORNEY

- Explain how locating the absent parent or relatives will benefit your client and the Child
- Ask your client to identify family support people
- Encourage parent to share information with the social worker
- Check to see what social worker has completed
- Ask for court review, if needed
- Talk to social worker’s supervisor, if needed
- Conduct your own search

(Courtesy of Rose Wentz)
SERVICES FOR FAMILIES SEPARATED FROM A CHILD IN THE US FOSTER CARE SYSTEM

Permanency Planning
- Family Notification
- Family Reunification
- Family Finding and Engagement
- Repatriation and Reintegration Planning and Services
- Permanency Determinations
- Post-placement services
- Counselling and other support services post-placement
FAMILY PRESERVATION: WHEN A CHILD IS INVOLVED IN THE CHILD WELFARE SYSTEM: PARENTS RIGHTS

- Parents have the right to participate in the permanency planning process.
- Parents have the right to request a guardian for their child in the U.S..
- Parents have the right to request reunification with their child in the home country.
- Parents have the right to be assessed for their capacity to parent the child.
- Parents have the right to be represented in all legal proceedings involving their children.
- Parents have the right to receive notification of a child in care.
- Parents have the right to receive all legal documents in their native language.
CONTACT US

ISS-USA Website: www.iss-usa.org

Email to ask question or refer a case: question@iss-usa.org

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QUESTIONS

I'm confused.
No wait...
Maybe I'm not.

HELP!
Court Perspective

Hon. Julie Breslow
District of Columbia Superior Court
Unaccompanied Children

- An unaccompanied child:
  - Has no lawful immigration status in the U.S.
  - Has not attained 18 years of age
  - With respect to whom— (i) there is no parent or legal guardian in the U.S.; or (ii) no parent or legal guardian in the U.S. is available to provide care and physical custody

- In FY18, over 50,000 unaccompanied children apprehended by U.S. Border Patrol at Southwest border
Special Immigrant Juvenile Status

Provides a path to lawful permanent residency for unmarried non-citizens under age 21, who are under the jurisdiction of a State juvenile court, for whom the court has made these findings:

- the child has been declared dependent on a juvenile court or the court has placed the child in the custody of a state agency, individual, or entity appointed by a state or juvenile court;
- the child’s reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
- the child’s best interest would not be served by being returned to his or her country of nationality/last habitual residence.
• In re: C.G.H., 75 A.3d 166 (2013) – SIJS motions and adoption “placement” by court


• B.R.L.F. v. Lilia Marleny Sarceno Zuniga, 2019 D.C.App. LEXIS 66 – trial court should look at SIJS factors in light most favorable to determination of abuse/neglect, with an eye to the practicalities of the situation and without excessive adherence to standards and interpretations that might normally apply in strictly local contexts
Questions?
Child Welfare & Immigration Resources

• *Immigrants in the Child Welfare System: Case Studies and Immigrant Caregivers: The Implications of Immigration Status on Foster Care Licensure*, [https://www.ambar.org/cwimmigration](https://www.ambar.org/cwimmigration)

• The Center on Immigration and Child Welfare: [https://cimmcw.org/](https://cimmcw.org/)


• HHS, Information Memorandum, “Immigration Enforcement and Child Welfare; Case Planning; Foster Care” [https://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf](https://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf)
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Immigrants in the Child Welfare System

Case Studies

May 2018

Child Welfare and Immigration Project, ABA Center on Children and the Law

Immigrant children and families in the U.S.

Of the 70 million children under age 18 in the United States, 26% (18.2 million) live with at least one immigrant parent. Many of the U.S. and foreign-born children live in families with members who have mixed status—

• some adults and/or children are U.S. citizens,
• others are Lawful Permanent Residents or hold other types of lawful status through work and other visas,
• others have temporary status, and
• others lack lawful status (also known as being an “undocumented immigrant”).

Growing agency and court involvement

Given these numbers, it is not surprising that child welfare agencies and juvenile courts are becoming increasingly involved with immigrant families—particularly as recent immigration enforcement efforts have created growing pressures for families and communities. When immigrant adults and children interact with the child welfare system, their attorneys and advocates should know how best to address their clients’ needs.

A need for guidance

How parents, children, and caregivers are affected by immigration law and procedure may seem daunting to child welfare and other professionals at the state and local levels. This guide is intended to help child welfare professionals feel less overwhelmed by describing common situations and providing guidance through issues where there may be areas of intersection between child welfare and immigration law.

The following hypothetical—but realistic—child welfare cases are followed by questions for attorneys, caseworkers, judges, and others to consider and issues to spot about the impact of the client’s immigration status on involvement with the child welfare system. Though these case examples address many different crossover issues, the list is not comprehensive.

These case studies highlight forms of immigration relief that may help the youth and children involved, but they do not provide full details of the conditions of eligibility or related benefits and risks. In addition to identifying and advocating for their clients’ goals and priorities, attorneys for all parties in child welfare proceedings should seek input from immigration attorneys on possibilities for immigration relief. Child welfare agencies can develop procedures for appropriate eligibility screening of immigrant clients for relief, and either hire immigration law experts on staff or develop agreements with immigration legal services providers to refer parents, youth, children, and caregivers when immigration relief is needed.
## Overarching principles

The following principles apply in all cases and may be relevant to multiple scenarios. As a result, we have not repeated them in each instance, but have instead reflected them here as overarching principles to keep in mind in all child welfare cases that may involve immigration.

✔ Immigration-related procedures and processes, including grounds for deportation and forms of humanitarian relief are governed by federal law. Child welfare and family law decisions are governed primarily (although not exclusively) by state law.

✔ The Vienna Convention requires child welfare agencies to inform the relevant foreign consulate when any foreign national child comes into state custody.² (See, e.g., Cases One, Two, Three, and Four) Many child welfare agencies and courts have Memoranda of Understanding with foreign consulates to facilitate this notification process.³

✔ Any child protection agency that receives federal funding is prohibited from discriminating against parents or others based on their national origin. This includes discrimination based on limited English language proficiency.⁴

✔ Federal law does not require child protective workers to contact immigration enforcement authorities when they encounter individuals without authorized immigration status.

✔ Immigration detention or deportation do not alone constitute grounds for termination of parental rights in child welfare proceedings.

✔ Parents who lack lawful immigration status have the same constitutional rights as U.S. Citizen parents in child welfare proceedings.

✔ Parents are entitled to participate in hearings while in detention or if they live abroad. Similarly, parents are entitled to reasonable efforts that support reunification goals even if they do not live in the United States.

✔ Federal law does not require foster parents to have lawful immigration status. State laws and requirements vary.

✔ Some states have explicit statutory or policy exceptions to federal and state timeliness requirements regarding termination of parental rights when cases involve a parent who has been detained or deported through immigration enforcement. Even in states without articulated exceptions, child, parent, and agency attorneys can advocate for such exceptions in individual cases.

### Case List

1. **Sara and Nicole:** A child who lacks immigration status is experiencing abuse in the home by a nonparent.

2. **Lizette, Tomas and Ana:** A mother who lacks immigration status is detained by immigration enforcement authorities and fears separation from her son, who was born in Guatemala, and her U.S. Citizen daughter.

3. **Marco:** A child who arrived in the United States as an unaccompanied minor becomes homeless after his sponsor placement with relatives falls through.

4. **Victor and Christopher:** A child who lacks immigration status suffers from neglect at home while residing with his father, who is also undocumented.

5. **Fatima and Ami:** The mother of a U.S. Citizen child is held in immigration detention and faces possible deportation from the United States.

6. **Ade, Abiola and Emmanuel:** A father in a foreign country seeks reunification with his child after the baby is removed from his mother in the United States.

7. **Jennifer:** A mother with deferred action experiences domestic violence in her home but is scared to contact authorities.

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The Annie E. Casey Foundation supported creation of this resource. Several case examples are based on a presentation by Heidi Altman, National Immigration Law Center; Randi Mandelbaum, Rutgers Law School Child Advocacy Clinic; Elizabeth Thornton; and Abigail Trillin, Legal Services for Children, offered as part of the ABA Center on Children and the Law’s Preconference on the Intersection of Immigration and Child Welfare Law.
Case 1: Sara and Nicole

A child who lacks immigration status is experiencing abuse in the home by a nonparent.

Sara came to the United States from the Philippines as a child with her mother, Nicole. Neither Sara nor Nicole have legal status here. Sara is now 14 years old. She attends school regularly and has never had any contact with immigration authorities. Six months ago, Sara’s mother’s new boyfriend moved into the home. Three months ago, he started making sexual advances towards Sara. Sara’s grades plummeted and she started missing school. When the school counselor reached out to Sara, she learned what had been happening. The counselor made a Child Protective Services (CPS) report and Sara was removed from Nicole’s home and placed with an aunt, with whom Sara has a close relationship. Sara’s aunt also lacks immigration status.

Issues to consider

Child Welfare Agency Involvement
Should the child welfare agency get involved?

• The child welfare agency has full responsibility to make sure Sara is safe, and to provide needed supports and services no matter the immigration status of Sara or her mother.

Foster Care Placement
How might immigration status impact Sara’s placement?

• Sara’s status: Sara’s lack of immigration status should not affect her foster care placement. The state would not be able to receive Title IV-E federal reimbursement for foster care maintenance costs, however, and would need to support the placement with state or local funds.

• Her aunt’s status: Although federal law does not require immigration status as a prerequisite for foster care licensure, state policy and law vary on this issue. As a result, the aunt’s eligibility to become a licensed foster parent depends on where she lives. In jurisdictions that exclude caregivers without immigration status from being certified as foster parents, the attorney for the child, agency, or parent could seek a waiver of those rules, or advocate for a nonformal foster care placement with Sara’s aunt and help her pursue other financial support to stabilize the placement.5

Permanency Planning
How might immigration status impact reunification with her mother?

• Nicole’s status: To achieve safe reunification, Nicole’s boyfriend likely will need to leave the home and not be involved in Sara’s life. It is possible Nicole is dependent on the boyfriend for income, especially because she likely lacks work authorization. This means she may need to find another way to support Sara in her home. If there are any other safety concerns, Nicole’s eligibility for federally funded services as part of a reunification plan may be restricted by her lack of lawful immigration status. The parent attorney and child welfare agency should seek services that are available to support individuals who lack immigration status.
• Sara’s status: Sara may benefit from counseling and other services; the agency will need to identify services for which Sara is eligible as a youth without lawful status.

**Immigration Relief**

What type of immigration relief might Sara and her mother qualify for?

• **U Visa:** If Sara or Nicole assists with the investigation or criminal prosecution of Nicole’s boyfriend, one or both of them may be eligible for a U Visa, which is for immigrants who are victims of crimes (and their immediate family members) who have suffered substantial mental or physical abuse and are willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity. The child welfare agency may play a role by signing the certification needed as part of a person’s U Visa application process.

• **Special Immigrant Juvenile Status (SIJS):** Special Immigrant Juvenile classification allows certain children who have been subject to state court proceedings the ability to seek lawful permanent residence (i.e., a green card) in the United States. In this case, if the juvenile court finds that Sara’s reunification with either Nicole or her father, who may be in the Philippines, is not viable due to neglect, abuse, abandonment, or a similar basis in state law, and determines it is not in Sara’s best interest to return to the Philippines, then Sara could apply for SIJS through the federal government. If the father is identified as the offending parent (e.g., as having abandoned Sara) Sara may be able to return to her mother’s home. If Nicole is identified as the offending parent for SIJS predicate findings, the juvenile court would need to find reunification with Nicole “not viable,” which would affect the outcome of Sara’s permanency plan. SIJS does not allow family members to be included in the petition as derivative beneficiaries. Additionally, if Sara were eventually to obtain Lawful Permanent Resident status through SIJ findings, she could never sponsor a parent for lawful status (though she could sponsor other relatives).

• Sara and Nicole should be screened for immigration relief options as soon as possible, as those procedures may take months or even years to resolve, and include age limits (in the case of SIJS) and deadlines.

• If Sara or Nicole becomes involved in immigration removal proceedings, other options for relief may apply.

**Education**

Can Sara stay in her same school even if placed with her aunt out of the school boundary?

• Sara is legally entitled to attend public school even though she lacks immigration status. That entitlement does not change based on moving to a new school district.

• Unless it is in her best interests to change schools, the presumption is that Sara should remain in her current school to avoid further disruption and instability. Any education decisions should comply with federal, state, and agency rules about the education of youth in foster care.
Case 2: Lizette, Tomas and Ana

A mother who lacks immigration status is detained by immigration enforcement authorities and fears separation from her son, who was born in Guatemala, and her U.S. citizen daughter.

After her husband was killed by a gang in Guatemala, Lizette traveled to the United States with her four-year-old son, Tomas. She and Tomas were stopped at the border, then released and issued Notices to Appear in Immigration Court. An Immigration Judge subsequently issued *in absentia* removal orders for each of them when they did not appear for proceedings.

Tomas is now 11 years old, and has a six-year-old sister, Ana, who was born in the United States, and whose father left the family soon after Ana’s birth. Lizette is detained when U.S. Immigration and Customs Enforcement (ICE) raids her workplace and picks up any employee who cannot provide evidence of lawful immigration status. ICE asks if anyone needs to make plans for children in their care before being detained. Scared that Tomas could be detained as well, Lizette does not tell ICE about her children.

When Lizette fails to pick up the children from school, the school calls Lizette’s emergency contact—a family friend named Marta. Marta, also from Guatemala and a Lawful Permanent Resident (LPR), has agreed to take care of the children if Lizette is ever detained or deported as a “contingency plan.” Marta begins caring for Ana and Tomas but quickly becomes overwhelmed because she has her own children and has started serving as a contingency caregiver for one other child as well. She tries to find Lizette in immigration detention but cannot track her down. Ultimately, Marta calls CPS and asks the agency to place Ana and Tomas in foster care while their mother is in immigration detention.

**Issues to consider**

**Child Welfare Agency Involvement**

Should the child welfare agency get involved?

- Many parents without immigration status create “contingency plans” or safety plans of varied formality to provide for the immediate care of minor children in case the parents are detained and/or deported. These contingency plans are often created with a relative or family friend whom the child knows and who may or may not have lawful status in the United States. Child welfare agencies need then only become involved if the caregiving arrangement with the selected adult disrupts, as in the case with Marta. If ICE contacts CPS at the time of a parent’s detention, CPS should ask the child and parent about any pre-planned contingency plan and either facilitate the plan or explore the named caregiver as a kinship caregiver resource, if foster care placement is needed.

**Foster Care Placement**

How might immigration status affect the children’s placement?

- If, after Marta reaches out, the child welfare agency chooses to file a petition against Lizette for failing to provide care and control and takes the children into state custody, Marta could be explored as a nonrelative kinship placement resource for the children. As a result, she could have better access to financial support for caring for Tomas and Ana within the foster care system. There are risks to this approach, however, because Lizette would have substantially less control of what happens with her children and Marta could be subjecting other children in her care to CPS involvement unnecessarily.
Marta or other kinship resources may be reluctant to engage with government agencies because of experiences in their native countries or of anxieties about treatment of others in the United States. There are also sensitivities in this case because Tomas has a pending removal order issued against him. The caseworker should build a trusting relationship with these individuals, provide any needed service referrals to organizations known within and trusted by the local immigrant community, and recognize the increased vulnerabilities of immigrants, even those with lawful status.

**Permanency Planning**

How might immigration status impact the case plan for Lizette, Tomas, and Ana?

- If a dependency case is filed, the agency should include Lizette in case planning while she is in detention. To locate where she is being held, the caseworker can visit [https://locator.ice.gov](https://locator.ice.gov). (Lizette’s Alien Number or “A-Number” and country of birth, or exact name, country of birth, and date of birth are needed to perform a search.) The caseworker, agency attorney, and/or Lizette’s attorney then can reach out to the appropriate ICE Field Office Director to coordinate Lizette’s involvement in agency meetings and court hearings, whether in person or by video or conference call.

- Lizette should be appointed an attorney for the dependency case as soon as possible, and that person or the caseworker can also make a referral to an immigration attorney. Both attorneys could advocate for Lizette’s release, or at least for her detention close to the children and the dependency court. An immigration attorney also could pursue any relief options available before Lizette is deported, which might allow the children to return to her care safely in the United States.

- If Lizette is removed and requests that her children accompany her as part of a reunification plan, several options exist.12
  - Because Tomas is also subject to a removal order, ICE may arrange for him to accompany his mother on the trip back to Guatemala and pay for their tickets on a commercial flight. ICE would not necessarily provide for Ana’s transportation in the same way, because she is a U.S. Citizen. The Guatemalan foreign consulate may be able to support Ana’s transfer (or that of both children) to join her mother in Guatemala, logistically and even financially. Additionally, the agency can facilitate an easier transfer with staff accompanying Ana and Tomas on the trip there, if they cannot travel with their mother.

- Though no concerns about Lizette’s parental fitness have been raised in the past, if the court or agency wants additional information about her home situation in Guatemala, requests for a home study can be made through an agency in Guatemala or an organization such as International Social Services.13

**Immigration Relief**

- Several options may be available to Lizette and Tomas for trying to contest removal to Guatemala. Those options will depend on many different factors and an immigration attorney should be consulted as early in the case as possible to identify potential defenses to removal based on their factual circumstances.
Case 3: Marco

A child who arrived in the United States as an unaccompanied minor becomes homeless after his sponsor placement with relatives falls through.

Marco, who just turned 17, came from Honduras fleeing gang violence approximately one year ago. He had been living on his own for several years, mostly on the street. He has never known his father and his mother died three years ago. He was apprehended at the border, transferred to a shelter operated by a grantee of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) shelter, and placed in deportation (removal) proceedings before the Immigration Court.

At the ORR-funded shelter, Marco shared the name of an uncle who he had not seen in many years. The uncle agreed to be Marco’s sponsor and Marco was released to the uncle and his family. As is standard with ORR sponsor arrangements, Marco’s uncle did not have a formal legal order of custody or guardianship. Although he helped Marco enroll in school, soon after Marco’s arrival, it became clear the uncle did not have space for Marco or a desire to care for him.

Marco began couch surfing with different friends he met at school and sometimes sleeping outside or in an area youth shelter. One of the staff at the shelter learned about Marco’s background and contacted CPS to report that he should be taken into care. The CPS hotline worker suggested that perhaps he could be “sent back” to the ORR shelter.

Issues to consider

Child Welfare Agency Involvement
Should CPS become involved or is this a federal matter?
• Although Marco has a pending immigration case, because he is homeless and his sponsor placement has fallen through, the question of current child welfare involvement is a local one that needs to be handled by the state and local authorities. The agency could file a petition asserting that Marco’s uncle is not providing proper care and custody in his current situation and/or, depending on the underlying circumstances, alleging abandonment, abuse, or neglect by Marco’s parents in Honduras. In very rare circumstances, ORR may reassume custody if Marco has become a danger to himself or to others.

Foster Care Placement
What are Marco’s placement options?
• Marco likely needs a foster care placement where he can live safely and also be supported in processing the trauma of his experiences in Honduras and his travel to the United States.

Permanency Planning
What should Marco’s permanency plan be?
• Whether Marco can reunify with his uncle depends on whether Marco wants to live with the uncle and his family and whether the uncle will welcome him back. The agency and Marco’s attorney should explore other placement options and permanency goals including Another Planned Permanency Living Arrangement (APPLA).
• It is important to help Marco establish meaningful positive connections with adults and gain support to make the transition to adulthood. Marco’s attorney and caseworker should explore available housing and education opportunities at the local, state, and federal levels.\textsuperscript{14}

**Immigration Relief**

What type of immigration relief might Marco qualify for?

• Marco may be eligible for Special Immigrant Juvenile Status (SIJS — See Case Example One) because of his abandonment by both parents (in some states, death of a parent constitutes “abandonment” or a “similar basis to abandonment”) and his inability to reunify with either of them. The SIJ program was originally created to provide immigration status to eligible youth placed in “long-term foster care,” though the terms of eligibility include other youth now. His immigration attorney should also explore whether Marco could qualify for asylum based on fear of persecution in Honduras.

• Because he is about to turn 18, a predicate order from the state court for his SIJS application should be pursued quickly. In some states, state court jurisdiction terminates at age 18, while in others it continues until 19, 20, or 21. At times, this extension of jurisdiction is connected to an extension of foster care beyond age 18. However, some jurisdictions permit jurisdiction to be extended at the court’s discretion if it is in the best interest of the child.
Case 4: Victor and Christopher

A child who lacks immigration status suffers from neglect at home while residing with his father, who also lacks status.

Victor and his four-year-old son Christopher fled El Salvador to the United States in 2015 and crossed the border together without inspection. Victor decided to flee because his wife (Christopher's mother) had been killed in an attack on a bus while coming home from work and he felt unsafe trying to raise his son there.

In the United States, Victor suffered from depression and PTSD. Initially, he was able to work as a day laborer and found day care for Christopher. Because of his depression, however, Victor eventually became unable to work and he has struggled to care for his young son.

A caregiver at Christopher's day care noticed that Christopher was frequently ill and hungry. Christopher also has asthma, which appeared to be untreated. She hesitated to contact CPS, however, given Victor and Christopher's lack of immigration status and because she was not sure CPS would have many services to assist non-English speakers.

Issues to consider

Child Welfare Agency Involvement
Should CPS become involved?

- Victor and Christopher's lack of immigration status is not a reason for the agency to remain uninvolved, especially if agency staff can help establish a prevention plan for Victor and Christopher. Without support, Christopher is at risk of maltreatment.
- The agency should seek to help Victor access services to stabilize his life and Christopher's. If eligibility rules for certain services (e.g., health care, mental health, employment, housing) exclude participants who lack lawful immigration status, the agency may need to explore other options of providing the family with needed help through local community groups that may have greater access to Spanish-speaking members.

Foster Care Placement
If foster care does become necessary, how might immigration status impact Christopher's placement?

- Christopher's lack of immigration status should not affect his foster care placement even though the state would not be able to receive Title IV-E federal reimbursement for foster care maintenance costs.

Permanency Planning
How might immigration status impact reunification with Victor?

- If Christopher is placed into foster care, Victor's lack of immigration status would not be a lawful basis upon which to delay reunification. To achieve safe reunification, however, Victor would likely need help for his own mental health challenges and his eligibility for services may be restricted by his immigration status.
- Christopher will also benefit from health care and other services tailored to his age
and language abilities; the agency will need to identify services for which he is eligible as a youth without lawful status.

**Immigration Relief**
What type of immigration relief might Victor and Christopher qualify for?

- Christopher may be eligible for SIJS based on abandonment by his mother; in some states death qualifies as abandonment. (See the Case Study One for details on SIJS.)
- Victor may qualify for asylum depending on the circumstances surrounding his wife's death and other threats he may have experienced in his home country.\(^\text{15}\)
Fatima and Ami

The mother of a U.S. Citizen child is held in immigration detention and faces possible deportation from the United States.

Fatima is originally from Haiti and has lived in the United States for 20 years. She is a Lawful Permanent Resident (LPR) of the United States (green card holder) who has a 10-year-old U.S. Citizen daughter named Ami. When Ami was eight, Fatima’s husband (Ami’s father) died and Fatima was left to support the family. In her job as a maintenance worker at a local office building she has not been able to earn enough to support her family, however, and she has begun to fall short on her rent.

Desperate, one night she stole a laptop from the office building to sell it. Caught on surveillance video, she was arrested and subsequently convicted of theft and sentenced to one year in jail. Though her sentence was suspended in exchange for three years probation, her conviction constituted an “aggravated felony,” which can result in LPRs losing their immigration status. When the police arrested Fatima at her home they called CPS to take custody of Ami. Ami told CPS she had never been mistreated by her mother. She said she has an aunt who might be willing to care for her but she did not have her number.

Following her criminal conviction, Fatima was put into removal proceedings and transferred to immigration detention. Fatima had never imagined she could be arrested or face deportation and had not designated a potential guardian for Ami.

**Issues to consider**

**Child Welfare Agency Involvement**

**Should CPS become involved?**

- Because there were no allegations of abuse or neglect, it may have been possible to prevent unnecessary CPS involvement if Fatima had had an opportunity to call a substitute caregiver who could have come for Ami when she was arrested. Many immigrant families who fear the possibility of sudden detention by ICE have created contingency plans for this kind of situation. Once Ami did come into CPS care, the agency was required to notify adult relatives of Ami’s placement, so the caseworker should identify, reach out to, and explore the aunt as a placement resource. If the aunt is also Haitian, the Haitian Consulate may be able to help locate Ami’s aunt in the United States.

**Foster Care Placement**

If foster care becomes necessary, how might immigration status impact Ami’s placement?

- Because Ami is a U.S. Citizen, immigration status is not relevant to her own placement. If CPS seeks to maintain her in child welfare custody and place her in the home of a relative, however, that relative’s immigration status may have an impact on whether the relative can become a licensed foster parent and receive corresponding support from the state. If Ami enters foster care but still wants to live with the originally suggested aunt, her attorney should follow up on the agency’s identification and notification to the aunt and advocate for Ami’s placement with her.

- Placement considerations may need to evolve as more is learned about Fatima’s detention and potential removal to Haiti.
• Ami’s attorney should talk to Ami about options for visiting her mother in detention and reunifying with her mother in Haiti if she is deported there.

• Immigration status will also impact communication with Fatima insofar as she will need to be contacted through the detention facility. Fatima’s attorney and the case-worker should try to meet with her in person and engage her in case planning to the extent possible. At minimum, the attorney could request that Fatima be held in a location near the active child welfare case so Ami could visit her mother and Fatima could participate in court hearings and agency meetings in person or remotely.¹⁷

Permanency Planning
What should Ami’s permanency plan be?

• The permanency goal should be reunification. There are no underlying allegations of maltreatment and immigration detention, deportation, residence outside the United States, and another country’s standard of living are not alone grounds to terminate parental rights.

• While in immigration detention, Fatima retains her parental rights and she should be represented by counsel in the child welfare proceeding and should have an opportunity to participate. To locate where she is being held in immigration custody, the caseworker and Fatima’s attorney can visit https://locator.ice.gov. (Fatima’s Alien Number or “A-Number” and country of birth or exact name, country of birth, and date of birth are needed to perform a search.) The caseworker, agency attorney, and/or Fatima’s attorney then can reach out to the appropriate ICE Field Office Director to coordinate Fatima’s involvement in agency meetings and court hearings in person or by video or conference call.

• Prolonged detention can impede a parent’s engagement in reunification efforts. The agency should consider requesting, and Fatima’s attorney should advocate for, alternatives to seeking a termination of Fatima’s parental rights if there is a risk that Ami might remain in foster care for 15 of 22 months.¹⁸ That delay could take the form of the court’s extension of the reunification period beyond 15 months or as classification of Fatima’s detention as a compelling reason why terminating Fatima’s rights would not be in Ami’s best interest.¹⁹

• If Fatima is removed to Haiti and seeks to have Ami reunify with her there, then the agency would need to develop a realistic reunification plan. If a home study is required, the agency could seek help from organizations such as International Social Services, which can facilitate noncustodial parent/relative finding services, home studies, and more in foreign countries. The Haitian Consulate could also provide information on Ami’s eligibility for citizenship in Haiti (which may be necessary for accessing school and other public services there) and help facilitate Ami’s transportation to Haiti for visits and reunification.

• Fatima’s attorney should remain in contact with her in Haiti, continue to advocate for Fatima’s remote participation in court hearings and agency meetings and, if needed, seek an additional extension of the reunification period.

Immigration Relief

• As a U.S. Citizen, Ami does not need any immigration relief. As an LPR convicted of a removable offense, several options may be available to Fatima for trying to contest her removal to Haiti. Those options will depend on many different factors and an immigration attorney should be consulted as early in the case as possible to identify potential defenses to removal based on her factual circumstances.
Ade and his wife Abiola live in Nigeria. When Abiola was pregnant, she traveled to the United States to visit her sister and gave birth to Emmanuel in the United States. Four months later, a CPS report from hospital staff led to identification of Abiola’s substance abuse addiction and neglect of the baby; Emmanuel was placed in foster care. Ade initially supported the plan to reunify Emmanuel with Abiola. He also attempted to secure a visa to visit the United States from Nigeria so he could be with his son. After his visa request was denied, he asked that the child welfare agency arrange for Emmanuel’s travel to Nigeria to his care. He maintains regular phone and email contact with the caseworker, seeks help participating in court hearings from the Foreign Consulate of Nigeria, and provides contact information for relatives in the U.S. who may be placement options. The foster parents have indicated they are interested in adopting Emmanuel and have asserted it is in his best interest to remain in the United States. After seven months, the agency petitions to terminate Abiola’s parental rights for failure to pursue any components of her case plan.

**Issues to consider**

### Child Welfare Agency Involvement

**How should the agency and others involve the family?**

- Agency involvement should not be affected by Abiola’s lack of immigration status or by Ade’s residence in another country.
- The agency must explore the kinship resources Ade has provided as placement or support options.
- Cultural sensitivities should be considered in the foster care placement, and the agency should seek to engage the foster parents in a plan to facilitate communication with Emmanuel's father.

### Permanency Planning

**How might the family’s location and immigration status affect the permanency goal and case planning?**

- Reunification with Ade should be prioritized because there are no allegations of abuse, neglect, or abandonment and he has tried actively to be with his son.
- Whether or not he is named a respondent in the dependency petition, Ade should be appointed an attorney to represent his interests in that proceeding. Ade also needs to be effectively served the pleadings, according to the local jurisdiction's rules.
- The court can help Ade participate in court hearings by phone or video, making efforts to account for time zone differences and Ade’s access to the needed technology.
- Despite Ade’s residence in another country, the agency has a duty to provide reasonable efforts to reunify Ade with his son. The agency can engage him in several ways, and his attorney can support and monitor that interaction. The agency can facilitate electronic visitation with Emmanuel, so Ade can foster a relationship with his son. The caseworker can include Ade by phone in case planning and other meetings.
- If any valid concerns of Ade’s fitness as a parent exist, the agency could reach out to international organizations to explore options for a home study or social services.
Case 7: Jennifer

A mother with deferred action experiences domestic violence in her home but is scared to contact authorities.

Jennifer was born in Mexico and was brought to the United States by her parents when she was three. When Jennifer was 20, she applied for and was granted Deferred Action for Childhood Arrivals (DACA), which does not provide lawful status to undocumented immigrants but does provide work authorization and temporary protection from deportation (deferred action).20

Jennifer is now 24 and married to a Lawful Permanent Resident (green card holder) with whom she has two young children. She has worked for the same company for three years. The children’s father, George, abuses Jennifer physically, emotionally, and sexually. A neighbor calls the police after hearing an abusive incident, and the police call CPS. When interviewed by the CPS investigator, Jennifer explains that her children have never been physically harmed and that she has not sought help for herself because her deferred action is set to expire soon and cannot be renewed unless the federal government resumes the DACA program. As a result, she fears that if she contacts local authorities they will alert ICE and she will be subject to deportation. If that happens, she believes the children would be unsafe in George’s care.

Issues to consider

Child Welfare Agency Involvement

Does the agency need to become involved?

• Jennifer’s expiring deferred action is not a reason for CPS involvement. Additionally, her fear about the potential ramifications of seeking help to protect herself from domestic violence may provide a sufficient defense to any potential grounds for a dependency petition alleging she exposed her children to danger by not contacting authorities sooner.

• Jennifer should be counseled about the benefits and risks of securing a protective order against George, which can keep him away from her and provide safeguards for any contact with the children. She can also seek a custody order. These formal legal protections and arrangements can keep Jennifer and the children safe without the need for child welfare agency involvement.

Foster Care Placement

What are the children’s placement options?

• Most likely the children can remain in Jennifer’s care and do not require foster care placement. Her continued ability to provide for the children and their needs may be complicated slightly by Jennifer’s worries about work authorization and a lack of access to other support services. DACA provides access to work authorization, a social security number, and possible tax credits for low-income workers. DACA recipients do not become eligible for many public benefits, however, such as TANF. While poverty alone cannot be grounds for removing children from parents, lack of access to many of the financial and other supports that assist families in similar situations (those within the child welfare system or at risk of involvement) leaves Jennifer and her children in a more precarious situation.
Permanency Planning
If a child welfare case is initiated, what should the children's permanency plan be?

• If a child welfare petition is filed, Jennifer’s attorney should argue that George be excluded from the home and the children remain in Jennifer’s care. That way, the agency’s safety concerns can be addressed without unnecessarily removing the children or uprooting them and Jennifer from their home.

Immigration Relief
What type of immigration relief may Jennifer or the children qualify for?

• Since George is a Lawful Permanent Resident, Jennifer may be eligible for immigration relief under the Violence Against Women Act (VAWA). Her children were born in the United States so are U.S. citizens. But immigrant children in similar circumstances could access derivative relief or themselves qualify for VAWA, or possibly be eligible for SIJS based on maltreatment by their abusive parent.

Endnotes


3. There may be instances where notification is not in the child or parent's interest because there are sensitivities surrounding an application for asylum or other request for immigration relief. As a result, different stakeholders should consider whether notifying the Foreign Consulate may compromise the child or parent's interests, including when individuals are seeking asylum and alleging they fear harm if returned to their home country.


5. For information about the eligibility of kin caregivers without immigration status to become certified foster parents, see Immigrant Caregivers: The Implications of Immigration Status on Foster Care Licensure (ABA Center on Children and the Law 2017) at www.ambar.org/cwimmigration.


7. The U.S. Department of Homeland Security has indicated that child and adult protective services agencies may sign the certifications needed for the U Visa application process. See Dept. of Homeland Security U Visa Certification Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, at p. 9; see also 8 C.F.R. § 214.14(a)(2) (defining “certifying agency” to include child protective services).

8. See supra text and resources accompanying note 6.


10. For more information about laws that support children's access to the same schools while in foster care,
visit the Legal Center for Foster care and Education at http://www.fostercareandeducation.org/.


12. In 2018, ICE issued Detention and Removal of Alien Parents or Legal Guardians. This new directive, dated August 2017 and made public April 2018, provides guidance on ICE management of cases involving the detention of parents and legal guardians of minor children. Touching on a few topics, the directive addresses accommodating the coordination of care and travel for minor children by a parent who will be deported and facilitating detained parents’ involvement in child welfare or custody proceedings. The directive is available at https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf and supersedes the 2013 ICE directive entitled Facilitating Parental Interests in the Court of Civil Immigration Enforcement Activities.

13. For more information, see http://www.iss-usa.org/.

14. Immigrant and other youth who experience homelessness in certain states can also learn about their rights and available resources from The Homeless Youth Handbook at https://www.homelessyouth.org. Additionally, in some jurisdictions, attorneys for older youth who are not involved with the child welfare agency have helped those young people access supports and services by filing a “private” dependency case or by seeking an order of non-parental custody.

15. For more information about asylum, see resources from ILRC: https://www.ilrc.org/u-visa-t-visa-vawa and https://www.ilrc.org/asylum.


17. For additional information about access to parents detained by ICE, see Detention and Removal of Alien Parents or Legal Guardians, supra note 12.

18. For more information about requirements regarding termination of parental rights petitions, see The Adoption and Safe Families Act of 1997 (P.L. 105-89), codified in relevant part at 42 U.S.C. 675(5) and relevant state law.

19. For example, California law not only requires that reasonable services be provided to a family after the court and agency consider the particular barriers a detained or deported parent faces in accessing services and maintaining contact with the child, but also authorizes courts to extend the reunification period for parents who have been detained or deported. See Cal. Welf. & Inst. Code §§ 361.5(a)(3)-(4), § 361.5(e)(1), 366.21(g)(2), 366.22(b).

20. For more information about Deferred Action for Childhood Arrivals and the program's status, see www.nilc.org/daca and www.ilrc.org/daca.

21. For more information about VAWA, see resources from ILRC: https://www.ilrc.org/u-visa-t-visa-vawa and https://www.ilrc.org/asylum.

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For more resources on the intersection between child welfare and immigration, visit the Child Welfare and Immigration Project website at the ABA Center on Children and the Law: https://www.americanbar.org/groups/child_law/project-areas/immigration.html

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## About ICE

The mission of U.S. Immigration and Customs Enforcement (ICE) is to promote homeland security and public safety through the enforcement of federal laws governing border control, customs, trade, and immigration.

### Enforcement Priorities

ICE prioritizes immigration enforcement to:

- **Priority 1**: persons who pose a national security threat, have been convicted of a felony or aggravated felony, convicted of a criminal street gang offense or intentionally participated in gang activity, or are apprehended attempting to unlawfully enter;
- **Priority 2**: persons convicted of three or more misdemeanors or a significant misdemeanor, who illegally entered after January 1, 2014, or significantly abused the visa or visa waiver programs;
- **Priority 3**: persons issued a final order of removal on or after January 1, 2014.

## ICE Parental Interests Directive

### What is the Parental Interests Directive?

ICE directive 11064.1: *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* outlines ICE policies and procedures concerning the placement, monitoring, accommodation, and repatriation of parents or legal guardians.

### To whom does it apply?

The Parental Interests Directive applies to parents, legal guardians, and primary caretakers of minor children.

### How is the directive relevant to families involved in the child welfare system?

The Parental Interests Directive contains several important elements related to individuals involved in both immigration court and child welfare proceedings. It requires that ICE:

- Designate a specific point of contact for parental interests matters in each ICE field office;
- Weigh whether an exercise of prosecutorial discretion is warranted;
- Refrain from making initial placement or transfers outside the area of initial apprehension if the person’s child, children, or family court or child welfare proceedings are within the area;
- Arrange for detained parents’ participation in court-proceedings, either in-person or by video or teleconferencing;
- Facilitate parent-child visitation required by the family court or child welfare authority;
- Accommodate the arrangements of parents, legal guardians, or primary caretakers who are facing pending removal for the care and travel arrangements of their children; and
- On a case-by-case basis, facilitate the return of lawfully removed persons to the United States, by granting parole for the sole purpose of participation in termination of parental rights proceedings.

Questions about prosecutorial discretion can be directed to a person’s Deportation Officer (DO) or the field point of contact for parental interests (contact information below).

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**February 2015**
Finding a Person in ICE Custody

The **Online Detainee Locator System** (ODLS) is a public system available on the internet that allows family members, legal representatives, and members of the public, to locate persons who are in ICE detention. To use the ODLS, visit: [https://www.ice.gov/locator](https://www.ice.gov/locator).

Tips for using the Online Detainee Locator System:

- The best way to search the system is to use the person’s A-Number and country of birth. The A-Number is the nine-digit identification number that is assigned to a person who applies for immigration benefits or is subject to an immigration enforcement action.
- In addition to the A-Number, you will need to input the person’s country of birth.
- If you do not have the person’s A-Number, you can search the system using the person’s first and last name and country of birth.
- The ODLS performs an “exact match” search. In order to find someone using the ODLS, you need to have the person’s A-Number or his first and last name as it appears on his detention record.

What should I do if I cannot find someone using the Online Detainee Locator System? If you cannot find someone who is in ICE custody using the ODLS, you should contact the ICE ERO field office in the area where you believe the immigration enforcement case was initiated.

What is a Deportation Officer and how do I contact him? A Deportation Officer (DO) is assigned to each detained person’s case. To contact a person’s DO, you must first contact the field office that is responsible for the facility where the detainee is located. Field offices can be contacted by phone, email, or the ERO contact form, available at: [http://www.ice.gov/exec/forms/erofaq-contact/erofaq-contact.asp](http://www.ice.gov/exec/forms/erofaq-contact/erofaq-contact.asp).

Information about Visitation

Can persons detained by ICE visit with their children, family, and caseworker? Yes, generally persons detained by ICE can visit with their children, other family members, caseworkers, and attorneys.

- Detention standards require visitation hours on weekends, and many facilities offer more extensive visiting schedules. Visitation hours vary between facilities.
- Please call ahead to determine an appropriate visitation time.
- Please arrive for your visit at least 30 minutes ahead of time for a security screening. All visitors are required to present a valid government-issued ID.
- Facilities and field offices may make arrangements to accommodate visits by family members outside of normal visiting hours.

**Parent/Child Visits**

ICE will facilitate parent-child visitation, to the extent practicable, when required by a family or dependency court or a child welfare authority **AND** documentation is provided of this requirement, including but not limited to:

- A reunification plan;
- A scheduling letter; or
- Other documentation stating the visitation required.

In New York, facilities may not allow contact visits as a matter of course. If contact visits are required by a family or dependency court or child welfare authority, please contact the field point of contact for parental interests to discuss visitation.
Points of Contact for Parental Interests

How do I contact ICE with a question about parental interests? Anyone may contact ICE on parental interests matters, including but not limited to: detained parents, legal guardians or primary caretakers of minor children in the United States; family or child welfare court officials; social workers or other child welfare authorities; immigration attorneys; family law attorneys; and other child welfare or immigration advocates.

Prior to contacting ICE headquarters about a parental interests concern or question, you should first try to resolve your request or concern at the field level through one of the field points of contact. The field points of contact for New York are:

- Jacob Antoninis; jacob.a.antoninis@ice.dhs.gov
  Area of Responsibility: New York Metropolitan Area
- Diane McConnell; Diane.McConnell@ice.dhs.gov
  Area of Responsibility: New York Metropolitan Area
- Thomas Brophy; Thomas.p.brophy@ice.dhs.gov
  Area of Responsibility: Upstate New York

Contacting ICE Headquarters

If you cannot resolve your concerns or request at the field level, you may send an email to ERO at ICE Headquarters: ERO.INFO@ice.dhs.gov. Note: Enter "Parental Interests Inquiry" into the subject line of the email.

You may also contact ICE Headquarters by calling the ICE Detention Reporting and Information Line at 1-888-351-4024 during regular business hours, 8 a.m. to 8 p.m. EST, Monday through Friday. Note: State that your request is a "Parental Interests Inquiry." Bilingual (English/Spanish) operators are available.

You may also contact the national point of contact for parental interests:

- National Parental Rights Coordinator, Andrew Lorenzen-Strait;
  Andrew.R.Lorenzen.Strait@ice.dhs.gov

ICE New York Field Offices

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<th>Field Office</th>
<th>Responsibility</th>
<th>Address</th>
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<tr>
<td>Buffalo</td>
<td>Upstate New York</td>
<td>130 Delaware Avenue, Buffalo, NY, 14202</td>
<td>(716) 843-7600</td>
<td><a href="mailto:Buffalo.Outreach@ice.dhs.gov">Buffalo.Outreach@ice.dhs.gov</a></td>
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Advisory Memorandum #3

To: Chief Administrative Judge Lawrence Marks

From: Advisory Council on Immigration Issues in Family Court

Re: Adverse Consequences to Family Court Dispositions

Date: October 27, 2017

The Advisory Council on Immigration Issues in Family Court, co-chaired by Hon. Ruben Martino, Supervising Judge, Family Court, Bronx County, and Theo Liebmann, Clinical Professor and Director of Clinical Programs, Hofstra Law School, was appointed by Chief Administrative Judge Lawrence Marks in 2015. The Council has prepared this memorandum as the third in a series of memoranda, bench aids and other documents to address the variety of immigration issues arising from Family Court proceedings. A list of the Council’s members, including the Subcommittee on Adverse Consequences, is attached as Appendix A to this memorandum.

The goal of this Advisory Memorandum is to provide guidance to New York Family Court practitioners and jurists in understanding possible adverse immigration consequences resulting from dispositions, rulings, findings and orders that are commonly issued in family court matters. The Memorandum provides an overview of the content and intended use of the Adverse Consequences Chart (Appendix B). The Memorandum also details how immigration authorities obtain access to family court case information and adjudications that can cause adverse immigration consequences for participants in family court matters.

Content and Intended Use of Adverse Consequences Chart

The Chart describes the adverse immigration consequences related to adjudications issued in many common family court proceedings, including guardianship and custody, family offense, child support, abuse and neglect and juvenile delinquency. The Chart also highlights potential adverse consequences to fingerprinting practices in family courts, and to incarcerations that result from family court contempt findings. It places adverse consequences into the following four broad categories:

1. **Deportability**: A person is rendered “deportable” if he/she was lawfully admitted to the United States or currently maintains valid U.S. immigration status (e.g. a green card holder, or a holder of a temporary student or worker visa), and is subsequently found to be in violation of a statutory ground of deportability and subject to removal from the United States.¹

2. **Inadmissibility**: A person is deemed “inadmissible” if he/she is denied the opportunity to obtain valid immigration status, or is denied permission to re-enter the U.S. following travel abroad, or is deemed to have entered the U.S. in violation of a statutory ground of exclusion (i.e., inadmissibility) and is subject to removal from the U.S.²

3. **Mandatory bars to immigration benefits or relief from removal**: A person may be permanently barred from obtaining or maintaining valid immigration status or prohibited from seeking an immigration benefit to prevent his/her removal from the U.S. if s/he has

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¹ Grounds of deportability are specified in 8 U.S.C. §1227 or section 237 of the U.S. Immigration and Nationality Act.
² Grounds of inadmissibility are specified in 8 U.S.C. §1182 or section 212 of the U.S. Immigration and Nationality Act.
admitted to certain conduct, including conduct related to alcohol abuse, controlled substances and prostitution, or has been convicted of certain crimes.

(4) Discretionary denials of immigration benefits or relief from removal: a person who is statutorily eligible to seek an immigration benefit or waiver to prevent his/her removal from the U.S. may be discretionarily denied the benefit or waiver based on conduct or convictions.³

In using the Chart, it is important to note that the adverse consequences discussed can vary depending on the individual’s immigration status; the policies and practices across different jurisdictions; and the policies and priorities adopted by the current federal government administration. Individuals should always consult with a competent immigration attorney to determine the potential for adverse immigration consequences and to identify any available options that may pertain to his or her specific case.

For attorneys, the Chart provides an overview of immigration consequences that should be considered when non-citizen clients are assessing their options in family court matters.⁴ If an attorney does not have sufficient expertise to competently provide the level of advice required, an attorney with that expertise should be consulted.⁵

For jurists, the Chart provides a general educational framework to understand immigration-related issues that may be raised by counsel or individual litigants during a family court proceeding. Since it is the role of attorneys to provide individualized legal advice to their clients, it is best practice for jurists to avoid independently engaging in any immigration-based analysis or issuing any type of warning or notification of immigration consequences.⁶ For those jurists who wish to provide general information pertaining to potential immigration consequences, a general allocution should be adopted for universal use and offered at a litigant’s initial appearance.⁷ If a general allocution is adopted, universal language should be given in all cases, and to all parties, regardless of the known or suspected immigration status of a litigant. Upon request by a litigant or the litigant’s attorney, a jurist should consider providing additional time and opportunity for the litigant or litigant’s counsel to consult with an immigration expert.

³ The Adverse Consequences Glossary (Appendix C) defines these and other immigration terms used in the Chart.
⁴ For more explicit information on the role of family court lawyers to advise clients of immigration consequences, see NEW YORK STATE INDIGENT LEGAL SERVICE STANDARDS – PARENTAL REPRESENTATION IN STATE INTERVENTION MATTERS, STANDARD H-1; NEW YORK STATE BAR ASSOCIATION STANDARDS OF MANDATED REPRESENTATION, STANDARD I-9; NEW YORK STATE BAR ASSOCIATION STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN NEW YORK CHILD PROTECTIVE, FOSTER CARE, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, STANDARD D-12; AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, STANDARDS 2, 5; AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILD WELFARE AGENCIES, STANDARD 4.
⁵ The New York State Office of Indigent Legal Services has created six Regional Immigration Assistance Centers (RIACs) responsible for providing immigration-related support to counsel providing mandated representation in criminal and family court matters throughout New York State. More information, including the location of the RIACS, is available at https://www.ils.ny.gov/content/regional-immigration-assistance-centers.
⁶ Judicial warnings of any type may interfere with the attorney client relationship by appearing to contradict an attorney’s individualized assessment of a client’s immigration risks. They may also call attention to a litigant’s immigration status. Requiring or eliciting the disclosure of a litigant’s immigration status may impose a chilling effect on securing the presence or cooperation of non-citizen litigants and witnesses. Required disclosure of the immigration status of a litigant in open court may also trigger unintended immigration consequences. Jurists should consider options (e.g., permitting an off-the-record discussion between litigants, counsel and the court at the bench, or closing the courtroom to the public and non-court law enforcement), to limit public disclosure of immigration-related matters if and when requested to do so and when it is deemed appropriate.
⁷ The following language can be considered by jurists for use at all initial appearances: I am not asking you whether or not you are a United States citizen, but if you are not, then you may wish to consider consulting with a lawyer to discuss whether this case presents any immigration-related or other type of consequence that you should be aware of before proceeding in this case. Do you understand this?
Immigration Agency Access to Family Court Case Information and Adjudications

It is not uncommon for immigration authorities to obtain family court information by requiring individuals who are applying for immigration benefits or relief from removal to produce their family court records. Individuals are frequently compelled to produce records regardless of the privacy protections afforded by the New York Family Court Act and other state regulations. In other cases, immigration authorities discover family court information automatically through data-sharing agreements between state, local and federal agencies. Descriptions of the primary methods by which immigration authorities obtain family court case information are provided below.

1. Immigration Applications

Immigration applications are the most common trigger of adverse immigration consequences. When an immigrant applies for an immigration benefit or status, such as green card or naturalization, s/he has the burden to demonstrate that s/he is admissible to the U.S. and has good moral character. Immigration adjudicators often compel applicants to divulge information about their family court cases when, for example, proof of materially supporting a child is relevant to the relief being sought; when a child does not reside with the applicant; when an applicant has had an order of protection issued against him or her; or where an applicant has been arrested for a crime involving endangering the welfare of a minor (even if the charge was dismissed). When immigrants face removal, they are also sometimes eligible to apply for relief, which will allow them to remain in the U.S. In both contexts, immigrants must answer a litany of questions under penalty of perjury about their family history and past conduct. The discretion to deny an application for a benefit or relief is extremely broad and subject to limited judicial review. Therefore, while individual immigrants may argue that family court records are private and may even refuse to present the requested information, immigration authorities will often reject these arguments and use the refusal as a basis to deny relief and support removal.

Among the questions that immigration authorities regularly require immigrants to answer, under penalty of perjury, during the course of applying for benefits or relief, are many that can prompt disclosures about an individual’s family court history, including:

- Have you ever willfully failed to pay child support?
- Have you ever been in jail?
- Have you ever knowingly committed a drug-related offense for which you have not been arrested?
- Have you ever committed, assisted in committing, or attempted to commit, a crime or offense for which you were not arrested?
- Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor, including incidents handled in juvenile court?

In response to information that is disclosed on immigration applications, immigration authorities can also make requests for further evidence, and may require immigrants to submit records from

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8 Under the Trump administration’s executive orders, access to family court information can bear special risks because undocumented immigrants who were not previously targeted for immigration enforcement are now priorities whenever they engage in conduct that “constitutes a criminal offense” or is deemed by any individual immigration officer to “pose a risk to public safety.” This wide discretion and broadly worded language suggests that any arrest or other conduct deemed “a risk” may prompt Immigration and Customs Enforcement (“ICE”) to apprehend a noncitizen, regardless of whether the conduct results in criminal prosecution and conviction.
family courts. State confidentiality and sealing laws do not prevent federal immigration authorities from asking about family court cases and requiring immigrant applicants to provide those records.

2. **New York Order of Protection Registry**

Harmful immigration consequences can also be triggered when an Order of Protection is issued by the Family Court and entered into the New York State Order of Protection Registry (“OP Registry”). As mandated by The Family Protection and Domestic Violence Intervention Act of 1994, the New York State Police maintain an OP Registry, a computerized database of active orders of protection issued by state courts for the purpose of protecting victims of domestic violence. When a protective order is created using the WebDVS software, or a protective order pursuant to Articles Four, Five, Six, Eight, or Ten of the Family Court Act is created in the Family Court UCMS computer system, data elements from the order are automatically sent to the OP registry, which is in turn linked to the FBI’s National Crime Information Center (NCIC), an electronic clearinghouse of crime data that is accessible by virtually every federal, state, and local law enforcement agency in the country including federal immigration agencies. Since federal immigration agents can access information from New York’s OP Registry via the FBI’s NCIC, immigration officers can readily determine whether an individual has an order of protection by searching their name and date of birth, or other identifying information.

When immigration officers search for protective order information through the FBI’s NCIC, they can, at a minimum, determine the name, race, and sex of the party against whom the order is brought; whether the order is temporary or final; dates of issuance and expiration; conditions of the

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9 As noted in the Chart, information from orders of protection are immigration-related triggers for several reasons. A family court finding that an individual has violated an order of protection, even a temporary one, is grounds for deportation. Even if an order is not violated, the existence of a temporary or permanent protective order can be grounds for denying an individual an immigration benefit or relief from removal. An order of protection may also prompt questions about the underlying conduct, and additional requests for family court records.

10 Per N.Y. Executive Law 221-a, the registry includes all orders of protection issued “pursuant to articles four, five, six, eight and ten of the family court act, section 530.12 of the criminal procedure law and, insofar as they involve victims of domestic violence as defined by section four hundred fifty-nine-a of the social services law, section 530.13 of the criminal procedure law and sections two hundred forty and two hundred fifty-two of the domestic relations law.”

11 The FBI's NCIC has included a “protection order file” since 1994 when Congress first required that all States, territories, and Indian tribal governments give ‘full faith and credit’ to valid protection orders issued by other jurisdictions. See 18 U.S.C. §2265(a). Protection orders included in the database include both temporary and final civil and criminal court orders issued for “the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person.” 28 U.S.C. §534.

12 Congress has given the FBI broad authority to collect and exchange information via the NCIC with authorized Federal officials and the States. 28 U.S.C. §534(a). It has also expressly granted the immigration agencies that fall under the Dep’t of Homeland Security access to information contained in the NCIC. 8 U.S.C. §1105. The various immigration agencies have had access to NCIC since the 1970s and are “indisputably NCIC's largest customer.” Michael D. Kirkpatrick, Assistant Director in Charge, FBI, Before the United States Senate Subcommittee on Immigration, Border Security (Nov. 13, 2003) available at https://archives.fbi.gov/archives/news/testimony/the-fbis-national-crime-information-center.
order; and the agency that issued the order.\textsuperscript{13} Immigration authorities can access information from New York protection orders up to five years after they expire or are cancelled.\textsuperscript{14}

Requests for protective order information can come from any of the numerous immigration agencies, including United States Citizenship and Immigration Services ("USCIS"), the agency that adjudicates applications for immigration benefits, Immigration and Customs Enforcement ("ICE"), the agency that detains and deports immigrants, and Customs and Border Protection ("CBP"), the agency that, among other things, screens individuals entering the U.S. These requests may be prompted by international travel, applications for immigration status or benefits (including Special Immigrant Juvenile Status, U nonimmigrant status, lawful permanent residence, and citizenship); or removal proceedings.

The discovery of an active or expired order of protection may prompt immigration officials to question noncitizens, request additional evidence (including family court records) from noncitizens, and cause adjudicators to deny an a noncitizen’s application for a benefit or relief from removal.\textsuperscript{15} If immigration officers learn that a court has determined an immigrant has violated a protective order, they may initiate removal proceedings.\textsuperscript{16}

3. Fingerprinting

There are three types of fingerprinting that can prompt an immigration authority or adjudicator to demand access to family court information and adjudications: a) fingerprints taken at the time of booking into a local jail; b) fingerprints taken for purposes of conducting both criminal and civil background checks; and c) fingerprints taken for purposes of adjudicating immigration applications.

a. Fingerprinting at Booking in Criminal Matters

Any time an immigrant litigant is arrested on a family court warrant or confined in connection with a contempt order, the immigrant becomes vulnerable to detection and apprehension by ICE. Fingerprints taken by local jails at booking are automatically shared with ICE via federal data-sharing.

\textsuperscript{13} The FBI’s NCIC requires this data before accepting an order of protection record from the NY OP Registry into its database. However, for any given order of protection, the NCIC may also contain other non-mandatory information including the protected party’s name, date of birth, social security number, race, and sex; the party against’s license plate, license number and vehicle identification number; physical descriptors of the party against; the citizenship and ethnicity of the party against; and service of process of information. NCIC 2000 Operation Manual, Protection Order File, 1.7 Message Field Codes and Edits. According to the New York State Police Office of Counsel, a small percentage of files are not shared with the NCIC because they do not conform to the NCIC’s data entry requirements. For a complete list of the data fields contained in the OP Registry, see NYSPIN Support Services, NYSPIN Manual, Chapter 2 Section 22 Orders of Protection File.

\textsuperscript{14} While NY Executive Law 221-a(6) requires the New York State Police to promptly remove expired orders from the OP Registry, the FBI’s NCIC maintains these orders as “inactive records” for up to five years after expiration. See NCIC 2000 Operating Manual 1.4 Record Retention Period.

\textsuperscript{15} For example, individuals applying for U nonimmigrant status and lawful permanent residence can be required to submit family court records when immigration authorities discover that the individual applicant has had an order of protection. Individuals who seek waivers of deportation before an Immigration Judge may be questioned about active orders of protection issued against them and denied relief from deportation based on their answers. At the border and other ports of entry, lawful permanent residents can also be questioned about active orders of protection. CBP agents can interrogate individuals without the presence of counsel, presenting particular risks for noncitizen travelers because admissions made to CBP agents can be used to initiate a removal proceeding or to deny re-entry into the U.S. altogether. See 8 U.S.C. 1227(a)(2)(E)(ii); Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.

If ICE gets a “match” and identifies someone who they believe is removable, the agency can notify the local jail and ask that the jail hold the individual until ICE retrieves the individual for potential civil immigration detention. This is often referred to as an ICE “detainer” or “hold.”

Fingerprint-sharing occurs in every local jail, regardless of whether or not a locality has self-identified sanctuary policies in place. In New York City, for example, local laws prevent local jails from honoring ICE “detainers” or “holds” issued by ICE. However, the information is still automatically provided to ICE, and the local policy does not prevent ICE from apprehending an immigrant once that person is released from criminal custody. In New York City and other self-identified sanctuary jurisdictions, ICE raids on homes and other areas are often triggered by an arrest and subsequent fingerprinting.

b. Fingerprinting for Background Checks in Family Court

When individuals are fingerprinted for family court related background checks, the print checks are done by New York State’s Division of Criminal Justice Services (DCJS). DCJS currently has a policy of contacting ICE whenever it runs fingerprints and discovers that an individual has a prior conviction for any misdemeanor, felony, or other offense under New York law for which they were fingerprinted, and has been previously deported from the United States. When an immigrant who falls into this category submits fingerprints to DCJS for a background check, DCJS contacts ICE. ICE can then apprehend, detain and deport the individual. Federal prosecutors can also bring criminal charges against the individual for illegal reentry into the U.S.

c. Fingerprinting for Immigration Applications

For many types of immigration benefits, including those that relate to protecting unaccompanied minors and victims of domestic violence and other crimes, USCIS requires that the immigrant applicant undergo a “biometric screening” that includes both fingerprints and digitized photographs. USCIS uses the fingerprints to check an individual’s immigration and criminal history. Fingerprints are run through immigration databases that include information about immigrants who have previously violated immigration laws. Fingerprints are also run through the FBI’s criminal database, which includes information about past arrests, criminal convictions, and any active orders of protection. The FBI database includes information about active orders of protection issued by both family and criminal courts, which it obtains through a data sharing agreement with the New York State Police. As a result, any time an immigrant applies for an immigration benefit, USCIS can access information about active family court orders of protection. Immigrant applicants are often questioned about orders of protection that surface through biometric screening, and can be denied benefits after disclosure of information about arrests that do not result in prosecution.

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17 Fingerprints taken at booking are automatically shared with NCIC. The FBI then forwards the fingerprints to ICE, which cross checks every individual’s fingerprints against its own immigration databases.
Appendix A:
Advisory Council Members and Consultants
APPENDIX A

Advisory Council on Immigration Issues in Family Court
(Oct. 2017)¹

Co-Chair:  Professor Theo Liebmann, Clinical Professor of Law and Director of Clinical Programs, Maurice A. Dean School of Law at Hofstra Univ.
Co-Chair:  Hon. Ruben Martino, Supervising Judge, Family Court, Bronx County
Counsel to the Advisory Council:  Janet Fink, Esq., Deputy Counsel, NYS Unified Court System

MEMBERS:

1. Hon. Lisa Bloch-Rodwin, Judge of the Family Court, Erie County
2. Margaret Burt, Esq., Attorney, Pittsford, NY
3. Myra Elgabry, Esq., Director, Immigrant Rights Project, Lawyers for Children, New York, NY
4. Anne Erickson, Esq., President and CEO, Empire Justice Center, Albany, NY
5. Hon. Alison Hamanjian, Judge of the Criminal Court, Kings County
6. Terry Lawson, Esq., Director, Family and Immigration Unit, Bronx Legal Services, Bronx, NY
7. * Joanne Macri, Esq., Director of Regional Initiatives, NYS Office of Indigent Legal Services, Albany, NY
8. Hon. Edwina Mendelson, Acting Supreme Court Justice, New York, NY (emeritus status)
9. * Andrea Panjwani, Esq., Managing Attorney, My Sister’s Place, White Plains, NY
10. Carmen Rey, Esq., Deputy Director, Immigration Intervention Project, Sanctuary for Families, New York, NY
11. Professor Sara Rogerson, Esq., Director, Immigration law Clinic and Law Clinic and Justice Center, Albany Law School
12. Wedade Abdallah, Esq., Assistant Public Defender, Legal Aid Society of Rochester
15. Eve Stotland, Esq., Director, Legal Services Center, The Door, New York, NY

¹ Affiliations are listed for identification purposes only. Members whose names are marked with an asterisk (*), participated in the Adverse Consequences Subcommittee, which was primarily responsible for the preparation of this guidance document.
Appendix B:
Adverse Consequences Chart
<table>
<thead>
<tr>
<th>Type of Order or Ruling</th>
<th>Deportability</th>
<th>Inadmissibility</th>
<th>Statutory Bar on Immigration Benefit or Relief from Removal</th>
<th>Discretionary Denial of Immigration Benefit or Relief from Removal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ARTICLE 3 – JUVENILE DELINQUENCY</strong></td>
<td>Admission to acts that constitute drug abuse or addiction is a ground for deportation.</td>
<td>Admission or finding related to acts that constitute a controlled substance offense or to acts that give &quot;reason to believe&quot; that the individual is a drug trafficker can trigger inadmissibility.</td>
<td>Admissions or finding related to acts that constitute a controlled substance offense or to acts that give &quot;reason to believe&quot; that the individual is a drug trafficker can trigger inadmissibility.</td>
<td>Adjudications related to drugs can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>Drug Related Adjudications</td>
<td>None.</td>
<td>None.</td>
<td>None.</td>
<td>Evidence of gang membership or gang-related conduct can bar an individual from receiving certain immigration benefits.</td>
</tr>
<tr>
<td>Prostitution Related Adjudications</td>
<td>None.</td>
<td>Administration or finding related to acts that constitute prostitution or other &quot;commercialized vice&quot; can trigger inadmissibility.</td>
<td>Admissions or finding related to acts that constitute prostitution or other &quot;commercialized vice&quot; can bar an individual from receiving certain immigration benefits.</td>
<td>Evidence of gang membership or gang-related conduct can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>Gang Related Adjudications</td>
<td>None.</td>
<td>None.</td>
<td>None.</td>
<td>Evidence of gang membership or gang-related conduct can bar an individual from receiving certain immigration benefits.</td>
</tr>
<tr>
<td>Other Adjudications</td>
<td>None.</td>
<td>Admission to acts that constitute a &quot;crime involving moral turpitude&quot; can trigger inadmissibility.</td>
<td>Admission to acts that constitute a &quot;crime involving moral turpitude&quot; can bar an individual from receiving certain immigration benefits.</td>
<td>Evidence of gang membership or gang-related conduct can bar an individual from receiving certain immigration benefits.</td>
</tr>
<tr>
<td>Order of Protection (O/P)</td>
<td>None.</td>
<td>Admission or finding related to acts prompting the issuance of a protective order can be considered a &quot;crime involving moral turpitude&quot; and trigger inadmissibility.</td>
<td>Admission or finding related to acts underlying the issuance of a protective order can bar an individual from receiving certain immigration benefits.</td>
<td>Admission to acts prompting the issuance of a protective order can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>Violation of Order of Protection</td>
<td>An Article 3 court finding that a juvenile has violated a temporary or permanent O/P is a ground for deportation.</td>
<td>Admission or finding related to acts underlying the violation can be considered a &quot;crime involving moral turpitude&quot; and trigger inadmissibility.</td>
<td>Admission or finding related to acts underlying the violation can bar an individual from receiving certain immigration benefits.</td>
<td>Admission to acts underlying the violation can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td><strong>ARTICLE 4 – CHILD SUPPORT</strong></td>
<td>Deportability</td>
<td>Inadmissibility</td>
<td>Statutory Bar on Immigration Benefit or Relief from Removal</td>
<td>Discretionary Denial of Immigration Benefit or Relief from Removal</td>
</tr>
<tr>
<td>Willful Failure to Support</td>
<td>None.</td>
<td>None.</td>
<td>None.</td>
<td>The willful failure to provide child support is a statutory bar to naturalization if it occurs in the five years leading up to the naturalization application.</td>
</tr>
</tbody>
</table>

Note that immigration policies and practices are subject to change, especially during a new federal administration. This chart is subject to revision to reflect those changes. In addition, adverse consequences can depend upon an individual’s immigration status, and immigration agency practices can vary across different jurisdictions. Individuals should always consult with a competent immigration attorney to determine the possible adverse consequences in his or her specific case.
<p>| Use of Falsified Documents | None. | Admission or finding related to acts that constitute making false statements to a governmental authority can trigger inadmissibility. | Admission or finding related to acts that constitute making false statements to a governmental authority can bar an individual from receiving certain benefits. | Admission or finding related to acts that constitute making false statements to a governmental authority can be a significant factor in discretionary denial. |
| ARTICLE 6 – CUSTODY, GUARDIANSHIP, ADOPTION, TPR | Deportability | Inadmissibility | Statutory Bar on Immigration Benefit or Relief from Removal | Discretionary Denial of Immigration Benefit or Relief from Removal |
| Termination of Parental Rights | None. | None. | Children cannot derive immigration benefits through a parent once parental rights are terminated. Similarly, parents cannot derive benefits from their children once rights are terminated. | Immigration benefits can be denied in discretion to a parent based on a termination of parental rights, particularly if the underlying reason for the termination is abuse or neglect of a child. |
| ARTICLE 8 – FAMILY OFFENSE | Deportability | Inadmissibility | Statutory Bar on Immigration Benefit or Relief from Removal | Discretionary Denial of Immigration Benefit or Relief from Removal |
| Temporary O/P | None. | Statements or testimony made about conduct underlying an O/P may be deemed admissions for immigration purposes and can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps. | The existence of an active O/P between spouses can bar either party from obtaining benefits based on the marital relationship (with the exception of benefits for survivors of domestic violence) | The existence of an active O/P can be a significant factor in discretionary denial. An expired O/P may also be considered. |
| Permanent O/P | None. | Statements or testimony made about conduct underlying an O/P can be deemed admissions for immigration purposes and can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps. | The existence of an active O/P between spouses can bar either party from obtaining benefits based on the marital relationship (with the exception of benefits for survivors of domestic violence) | The existence of an active O/P is likely to be a significant factor in discretionary denial. An expired O/P may also be considered. |
| Consent to O/P without Admissions | None. | An O/P issued on consent is unlikely to trigger inadmissibility; however, a respondent may still be questioned about underlying conduct by immigration authorities and any admissions made can serve as the basis for inadmissibility. | The existence of an active O/P on consent can also bar benefits with the exception of benefits for survivors of domestic violence. | The issuance of a permanent O/P on consent can have the same potential consequences as one entered after trial. See above. |
| Violation of O/P | A court determination that a non-U.S. citizen violated a temporary or permanent O/P will make that person deportable. This applies to the violation of nearly any condition of an Article 8 O/P including (but not limited to) the violation of no contact provisions. | Statements or testimony made about violating an O/P can be deemed admissions for immigration purposes and can trigger inadmissibility. | A court finding that an individual violated an O/P between spouses will bar either party from receiving an immigration benefits that depends on the spousal relationship. | A court finding that an individual violated an O/P can be a significant factor in discretionary denial even if the violation occurred in the past and the O/P is expired. |
| Concurrent Criminal Case | If an admission made in the Article 8 case is used to support a criminal prosecution, any resulting conviction can serve as grounds for deportation. Convictions for most New York family offenses, as defined in Family Court Act §812, can serve as grounds for deportation. | If a conviction for a family offense results from a concurrent criminal case it can trigger inadmissibility. | If a conviction for a family offense results from a concurrent criminal case it can bar an individual from benefits. | If a conviction for a family offense results from a concurrent criminal case it can be a significant factor in discretionary denial, if not an outright bar. |</p>
<table>
<thead>
<tr>
<th><strong>ARTICLE 10 – ABUSE/NEGLECT</strong></th>
<th><strong>Deportability</strong></th>
<th><strong>Inadmissibility</strong></th>
<th><strong>Statutory Bar on Immigration Benefit or Relief from Removal</strong></th>
<th><strong>Discretionary Denial of Immigration Benefit or Relief from Removal</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary Order of Protection</td>
<td>None.</td>
<td>Admission to conduct underlying an O/P can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps.</td>
<td>Admission to conduct underlying an O/P can be grounds for denying a benefit.</td>
<td>The issuance of a temporary O/P at any point in an Article 10 proceeding can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>Permanent Order of Protection</td>
<td>None.</td>
<td>Admission to conduct underlying an O/P can trigger inadmissibility. Customs and Border Patrol agents question non-citizens reentering the U.S. who have active O/Ps.</td>
<td>Admission to conduct underlying an O/P can be grounds for denying a benefit.</td>
<td>The issuance of a permanent O/P can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>Violation of Order of Protection (Temporary or Permanent)</td>
<td>A court determination that a non-U.S. citizen violated a temporary or permanent O/P will make that person deportable. This applies to the violation of nearly any condition of an Article 10 O/P including (but not limited to) the violation of no contact provisions. If an individual admits to violating an O/P, the admission can be used to trigger inadmissibility.</td>
<td>Admission to violating an O/P can be grounds for denying a benefit.</td>
<td>The disclosure that a non-U.S. citizen violated an O/P (temporary or permanent) can be a significant factor in discretionary denial.</td>
<td></td>
</tr>
<tr>
<td>Finding of Abuse or Neglect</td>
<td>None.</td>
<td>Admission to or finding related to acts that constitute a controlled substance offense or to acts that give &quot;reason to believe&quot; that the individual is a drug trafficker, or to acts constituting prostitution or other &quot;commercialized vice&quot;, or to acts constituting a &quot;crime involving moral turpitude&quot; can trigger inadmissibility.</td>
<td>Admission to or finding related to acts that constitute a controlled substance offense or to acts that give &quot;reason to believe&quot; that the individual is a drug trafficker, or to acts constituting prostitution or other &quot;commercialized vice&quot;, or to acts constituting a &quot;crime involving moral turpitude&quot; can bar an individual from receiving certain immigration benefits.</td>
<td>Admission to or finding related to acts that constitute a controlled substance offense or to acts that give &quot;reason to believe&quot; that the individual is a drug trafficker, or to acts constituting prostitution or other &quot;commercialized vice&quot;, or to acts constituting a &quot;crime involving moral turpitude&quot; can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>1051(a) Submission</td>
<td>None.</td>
<td>Immigration authorities may consider a 1051(a) submission an admission to wrongdoing and can use a 1051(a) submission to deny admission.</td>
<td>Immigration authorities may consider a 1051(a) submission an admission to wrongdoing and can use it as a ground for denying benefits.</td>
<td>A finding that an individual has abused or neglected a child, even if entered pursuant to 1051(a), can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>Adjournment in Contemplation of Dismissal</td>
<td>None.</td>
<td>None.</td>
<td>None.</td>
<td>None.</td>
</tr>
<tr>
<td>Suspended Judgment</td>
<td>None.</td>
<td>A court finding may prompt questions from immigration authorities and requests for court documents. Any admission made during trial can be used to deny admission.</td>
<td>Immigration authorities may question individuals about vacated judgments and compel individuals to produce documents related to the case. Any admissions made in the course of the application can be used to bar an individual from receiving benefits.</td>
<td>Immigration authorities may question individuals about vacated judgments and compel individuals to produce documents related to the case. Any admissions made in the course of the application can be used as significant factors in discretionary denial.</td>
</tr>
<tr>
<td>Concurrent Criminal Case</td>
<td>If an admission made in the Article 10 case is used to support criminal prosecution, any resulting conviction can serve as grounds for deportation. Criminal convictions for most New York family offenses can serve as grounds for deportation.</td>
<td>If an admission made in the Article 10 case is used to support criminal prosecution, the resulting conviction can trigger inadmissibility.</td>
<td>If an admission made in the Article 10 case is used to support criminal prosecution, the resulting conviction can bar an individual from receiving benefits.</td>
<td>If an admission made in the Article 10 case is used to support criminal prosecution, the resulting conviction(s) can be a significant factor in discretionary denial.</td>
</tr>
<tr>
<td>SPECIAL IMMIGRANT JUVENILE STATUS</td>
<td>Deportability</td>
<td>Inadmissibility</td>
<td>Statutory Bar on Immigration Benefit or Relief from Removal</td>
<td>Discretionary Denial of Immigration Benefit or Relief from Removal</td>
</tr>
<tr>
<td>----------------------------------</td>
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<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Special Findings Order (Consequences to Parents)</td>
<td>None.</td>
<td>None.</td>
<td>Parents cannot receive immigration benefits through the child. However, the issuance of a SIJ visa to a child does not bar parents from applying for or receiving immigration benefits independent of their children.</td>
<td>A child’s SIJ visa application lists the name of the parent with whom reunification is not viable. There is currently no evidence that a parent’s application for an immigration benefit or relief from removal has been negatively impacted by being named in a SIJ order.</td>
</tr>
<tr>
<td>OTHER FAMILY COURT ACTIONS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fingerprinting</td>
<td>If an individual has a conviction record and was previously deported, a request for a fingerprint check with the NYS Department of Criminal Justice Services can trigger immigration enforcement measures.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contempt and Incarceration</td>
<td>The incarceration of an individual who is otherwise subject to removal from the U.S. may trigger immigration enforcement measures. In addition, any period of incarceration for contempt may be a factor in discretionary denial.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix C:
Adverse Consequences Glossary
Adverse Immigration Consequences Glossary

GENERAL TERMINOLOGY

Adjustment of Immigration Status
Adjustment of status is the process that allows a noncitizen to apply for and to obtain lawful permanent resident status from within the U.S.

Change of Immigration Status
Change of status is the process that allows a noncitizen to apply to change his/her nonimmigrant (i.e., temporary) status to that of another nonimmigrant (i.e., temporary) immigration status from within the U.S.

Customs and Border Protection (CBP)
CBP is an agency within the U.S. Dept. of Homeland Security that is charged with enforcing trade, customs, and immigration regulations at the border and ports of entry. CBP is responsible for apprehending individuals attempting to enter the U.S. illegally and has approximately 60,000 Border Patrol agents working along the land borders, seaports and airports across the nation.

Data-sharing Agreements
Data-sharing agreements refer to formal and informal agreements, policies or practices between certain local, state and federal agencies to exchange gathered information.

Department of Homeland Security (DHS)
Created in 2003, the U.S. Department of Homeland Security brought together 22 government agencies, including the former Immigration and Naturalization Service. Among its many responsibilities, DHS oversees enforcement of U.S. immigration laws.

Executive Office of Immigration Review (EOIR)
EOIR is an agency within the jurisdiction of the U.S. Dept. of Justice. EOIR is responsible for the administration of the immigration courts nationwide, the appointment of immigration court judges, immigration court hearings and review of immigration appeals. The EOIR includes the Board of Immigration Appeals (BIA) which has jurisdiction to review the decisions of the local immigration courts. The BIA consists of a panel of administrative law judges who are appointed by the EOIR.

Good Moral Character
“Good moral character” is an assessment during the course of an application for an immigration benefit of whether the conduct of the applicant measures up to the standards of average citizens of the community in which the applicant resides. Good moral character is a common statutory requirement that applies to many types of immigration benefits (e.g. VAWA, T Visa, Green Card,
Cancellation of Removal and Voluntary Departure. Bars to a finding of good moral character include a determination or admission that the immigrant applicant is an alcoholic; has been convicted of or admitted to acts which constitute the essential elements of a crime involving moral turpitude or a crime related to a controlled substance; or has been found to have failed to pay court-ordered child support or alimony. 8 U.S.C. §1101(f); INA §101(f).

Immigration and Customs Enforcement (ICE)
ICE is the agency within DHS that is responsible for enforcing federal immigration law within the interior of the U.S. The agency is tasked with identifying, arresting, detaining and, when applicable, removing any noncitizen found in violation of U.S. immigration laws and ordered removed from the U.S. ICE maintains at least two units: Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO) that are significantly involved in immigration enforcement measures. HSI conducts investigations to prevent national security from being compromised such as drug, weapons and human trafficking. Sometimes referred to as the “immigration police,” ERO identifies, arrests, detains and physically deports removable immigrants from the U.S.

Immigration Benefit
A status or permission granted by an agency within the federal government that allows a noncitizen to temporarily or permanently reside, and in many cases to work, in the U.S. Examples of temporary immigration benefits include work visas, student visas, Deferred Action for Childhood Arrivals, T Visas, U Visas and Temporary Protected Status. Examples of longer-term or permanent immigration benefits include a grant of asylum status, issuance of a green card, citizenship, a grant of withholding of removal, Special Immigrant Juvenile Status, and immigration benefits based on VAWA relief.

Immigration Detainers (Immigration “Holds”)
Immigration detainers (often referred to as immigration “holds”) are administrative notices issued by ICE agents to advise local, state and federal law enforcement agencies (LEA’s) that ICE, “seeks custody of the alien” who is being detained by the LEA “for the purpose of arresting and removing the alien.” 8 CFR 287.7(a). An LEA may voluntarily agree to maintain custody of a noncitizen for “a period not to exceed 48 hours” (excluding weekends and holidays), beyond the time that release of the noncitizen defendant from any custody or supervision is mandated by law. An ICE detainer is not a judicial warrant; it is “merely an administrative mechanism to assure that a person is subject to confinement will not be released from custody until the party requesting the detainer has an opportunity to act.” See Matter of Sanchez, 20 I&N Dec. 223, 225 (BIA 1990), citing Moody v. Daggett, 429 U.S. 78, 80 n. 2 (1976). See also Roldan v. Racette, 984 F.2d 85, 88 (2d Cir.1993) (concluding that an immigration detainer solely constitutes “a notice that future INS custody will be sought at the conclusion of a prisoner’s pending confinement by another jurisdiction, and ... a request for prior notice regarding the termination of that confinement.” [emphasis added]).

Immigration Detention
ICE has administrative authority to arrest and detain aliens during the removal process. 8 U.S.C §1226, 1231; INA §236, §241. Immigration detention is intended to ensure the ability to enforce U.S. immigration laws against those noncitizens found subject to removal from the U.S. and is not intended to be applied as a form of punishment against noncitizens. In other limited instances, immigration detention may be used to establish a person’s identity, facilitate an immigration or other protection claim, and to effectuate a noncitizen’s removal from the U.S.
Immigration and Nationality Act ("INA")
The INA is the federal statute which contains all U.S. immigration laws. This statute, which has been modified by a number of subsequently enacted federal amendments and acts, establishes the grounds and procedures for removal from the U.S., as well as eligibility for each type of immigration benefit and relief. It also outlines the jurisdiction of federal immigration authorities. This federal statute is found at Title 8 of the U.S. Code, and the relevant regulations are codified in Volume 8 of the Code of Federal Regulations, entitled “Aliens and Nationality.”

Immigration-related Waivers
The INA and other U.S. immigration-related laws contain provisions that provide conditions and requirements for lawful admission to the U.S. or status within the U.S. The INA also provides exceptions to the provisions and waivers with specified statutory conditions that must be met in order to waive the specific statutory basis for ineligibility. Any waiver that is sought by an individual must first meet the prima facie statutory eligibility criteria to be considered. Once statutory eligibility is determined, each waiver will then be decided based on discretionary factors on a case-by-case basis. Waivers may be issued to overcome certain enumerated grounds of removal including waivers for certain criminal activity, health-related issues, and fraud-related concerns.

Immigration Status
Immigration status denotes the type of legal or non-legal status of a non-citizen. Lawful immigration status may be obtained based on an application process that can be initiated either inside or, for some types of status, outside of the U.S.

Lawful Admission
Lawful admission occurs when an individual is inspected by U.S. immigration authorities who determine that the individual is entitled to enter the U.S. on the basis of a temporary non-immigrant status, such as tourist visa or humanitarian parole, or on the basis of a permanent or indefinite immigrant status such as lawful permanent residence or refugee. 8 U.S.C §1101(a)(13); INA §101(a)(13). This assessment includes a determination of whether the non-citizen is subject to any statutory bars. 8 U.S.C §1182; INA §212.

Mandatory Detention
Mandatory immigration detention for certain noncitizens subject to removal is triggered by conditions such as prior convictions for certain crimes, including “aggravated felony” offenses. 8 U.S.C §1226(c); INA §236(c). Mandatory detention severely limits a noncitizen’s ability to secure release while awaiting immigration proceedings or removal from the U.S. Incarceration following a criminal arrest may trigger an immigration detainer resulting in civil mandatory immigration detention pending removal proceedings.

Removal Proceedings
Removal proceedings are immigration court proceedings adjudicated by an administrative law immigration judge or a tribunal of administrative law judges (e.g., Board of Immigration Appeals) for the purposes of determining whether a noncitizen is subject to removal based on statutory grounds of deportation. 8 U.S.C §1229a; INA §240. Removal proceedings are conducted to determine whether a noncitizen is subject to removal from the U.S. and to adjudicate any requests for relief from removal.
Sanctuary Jurisdiction or Policy
Local jurisdictions may formally implement policies of non-cooperation with ICE deportation within legal limits. Sanctuary jurisdictions and policies can be set expressly in law or observed in practice. These policies typically cite to the value that immigrants bring to communities, and concern for public safety generally if immigrants are afraid to report crime and cooperate with law enforcement. They policies do not prevent ICE from executing immigration enforcement actions in sanctuary jurisdictions; they simply limit cooperation with ICE.

U.S. Citizenship and Immigration Services (USCIS)
U.S. Citizenship and Immigration Services (USCIS) is an agency within DHS. It consists of multiple district offices and regional service centers throughout the U.S. USCIS is responsible for overseeing the adjudication of a variety of immigration applications for status and other immigration benefits and waivers.

Visa
A citizen of a foreign country who seeks to enter the U.S. must first obtain formal permission in the form of a visa before s/he may enter the U.S., unless s/he is coming from a designated “visa waiver” country. Visas are given to non-citizens who do not intend to immigrate to the U.S. but who seek to reside in the U.S. temporarily for the purpose of tourism or work or study. Visa holders are considered “non-immigrants”. While having a visa does not guarantee entry to the U.S., it does indicate a consular officer at a U.S. Embassy or Consulate abroad has determined you are eligible to seek entry for a specific purpose. Visa holders are subject to removal if they are deemed to be in violation of the INA.

CATEGORIES OF IMMIGRATION STATUS

Alien
An alien, also referred to as a “noncitizen,” is any person who is not a U.S. citizen or national of the U.S. 8 U.S.C §1101(a)(3); INA §101(a)(3).

Conditional Resident
A conditional resident is a non-citizen who obtains a two-year green card through marriage or the entrepreneur program. Conditional residents must petition to remove the conditions 90 days prior to the expiration of the conditional green card, and submit to an interview with USCIS before receiving a permanent green card that gives them permanent resident status.

Derivative/Acquired U.S. Citizenship
A person with derivative or acquired U.S. citizenship has obtained U.S. citizenship outside of the naturalization application process. Examples include deriving U.S. citizenship after birth as a result of the naturalization of parents prior to a child’s 18th birthday or acquiring U.S. citizenship based on the citizenship of a parent/grandparent.

Immigrant
An immigrant is an individual who enters the U.S. with an intention to reside here permanently. 8 U.S.C §1101(a)(20); INA §101(a)(20). An immigrant includes lawful permanent residents (“LPR”), as well as non-citizens who are allowed to reside indefinitely in the U.S., such as refugees and
asylees. LPR status is required of any person who is seeking to obtain U.S. citizenship through the naturalization application process.

Lawful Permanent Resident ("LPR") / "Green Card" Holder
A lawful permanent resident is a non-citizen who has been granted authorization to live and work in the U.S. on a permanent basis. As proof of that status, a person is granted a permanent resident card, commonly called a "green card." LPRs can still be subject to removal from the U.S. for certain types of criminal-related grounds.

Naturalized U.S. Citizen
A naturalized U.S. citizen is any person who has obtained U.S. citizenship through the "naturalization" application process. 8 U.S.C 1101(a)(23); INA §101(a)(23). A naturalized U.S. citizen has the right to U.S. citizenship equal to those who have obtained U.S. citizenship through birthright. However, U.S. citizenship through naturalization can be subject to rescission if citizenship was granted based on fraudulent or erroneous information.

Nonimmigrant
A nonimmigrant is an individual who enters the U.S. without intending to reside here permanently, but rather to remain in the U.S. for a temporary period of time to fulfill certain conditions (i.e., such as a temporary visitor, worker, foreign student, etc.). 8 U.S.C §1101(a)(15); INA § 101(a)(15). There are 22 categories of nonimmigrants. 8 U.S.C §1101(a)(15); INA §101(a)(15).

Undocumented Immigrant
For purposes of the Chart, any reference made to an “undocumented immigrant” means those immigrants who entered the U.S. without “lawful admission.”

ADVERSE IMMIGRATION GROUNDS AND OUTCOMES

Aggravated Felony Offense
An “aggravated felony” offense for immigration purposes includes serious felony offenses such as murder and rape, as well as numerous offenses that are not defined as “felony” offenses pursuant to New York Penal Law (e.g., class A misdemeanor offenses related to theft, burglary and assault for which a term of one year or more than one year of imprisonment is imposed). 8 U.S.C. §1101(a)(43)(a)-(u); INA §101(a)(43)(a)-(u). Interpretation of an “aggravated felony” offense is also shaped by judicial interpretation of federal felony offenses. If a noncitizen is convicted of an aggravated felony offense, s/he will likely be subjected to mandatory civil immigration detention. In addition, having been convicted of an aggravated felony offense will severely limit a noncitizen from seeking most forms of relief designed to prevent removal from the U.S.

Conduct-based “Admission” or “Finding”
Grounds of inadmissibility/exclusion include conduct-based admissions/findings that may subject an individual to removal from the U.S. without having been found guilty or responsible for committing the conduct identified through an “admission” or “finding.” For purposes of the Chart, “admissions” refer to those statements that are made by an individual under penalty of perjury and available by transcription or recording. A “finding” of facts refers to conduct-based conclusions reached by a judge, magistrate or other adjudicator which is formally recorded or transcribed and may be subject to consideration by U.S. immigration authorities in regards to any immigration-
related matter involving the individual who made the admission or against whom the finding has been reached.

Conviction
A “conviction” for immigration purposes includes (1) a formal judgement of guilt entered by a court; and (2) in a case where an adjudication of guilty has been withheld (e.g., in a “diversion” court), a “conviction” exists when (a) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and (b) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed (e.g., a mandatory treatment program). 8 U.S.C §1101(a)(48)(A); INA §101(a)(48)(A).

Crime Involving Moral Turpitude
This is an immigration term that lacks any statutory definition, but is defined through case law as conduct that is “inherently base, vile, or depraved.” In New York, crimes of moral turpitude include some misdemeanors and violations and encompass offenses such as theft of services (e.g., turnstile jumping), petty theft, child endangerment, and simple assault between intimate partners and harassment. A crime involving moral turpitude will generally not include a range of regulatory offenses. While only a conviction for a crime involving moral turpitude can make a lawfully present immigrant deportable, the admission to the essential elements of a crime involving moral turpitude may also have adverse consequences. In Family Court, an admission or finding to conduct considered turpitudinous can thus result in the denial of an immigration benefit like a green card, citizenship, or a visa reserved for victims of crime or domestic violence. Admissions or findings may also result in the denial of admission to the U.S. following travel abroad.

Deportation / Removal
A noncitizen who has been lawfully admitted to the U.S. is subject to removal from the U.S. if found to be in violation of a statutory ground of deportation. Noncitizens may be subjected to deportation proceedings and ordered removed from the U.S. if convicted of enumerated crimes or on the basis of certain conduct for which the noncitizen has not been convicted or even prosecuted, including, but not limited to, addiction to controlled substances and violation of certain U.S. immigration laws. INA §237(a); 8 U.S.C. §1227. There is no statute of limitations for deportation; noncitizens can be removed even decades after a conviction or objectionable conduct.

Discretionary Adjudication or Denial
Applications for immigration status or to seek an immigration benefit may be determined by immigration officials (USCIS, CBO, ICE), U.S. State Department officials (e.g., consular or embassy officials) and immigration administrative law judges within the U.S. Department of Justice Executive Office for Immigration Review (EOIR). Even if a noncitizen applicant meets all the statutory eligibility criteria to obtain legal immigration status or to seek an immigration benefit and is not barred from doing so because of a determination of deportability or inadmissibility, s/he is not automatically entitled to the immigration status or benefit until s/he is found to be deserving of the status or benefit based on the discretionary review of such application by any of the above-referenced immigration-related authorities. Discretionary review may include factors such as personal character, family unity, length of time residing in the U.S., employment history, and prior arrests and convictions.
Criminal-Related Grounds of Removal – Generally
Criminal-related grounds of removal are found in both statutory grounds of inadmissibility (8 U.S.C §1182; INA §212) and grounds of deportation (8 U.S.C §1227; INA §237). Although the criminal grounds of removal for inadmissibility and deportation are similar, they are not identical.

Inadmissibility
An immigrant is ineligible to enter the U.S., or obtain any type of visa, humanitarian status or green card once in the U.S. if s/he is found to have violated any one of the grounds of inadmissibility. 8 U.S.C. §1182; INA §212. Common grounds of inadmissibility include, but are not limited to, being convicted of or admitting to the essential elements of acts that constitute a crime involving moral turpitude, conviction or admission to a controlled substance offense, having a history of certain immigration law violations, being without a source of financial support, or health-related grounds which include lack of certain vaccinations or being diagnosed suffering from certain communicable diseases.

Statutory Bar to Immigration Benefit or Relief from Removal
A statutory bar is a violation of the Immigration and Nationality Act that renders a noncitizen ineligible, either temporarily or permanently, for an immigration visa, humanitarian status, a green card, naturalization or other immigration benefit as a matter of law. The discretion to consider or grant a specific immigration benefit or immigration relief may be deemed prohibited, despite any compelling or positive equities or circumstances presented, if the statutory bar to the benefit or relief is defined as “mandatory.”

HUMANITARIAN RELIEF AND PROTECTION

Asylee
An asylee is a person who, while seeking admission at a U.S. port of entry or while inside of the U.S., is seeking asylum after establishing that s/he qualifies as a “refugee.” 8 U.S.C §1158(b)(1)(A); INA §208(b)(1)(A). A refugee is a person displaced outside of his/her native country or country of nationality or origin who is unable to return to that country because of a well-founded fear of persecution on account of (1) race, (2) religion, (3) nationality, (4) political opinion, or (5) membership in a particular social group. 8 U.S.C §1101(a)(42); INA §101(a)(42). Asylum can provide relief from removal from the U.S. and may also lead to lawful permanent resident status in the U.S.

Cancellation of Removal – for Certain Lawful Permanent Residents
Cancellation of Removal for lawful permanent residents is a form of relief only available for certain LPRs who have been found subject to grounds of removal. To be eligible for cancellation of removal, the LPR must establish that s/he has been “lawfully admitted to the U.S. for permanent resident status” for a minimum of five years; has resided in the U.S. continuously for a minimum of seven years after having been admitted to the U.S. in any lawful status and that s/he has not been convicted of an “aggravated felony” offense. Despite a noncitizen's statutory eligibility for cancellation of removal relief, his/her application will be subjected to discretionary review by an immigration judge and will only be granted if the application warrants a favorable exercise of discretion.
Cancellation of Removal – for Certain Nonpermanent Residents
Cancellation of Removal for certain noncitizens is a form of relief only available for certain nonpermanent residents who have been found subject to grounds of removal. If cancellation of removal is granted, the noncitizen will be permitted to seek “adjustment of status” resulting in a grant of U.S. lawful permanent resident status. To be eligible for such relief from removal, the noncitizen must establish that s/he has been physically present in the U.S. for a continuous period of not less than ten years immediately preceding the date of such application; has been a person of “good moral character” for 10 years; has not been convicted of certain offenses; and has established that his/her removal from the U.S. would result in exceptional and extremely unusual hardship to a U.S. citizen or U.S. lawful permanent resident spouse, parent or child. 8 U.S.C §1229b(b); INA §240A(b). Despite a noncitizen’s statutory eligibility for cancellation of removal relief, his/her application will be subjected to discretionary review by an immigration judge and will only be granted if the application warrants a favorable exercise of discretion.

Crime Victim Visa (U-Visa)
A U visa is a four-year, temporary visa that allows a noncitizen to temporarily reside and work within the U.S. if s/he can establish that: 1) s/he has been a victim of an enumerated crime – including a crime of domestic violence; 2) has reported the crime and cooperated with law enforcement (including, but not limited to, federal, state and local law enforcement agencies, criminal and family court judges, local and federal prosecutors, Dept. of Labor, Human Rights Commission, etc.) in the investigation or prosecution of the offense; 3) is successful in obtaining a certification form signed by a judge or designated law enforcement officer that certifies cooperation; 4) s/he is able to establish that s/he suffered substantial harm as a result of the crime; and 5) is otherwise admissible or eligible for available waivers if deemed inadmissible. 8 U.S.C. §1101(a)(15)(U). U visa holders may apply for lawful permanent resident status prior to the expiration of their U visa.

Deferred Action for Childhood Arrivals (DACA)
DACA is a program started in 2012 which has granted protection from deportation to many undocumented immigrants who came to the U.S. as children. Although DACA does not provide a pathway to lawful status, it provides work authorization, the ability to apply for a social security card, and opens the door to many educational and employment opportunities. In September of 2017, President Trump announced that DACA will be phased out by March 5, 2018. As of this writing, many questions remain about the termination of this program. Any questions should be directed to an immigration law expert.

Deferral of Removal under the Convention Against Torture (“CAT”) Treaty
Under the CAT Treaty, deferral of removal may be granted to a noncitizen who establishes that s/he is more likely than not to be subjected to torture if ordered subject to removal to his/her country of origin or nationality. There are no bars to eligibility for relief under CAT. However, CAT relief does not confer upon the noncitizen any lawful or permanent immigration status in the U.S. and is only effective until and unless terminated by U.S. immigration officials or an immigration judge.

Human Trafficking Visa (T-Visa)
A T visa is a temporary four-year visa that provides protection to a victim of human trafficking by allowing him/her to remain and work within the U.S. for four years if s/he: 1) is in the U.S. because s/he has been a subject of sex or labor trafficking; 2) has agreed to provide some level of
cooperation with law enforcement; 3) would suffer substantial hardship if returned to his/her country of origin or citizenship; and 4) is otherwise admissible or eligible for available waivers from being deemed inadmissible. 8 U.S.C. §1101(a)(15)(T). T visa holders may also be eligible to subsequently apply for U.S. lawful permanent resident status.

Refugee
A refugee is a person displaced outside of his/her native country or country of nationality or origin who is unable to return to that country because of a well-founded fear of persecution on account of (1) race, (2) religion, (3) nationality, (4) political opinion, or (5) membership in a particular social group. 8 U.S.C §1101(a)(42); INA §101(a)(42). Refugees are resettled in the U.S. after seeking admission and approval to do so abroad. Once admitted to the U.S., refugees are expected to apply for and to obtain lawful permanent resident status following their first year of admission to the U.S.

Special Immigrant Juvenile (“SIJ”) Status
SIJ status provides a basis for a noncitizen minor to apply for lawful permanent resident status. 8 U.S.C. 1101(a)(27)(J). To be eligible for a grant of SIJ status by USCIS, the minor must provide an order from a family court or other “juvenile court” finding that: (1) the minor is under 21; (2) the minor is unmarried; (3) the minor is “dependent” on a juvenile court, or committed to the custody of a state agency or court-appointed individual or entity; (4) reunification with one or both of the minor’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and (5) it is not in the best interests of the minor to return to their country of nationality or last habitual residence. The order must cite to specific New York law and facts on which the findings are based, rather than federal law, in order to be accepted by USCIS. A parent of a child who is granted SIJ status is statutorily prohibited from obtaining any immigration benefit based on his/her child’s immigration status. However, the issuance of SIJ status to a child does not bar his/her parent from applying for or receiving an immigration benefit independent of the child’s immigration status.

Temporary Protected Status (TPS)
TPS is a temporary status designed to provide a temporary safe haven for individuals from a foreign country when conditions in the country prevent them from returning. Conditions that can justify a TPS designation include armed conflict, natural disasters, and other extraordinary conditions that prevent foreign nationals from safely returning to their home country. Foreign nationals and recent residents of a country that is given a TPS designation may apply for temporary status for 6-18 months. Temporary status may also be extended, and individuals may retain temporary status for many years. Currently, ten countries have TPS designation.

Violence Against Women Act (VAWA) Related Benefits
A noncitizen who has been battered or subjected to extreme cruelty by a spouse, parent or child who is a U.S. citizen or legal permanent resident may file an immigrant visa petition or lawful permanent resident application on their own behalf, rather than having to rely on the abusive spouse, parent or child. 8 U.S.C. §1154(a) In order to prevail, abused spouses must provide evidence that they 1) married in good faith; 2) resided together with the abusive spouse; 3) were physically abused or subjected to extreme cruelty; and 4) have good moral character. (The requirements for abused children and parents differ).
**Withholding of Removal**

Withholding of removal, also called “non-refoulment” under the United Nations Convention Relating to the Status of Refugees, is a form of relief that prohibits a noncitizen’s removal from the U.S. to his/her country of origin or nationality based on fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. Unlike asylum, a grant of withholding of removal does not provide a pathway to U.S. lawful permanent resident status and may be issued on a permanent or temporary basis based on any significant changes of conditions in the noncitizen’s country of origin or nationality.
DHS Organizational Structure

U.S. Department of Homeland Security

Secretary
  -- DEPUTY SECRETARY --
  Chief of Staff
    Executive Secretary
    Military Advisor

MANAGEMENT DIRECTORATE
  Chief Financial Officer
    Office of Health Affairs
    Office of Partnership & Engagement

SCIENCE & TECHNOLOGY DIRECTORATE

NATIONAL PROTECTION & PROGRAMS DIRECTORATE
  Office of Policy
    Office of the General Counsel
    Office of Legislative Affairs
    Office of Public Affairs
    Office of the Inspector General

OFFICE OF THE GENERAL COUNSEL

OFFICE OF LEGISLATIVE AFFAIRS

OFFICE OF PUBLIC AFFAIRS

OFFICE OF THE INSPECTOR GENERAL

DOMESTIC NUCLEAR DETECTION OFFICE

FEDERAL LAW ENFORCEMENT TRAINING CENTER

U.S. CUSTOMS & BORDER PROTECTION

U.S. CITIZENSHIP & IMMIGRATION SERVICES

U.S. COAST GUARD

FEDERAL EMERGENCY MANAGEMENT AGENCY

U.S. IMMIGRATION & CUSTOMS ENFORCEMENT

U.S. SECRET SERVICE

TRANSPORTATION SECURITY ADMINISTRATION