Critical Immigration Issues in Family Court

Committee on Children and the Law

Friday, January 18, 2019
9:00 a.m. – 12:00 p.m.

New York Hilton Midtown
1335 Avenue of the Americas, New York, NY
Beekman, Second Floor

3.0 MCLE Credits Total
1.0 Areas of Professional Practice, 1.0 Skills, 1.0 Diversity, Inclusion and Elimination of Bias

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AGENDA

9:00 a.m. – 9:05 a.m.	Welcoming Remarks
	David J. Lansner, Esq. | Lansner & Kubitschek | Brooklyn, NY
	Betsy R. Ruslander, Esq. | Office of Attorneys for Children NYS Supreme Court | Albany, NY
	Harriet R. Weinberger, Esq. | NYS Appellate Division Office of Attorneys for Children | Brooklyn, NY
9:05 a.m. – 9:55 a.m.	**Adverse and Unintended Consequences for Families Facing Immigration Issues**
	Speaker: **Professor Sarah F. Rogerson** | Albany Law School | Albany, NY
	(1.0 Credit in Diversity, Inclusion and Elimination of Bias)
9:55 a.m. – 10:45 a.m.	**SIJS Update and U-Visas**
	Panelists: **Professor Theo Liebmann** | Hofstra Law School | Hempstead, NY
	(1.0 Credit in Areas of Professional Practice)
10:45 a.m. – 11:00 a.m.	Break
11:00 a.m. – 11:50 a.m.	**Parental Interest Directive and Service of Process**
	Panelists: **Joann Macri, Esq.** | Office of Indigent Legal Service | Albany, NY
	Maureen Shad, Esq. | Norton Rose Fulbright | New York City
	(1.0 Credit in Skills)
11:50 a.m. – 12:00 p.m.	Question and Answer
12:00 p.m.	Adjournment

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.

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[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.[8] 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

[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").[9] 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.[10] 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),[11] 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.[12] 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

[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.[13] Immigration authorities can access information from New York protection orders up to five years after they expire or are cancelled.[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. [15] If immigration officers learn that a court has determined an immigrant has violated a protective order, they may initiate removal proceedings.[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

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[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.

[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.

[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.

[16] *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.)

networks.[17] 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.

[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, 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, Deputy Chief Administrative Judge for Justice Initiatives and 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
13. Maureen Schad, Esq., Pro Bono Counsel, Norton Rose Fulbright, L.L.P.
14. Amelia T. R. Starr, Esq., Partner, Davis Polk and Wardwell, L.L.P.
15. Eve Stotland, Esq., Director, Legal Services Center, The Door, New York, NY
16. * Lee Wang, Esq., Staff Attorney, Immigrant Defense Project, 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

Adverse Immigration Consequences to New York Family Court Dispositions

This chart provides a general framework for understanding the range of immigration consequences that immigrant litigants may face in Family Court. The application of these consequences to specific litigants depends on individual circumstances. Since it is the role of attorneys to provide individualized advice to their clients on immigration consequences, it is best practice for jurists to avoid making any type of warning or notification of immigration consequences. The chart focuses on four categories of adverse immigration consequences: 1) Deportability; 2) Inadmissibility; 3) Statutory Bar on Immigration Benefit or Relief from Removal; and 4) Discretionary Denial of Immigration Benefit or Relief from Removal. The chart is meant to be used in conjunction with the attached Glossary and Memorandum. ***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.***

Type of Order or Ruling / Adverse Immigration Consequence	Deportability	Inadmissibility	Statutory Bar on Immigration Benefit or Relief from Removal	Discretionary Denial of Immigration Benefit or Relief from Removal
ARTICLE 3 – JUVENILE DELINQUENCY				
Drug Related Adjudications	Admission to acts that constitute drug abuse or addiction is a ground for deportation.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker can trigger inadmissibility.	Admissions or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker can be a bar to immigration benefits. In most cases the bar is permanent.	Adjudications related to drugs can be a significant factor in discretionary denial.
Prostitution Related Adjudications	None.	Admission or finding related to acts that constitute prostitution or other "commercialized vice" can trigger inadmissibility.	Admission or finding related to acts that constitute prostitution or other "commercialized vice" can bar an individual from receiving certain immigration benefits.	Admission to acts that constitute prostitution or other "commercialized vice" can be a significant factor in discretionary denial.
Gang Related Adjudications	None.	None.	Evidence of gang membership or gang-related conduct can bar an individual from receiving certain immigration benefits.	Evidence of gang membership or gang-related conduct can be a significant factor in discretionary denial.
Other Adjudications	None.	Admission to acts that constitute a "crime involving moral turpitude" can trigger inadmissibility.	Admission to acts that constitute a "crime involving moral turpitude" can bar an individual from receiving certain immigration benefits.	Admission to acts that constitute a "crime involving moral turpitude" can be a significant factor in discretionary denial.
Order of Protection (O/P)	None.	Admission or finding related to acts prompting the issuance of a protective order can be considered a "crime involving moral turpitude" and trigger inadmissibility.	Admission or finding related to acts underlying the issuance of a protective order can bar an individual from receiving certain immigration benefits.	Admission to acts prompting the issuance of a protective order can be a significant factor in discretionary denial.
Violation of Order of Protection	An Article 3 court finding that a juvenile has violated a temporary or permanent O/P is a ground for deportation.	Admission or finding related to acts underlying the violation can be considered a "crime involving moral turpitude" and trigger inadmissibility.	Admission or finding related to acts underlying the violation can bar an individual from receiving certain immigration benefits.	Admission to acts underlying the violation can be a significant factor in discretionary denial.
ARTICLE 4 – CHILD SUPPORT	**Deportability**	**Inadmissibility**	**Statutory Bar on Immigration Benefit or Relief from Removal**	**Discretionary Denial of Immigration Benefit or Relief from Removal**
Willful Failure to Support	None.	None.	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.	Regardless of when the willful failure to provide child support occurs, it can be a significant factor in discretionary denial.

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 martial 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.

ARTICLE 10 – ABUSE/NEGLECT	Deportability	Inadmissibility	Statutory Bar on Immigration Benefit or Relief from Removal	Discretionary Denial of Immigration Benefit or Relief from Removal
Temporary Order of Protection	None.	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.	Admission to conduct underlying an O/P can be grounds for denying a benefit.	The issuance of a temporary O/P at any point in an Article 10 proceeding can be a significant factor in discretionary denial.
Permanent Order of Protection	None.	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.	Admission to conduct underlying an O/P can be grounds for denying a benefit.	The issuance of a permanent O/P can be a significant factor in discretionary denial.
Violation of Order of Protection (Temporary or Permanent)	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.	Admission to violating an O/P can be grounds for denying a benefit.	The disclosure that a non- U.S. citizen violated an O/P (temporary or permanent) can be a significant factor in discretionary denial.
Finding of Abuse or Neglect	None.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker, or to acts constituting prostitution or other "commercialized vice", or to acts constituting a "crime involving moral turpitude" can trigger inadmissibility.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker, or to acts constituting prostitution or other "commercialized vice", or to acts constituting a "crime involving moral turpitude" can bar an individual from receiving certain immigration benefits.	Admission or finding related to acts that constitute a controlled substance offense or to acts that give "reason to believe" that the individual is a drug trafficker, or to acts constituting prostitution or other "commercialized vice", or to acts constituting a "crime involving moral turpitude" can be a significant factor in discretionary denial.
1051(a) Submission	None.	Immigration authorities may consider a 1051(a) submission an admission to wrongdoing and can use a 1051(a) submission to deny admission.	Immigration authorities may consider a 1051(a) submission an admission to wrongdoing and can use it as a ground for denying benefits.	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.
Adjournment in Contemplation of Dismissal	None.	None.	None.	None.
Suspended Judgment	None.	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.	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.	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.
Concurrent Criminal Case	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.	If an admission made in the Article 10 case is used to support criminal prosecution, the resulting conviction can trigger inadmissibility.	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.	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

SPECIAL IMMIGRANT JUVENILE STATUS	Deportability	Inadmissibility	Statutory Bar on Immigration Benefit or Relief from Removal	Discretionary Denial of Immigration Benefit or Relief from Removal
Special Findings Order (Consequences to Parents)	None.	None.	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.	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.
OTHER FAMILY COURT ACTIONS				
Fingerprinting	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.			
Contempt and Incarceration	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.			

Appendix C:
Adverse Consequences Glossary

Adverse Immigration Consequences Glossary

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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); lNA §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 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.

Advisory Memorandum #4

To: **Chief Administrative Judge Lawrence Marks**

From: **Advisory Council on Immigration Issues in Family Court**

Re: **Guidance on International Service Requirements and Foreign Documents**

Date: **August 1, 2018**

This Advisory Memorandum provides background information and guidance regarding international service requirements for parties in custody and guardianship proceedings who live outside of the United States. It also provides guidance on proper authentication and admissibility of foreign documents. This Memorandum serves to clarify and facilitate the expeditious adjudication of such cases to ensure all parties' rights are protected.

International Service Overview

A threshold question for international service is whether the Hague Convention on Service applies.[1] If the Hague Convention does not apply, state law service requirements govern.

If state law controls, then the next question is which body of state law governs. In New York, the Civil Practice Law and Rules ("CPLR") generally applies to all civil proceedings.[2] However, service of the summons and petition in a guardianship or custody case is governed by various provisions of state law, including the Domestic Relations Law ("DRL"), Family Court Act ("FCA"), and the Surrogate's Court Procedure Act ("SCPA"). Service of motions is governed by the CPLR.

Hague Convention

The Hague Convention applies to civil cases where "there is occasion to transmit a judicial or extrajudicial document for service abroad" to a known address in a signatory country.[3] There are three components that must all be met before the Convention applies in Family Court cases:

1. The party's address is known;
2. The party lives in a country that is a signatory to the Convention;[4] *and*,
3. Service is in fact necessary – that is, service is not waived or unnecessary pursuant to SCPA 1705(2) or any other statutory provision, or due to obtaining consent from the party (for example, on Form 6-4).

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[1] Hague Convention Service methods are required in civil matters only if an individual with a known address resides in a country that is a signatory to the Convention. If those criteria are met, then service is dictated solely by Hague Convention terms.

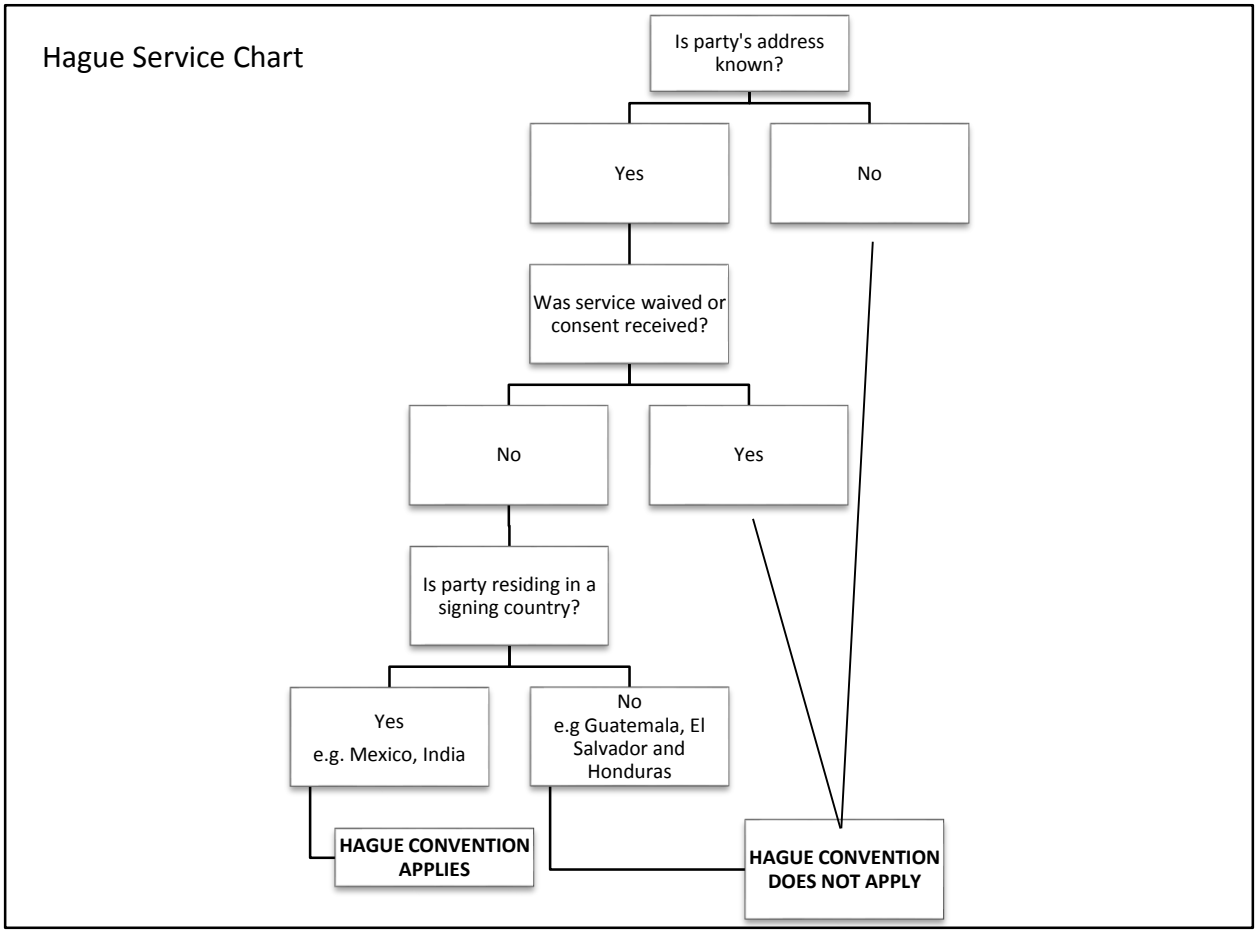
[2] CPLR § 101.

[3] Article 1 of the Hague Convention of Service, available at http://www.hcch.net/upload/conventions/txt14en.pdf.

[4] Mexico, Argentina and Venezuela are the only Central and South American nations which are signatories. Additionally, most African countries are not signatories. China, India and Pakistan are signatories, as are some Caribbean countries. A chart of participating countries is available at http://www.hcch.net/index_en.php?act=authorities.listing. *See also* Appendix A.

If all of these conditions are met, then the Convention applies and service must be effectuated under its terms, as described below. If any of these conditions are not met (e.g. the Respondent has consented; he/she abandoned the child and thus service is not required pursuant to SCPA 1705(2); or his/her address is not known), then the Convention does not apply and state law governs.

The Convention provides for three primary methods for service: international postal channels;[5] direct service through an agent in the destination state (e.g. personal service effectuated by a person competent under that country's laws to serve process.);[6] or, use of the country's designated Central Authority.[7] A Central Authority is a government office designated by the signatory country and charged with service of process of legal documents.



Under the terms of the Convention, service is "complete" when the documents are transmitted to the Central Authority or via another method allowed by the Convention. Once service has been

[5] Article 10(a) of the Convention.
[6] Articles 10(b) and (c) of the Convention.
[7] Article 2 of the Convention.

effectuated under the Convention and enough time has passed for the party to be able to defend the case, generally 21 days, a default judgment may be entered.[8]

If service is effectuated through the Central Authority, the Authority provides the party requesting service with a certificate of service. However, if no certificate of service has been received from a country's Central Authority, U.S. Courts may nevertheless enter default judgments if the document was transmitted by a method prescribed by the Convention; at least six months, or a longer period considered adequate by the judge, has passed since the transmission of the documents; and a reasonable effort was made to obtain a certificate of service from the relevant Authority.[9]

Guardianship - Service of Process (Summons & Petition)

Pursuant to Family Court Act § 661, the Surrogate's Court Procedure Act's provisions on service may apply to guardianship petitions filed in Family Court.[10] What form of service is required under the SCPA depends on whether the person to be served lives inside or outside of New York State, and on whether the parent has abandoned the child. In addition, the SCPA provides jurists discretion over the form of service required for the court to obtain jurisdiction.

Inside New York

For respondents who are domiciled in New York, personal service is required.[11] The Court may direct an alternate form of service, provided that there is a showing that with due diligence, personal service within New York cannot be effectuated, or upon a showing of good cause that personal service within New York would be impracticable.[12] Once good cause/due diligence is shown, the SCPA has a non-exclusive list of methods of alternate service that may be ordered by a Judge, including mail, publication, or substituted service such as e-mail or Facebook (*see* discussion of "Court Ordered Service" and relevant references, below).[13]

Outside New York

Those outside of New York can be served by various methods, including personal, mail, publication, substituted service, email and Facebook service; no showing of due diligence/good cause is necessary before such service is ordered.[14]

Abandoned Child

The SCPA specifies that service is not necessary on a parent who has abandoned an infant.[15] A child is considered abandoned if a "parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child."[16]

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[8] If a default judgment is entered, a respondent may move to vacate the default by showing that service was not proper. *E.g. Vikram J. v Anupama S.*, 2014 NY Slip Op (1st Dept. 2014) (custody order vacated because India's Central Authority did not transmit documents to respondent parent).

[9] Article 15 of the Convention.

[10] FCA § 661(a); SCPA §§ 102, 307; *see also* FCA § 154.

[11] SCPA § 307(1).

[12] SCPA § 307(3).

[13] SCPA § 307(3).

[14] SCPA § 307(2 and 3).

[15] SCPA § 1705(2).

[16] FCA § 1012(f)(ii), citing SSL § 384-b.

Court Ordered Service (Email and Facebook)
Jurists may also order any other form of service, such as service via Facebook or email; CPLR 308(5) gives a court "broad discretion to fashion proper methods of notice in unpredictable circumstances."[17] Due process requires that whatever form of service is ordered must be "reasonably calculated" to appraise the respondent of the pendency of proceedings.[18]

Affidavits of Service
An affidavit of service that comports with the requirements of the CPLR is prima facie evidence that process was properly served and creates a rebuttable presumption of proper service.[19] Any deficiency in the affidavit of service does not strip away the jurisdiction which was obtained.[20]

Custody - Service of Process (Summons & Petition)

In custody cases filed in Family Court, the service provisions of the DRL normally apply when service will be made out of state.[21] Provisions of the CPLR, FCA or case law may also apply, particularly when ordering alternatives to personal service, including service by publication, e-mail, Facebook, or other means[22] (*see* discussion of "Court Ordered Service," and relevant references, above). DRL § 75-g(1) explains that "[n]otice must be given in a matter reasonably calculated to give actual notice."

Service of Motions

Service of motions in virtually all civil court actions is governed by the CPLR, which provides that mail service upon attorneys or parties who are unrepresented is generally sufficient.[23]

Validity and Admissibility of Foreign Documents

Neither the Family Court Act nor the Surrogate Court Procedure Act has requirements for the authentication and admissibility of foreign documents. Accordingly, the provisions of the CPLR apply. CPLR § 4542(a) provides that original foreign documents sought to be admitted into evidence, such as birth certificates, passports and foreign court orders are self-authenticating, and admissible. In addition, CPLR § 2101(e) permits the court to accept copies of documents, even where an original is otherwise required.

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[17] CPLR § 308(5); *Maloney v. Ensign,* 43 A.D.2d 902 (4th Dept. 1974); *Harkness v. Doe*, 261 A.D.2d 846 (4th Dept. 1999); see also *Matter of J.T.*, 2016 N.Y. Slip Op. 26286 (Fam. Ct., Onondaga Co. 2016) (authorizing service by email); *Baidoo v. Blood-Dzraku*, 5 N.Y.S.3d 709 (Sup. Ct. N.Y. Co. 2015) (authorizing service by Facebook).
[18] *Maloney,* 43 A.D.2d 902; *Harkness*, 261 A.D.2d 846; see also *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950). Reasonableness only requires a likelihood that a party will learn of the action and not that the transmission will actually be received. *Id.* Indeed, "in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits." *Mullane.* 339 U.S. at 317.
[19] CPLR § 306. *Genway Corp. v. Elgut*, 177 A.D. 2d 467 (2nd Dept. 1991).
[20] *Morrissey v. Sostar, S.A.*, 63 A.D.2d 944 (1st Dept. 1978).
[21] DRL § 75-g; see also CPLR § 2103, FCA § 154.
[22] DRL § 75-g(c); see also CPLR § 2103, FCA § 154.
[23] CPLR § 2214; see also *Matter of Elida Edith Vaillatoro Ramirez*, 136 A.D.3d. 666 (2nd Dept. 2016) (holding that personal service of a SIJS motion was not required and that mail service on the father's last known address was sufficient).

The Apostille Convention is an international treaty which specifies the ways a document in one of the signatory countries can be certified for legal purposes in another signatory state. The Apostille Convention was created to remove the need for double certification from an originating country to a receiving country. An apostille simply serves to verify that the document was issued by the appropriate authority.

An apostille is required only if the following conditions are met: both countries are signatories;[24] the document is covered by the Convention (e.g. a public document); and the U.S. requires an apostille to recognize it as a foreign public document. However, the Convention contains explicit exemptions from its applicability.[25] Given the CPLR provision permitting the use of original foreign documents as admissible evidence, the Apostille Convention will rarely apply. Additionally, an apostille does not address the content of the document, merely its certification.

When a document, such as a signed consent to jurisdiction of the court and waiver of service of process, has a proper certification such as notarization, it is prima facie evidence that the document was executed by the person who purported to do so, regardless of where the document was executed.[26] The CPLR likewise provides that oaths and affirmations taken outside of NY should be treated the same as those taken inside.[27] As a result, consents executed by respondent parents which waive the issuance of service of process have been upheld by appellate courts.[28]

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[24] Not all countries are a signatory to the Apostille Convention (https://www.hcch.net/en/instruments/conventions/status-table/?cid=41).
[25] Exemptions include: If the domestic law of the State of destination has eliminated, limited or further simplified the authentication requirement; the domestic law of the State of destination does not impose any authentication requirement; or an applicable treaty, convention, agreement or other similar instrument (incl. a regulation) has eliminated, limited or further simplified such a requirement. http://www.hcch.net/upload/apostille_hbe.pd.
[26] CPLR § 4538.
[27] CPLR § 2309(c).
[28] *Matter of Ramirez v. Palacios*, 136 A.D.3d 666 (2nd Dept. 2016).

APPENDIX A: HAGUE SIGNATORIES[29]

Albania
Antigua and Barbuda
Argentina
Armenia
Australia
Bahamas
Barbados
Belarus
Belgium
Belize
Bosnia and Herzegovina
Botswana
Bulgaria
Canada
China, People's Republic of
China (Hong Kong)
China (Macao)
Croatia
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
India
Ireland
Israel
Italy
Japan
Korea, Republic of
Kuwait
Latvia
Lithuania
Luxembourg
Malawi
Malta
Mexico

Monaco
Montenegro
Morocco
Netherlands
Norway
Pakistan
Poland
Portugal
Republic of Moldova
Romania
Russian Federation
Saint Vincent and the Grenadines
San Marino
Serbia
Seychelles
Slovakia
Slovenia
Spain
Sri Lanka
Sweden
Switzerland
The Former Yugoslav Republic of Macedonia
Turkey
Ukraine
United Kingdom
United States of America
Venezuela

[29] For a complete description of each signatory country's specific international service provisions under the Hague Convention, go to https://www.hcch.net/en/instruments/conventions/status-table/print/?cid=17.

Advisory Council on Immigration Issues in Family Court Memorandum #1A

To: **Family Court Judges, Chief Clerks and Non-judicial Staff**

From: **Advisory Council on Immigration Issues in Family Court**

Re: **Supplemental Guidance on Guardianship Matters and Applications for Special Immigrant Juvenile ("SIJ") Findings**

Date: **May 7, 2018**

The Advisory Council on Immigration Issues in Family Court was created by Chief Administrative Judge Lawrence Marks in 2015. In January 2017, the Council prepared and distributed a memorandum entitled *Guidance on Guardianship Matters and Applications for Special Immigrant Juvenile ("SIJ") Findings* (SIJ Guidance Memo). The goal of the SIJ Guidance Memo was to assist Family Court jurists and non-judicial staff regarding issues related to guardianship proceedings and requests for the State court special findings required by Federal law for juveniles to obtain SIJ Status.

Beginning in early 2017, the United States Citizenship and Immigration Services (USCIS) has deemed a large and increasing number of Family Court orders insufficient to establish the SIJ findings required of a State court. This change in USCIS responses to SIJ applications has transpired without any change in the Federal law, rules or regulations that govern SIJ matters. In addition, the responses also depart significantly from previous USCIS adjudication practices where SIJ orders with identical language had for many years been deemed sufficient and resulted in SIJ Status approvals. There is, consequently, understandable uncertainty about what impact the increased number of rejected applications has on State law SIJ-related practice. This Supplemental Memorandum provides information and guidance related to the question of that impact.

Background

SIJ Status is available to children who can provide an order from a state "juvenile" court showing the following: (1) they are under 21; (2) they are unmarried; (3) they are either dependent on a juvenile court, or have been placed by a juvenile court under the custody of a state agency or department, or have been placed by a State or juvenile court under the custody of an individual or entity; (4) they are not able to reunify with one or both parents due to abuse, neglect, abandonment or a similar basis; and (5) it is not in their best interests to return to their country of origin.[1]

As noted in the first SIJ Guidance Memo, the family court has a discrete yet vital role in these children's pursuit of SIJ Status: the family court does not and cannot grant SIJ Status or any immigration benefit; however, only a state "juvenile court" such as a family court, and not a federal court, can make the necessary pre-cursor findings that accompany the SIJ application made to USCIS. [2]

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[1] 8 U.S.C. § 1107(a)(27)(J). A juvenile court is any court with jurisdiction to make "judicial determinations about the custody and care of juveniles." *See* 8 C.F.R. §204.11(a).

[2] *Id.* *See also* U.S. Citizen and Immigration Services Memorandum "Trafficking Victims Protection Reauthorization Act of 2008: Special immigrant Juvenile Status Provisions" (March 24, 2009), *available at* https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf.

USCIS Responses to SIJ Status Applications

When USCIS determines that a Family Court SIJ Order is sufficient, and when a variety of other criteria are met, USCIS will typically grant SIJ Status to the applicant child.

When USCIS deems a Family Court SIJ Order insufficient, they can return it to the child with a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID). An RFE, which typically precedes the issuance of a NOID, seeks additional evidence, often including an amended SIJ Order, to address specific concerns. Child applicants have 90 days to respond to an RFE. A NOID indicates USCIS' intent to deny the SIJ petition, and provides the child with 30 days to contest the grounds for the anticipated denial. USCIS can also issue a Notice of Intent to Revoke (NOIR), which indicates the intent by USCIS to revoke a previously granted application for SIJ Status.

Since early 2017 there has been a stark and dramatic increase in the number of children who are receiving RFEs, NOIDs and NOIRs. USCIS' bases for determining SIJ Orders insufficient have included the following:

- Insufficient description of the facts underlying the determination of abuse, neglect, abandonment or a similar basis;
- Insufficient facts to support the determination that it is not in the child's best interests to return to her country of origin;
- Insufficient citation to the State law under which specific findings are made;
- Insufficient basis for finding that guardianship constitutes "dependency" on the Family Court;
- Insufficient basis for finding that the Family Court acts as a "juvenile court" when making guardianship determinations for minors ages 18, 19 and 20;
- Insufficient basis for finding that the Family Court has jurisdiction to reunify minors with their parents once the minor reaches age 18; and,
- Insufficient basis for finding that the death of a parent constitutes a "similar basis" under State law.

Family Court Guidance

In response to these unanticipated changes in USCIS practice, Family Court practitioners and jurists can make additional efforts to ensure that SIJ Orders utilize suitable and sufficient factual context and legal citation, including for cases where an SIJ Order has already been issued and practitioners are seeking an Amended Order from the Family Court.[3]

[3] The Family Court maintains jurisdiction over motions for Amended SIJ Orders and *nunc pro tunc* Orders even where the minor has turned 21 since the original SIJ Order was issued. *See In re Juan R.E.M.*, 154 A.D.3d 725 (2nd Dept. 2017) (Appellate Division holds motions to amend SIJ Orders can be filed after minor turns 21 so long as guardianship order was issued prior to minor turning 21). *See generally In re Emma M.*, 74 A.D.3d 968 (2nd Dept. 2010) (Appellate Division overturns Family Court's denial of *nunc pro tunc* special findings motion).

Practitioners and jurists can address many of the issues raised in USCIS responses through reference to New York statutory law and appellate case law in Orders and Amended Orders; many are also addressed by the new GF-42 form.[4] For example:

- The insufficiency of the basis for factual findings, and the insufficiency of State law citations, may be addressed by ensuring, as indicated on the new GF-42, that sufficient factual and statutory bases are provided for the Order generally, as well as for each finding.
- The basis for guardianship constituting "dependency" is recognized across the State, and may be addressed through citations to determinations by the three appellate divisions that have reached this issue.[5]
- The basis for New York Family Courts acting as a "juvenile court" for youth ages 18, 19 and 20 in guardianship cases may be addressed through the use of the language in the opening paragraph and Note in the new GF-42[6] –
    - *This Court, after examining the motion papers, supporting affidavits, pleadings and prior proceedings in this matter, and/or hearing testimony, finds, in accordance with its jurisdiction to determine custody and guardianship of minors up to the age of 21 under Article 6, §13, of the New York State Constitution, section 115 of the Family Court Act and §_____ of the [check applicable box]: □ Family Court Act □ Social Services Law □ Domestic Relations Law □ Surrogate's Court Procedure Act □ Other [specify].*
    - *NOTE [Guardianship cases]: Family Court Act §657(c) provides that an order of guardianship under Family Court Act §661 conveys "the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child.*
- The basis for the Family Court's jurisdiction to reunify minors up to age 21 with their parents can be addressed through citation to the numerous statutory provisions which grant the Family Court that power in various contexts.[7]

[4] The GF-42 is the SIJ Order form posted on the New York State Unified Court System website. *See* New York State Unified Court System General Form G-42 ("Special immigrant Juvenile Status – Order"), *available at* nycourts.gov/forms/familycourt/general. A copy of the new GF-42 is attached to this memorandum. Note that the GF-42 is a form designed to assist practitioners and jurists in preparing effective SIJ Orders; there is no requirement that New York State courts use this specific form when preparing SIJ Orders.

[5] *See*, *e.g.*, *Matter of Antowa McD.*, 50 A.D.3d 507 (1st Dept. 2008); *Matter of Trudy Ann W.*, 73 A.D.3d 793 (2nd Dept. 2010); *Matter of Keilyn GG.*, 159 A.D.3d 1295 (3rd Dept. 2018).

[6] There are numerous proceedings, including guardianships, where the Family Court exercises its jurisdiction over the custody and care of minors up to age 21, including permanency hearings for abused and neglected children in State care, minors who wish to return to State care after their 18th birthday, permanency hearings for destitute children who are in State care, and minors in State care pursuant to juvenile delinquency proceedings. N.Y. Fam. Ct. Act Articles 3; 6; 10-A; 10-B; 10-C.

[7] *See, e.g.*, Family Court Act §§ 1087(a) (including, under definition of "child," minors between 18 and 21 who have consented to continuation in foster care or to trial discharge status); 1089-a (permitting award of custody and guardianship of minor up to age 21 to any relative or respondent parent at permanency hearing); 355.5 (authorizing return to parent of minors up to age 21 who are placed with a commissioner of social services or office of children and family services). Family Court Act § 661(a) similarly grants the Family Court the power in guardianship matters to place minors up to age 21 in the care and custody of parents from whom they had been separated. *See Matter of Marisol N.H.*, 115 A.D.3d 185 (2nd Dept. 2014) (Family Court has jurisdiction over guardianship matter where mother was proposed guardian for children ages 19, 18, and 16 from whom she had been separated).

- The determination of "death" as a similar basis can be supported by citation to relevant statutory and appellate case law, and an explicit description of how the death of a parent or parents creates challenges similar to those that arise from abandonment by a parent.[8]

Conclusion

New York has for many years recognized the Family Court's jurisdiction over motions seeking SIJ Orders; the consistency of issuing SIJ findings with Family Court goals of permanency, stability and safety; and the important but limited role that SIJ findings play in the ultimate decision by USCIS on whether a child will be granted SIJ Status and permitted to stay in the U.S.[9] Our State courts consequently have an ongoing obligation to issue requested SIJ Orders and Amended SIJ Orders when consistent with State law and when supporting evidence is presented, regardless of any changes in how USCIS approaches applications for SIJ Status.

[8] *See, generally,* Family Court Act Article 10-C ("Destitute Children"). *See also Matter of Luis R. v. Elena G.*, 120 A.D.3d 581(2nd Dept. 2014); *Matter of Jose YY.*, 158 A.D.3d 200 (3rd Dept. 2018).

[9] *See*, *e.g.*, *Matter of Marcelina M.-G.*, 112 A.D.3d 100 (2nd Dept. 2013); *Matter of Marisol N.H.*, 115 A.D.3d 185 (2nd Dept. 2014).

Advisory Council on Immigration Issues in Family Court Memorandum #1

To: **Family Court Judges, Chief Clerks and Non-judicial Staff**

From: **Advisory Council on Immigration Issues in Family Court**

Re: **Guidance on Guardianship Matters and Applications for Special Immigrant Juvenile ("SIJ") Findings**

Date: **January 4, 2017**

The Advisory Council on Immigration Issues in Family Court, co-chaired by Hon. Edwina G. Mendelson, Acting Supreme Court Justice, and Theo S. 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 to assist Family Court jurists and non-judicial staff regarding issues frequently arising in guardianship proceedings involving requests for the State court special findings required by Federal law for juveniles to obtain Special Immigrant Juvenile Status (SIJ). This is the first in a series of memoranda, bench aids and other documents in preparation by the Council to address the variety of immigration issues arising in and as a result of Family Court proceedings.

Background

In the past five years, the number of children seeking refuge in the United States has increased dramatically.[1] These children are often escaping violence in their homes and communities, abject poverty, and extreme governmental dysfunction.[2] New York State, where many of them have relatives or other community connections, is a frequent destination. In fact, for immigrant children crossing the U.S.-Mexico border, New York State is the fourth-most common state destination, and Nassau and Suffolk counties are both among the top-10 most frequent county destinations.[3]

Many of the children coming to New York and other states are eligible for a form of immigration relief called Special Immigrant Juvenile ("SIJ") Status. A grant of SIJ Status provides a pathway to lawful permanent residence, also known as a "green card." SIJ Status is available to children who can provide an order from a state "juvenile" court showing the following: (1) they are under 21; (2) they are unmarried; (3) they are either dependent on a juvenile court, or have been placed by a juvenile court under the custody of a state agency or department, or have been placed by a State or juvenile court under the custody of an individual or entity; (4) they are not able to reunify with one or both parents due to abuse, neglect, abandonment or a similar basis; and (5) it is not in their best

[1] *See* U.S. Customs and Border Patrol on-line report "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016," *available at* https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016.

[2] *See* Migration Policy Institute's February 18, 2016 on-line report "Increased Central American Migration to the United States May Prove an Enduring Phenomenon," *available at* http://www.migrationpolicy.org/article/increased-central-american-migration-united-states-may-prove-enduring-phenomenon.

[3] *See* U.S. Office of Refugee Resettlement on-line reports at http://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors; and at http://www.acf.hhs.gov/orr/unaccompanied-children-released-to-sponsors-by-county.

interests to return to their country of origin.[4] The family court has a discrete yet vital role in these children's pursuit of SIJ Status: the family court does not and cannot grant SIJ Status or any immigration benefit; however, only a state "juvenile court" such as a family court, and not a federal court, can make the necessary pre-cursor findings that accompany the SIJ application made to the United States Citizenship and Immigration Services ("USCIS"), the federal agency that ultimately determines SIJ eligibility.[5]

New York has for many years recognized the family court's jurisdiction over motions seeking the five SIJ findings, the court's obligation to issue findings when supporting evidence is presented, and the consistency of issuing SIJ findings with family court goals of permanency, stability and safety.[6] New York courts have also recognized the important but limited role that SIJ findings, and therefore the family courts, play in the ultimate decision on whether a child will be permitted to stay in the U.S.[7] As numerous decisions have noted, while a family court can issue an order granting SIJ findings, the order is not a final determination on whether a child will be permitted to stay in the U.S., nor is it even a grant of SIJ Status; it is solely an issuance of specific state court findings that a child must obtain in order to proceed with an application for SIJ Status before USCIS.[8]

As the number of children eligible for SIJ Status in New York has increased, so has the number of children accessing the family courts both to have adult caretakers appointed as their guardian, and to ask family courts to issue SIJ findings. This increase, which has put enormous pressures on the clerical and judicial components of a number of family courts throughout the State, has also led to a wide divergence in how the cases are brought by attorneys, and how they are handled by the courts. In response to that divergence, this Advisory Memorandum provides guidance on a number of issues for courts to consider in assessing applications for guardianship and SIJ findings, and for attorneys to consider in bringing those cases.[9]

Testimony and Affidavits in Uncontested Matters

The vast majority of guardianship/SIJ cases are uncontested. As with other types of matters which at times come before the family court without being contested by an opposing party – such as one sided custody or family offense matters; neglect or termination of parental right inquests; or most adoption matters – jurists must necessarily rely primarily on the evidence presented by the parties

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[4] 8 U.S.C. § 1107(a) (27)(J). A juvenile court is any court with jurisdiction to make "judicial determinations about the custody and care of juveniles." *See* 8 C.F.R. §204.11(a).

[5] *Id.* *See also* U.S. Citizen and Immigration Services Memorandum "Trafficking Victims Protection Reauthorization Act of 2008: Special immigrant Juvenile Status Provisions" (March 24, 2009), *available at* https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf. While this advisory memorandum focuses on family court proceedings, there may be other state courts which have jurisdiction to make SIJ findings.

[6] *See*, *e.g.*, *Matter of Antowa McD.*, 50 A.D.3d 507 (1st Dept., 2008); *Matter of Trudy Ann W.*, 73 A.D.3d 793 (2nd Dept. 2010). *See also* New York State Unified Court System General Form G-42 ("Special immigrant Juvenile Status – Order"), *available at* nycourts.gov/forms/familycourt/general.

[7] *See*, *e.g.*, *Matter of Marcelina M.-G.*, 112 A.D.3d 100 (2nd Dept. 2013); *Matter of Marisol N.H.*, 115 A.D.3d 185 (2nd Dept. 2014).

[8] *Id.*

[9] Applications for SIJ findings can be and are made in contexts other than guardianship of the person matters, including abuse and neglect, delinquency, custody, adoption, destitute child, and family offense proceedings. This advisory memorandum focuses on discrete issues in guardianship proceedings that were most commonly raised by jurists and advocates as areas where guidance and clarification would prove especially useful.

who are present. For most uncontested guardianship/SIJ cases, therefore, jurists use their expertise to assess the credibility of testimony, affidavits, or other evidence presented, just as they do in other types of uncontested cases. Family courts use the sworn testimony of the proposed guardian, or the child, or both, to elicit evidence regarding the applications for guardianship and SIJ findings, and to address the central issues in question – whether granting the guardianship serves the interests of the minor, and whether the facts presented support each of the five SIJ findings.[10]

In guardianship / SIJ matters, as in any other case, jurists also rely on the assumption that the attorneys appearing before them are practicing and presenting evidence in a manner consistent with their ethical duties under the New York State Rules of Professional Conduct. These duties include requirements related to candor to the court, timely and diligent pursuit of a case, merit of the claims being brought, and avoidance of conflicts of interest.[11]

A child appearing in a guardianship / SIJ matter has a right to be represented by counsel.[12] The child can be represented by a lawyer of their own choosing or by an appointed counsel, just as minors in any family court proceeding are.[13] These attorneys are ethically obligated to provide sufficient information to the court to support their position in their role as advocates for the minors. This includes the obligation to counsel their child clients about the availability of SIJ findings, and to seek SIJ findings whenever appropriate.[14] Many children who appear in guardianship / SIJ matters come to court having already procured representation from a pro bono or low bono attorney, a private attorney, a legal services or legal aid attorney, or an attorney from a variety of other agencies and clinics that specialize in representing children. Where a minor does not appear with her own attorney, she has the right to have one appointed to represent her. Where the minor does appear with an attorney, the court should permit the child to be represented by the lawyer she has chosen rather than appoint one that the child has not chosen, unless there is a clear conflict of interest.[15]

Testimony, affidavits, and other evidence presented by lawyers for children or proposed guardians through written motions and hearings are the primary and most common method through which jurists assess the applications in guardianship / SIJ matters. Where additional information is

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[10] The testimony of an older child, in particular, is helpful in evaluating the appropriateness of the guardian, and the preference of an older child for a particular guardian is deserving of significant weight. With younger children, whether or not to require testimony of the child will depend in part on the court's assessment of the effect on the child of providing such testimony. In all instances, courts regularly consider the age, developmental stage and emotional well-being of children in determining whether to require testimony, in framing questions and in weighing testimony.

[11] N.Y. Rules of Professional Conduct, Rules 1.1, 1.3, 1.7, 1.8, 3.1, and 3.3. *See also* 22 NYCRR Rule 130-1.1-a of the Rules of the Chief Administrative Judge, which requires attorneys to sign all pleadings, written motions and other papers submitted, and which deems the attorney's signature to constitute a certification that "to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances… the presentation of the paper or the contentions therein are not frivolous…" If a judge sees that an attorney is acting in a manner inconsistent with the Rules of Professional Conduct, the judge should take appropriate action. 22 NYCRR Rule 100.3(D).

[12] Fam. Ct. Act §241.

[13] Id. Proposed guardians and respondents in guardianship cases who are indigent can also be appointed counsel at the discretion of the court, and are permitted to waive counsel as well if they choose. Fam. Ct. Act §262.

[14] NYSBA Comm. on Children and the Law, STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN CUSTODY, VISITATION AND GUARDIANSHIP PROCEEDINGS, Standard C-8 (2015);

[15] *Matter of Elianne M.*, 196 A.D.2d 439 (1st Dept.1993); *Sosa v. Serrano*, 130 A.D.3d 636 (2nd Dept. 2015); *Bryan v. Singer*, 234 A.D.2d 631 (3rd Dept. 1996). Unless there is an identifiable reason to doubt the candor or competence of a retained attorney, appointing an attorney for the child *in addition* to allowing the retained attorney to remain on the case can be both confusing for the child and counter-productive.

necessary, there are other sources of information for courts and attorneys to consider. These include reports from the State Central Registry, fingerprinting results, and Court-Ordered Investigations conducted by the local social services agency or probation department, each of which is described below.[16]

State Central Registry History

Surrogate's Court Procedure Act §1706(2) requires that a court hearing a guardianship matter ask the office of children and family services ("OCFS") to determine whether a proposed guardian, or any other resident of the proposed guardian's home who is 18 or over, has been the subject of an indicated report or is currently under investigation for a report.[17] Petitioners in guardianship proceedings must fill out Form OCFS-3909 at the initiation of any guardianship proceeding so that the family court can procure that information from OCFS. The State Central Registry of Child Abuse and Maltreatment (SCR) then provides the court with a summary of any indicated reports of child abuse or neglect against the nominated guardian and other residents age eighteen or older. While the existence of an indicated report, or even a finding in an Article 10 case, will usually be relevant to guardianship determinations, the weight given that information will vary depending on the circumstances of any individual case.

Fingerprinting

Before making the best interests determination required in a guardianship case, jurists want as much information as possible to ensure that their decision is consistent with what will best serve the stability, security and permanency of the child. Fingerprinting can provide information on the criminal history of adults in the child's home that is useful in making that determination. Although most family courts in New York require fingerprinting as a matter of course in all guardianship cases, neither the New York Family Court Act (FCA) nor the Surrogate's Court Procedure Act (SCPA) actually require fingerprinting of potential guardians or other individuals in guardianship of the person cases.[18] Ordering fingerprints in any specific case is therefore at the discretion of the

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[16] The methods, if any, to use in a given case will depend on each judge's assessment of a variety of factors including the age of child, whether the child lives with the guardian, and whether the guardian is the child's parent, among others. In cases in which the proposed guardian is a parent, for example, the parent-child relationship should enjoy a presumption of safety, security and legitimacy, absent clear evidence to the contrary.

[17] Provisions of the Surrogate's Court Procedure Act apply in family court guardianship of the person cases where the Family Court Act is silent. Fam. Ct. Act §661(a).

[18] Most family court petitions for guardianship are filed as *guardianship of the person* matters under Family Court Act (FCA) §661(a) and the Surrogate's Court Procedure Act (SCPA). The requirements for a petition differ depending on whether the matter is a *permanent guardianship* case or a *guardianship of the person* case. A permanent guardian pursuant to FCA §661(b) is available only in cases where "guardianship and custody of a child have been committed to an authorized agency" pursuant to laws regarding permanent neglect, foster care, or other laws, or when "both parents of the child whose consent to the adoption of the child would have been required . . . are dead." *Id.* SCPA §1704 subsections (1) through (7) lists the requirements for guardianship petitions that apply to both types of guardianship cases. The requirements include, *inter alia*, information regarding the child, his/her birth parents, previously ordered guardianship appointments, whether the nominated guardian or other individuals residing with the guardian have been the subject of an indicated report, and reasons why the person nominated would be a suitable guardian. *See* SCPA §1704. The requirements listed in subsection (8) of SCPA §1704 apply only to *permanent guardian* cases. Those requirements include the results of the criminal history record check of the guardian and any adults residing in the guardian's household, if such a record check has been conducted, and the results of a search of the statewide central register of child abuse.

judge.[19] Ultimately the decision to exercise discretion in requiring fingerprinting rests on whether the court is satisfied, on a case-by-case basis, that the child is safe and secure under the guardian's care and that the guardian holds the child's best interests as paramount, or whether there is an identifiable cause for concern that may be allayed by procuring fingerprinting results. When the court is deciding whether or not to order fingerprints in any specific guardianship case, and which adults in a home should be required to be fingerprinted, a number of factors, including the following, can be useful:[20]

- **Lack of U.S.-issued Identification Documents**

In New York City, fingerprinting can be completed for adults regardless of whether the adult possesses U.S.-issued identification; outside of New York City, however, most fingerprinting centers used by family courts require that a U.S.-issued identification document be provided at the time of the fingerprinting. Many immigrants do not have such identification, and therefore are turned away by the fingerprinting centers. Family courts have tried a variety of alternatives to work around this problem, including the following:

  - Allowing a social service agency to take the fingerprints and send them to Albany, with an affidavit of chain of custody;
  - Using local stores that offer fingerprinting as a service;
  - Sending immigrant families to police precincts to be fingerprinted.

These options present problems for immigrant families. Local stores charge anywhere from $30-$100, creating a financial barrier for access to a court that generally seeks to avoid such barriers as a matter of public policy.[21] In addition, precincts are often unwilling to take fingerprints if someone cannot prove residency, and police contact can be a frightening and intimidating experience for an undocumented individual and their family.

- **Fear of Law Enforcement Using Fingerprints for Deportation Purposes**

Many in the immigrant community fear fingerprinting for any purpose as many different databases have been available at different times to Immigration and Customs Enforcement. That fear may have the unintended and unfortunate consequence of discouraging the most suitable potential guardians from stepping forward and offering permanency and stability for children and youth.[22]

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[19] *But see Matter of Silvia N.L.P.*, 141 A.D.3d 654 (2nd Dept. 2016) (finding that dismissing a case solely because of a guardian's failure to be fingerprinted is reversible error).

[20] This list of factors is not exhaustive, and the specific facts of any case are always particularly relevant to weighing whether or not to require fingerprinting. Where the minor does not live with the proposed guardian, or where the minor is 18 or older, for example, fingerprinting may be less significant to assessing best interests. Similarly, it may be less important for the court to order fingerprinting of adults in the minor's household with whom the minor has little interaction.

[21] *See*, *e.g.*, Fam. Ct. Act §261.

[22] Some cities, such as New York City, have issued executive orders that prohibit police or other government employees from disclosing immigration status for immigration enforcement purposes. *See* NYC Exec. Order No. 34, which, among other things, prohibits police from asking about or disclosing immigration status for purposes of investigating any crime related to immigration status; and Exec. Order No. 41, which places that same prohibition on all city agency employees.

- **Lack of Interpreting Services at Fingerprinting Location**

Some individuals are wrongfully turned away or are unable to properly determine who should be fingerprinted once they present themselves to a fingerprinting location because they lack an interpreter at the appointment. Additionally, courts may have difficulty setting up the appointment if the form is not filled out to the state's satisfaction. Without an interpreter's assistance in filling out the form, significant delay can result from simple miscommunications and misunderstandings of the complex forms and systems involved in the fingerprinting process.[23]

- **Non-Traditional Housing and Multi-Family Dwelling Units**

Increasingly, immigrant families are residing in non-traditional living arrangements within multi-family dwelling units. New York State has one of the highest housing costs in the country. Immigrant families are often low-income. Many live in multi-dwelling units as a necessary way to reduce housing costs. Often, the various individuals living in such settings have little or no contact with each other, and different families typically have their own locked rooms. Much like domestic violence shelters, large apartment complexes and homeless shelters, fingerprinting everyone in the residence can be impracticable and not necessary to prevent harm to the child.

Court Ordered Investigations

A family court judge can order an investigation of a home through the probation service or through a child protection service to ascertain the safety of a nominated guardian's home.[24] Where the testimony or other evidence presented is insufficient, or where the evidence presented creates concerns about the safety of the home, court-ordered investigations (COIs) conducted by the local social services agency or probation departments are another tool that courts may use to obtain additional information of the guardian's home.[25] Both the department of probation and child protection services agencies are required to comply with court orders for COIs in guardianship matters.[26]

Conclusion

We hope that the guidance provided in this memorandum will clarify some of the questions and concerns related to guardianship petitions and applications for SIJ findings that are most commonly raised with Council members by the judiciary and by advocates.

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[23] Pursuant to NYS Governor's Executive Order 26, all State agencies are required to offer language assistance to all persons with limited English proficiency.

[24] Fam Ct. Act §§252(d), 1034(1)(b). Family court jurists can order §1034 investigations to determine whether an abuse or neglect proceeding should be initiated. In addition, Social Serv. L. 422(4)(e) permits courts to obtain the full array of information in any State Central Registry report if the court determines that information is necessary for the determination of an issue before the court.

[25] Neither departments of social services nor departments of probation may collect fees from parties for COIs in guardianship matters. Pursuant to Family Court Act Sections 653 and 252-a, such fees may only be collected by a department of probation in habeas proceedings and custody proceedings – *not* in guardianship proceedings.

[26] *See Matter of Sing W.C.*, 83 A.D.3d 84 (2nd Dept. 2011) (affirming authority of family court to order children's services agency to conduct investigation or home study of minor in guardianship matter who is over age 18).

cc.: Hon. Michael Coccoma
Hon. Fern Fisher
Administrative Judges
John W. McConnell
Ron Younkins
Hon. Edwina G. Mendelson
Theo S. Liebmann
Janet Fink

Advisory Memorandum #2

To: **Family Court Judges, Chief Clerks and Non-judicial Staff**

From: **Advisory Council on Immigration Issues in Family Court**

Re: **Guidance on Family Court Role in U Nonimmigrant Status Certification**

Date: **June 1, 2017**

The Advisory Council on Immigration Issues in Family Court, co-chaired by Hon. Ruben Martino, Supervising Judge, Family Court, Bronx County, and Theo S. 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 second in a series of memoranda, bench aids and other documents to address the variety of immigration issues arising in and as a result of Family Court proceedings. It was prepared primarily by the Council's Subcommittee on U Nonimmigrant Status and is intended to assist Family Court jurists and non-judicial staff regarding the role of family court judges, referees, and magistrates in the U Nonimmigrant Status certification process. [A list of the Council's members, including the Subcommittee, is attached as Appendix A to this memorandum].

Background

In 2000, Congress created U Nonimmigrant Status to grant immigration status to victims of certain specified crimes, including domestic violence.[1] Adults and children with U Nonimmigrant Status receive, among other benefits, temporary permission to stay in the U.S. for four years, employment authorization to work legally in the U.S., and the ability to apply for lawful permanent residence.[2] The statutory requirements for U Nonimmigrant Status are outlined in 8 U.S.C. § 1184(a)(15)(U), which provides that applicants must submit "a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority" that the applicant 'has been helpful, is being helpful, or is likely to be helpful' in the investigation or prosecution of criminal activity." This certification takes the form of Form I-918 Supplement B, U Nonimmigrant Status Certification ("I-918 Supp B").[3] Following submission of the I-918 Supp B and several other documents demonstrating an applicant's eligibility for the relief, the Department of Homeland Security ("DHS") makes the final decision on whether to grant U Nonimmigrant Status.[4]

New York has prioritized the processing of the I-918 Supp B form by certifying agencies, both at the state and city levels.[5] Fair administration of the process depends upon the consistent participation of family court judges, referees, and magistrates, who are important certifiers in New York.[6] Part 1 of this document reviews the trajectory of the I-

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[1] *See* U.S.C. § 1101 *et. seq.*

[2] *See* INA §§214(p)(6); 214(p)(3)B); 245(m).

[3] 8 U.S.C. § 1184(p)(1).

[4] The information contained in the required certification is important, but not dispositive as to whether DHS will issue a certification. *See* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,019-24 (Sept. 17, 2007) (codified at 8 C.F.R. pts. 102, 212, 214, 218, 274a, 299).

[5] Governor Cuomo, for example, included establishing official certification protocols for law enforcement agencies in his 2016 State of the State address. *See* N.Y. ST., 2016 STATE OF THE STATE, *available at* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016_State_of_the_State_Book.pdf. Moreover, the New York City Commission on Human Rights announced that it is accepting requests for U Nonimmigrant Status certifications. *See* Press Release, Office of the Mayor, Mayor de Blasio Announces NYC Commission on Human Rights First Such Agency in Major U.S. City to Issue U and T Visa Certifications (Feb. 9, 2016) (on file with author).

[6] *See* N.Y. STATE JUDICIAL COMM. ON WOMEN IN THE COURTS, *Immigration and Domestic Violence: A Short Guide for New York State Judges* 3 (Apr. 2009), *available at* https://www.nycourts.gov/ip/womeninthecourts/pdfs/ImmigrationandDomesticViolence.pdf#page=5&zoom=auto,-157,148.

918 Supp B and the common ways they come to family court jurists. It clarifies that I-918 Supp B may be certified at various stages of a case, pursuant to federal law. Part 2 provides answers to some frequently asked questions by family court jurists encountering the certification process. Finally, Part 3 offers guidance on how to complete the I-918 Supp B, setting forth detailed descriptions of each section and specific instructions on how to fill them out.

Part 1: Certification Requests Presented to Family Court Judges, Magistrates and Referees

Under the DHS guidelines, family court judges, referees, and magistrates are certifying authorities for U Nonimmigrant Status purposes.[7] They have the authority to certify that an applicant "was helpful, is being helpful, or is likely to be helpful in the detection, investigation or prosecution of [qualifying] criminal activity."[8]

Family court jurists are often in the position of "detecting" criminal activity, consistent with the meaning of criminal activity under the U Nonimmigrant Status statute. Under the statute, domestic violence, abusive sexual contact, felonious assault, blackmail, extortion, and sexual assault are all qualifying criminal activities.[9] Proceedings in which family courts might encounter qualifying criminal activity include:

- Family Offense Cases, including Temporary Orders of Protection granted *ex parte*;
- Custody, Visitation, and Guardianship Cases, in which domestic violence is alleged or a child has been kidnapped;
- Abuse and neglect proceedings;
- Juvenile Delinquency proceedings;
- Child and Spousal Support proceedings, in which there are allegations of blackmail or extortion;
- Violation Petitions; and
- Other cases where appropriate. [10]

Under DHS Guidelines, certification requests may be made at any point in a proceeding and helpfulness means that the person seeking the certification has not "unreasonably refused to cooperate" or "failed to provide information or assistance reasonably requested."[11]

Part 2: Frequently Asked Questions

1. Does the signing of a certification form by a family court jurist grant the applicant U Nonimmigrant Status?

No. United States Citizenship and Immigration Services ("USCIS") makes the determination whether to grant U Nonimmigrant Status after a full application review.[12] Certifications are just one required submission in the complete application for U Nonimmigrant Status.[13] There are several other eligibility requirements.[14]

2. Who initiates the U Nonimmigrant Status certification process?

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[7] *See* 8 C.F.R. § 214.14(a)(2); 72 Fed. Reg. 53,014, 53,023-53,024 (Sept. 17, 2007).

[8] DEP'T OF HOMELAND SEC., *U and T Visa Law Enforcement Resource Guide* (last updated Jan. 8, 2016), *available at* https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (*hereinafter* DHS, Certification Resource Guide). For a list of qualifying criminal activity, *see* 8 U.S.C. §1101(a)(15)(U)(iii). This list, however, is non-exclusive.

[9] *See* 8 U.S.C. § 1101(a)(15)(U)(iii).

[10] *Id.* at 4; see also N.Y. STATE JUDICIAL COMM. ON WOMEN IN THE COURTS, *Immigration and Domestic Violence: A Short Guide for New York State Judges* (Apr. 2009) at 3, *available at* https://www.nycourts.gov/ip/womeninthecourts/pdfs/ImmigrationandDomesticViolence.pdf#page=5&zoom=auto,-157,148.

[11] DHS Certification Resource Guide, at 18-19.

[12] *Id.* § 1101(a)(15)(U)(i). See also DHS, Certification Resource Guide at 4.

[13] *See* 8 U.S.C. § 1184(p) (2014) (setting forth application requirements).

[14] DHS, Certification Resource Guide at 8.

The process for signing the U Nonimmigrant Status certification may be initiated by the certifying authority (e.g. state court) or by an individual seeking the certification. The applicant may be assisted by an advocate or an attorney.[15]

3. At what stage of a case can a family court jurist sign a certification?
A family court jurist may sign the I-918 Supp B as soon as the jurist is able to assess a person's helpfulness or willingness to be helpful in the detection, investigation, or prosecution of criminal activity. There is no requirement that a jurist make factual findings prior to signing a certification. Certifications may be signed after the filing of a petition.[16] They may also be signed after a temporary order of protection is granted *ex parte*, but before the order of protection is final.[17] There is no statute of limitations on signing certifications after a case has been closed.[18]

4. Must there be criminal charges in order for a family court jurist to sign a certification?
No. There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to be eligible to apply for U Nonimmigrant Status.[19] A family court jurist can certify if proceedings are only in family court.[20]

5. Must the signing family court jurist have been the jurist on the underlying matter to sign a certification?
No. Under the regulations and guidelines, any designated certifying agent or any federal, state, or local judge, magistrate, or referee may sign a certification.[21] There is no requirement that the signing jurist or agent have dealt with the underlying case.[22] A family court jurist may therefore sign a certification in connection with a matter presided over by someone else upon familiarizing themselves with the underlying record and finding sufficient evidence of "helpfulness."[23] This can happen when someone becomes unavailable due to retirement, relocation, or leaving the bench for other reasons.

6. What constitutes "helpfulness" under the U Nonimmigrant Status statute?
The governing statute, 8 U.S.C. § 1101(a)(15)(U), requires certification that an applicant "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity. Thus, helpfulness may consist of the applicant's past, current, or future conduct relating to the underlying activity. USCIS regulations require only that "since the initiation of cooperation, the victim has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement."[24] Several examples of "helpful" behavior in family law cases have been identified:

- seeking an order of protection;
- receiving an *ex parte* order of protection;
- receiving an order of protection on consent of all parties;
- reporting violations of an order of protection;

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[15] *Id* at 5.
[16] *See* N.Y. STATE JUDICIAL COMM. ON WOMEN IN THE COURTS, *Immigration and Domestic Violence: A Short Guide for New York State Judges* at 3. *See also* 72 Fed. Reg. 53,014, 53,019 ("USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation.").
[17] *Id.*
[18] DHS, Certification Resource Guide at 10, 18-19.
[19] *Id* at 11.
[20] *Id.* at 9.
[21] 8 C.F.R. § 214.14(a)(3)(ii).
[22] *Id.*
[23] The family court jurist need only verify the victim's "helpfulness." *See* DHS, Certification Resource Guide at 4. In one of the few available New York Family Court opinions regarding a U Visa certification, the court issued the requested certification based on a transcript of previous proceedings where the presiding judge had retired. *See In re Rosales*, 40 Misc. 3d 1216(A) (N.Y. Fam. Ct. 2013) (unreported table disposition).
[24] DHS, Certification Resource Guide at 18.

- reporting child abuse or neglect;
- reporting elder abuse;
- attempting to report violations of an order of protection unsuccessfully due to a failure to provide an interpreter;
- providing evidence of domestic violence or child abuse or neglect;
- providing information regarding child / elder abuse to protective services / investigators;
- reporting violations of family court custody and visitation orders that involve criminal activity, such as domestic violence;
- providing evidence or testifying in a child or elder abuse or neglect case; or
- providing a history of violence in court papers.[25]

Conclusion

Following a list of Advisory Council members (Appendix A), this memorandum contains a step-by-step guide for jurists in filling out U Nonimmigrant Status certifications (Appendix B).

We hope that the guidance provided in this memorandum will clarify some of the questions and concerns raised with Council members by the judiciary and by advocates regarding requests for judicial certifications to be submitted to Federal immigration authorities by litigants in conjunction with their applications for U Nonimmigrant Status.

cc.: Hon. Michael Coccoma
Hon. Fern Fisher
Administrative Judges
John W. McConnell
Ron Younkins
Hon. Ruben Martino
Theo S. Liebmann
Janet Fink

[25] Benish Anver, et al., *U-Visa: "Helpfulness"*, NIWAP (Jul. 23, 2015), *available at* http://library.niwap.org/wp-content/uploads/2015/IMM-Checklist-UVisaHelpfulness-09.25.13.pdf (enumeration and punctuation added).

APPENDIX A

Advisory Council on Immigration Issues in Family Court (June 2017)[1]

Co-Chair: Professor Theo Liebmann, Clinical Professor of Law and Director of Clinical Programs, Hofstra Univ. School of Law
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. Bree Bernwanger, Esq., Feerick Center for Social Justice, Fordham University School of Law
2. Hon. Lisa Bloch-Rodwin, Judge of the Family Court, Erie County
3. Margaret Burt, Esq., Attorney, Pittsford, NY
4. Myra Elgabry, Esq., Director, Immigrant Rights Project, Lawyers for Children, New York, NY
5. Anne Erickson, Esq., President and CEO, Empire Justice Center, Albany, NY
6. Hon. Alison Hamanjian, Judge of the Family Court, Richmond County
7. Terry Lawson, Esq.,* Director, Family and Immigration Unit, Bronx Legal Services, Bronx, NY
8. Joanne Macri, Esq., Director of Regional Initiatives, NYS Office of Indigent Legal Services
9. Kathleen Maloney, Esq., Immigration Law Unit, Legal Aid Society, New York, NY
10. Hon. Edwina Mendelson, Acting Supreme Court Justice, New York, NY
11. Andrea Panjwani, Esq., Managing Attorney, My Sister's Place, White Plains, NY
12. Carmen Rey, Esq., Deputy Director, Immigration Intervention Project, Sanctuary for Families, New York, NY
13. Professor Sara Rogerson, Esq., Director, Immigration law Clinic and Law Clinic and Justice Center, Albany Law School
14. Wedade Abdallah, Esq., Assistant Public Defender, Legal Aid Society of Rochester
15. Maureen Schad, Esq., Pro Bono Counsel, Chadbourne and Park, L.L.P.
16. Amelia T. R. Starr, Esq.,* Partner, Davis Polk and Wardwell, L.L.P.
17. Eve Stotland, Esq., Director, Legal Services Center, The Door, New York, NY
18. Trinh Tran, Esq.,* Staff Attorney, Sauti Yetu Center for African Women and Families, Bronx, NY
19. Lee Wang, Esq., Staff Attorney, Immigrant Defense Project, New York, NY

[1] Affiliations are listed for identification purposes only. Members, whose names are marked with an asterisk (*), participated in the U-non-immigrant Status Subcommittee, which was primarily responsible for the preparation of this guidance document.

APPENDIX B
Filling Out the Form I-918 Supplement B, U Nonimmigrant Status Certification

Below is a captioned guide to completing the Form I-918 Supp B. Further resources for completing the U Nonimmigrant Status certification are USCIS website at https://www.uscis.gov/i-918, DHS Certification Resource Guide and NIWAP's U Visa: "Helpfulness."

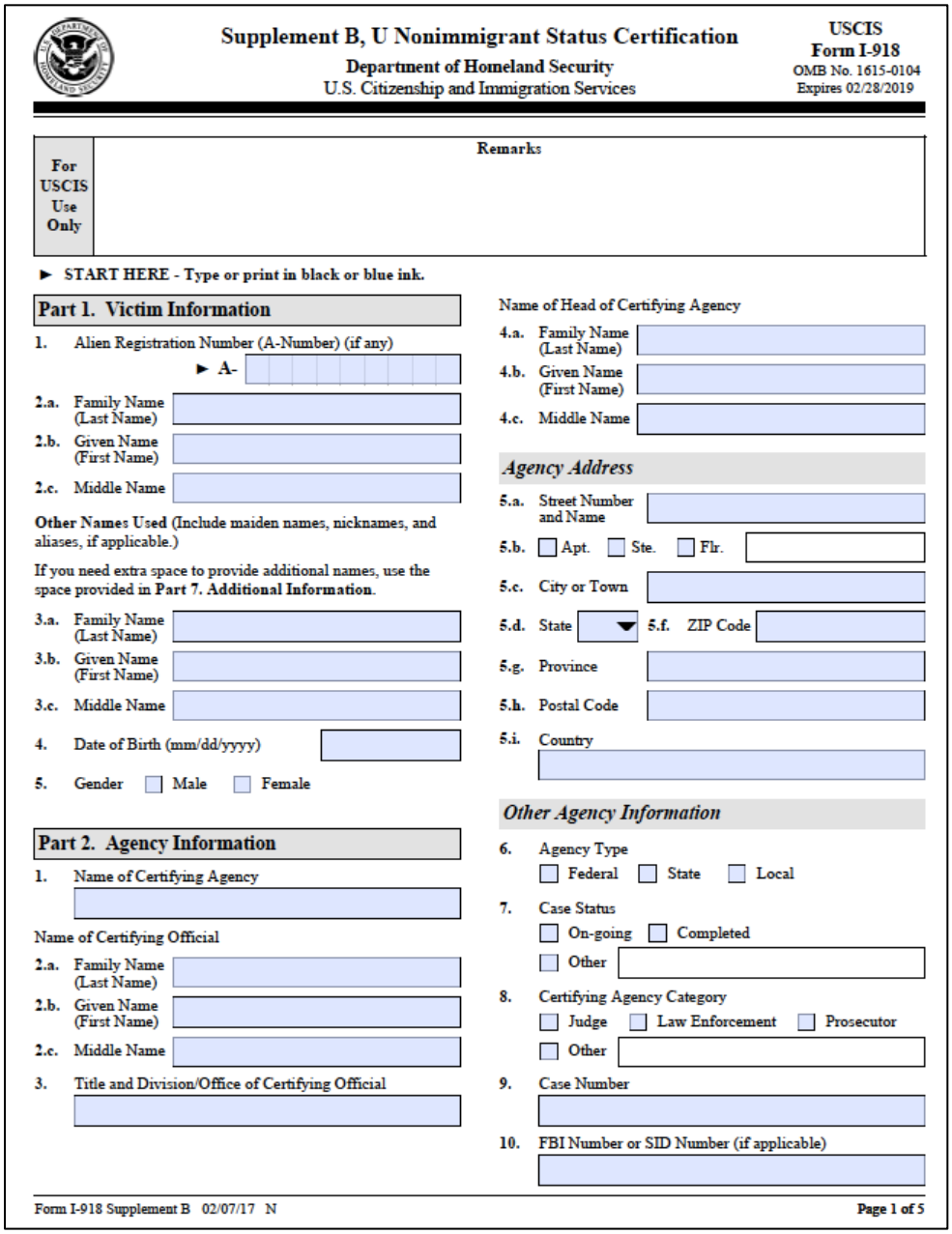
- Print legibly in black ink or type.
- If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
- The certifying official makes the initial determination as to the helpfulness of the petitioner. USCIS will give a certification significant weight but it will not be considered conclusory evidence that the victim has met eligibility requirements.

Provide the court's mailing address.

Provide the name of the court's supervising judge

Part 1 is usually filled out by the applicant or applicant's counsel.

A family court judge, magistrate, or referee, is both a "certifying agency" and a "certifying official."



Supplement B, U Nonimmigrant Status Certification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

For USCIS Use Only — Remarks

► START HERE - Type or print in black or blue ink.

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any) ► A-
2.a. Family Name (Last Name)
2.b. Given Name (First Name)
2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in Part 7. Additional Information.

3.a. Family Name (Last Name)
3.b. Given Name (First Name)
3.c. Middle Name
4. Date of Birth (mm/dd/yyyy)
5. Gender ☐ Male ☐ Female

Part 2. Agency Information

1. Name of Certifying Agency

Name of Certifying Official

2.a. Family Name (Last Name)
2.b. Given Name (First Name)
2.c. Middle Name
3. Title and Division/Office of Certifying Official

Name of Head of Certifying Agency

4.a. Family Name (Last Name)
4.b. Given Name (First Name)
4.c. Middle Name

Agency Address

5.a. Street Number and Name
5.b. ☐ Apt. ☐ Ste. ☐ Flr.
5.c. City or Town
5.d. State 5.f. ZIP Code
5.g. Province
5.h. Postal Code
5.i. Country

Other Agency Information

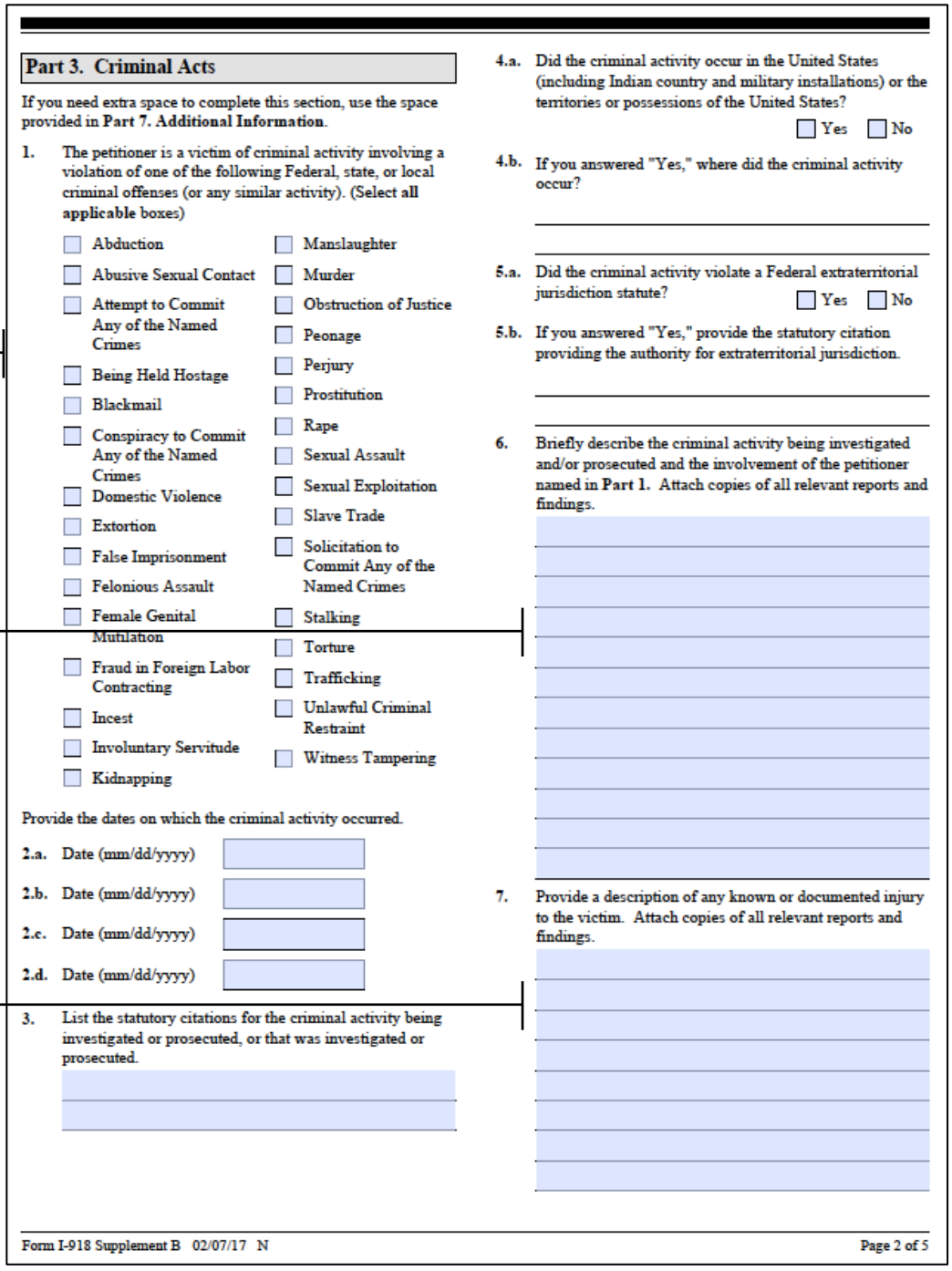
6. Agency Type ☐ Federal ☐ State ☐ Local
7. Case Status ☐ On-going ☐ Completed ☐ Other
8. Certifying Agency Category ☐ Judge ☐ Law Enforcement ☐ Prosecutor ☐ Other
9. Case Number
10. FBI Number or SID Number (if applicable)

Form I-918 Supplement B 02/07/17 N — Page 1 of 5

Check all of the acts in which the petitioner is a victim. Acts include conduct that triggers jurisdiction under the Family Court Act, e.g. domestic violence.

For example, "Petitioner X filed a family offense petition and participated in her case for the purpose of obtaining an order of protection against Respondent Y, whom she alleged repeatedly physically and verbally assaulted her. See attached Family Offense Petition."

For example, "Petitioner A reported that he suffered a history of repeated bruises, marks, and other injuries by Respondent B. See attached petition."



Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select **all applicable** boxes)

- ☐ Abduction
- ☐ Abusive Sexual Contact
- ☐ Attempt to Commit Any of the Named Crimes
- ☐ Being Held Hostage
- ☐ Blackmail
- ☐ Conspiracy to Commit Any of the Named Crimes
- ☐ Domestic Violence
- ☐ Extortion
- ☐ False Imprisonment
- ☐ Felonious Assault
- ☐ Female Genital Mutilation
- ☐ Fraud in Foreign Labor Contracting
- ☐ Incest
- ☐ Involuntary Servitude
- ☐ Kidnapping
- ☐ Manslaughter
- ☐ Murder
- ☐ Obstruction of Justice
- ☐ Peonage
- ☐ Perjury
- ☐ Prostitution
- ☐ Rape
- ☐ Sexual Assault
- ☐ Sexual Exploitation
- ☐ Slave Trade
- ☐ Solicitation to Commit Any of the Named Crimes
- ☐ Stalking
- ☐ Torture
- ☐ Trafficking
- ☐ Unlawful Criminal Restraint
- ☐ Witness Tampering

Provide the dates on which the criminal activity occurred.

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4.a. Did the criminal activity occur in the United States (including Indian country and military installations) or the territories or possessions of the United States? ☐ Yes ☐ No

4.b. If you answered "Yes," where did the criminal activity occur?

5.a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute? ☐ Yes ☐ No

5.b. If you answered "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1.** Attach copies of all relevant reports and findings.

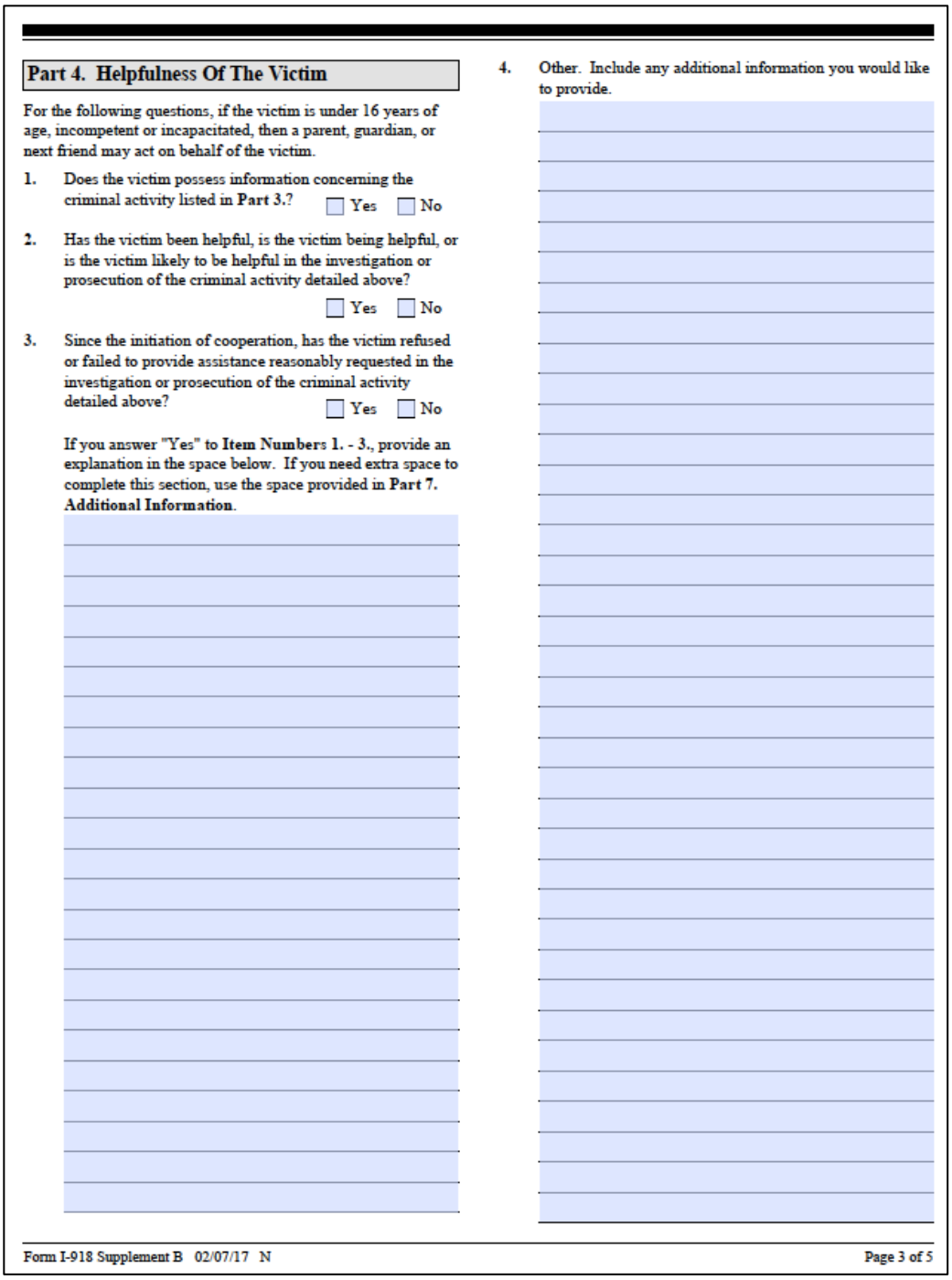
7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Form I-918 Supplement B 02/07/17 N Page 2 of 5

A petitioner is considered to possess information concerning the criminal activity of which he or she is a victim if he or she has knowledge of details concerning the criminal activity.

The standard of cooperation sufficient to constitute helpfulness is low. USCIS regulations require only that the applicant has not refused or failed to provide information and assistance reasonably requested.

Provide an explanation of the applicant's helpfulness to the investigation or prosecution of the criminal activity. Helpfulness can take a broad array of forms (see FAQ 6 for a non-exclusive list of helpful activities).



Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

1. Does the victim possess information concerning the criminal activity listed in **Part 3.**? ☐ Yes ☐ No

2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? ☐ Yes ☐ No

3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above? ☐ Yes ☐ No

If you answer "Yes" to **Item Numbers 1. - 3.**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.

4. Other. Include any additional information you would like to provide.

Form I-918 Supplement B 02/07/17 N Page 3 of 5

Include information about any family members culpable in the criminal activity.

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? ☐ Yes ☐ No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in **Part 7. Additional Information**.)

2.a. Family Name (Last Name)
2.b. Given Name (First Name)
2.c. Middle Name
2.d. Relationship
2.e. Involvement

3.a. Family Name (Last Name)
3.b. Given Name (First Name)
3.c. Middle Name
3.d. Relationship
3.e. Involvement

4.a. Family Name (Last Name)
4.b. Given Name (First Name)
4.c. Middle Name
4.d. Relationship
4.e. Involvement

Part 6. Certification

I am the head of the agency listed in **Part 2.** or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in **Part 1.** is or was a victim of one or more of the crimes listed in **Part 3.** I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

Don't forget to sign!

2. Date of Signature (mm/dd/yyyy)
3. Daytime Telephone Number
4. Fax Number

Sign and date the certification.

Part 7. Additional Information

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number, Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name

Petitioner's Name

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

3. A-Number (if any)

► A-

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d.

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d.

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d.

Recent Developments in SIJS & U-Visas

THEO LIEBMANN
CLINICAL PROFESSOR OF LAW
MAURICE A. DEANE SCHOOL OF LAW AT HOFSTRA UNIVERSITY
LAWTSL@HOFSTRA.EDU

Special Immigrant Juvenile Status (SIJS)

Established by Immigration Act of 1990, modified by 2008 Trafficking Victims Protection Reauthorization Act ("TVPRA"); codified at 8 U.S.C. 1101(a)(27)(J).

Federal law recognizes training and experience of state family court judges, and asks state courts to make certain determinations.

Final SIJS eligibility determinations made by USCIS
USCIS or Immigration Judges determine green card eligibility.

State Court Findings (aka "Special Findings")

Must be a child (under 21) when SIJ application is filed;

Must be unmarried.

Must be
- declared dependent on a juvenile court OR
- committed to/in custody of state agency or individual/entity appointed by state/juvenile court;

Must be finding that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and

Must be finding that it is not in the child's best interest to be returned to child's or parents' country of nationality/last habitual residence.

3

Impact of Special Finding Orders

Allows youth to apply for SIJS;

Does not guarantee a Green Card;

Not a conviction against parent for immigration purposes;

Does not provide immigration benefit to parent and/or guardian/custodian;

Will not bar a parent from obtaining legal status or employment.

4

RFEs, NOIDs, NOIRs, Denials

RFE (Request for Evidence): Seeks additional evidence, often including an amended SIJ Order, to address specific concerns. Child applicants have 90 days to respond to an RFE.

NOID (Notice of Intent to Deny): Indicates USCIS' intent to deny the SIJ petition, and provides the child with 30 days to contest the grounds for the anticipated denial.

NOIR (Notice of Intent to Revoke): Indicates the intent by USCIS to revoke a previously granted application for SIJ Status.

5

USCIS Grounds for RFEs, NOIDs, NOIRs

Insufficient description of the facts underlying the determination of abuse, neglect, abandonment or a similar basis.

Insufficient facts to support the determination that it is not in the child's best interests to return to her country of origin.

Insufficient citation to the State law under which specific findings are made.

Insufficient basis for finding that guardianship constitutes "dependency" on the Family Court.

6

USCIS Grounds for RFEs, NOIDs, NOIRs, ctd.

Insufficient basis for finding that the Family Court acts as a "juvenile court" when making guardianship determinations for minors ages 18, 19 and 20.

Insufficient basis for finding that the Family Court has jurisdiction to reunify minors with their parents once the minor reaches age 18.

7

Amended Orders

Nunc pro tunc special findings motion for previously granted underlying case is permissible. *In re Emma M.*, 74 A.D.3d 968 (2nd Dept. 2010)

Motions to amend SIJ Orders can be filed after minor turns 21 so long as guardianship order was issued *prior to minor turning 21. In re Juan R.E.M.*, 154 A.D.3d 725 (2nd Dept. 2017)

Order issued by another judge, who is no longer available, can be amended. *Interiano Argueta v. Alvarenga Santos,* 166 A.D.3d 608 (2nd Dept. 2018)

8

Fingerprints & OCFS

Dismissing a case solely because of a guardian's failure to be fingerprinted is reversible error. *Matter of Silvia N.L.P.*, 141 A.D.3d 654 (2nd Dept. 2016)

OCFS background checks do not need to be submitted in Guardianship of the Person cases. *Matter of A. v. P.*, 161 A.D.3d 1068 (2nd Dept. 2018); *Francisca M.V.R. v. Jose G.H.G.*, 154 A.D.3d 856 (2nd Dept. 2017)

9

Immigration Status of Proposed Guardian

A proposed guardian is not required to demonstrate that she has legal status or has taken steps to obtain such steps in order to qualify as a New York domiciliary eligible for appointment as guardian. *Matter of Alan S.M.C.,* 160 A.D.3d 721 (2nd Dept. 2018)

10

Parent as Guardian

Parents can be appointed as a guardian of their own child. *Marisol N.H.*, 115 A.D.3d 185 (2nd Dept. 2014)

The fact that paternity had not been established does not preclude the issuance of custody or special finding order against the putative father. *Matter of Jimenez.*, 144 A.D.3d 1036 (2nd Dept. 2016)

Family Court has the authority to make an abandonment finding for a putative father who is not listed on the birth certificate. *Matter of Haide L. G. M,* 130 AD3d 734 (2nd Dept. 2015)

Abandonment finding can be made against putative father in a Termination of Parental Rights case without any finding of paternity. *Matter of Jake W.E.*, 132 A.D.3d 990 (2nd Dept. 2015)

Even where a mother had presumptive custody after father's death pursuant to DRL § 81, she still has the right to petition for legal custody of her child. *Matter of Castellanos,* 142 A.D.3d 552 (2nd Dept. 2016)

Residence of Minor

Cases where minor does not reside with the proposed guardian must, like any other case, be examined "within the context of the required best interest analysis." *Matter of Grechel L.J.*, 2018 Slip Op. 08934 (2nd Dept. 2018); *Axel S.D.C. v. Elena A.C.*, 139 A.D.3d 1050 (2nd Dept. 2016)

Note that in both of these cases, although the underlying family court record made it clear that the basis for denial was that the minor did not reside with the proposed guardian, the appellate division decision does not mention that fact.

Special Findings in Delinquency Cases

***Matter of Keanu S.*, 167 A.D.3d 27 (2nd Dept. 2018)**

Family Court denied motion for special findings in context of delinquency matter.

Appellate Division upheld denial, finding that dependency requirement is not met because, *inter alia*, "[w]e cannot fathom that Congress envisioned, intended, or proposed that a child could satisfy the [SIJS] requirement by committing [delinquent] acts."

Dissent argued that majority's reasoning is not supported by the plain language of the statute or supported in any legislative history, and that majority ignores USCIS manual and state policy as reflected in the Family Court Act.

Possible motion for reconsideration pending.

13

GF-42

The GF-42 is the SIJ Order form posted on the New York State Unified Court System website.

GF-42 is designed to assist practitioners and jurists in preparing effective SIJ Orders.

There is no requirement that New York State courts use this specific form when preparing SIJ Orders

14

What benefits does a U-Visa provide?

Adults and children with U Nonimmigrant Status receive, among other benefits, temporary permission to stay in the U.S. for four years, employment authorization to work legally in the U.S., and the ability to apply for lawful permanent residence.

15

What are the requirements to get a U-Visa?

Applicants must submit "a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority" that the applicant 'has been helpful, is being helpful, or is likely to be helpful' in the investigation or prosecution of criminal activity."

This certification takes the form of Form I-918 Supplement B, U Nonimmigrant Status Certification ("I-918 Supp B").

Following submission of the I-918 Supp B and several other documents demonstrating an applicant's eligibility for the relief, the Department of Homeland Security ("DHS") makes the final decision on whether to grant U Nonimmigrant Status.

16

At what stage of a family court proceeding can a jurist sign a U-Visa certification?

A family court jurist may sign the I-918 Supp. B as soon as the jurist is able to assess a person's helpfulness or willingness to be helpful in the detection, investigation, or prosecution of criminal activity.

There is no requirement that a jurist make factual findings prior to signing a certification.

Certifications may be signed after the filing of a petition.

They may also be signed after a temporary order of protection is granted ex parte, but before the order of protection is final.

There is no statute of limitations on signing certifications after a case has been closed.

There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to be eligible to apply for U Nonimmigrant Status.

A family court jurist can certify even if proceedings are only in family court.

A family court jurist may sign a certification in connection with a matter presided over by someone else upon familiarizing themselves with the underlying record and finding sufficient evidence of "helpfulness."

17

What constitutes "helpfulness"?

Helpfulness may consist of the applicant's past, current, or future conduct relating to the underlying activity.

USCIS regulations require only that "since the initiation of cooperation, the victim has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement."

18

Examples of helpfulness include:

seeking an order of protection;
receiving an ex parte order of protection;
receiving an order of protection on consent of all parties;
reporting violations of an order of protection;
reporting child abuse or neglect;
reporting elder abuse;
attempting to report violations of an order of protection unsuccessfully due to a failure to provide an interpreter;
providing evidence of domestic violence or child abuse or neglect;
providing information regarding child / elder abuse to protective services / investigators;
reporting violations of family court custody and visitation orders that involve criminal activity, such as domestic violence;
providing evidence or testifying in a child or elder abuse or neglect case; or
providing a history of violence in court papers.

19

Contact Information

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20

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF [COUNTY]

Proceeding for the Appointment of a Guardian of the Person for NAME (DOB: ___), A Person Under the Age of 21	Hon. [JUDGE] File No._____ Docket No. _____

Upon a proceeding pending in this Court requiring the presence of NAME date of birth ____ and alien number ____, who is currently detained by the Department of Homeland Security, Immigration and Customs Enforcement.

IT IS HEREBY ORDERED that the [COUNTY] County Sheriff's Department, produce NAME in person before the Hon. [JUDGE] at [NAME AND ADDRESS OF COURT AND COURT PART] at [DATE AND TIME OF HEARING].

[NAME] will be available for pick-up by the [COUNTY] County Sheriff's Department on the morning of [DATE], at [LOCATION OF DETENTION FACILITY]. He will be in the custody of Deportation Officer _____, who can be reached at [CONTACT INFORMATION FOR ICE ERO OFFICE].

ENTER

_____ _____

DATE Hon. [JUDGE]

ICE DETAINED PARENTS DIRECTIVE

Joanne Macri, Esq.
Chief Statewide Implementation Attorney
New York State Office of Indigent Legal Services

Committee on Children and the Law:
Critical Immigration Issues in Family Court

NYSBA Annual Meeting
January 19, 2019

#

Impacted Population

2

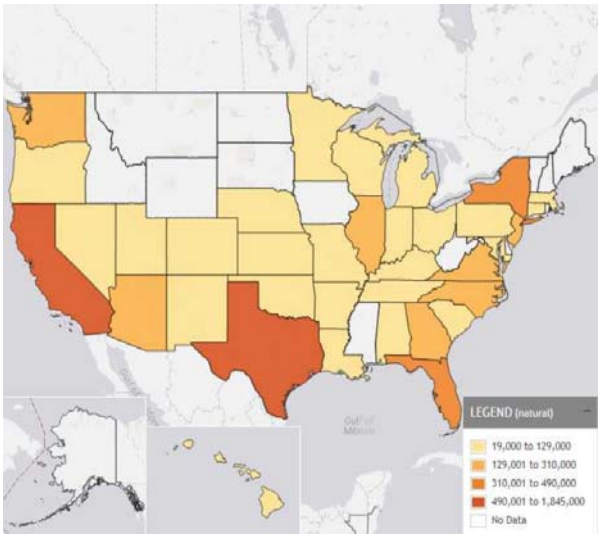
IMPACTED POPULATION

Of the 70 million children under age 18 in the United States, 26% (18.2 million) live with at least one immigrant parent (Migration Policy Institute, Children in U.S. Immigrant Families)

- 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

Migration Policy Institute, Children in U.S. Immigrant Families (2016 Statistics)

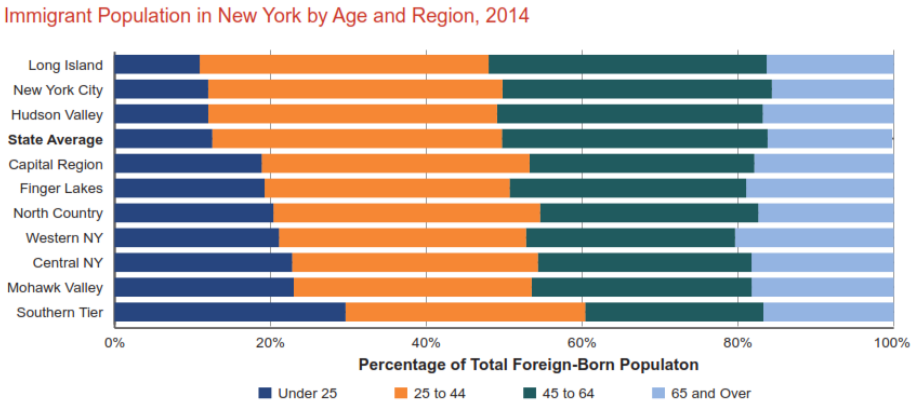
In 2014, it was estimated that over 2,000,000/19.75 million are reported non-citizens residing in New York State. (www.migrationpolicy.org)



CHILDREN IN IMMIGRANT FAMILIES IN WHICH RESIDENT PARENTS ARE NOT U.S. CITIZENS (NUMBER) - 2014

National KIDS COUNT
KIDS COUNT Data Center, datacenter.kidscount.org
A project of the Annie E. Casey Foundation

A PORTRAIT OF NEW YORK STATE IMMIGRANT POPULATION



Source: U.S. Census Bureau, OSC Analysis

A Portrait of Immigrants in NY

4

IMPACTED POPULATION: MIXED STATUS HOUSEHOLDS

How US citizen children are impacted by immigration enforcement

- Adjudication of Immigration Applications/Benefits
- Immigration Reporting Requirements of non-citizen parents
- Home/Employment Immigration Raids
- Traffic Checkpoints
- Return to US following Travel Abroad
- Immigration Enforcement Collaborations with local agencies

Estimated Impact of immigration enforcement on US citizen children:

- More than 273,000 USC children of TPS holders
- At least 200,000 USC children of DACA holders
- Parents will lose both status and work authorization

CMS TPS Study

5

IMPACTED POPULATION

- Impact of immigration enforcement on the well-being of children and families and can include:
  - Family economic hardship;
  - Psychological trauma to children;
  - Difficulty accessing social services because of language barriers, difficulty documenting eligibility, mistrust and fear; and
  - Family separation, child welfare involvement, potential termination of parental rights.

Migration Policy Institute and Urban Institute (2015) Study available at http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents

6

IMPACTED POPULATION: CAUSES AND EFFECTS

- **All undocumented people declared an enforcement priority** (January 2017 Executive Order which deters permitting DHS authority to exercise discretion not to detain parents)
- **Deportations occur more rapidly** (i.e., including expedited removals) with **no notice to dependency court, criminal court or child welfare agency**
- **More parents are placed into immigration detention** with ever-decreasing opportunity for immigration "parole" or release on a bond/surety from immigration detention
- I**ncreased fear of police, social services, medically-required services, community support, etc.** (i.e., including raids on "sponsors" of children based on May 2018 MOA between DHS and HHS)
- DHS **deterrence of allowing the return of a parent** (i.e., "parole") back into the US for a family court/child welfare proceeding (i.e., which was previously available under the Parental Interest Directive)

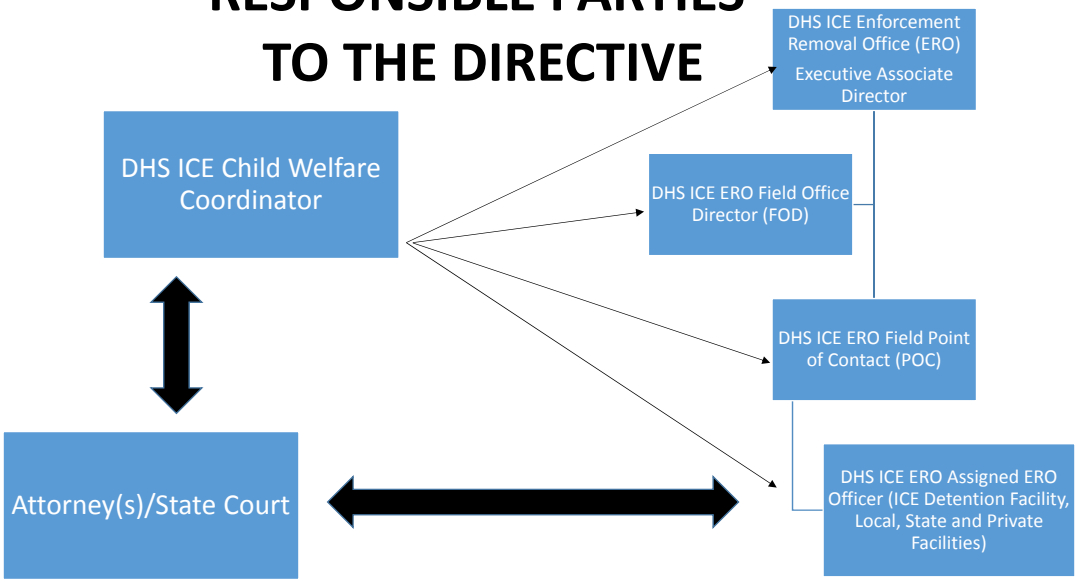
7

#

Understanding the ICE Directive

8

RESPONSIBLE PARTIES TO THE DIRECTIVE



9

PROCEEDINGS RELATED TO THE DIRECTIVE: "FAMILY COURT OR CHILD WELFARE PROCEEDINGS"

A proceeding involving the adjudication or enforcement of parental rights or minor child(ren) involving a determination or modification of:

- Parenting plans
- Child custody
- Visitation
- Support
- Distribution of Property or
- Other legal obligations in the context of parental rights

10

DETAINED PARENTS DIRECTIVE WHAT IS IT?

Detention and Removal of Alien Parents or Legal Guardians

Provides guidance to DHS Enforcement Removal Officers (EROs) and ICE detention facilities on the detention and removal of alien parents/legal guardians of a minor child(ren), who has a direct interest in a family/child welfare proceeding in the U.S. as to:

- Immigration Detention Placement and Transfer Decisions
- Facilitating Participation in Family/Child Welfare Proceedings
- Parent-Child Visitation
- Coordinating the Care and/or Travel of a Child

Detention and Removal of Alien Parents or Legal Guardians, Policy Number 11064.2 (Aug. 29, 2017)
Available at ice.gov/parental-interest

11

ICE ENCOUNTER OF MINOR CHILDREN*

- ICE should **NOT** take custody of USC, LPR (i.e., green card holder) or lawful status minor child/ren
- ICE should accommodate alternative care arrangements for minor child/ren or contact child welfare authorities or an LEA if no alternative care is available.
- ICE will document existence of minor child/ren (i.e., ICE computer system - ENFORCE Alien Removal Module (EARM))

*Exceptions to these procedures apply in instances of child abuse or neglect.

12

ICE POLICY ON INITIAL DETENTION PLACEMENT

- ICE should refrain from initially detaining or transferring a parent/legal guardian outside of the area of initial apprehension if there is a family court or child welfare proceeding pending in that area.

13

IN-PERSON PARTICIPATION IN FAMILY COURT/CHILD WELFARE PROCEEDING

In-person court appearance permitted if:

- required to maintain/regain custody of minor child/ren, and
- the parent/legal guardian, his/her attorney or other representative provides:
  - Timely request and reasonable notice
  - Evidence of hearing (i.e., such as notice of hearing, scheduling letter, court order, etc.)
- Travel is within a reasonable driving distance and transportation and escort is not unduly burdensome and will not pose a security or public safety concern.

14

OTHER FORM OF PARTICIPATION IN FAMILY COURT/CHILD WELFARE PROCEEDING

If **in-person appearance** is not practicable:

- Video or teleconference appearance should be permitted from the detention facility or ICE field office if technologically feasible and proof of court approval provided by parent/legal guardian, his/her attorney or other representative.
- Refusal to participate in a family court or child welfare proceeding will be documented in the immigration file (i.e., "A" immigration file) and any actions recorded in the ICE EARM electronic system

15

REGULAR CHILD VISITATION*

- ICE should facilitate regular visitation between parent and minor child/ren
- In no provision exists for minor child/ren visits and upon request, ICE must arrange:
  - Visits for minor child, step-child, child under legal guardianship or foster child must be arranged within first 30 days or consider request for transfer to allow such visitation.
- Upon request – ICE must continue monthly visits if transfer is not approved until transfer can be effected.

* See National Detention Standards 2000 (Section H.2.d); Performance-Based National Detention Standards 2008 (Section H.2.d); Performance-Based National Detention Standards 2011 (Section 1.2.b).

16

COURT-ORDERED VISITATION

Court-ordered visitation must maintain or regain custody of a minor child/ren.

- Documentation required by the parent, legal guardian, his/her attorney or other representative (i.e., such as a reunification plan, scheduling letter, court order, or other such documentation).
- May be contact visitation (within constraints of facility safety and security) and should not adversely affect normal visitation rights of the parent or legal guardian
- If impracticable – video or teleconferencing visitation from the facility or the ICE field office should be arranged upon court order.

17

COORDINATING CARE OR TRAVEL OF MINORS

If preparing for parent or legal guardian removal from the US, ICE should accommodate efforts to arrange for care or travel of minor child/ren in the US by allowing:

- Access to counsel, consular offices, courts, family members, etc. needed to execute documents (i.e., such as power of attorney, passport application, guardianship appointment, etc.),
- Allow for travel arrangements of child/ren prior to removal (i.e., such as purchase airline tickets and/or make other travel arrangements and provide for access to removal itinerary to coordinate travel arrangements of child/ren).

18

DHS DIRECTIVES (2013 vs 2017)

PARENTAL INTEREST DIRECTIVE (2013)

- Permitted return of Parents/Legal Guardians to US for family/child welfare proceedings
- Allowed for use of "prosecutorial discretion" by DHS
- Allowed for proximate detention of parent/legal guardian to family/child welfare proceeding
- Provided guidance on how to allow for parent/legal guardian participation in family/child welfare proceeding (i.e., including court-ordered visitation)

DETAINED PARENTS/LEGAL GUARDIANS DIRECTIVE (2017)

- Deleted language to facilitate a parent's/legal guardian's return to the US (i.e., but still includes language on "parole" into the US)
- Deleted reference to "prosecutorial discretion"
- Providing limited direction on proximity of detention of parent/legal guardian to family/child welfare proceeding
- Included language on parent/child visitation and added a section addressing "minor children"

For More Information, visit the Women's Refugee Commission FAQ on ICE Directive

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Tips on Representing the Impacted Population

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APPLICABLE FEDERAL PROTECTIONS

- ***Child Protective Services*** – Federal law does not base eligibility for reimbursement of state child protection services, which include prevention services, on a parent or child's immigration status if certain conditions are met. 8 U.S.C. § 1611(b)(1)(D) and Attorney General Order No. 2049 (1996) (see 61 Fed. Reg. 45985-01)
- ***Reunification with Parents*** – No part of Title IV-E prohibits reunification with parents who are undocumented or who live outside the U.S. 42 U.S.C. § 671(a)(15)(A)&(B).
- ***Notice to Relatives*** – No exception to requirements to search for and notify child's adult relatives is included in the statute for relatives who live outside the U.S.; a sole exception is articulated for family or domestic violence cases. 42 U.S.C. § 671(a)(29).
- ***Relative Placements*** – Title IV-E does not preclude placements with (or seeking other assistance from) relatives who are undocumented or living outside the U.S. 42 U.S.C. § 671(a)(19); ACF Child Welfare Policy Manual, 8.4B Title IV-E, General IV-E Requirements, Aliens/Immigrants.
- ***Foster care maintenance payments*** – Undocumented adults providing placement may receive IV-E foster care maintenance payments as long as the *child* is IV-E eligible.

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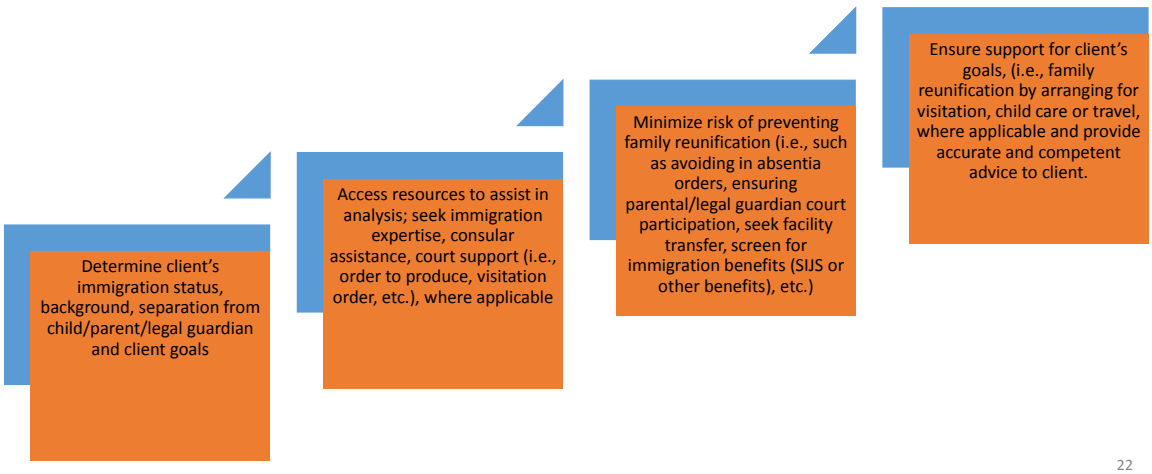
A COUNSEL'S ROLE



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A CONSULATE'S ROLE

- Consulate's Initial Assistance can include: locating detained parents or other relatives in the U.S. or abroad and obtaining immigration-related information/documentation, etc..
- Assist on ensuring access to court proceedings by assisting in parole document for return to US or facilitating client communication with relatives abroad or within the US, etc.
- Providing support during the court proceeding by assisting in bridging any language and other communication barriers, accessing necessary immigration-related or family-related documentation, etc.
- Ensure family reunification or support abroad: such as facilitating travel documents, identifying service providers in the client's country of origin or facilitating reunification for a removed parent and/or arranging for dual citizenship of a child for travel abroad, etc.

The Vienna Convention on Consular Relations requires child welfare agencies to inform the relevant foreign consulate when any foreign national child comes into state custody. Article 37, 21 U.S.T. 77; T.I.A.S. No. 6820

Sample MOUs between agencies/courts and Foreign Consulates: http://cimmcw.org/resources/state-specific-resources/

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A JUDGE'S ROLE

- Consider need for assignment of counsel for detained parent or legal guardian and require notification of proceeding, etc.
- Provide written order to produce, and allow for continuances to locate and notify parent or legal guardian, allow counsel to obtain immigration expertise, etc.
- Provide written orders for custody visitation, travel abroad to support family reunification, or other arrangements for care and/or orders to support immigration application(s) for legal status (i.e., SIJS, etc.).
- Consider supporting efforts for family reunification, where necessary and applicable (i.e., visitation order, custody order allowing for travel abroad, etc.).

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PRACTICE SCENARIO

After her husband was killed by Taliban forces in Afghanistan, Adela traveled to the United States with her four-year-old son where they were paroled into the United States and given notices to appear in immigration court to pursue an asylum claim. When they failed to appear in court, they were each issued removal orders in their absence (i.e., in absentia removal orders).

Eight years later, while working at an assisted living care facility, Adela is arrested by immigration authorities and placed into detention pending her removal from the United States. Prior to placing Adela into immigration custody, she is asked by ICE if she needs to make plans for any children in her care. Scared that her son, now 12 years of age, could be detained as well, Adela does not tell ICE about her son.

When Adela fails to pick up her son from school, the school calls Adela's emergency contact who is a neighbor and family friend who previously agreed, as part of an emergency "contingency plan" to take care of Adela's son if Adela was ever arrested and detained by immigration authorities. Adela's neighbor begins care of Adela's son but is immediately overwhelmed by the responsibility while caring for her own children. Unable to find Adela in immigration custody and to continue the care of Adela's son, the neighbor calls CPS and asks the agency to place Adela's son in foster care while their mother is in immigration detention.

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Additional Resources

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Attorney/Judicial Resources

- The Intersection of Immigration Status and the New York Family Courts by the Fund For Modern Courts,
  http://moderncourts.org/files/2014/03/Modern-Courts-Statewide-Report-The-Intersection-of-Immigration-Status-and-the-New-York-Family-Courts.pdf
- NYS OCA Advisory Council on Immigration Issues in Family Court – provides various family court/immigration advisories
- Regional Immigration Assistance Center for referrals and/or legal advice
  https://www.ils.ny.gov/content/regional-immigration-assistance-centers
- Immigration Benchbook for Juvenile and Family Courts by the ILRC,
  https://www.ilrc.org/immigration-benchbook-juvenile-and-family-courts

DHS Resources

- *Detention and Removal of Alien Parents or Legal Guardians*
  https://www.ice.gov/parental-interest
- **Locating a Parent:** To find a detained parent, use Alien Number & country of birth or exact name, country of birth, and date of birth :
  https://locator.ice.gov
- **DHS Call Center:** Detention Reporting and Information Line (DRIL)
  1-888-351-4024 or Parental.Interest@ice.dhs.gov
- **Local Contact Information:**
  - DHS ICE NYC FIELD OFFICE: (212) 264-4213
  - DHS ICE BUFFALO FIELD OFFICE: (716) 843-7600
  - DHS Buffalo Federal Detention Facility (Batavia, NY): (585) 344-6500 (VTC capability)

U.S. Immigration and Customs Enforcement

ICE | ERO

HOJA INFORMATIVA

Las Normas y Procedimientos que Involucran a los Padres que están Detenidos y a los Tutores Legales

Las normas y procedimientos actuales del Servicio de Inmigración y Control de Aduanas de Estados Unidos, (ICE, por sus siglas en inglés) se dirigen a las consideraciones que se toman cuando son detenidos o extraídos los padres y tutores legales de los hijos menores. Estas normas fueron establecidas el 23 de agosto del 2013 en la directiva titulada Como Facilitar los Intereses de los Padres durante el Curso de Actividades Civiles de Ejecución de Inmigración, el cual fue remplazado el 29 de agosto del 2017 con la Directiva titulada La Detención y Expulsión de Padres y Tutores Legales Extranjeros.

Las normas y procedimientos que rigen la aprehensión, detención y la expulsión de los padres y tutores legales de varias maneras, al incluir:

EMPLAZAMIENTO: Hacer el emplazamiento inicial y las decisiones de traslado para los padres y tutores legales extranjeros que están detenidos que han sido identificados como participantes en un caso jurídico familiar o en procedimientos de bienestar de menores.

FACILITAR LA PARTICIPACIÓN EN LOS PROCEDIMIENTOS JURÍDICOS FAMILIARES O ESTATALES: Hacer arreglos de transporte al juzgado familiar o a las audiencias de bienestar de menores si la ubicación está a una distancia razonable y al hacerlo no fuera excesivamente gravoso o que presentara problemas de seguridad y/o de seguridad pública. Si el transporte es impráctico identificar medios alternativos para que los padres puedan participar en las audiencias, tales como el uso de video o las tecnologías de teleconferencia.

VISITAS ENTRE PADRE E HIJO: Además de seguir las Normas de Detención de ICE sobre las visitas, facilitar las visitas de padre e hijo donde se requerido por un juzgado familiar o el juzgado de protección de menores o por la autoridad del bienestar de menores.

COORDINACIÓN DEL CUIDADO O VIAJE DEL MENOR: Asistir al detenido en los esfuerzos para hacer arreglos de cuidado para hijos menores que están en los Estados Unidos. Obtener documentos de viaje para los hijos menores de los detenidos para que los acompañen al país de expulsión o para que sean reunidos en el país de expulsión.

Normas de Detención de ICE

TODAS LAS VERSIONES DE DETENCION DE ICE REQUIEREN:

ACCESO A UN TELÉFONO: Los detenidos tienen permiso de hacer llamadas directas o gratuitas a familia inmediata u a otros en casos de emergencia personal o familiar o que puedan demostrar una necesidad convincente (se puede interpretar liberalmente).

VISITAS PARA MENORES: Los familiares, incluyendo hijos menores, tienen permiso de visitar a sus familiares que están detenidos. Cuando no hay disposición de visita en alguna instalación, ICE organizará una visita con hijos, hijastros y niños de crianza.

SOLICITUD DE TRASLADO: ICE tomará en consideración una solicitud de traslado cuando sea posible a una instalación que permita dichas visitas. Si el traslado no es aprobado o hasta que el traslado aprobado se pueda efectuar, ICE continuará la facilitación de visitas mensuales.

HORARIO DE VISITAS: Cada instalación está obligada a imponer un horario de visitas basado en la demanda de los detenidos, se deberá permitir un mínimo de 30 minutos y límites más generosos cuando sea posible, especialmente para los familiares que viajan grandes distancias. El horario de visitas los fines de semana y los días festivos son obligatorios y algunas instalaciones pueden permitir las visitas de familia fuera del horario de vistas normal.

¿Sabía Usted?

Los Estándares Basados en el Rendimiento de Detención Nacionales (Actualizado en diciembre del 2016) establecen que las instalaciones deben tratar de facilitar vistas con contacto cuando sea posible, y deben permitir que los detenidos vean a sus hijos menores tan pronto como sea posible después de su ingreso. Se recomienda asignación de horarios de visita generosos para los hijos menores.

Recursos Adicionales

CENTRO DE LLAMADAS: La Línea de Reportes de Detención e Información (DRIL, por sus siglas en inglés) es un servicio gratuito que proporciona una vía directa para que los detenidos y las partes interesadas puedan comunicarse con ERO (Oficina de Detención y Deportación, por sus siglas en inglés) para contestar preguntas y resolver preocupaciones, incluyendo la separación de un niño. Para ponerse en contacto con DRIL, llame al: 1-888-351-4024.

COMO LOCALIZAR A UN PADRE: El Sistema de Localización de Detenidos en Línea (ODLS) es un sistema público disponible en Internet que permite a familiares, representantes legales y miembros del público, localizar a personas que están detenidas por ICE. Para usar ODLS, navegue al: https://www.ice.gov/locators.

SITIO DE WEB: Para información adicional sobre los Estándares de Detención de ICE navegue al: https://www.ice.gov/factsheets/facilities-pbnds.

CORREO ELECTRÓNICO: Para más información sobre este tema, por favor envié sus preguntas a Parental.Interests@ice.dhs.gov.

Marzo 2018