INTEGRATING IMMIGRATION INTO FAMILY LAW: THE PATHWAY TO *PADILLA*

SUPPLEMENTAL MATERIALS

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Integrating Immigration into Family Law:
The Pathway to *Padilla*

Supplemental Materials

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KNOWING WHEN AND HOW TO SEEK ICE ASSISTANCE

It is not uncommon for immigration enforcement to interfere with obligations imposed on a noncitizen client in criminal and/or family court proceedings. There are, however, a limited number of resources that can assist a defense attorney in securing the necessary immigration enforcement information to address compliance issues and help to alleviate any unintended consequences that may result from immigration enforcement measures. This advisory provides an overview of the tools currently available to assist defense attorneys in accessing limited immigration enforcement information pertaining to a noncitizen client.

HELPFUL GOVERNMENT SOURCES OF INFORMATION

ICE Verification & Certification Form: ICE has recently introduced a verification process that will provide defense attorneys with the opportunity to request relevant and reliable information from ICE that can be used to verify that immigration enforcement is the cause for a client's failure to meet a criminal court or family court obligation. To access this information, defense attorneys must submit a "Request for Certification of Alien Custody, Removal, or Departure for Use In Criminal Legal Proceedings" form (ICE Request form) to ICE authorities. ICE will subsequently issue a Certification Form in response to the attorney's Request. If issued, a Certification Form can be used to verify that lack of client compliance is involuntary and caused by actions of immigration enforcement. *A copy of the ICE Request form and ICE Instruction Sheet are provided.*

ICE Form I-247, Notice of Detainer: The DHS relies heavily on the voluntary participation of all local and state law enforcement entities to ascertain the alienage of all individuals with whom they come into contact. As a result, most local and state police agencies, jails, prisons, probation and parole officers, and even some courts and prosecutors, will voluntarily take steps to identify and to refer all non-U.S. citizens to ICE. Upon receipt of these referrals, ICE will issue a Form I-247, Notice of Detainer (immigration detainer or "ICE hold") requesting that the referring law enforcement agency or individual contact ICE prior to completion of a court proceeding and/or any release of the noncitizen client from custody.

The immigration detainer contains helpful information that can be used by defense attorneys in understanding the basis for the ICE hold. For instance, the immigration detainer will provide an ICE alien registration file number (also referred to as the "A number") that can be used to locate a noncitizen client in immigration detention (i.e., see ICE Online Detainee Locator below) or to access immigration court information pertaining to a client's current or past immigration proceedings (i.e., see EOIR hotline below). The immigration detainer also provides the ICE office contact information necessary to negotiate immigration prosecutorial discretion (i.e., see ICE Prosecutorial Discretion Policies below) on behalf of a deserving client.

NOTE: Currently, ICE mandates that all local jails, state and federal prisons provide noncitizens with a copy of the Form I-247, Notice of Detainer issued to them by ICE authorities. Please notify your local facility of this obligation and contact our office if this obligation continues to be unmet.

ICE Online Detainee Locator: This ICE online locator system is available to assist in locating a noncitizen client that may be currently held by ICE in civil immigration detention. The system will provide facility contact and location information as well as information for facility visitation. The ICE Online Detainee Locator can be accessed at https://locator.ice.gov.

ICE Humanitarian Discretionary Policies: Despite a noncitizen client's immigration status, he/she may still be deserving of ICE prosecutorial discretion based on substantial equities or other humanitarian considerations which would allow ICE authorities to consider options such as temporarily lifting a previously issued immigration detainer, suspending or terminating a pending removal proceeding or arranging for local immigration detention pending a child welfare proceeding.

- ***ICE Prosecutorial Discretionary Policy:*** ICE allows for the exercise of prosecutorial discretion in an unlimited number of circumstances which may include, but not be limited to a client's law enforcement cooperation, victimization (i.e., domestic violence, trafficking), longtime lawful permanent resident status, age, health, military background, caregiver obligations and other humanitarian concerns. Defense counsel is encouraged to consider contacting ICE (i.e., as provided on the immigration detainer) to advocate for humanitarian discretion on a deserving client's behalf. For more information on ICE's policy on "prosecutorial discretion," see the ICE Director, John Morton's June 17, 2011 memorandum, "*Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*" published and available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.

- ***New Family Preservation Discretionary Policy:*** Most recently, ICE released a discretionary policy focused on family preservation. ICE's August 23, 2013 memoranda, "Facilitating Parental Interests in the Court of Civil Immigration Enforcement Activities" outlines policy designed to preserve a detained noncitizen parent's right to participate in child welfare court proceedings and parent-child visitation. The new policy also provides for ICE coordination of parental deportation with actions to promote their children's safe and legally secure placements, and to help facilitate arrangements to assist a deported parent to temporarily return to the U.S. in order to participate in child welfare court proceedings. To ensure such collaboration, ICE will assign designated officers as the "Point of Contact for Parental Rights" in each ICE field office across the country. For more information on the ICE family preservation policy, visit http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf.

Executive Office for Immigration Review (EOIR) Hotline: In addition to available ICE resources, the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) (i.e., which oversees the removal hearing process) has provided an automated hotline accessible at **1-800-898-7180** to provide automated information as to any prior or pending removal proceeding involving a noncitizen client. A client's alien registration file number (see Detainer information above) will be necessary to access the automated database information.

CAUTION! The basis, manner and circumstances in which defense counsel may seek to contact ICE about an individual client should be approached strategically and in a way that helps to ensure a positive outcome for your client. Any such contact should be pursued only after an attorney has clear indication of possible immigration enforcement action by ICE.

For help on determining when to seek ICE assistance, please contact the New York State Defenders Association at 518-465-3524 or the Immigrant Defense Project hotline at 212-725-6422.

FINAL ATTORNEY ADVISORY ON PARENTAL INTEREST DIRECTIVE:

What Attorneys Should Know about the Parental Interest Directive

WHAT ATTORNEYS SHOULD KNOW ABOUT THE PARENTAL INTEREST DIRECTIVE

What is the Parental Interest Directive?

If your client is currently in the custody of the U.S. Department of Homeland Security (DHS) based on a pending immigration matter, he/she continues to maintain a right to engage in any family court hearing or child welfare proceeding, especially one that impacts temporary and/or permanent custody rights of a child(ren) in the United States.

In recognition of this constitutional right, the DHS issued a directive on August 23, 2013 that instructs U.S. Immigration and Customs Enforcement (ICE) officials to address issues involving placement, monitoring, accommodation and removal of certain immigrant parents or legal guardians who are:

- **Primary caretakers of minor children** without regard to the dependent 's citizenship;
- **Parents and legal guardians** who have a direct interest in family court proceeding involving a minor or child welfare proceedings in the United States; and
- **Parents or legal guardians** whose minor children are U.S. citizens (USCs) or lawful permanent residents (LPRs).

What is the ICE Policy on Protecting Parental Rights?

ICE personnel should ensure that the agency's immigration enforcement activities do not unnecessarily disrupt the parental rights of both immigrant parents or legal guardians of minor children. ICE is further instructed to maintain a comprehensive process of safeguarding parental rights throughout the process of immigration custody.

To do this, each ICE Enforcement Removal Office (ERO) throughout the country has a trained coordinator, **Field Point of Contact (POC) for Parental Rights**, whose contact information must be posted in multiple language and publicized at each immigration detention facility throughout the country, as well as available on the ICE website at www.ice.gov.

Important First Steps to Protecting the Parental Rights of Detained Immigrants

- **Screen for and assist in advocating to protect the parental or guardianship rights of immigrants held within the custody of ICE authorities.**

- **Immediately notify the ICE POC for Parental Rights on behalf of any detained immigrant client who is identified as a parent or legal guardian who has a minor child(ren) in the United States**

- **Assist the immigrant parent or legal guardian in maintaining contact with his/her child(ren), the child(ren)'s caretaker(s) and foreign Consulate/Embassy officials while the parent or legal guardian remains in immigration custody and monitor any changes in his/her immigration custody that may impact protecting his/her parental or legal guardianship rights of a child(ren) in the U.S.**

How to Apply the Parental Interest Directive

- **Seek "Prosecutorial Discretion" from ICE authorities for the release of an immigrant parent or legal guardian seeking to preserve parental or legal guardianship interests of a minor in the U.S.**
    - According to the DHS Parental Interest Directive, once an immigrant is identified as a parent, primary caregiver or legal guardian, "ICE should reevaluate any custody determination for the alien to the extent permitted by law and in accordance with existing ICE policy." (*See DHS Directive 11064.1: Facilitating Parental Interests in the Course of Civil Immigration*, section 5.2 issued on August 23, 2013 for more information).

    - This process will require that the parent or legal guardians' assigned Deportation Officer (i.e., also referred to as an ERO "Case Officer") be contacted to discuss any request for release from immigration custody in the form of "humanitarian parole," "release on recognizance," "supervised release," or any other available "alternatives to detention" or "bond hearing" before an immigration judge, that will assist in preserving parental or legal guardianship rights of a child(ren). Request for any of these discretionary considerations may likely require written submissions and/or supporting documents to warrant favorable exercise of prosecutorial discretion and/or subsequent release from immigration custody.

Note: This process may take some time to accomplish. It is recommended that interim steps be taken to preserve a detained client's parental or legal guardianship rights during negotiations with ICE authorities.

How to Apply the Parental Interest Directive (continued)

- **Engage in Client Advocacy with the ICE ERO Community Outreach Officer and/or the ICE POC for Parental Rights and encourage your client, his/her family members and any other interested parties in advocating for steps to be taken to preserve your client's parental or guardianship rights.**

Note: Contact information for the ICE Community Outreach officer can be accessed at: http://www.ice.gov/about/offices/enforcement-removal-operations/ero-outreach/ or by contacting the ICE ERO Community and Detainee Helpline at 1-888-351-4024 which is available Monday through Friday (excluding holidays) from 8:00 a.m. to 8:00 p.m. (Eastern Time).

- **Ensure that the parent or legal guardian is able to actively participate in any family court or child welfare proceedings.**
  - Advocate for Placement and/or Transfer of the parent or legal guardian to place him/her as close as practicable to the location of his/her child(ren) and/or to the location of a family court hearing or child welfare proceeding, where applicable.
  - When possible, provide ICE with reasonable notice of an upcoming family court hearing or child welfare proceeding and advocate for a client's in-person appearance and participation.
  - If in-person appearance is not possible, arrange for the ability to attend a hearing or proceeding via videoconferencing or standard teleconferencing and ensure that the immigrant parent's or legal guardian's rights are not impaired by being denied in-person appearance (i.e., that access to language services are readily available, etc.)

Note: Be prepared to provide ICE authorities with evidence of the family court or child welfare proceedings (i.e., notice of hearing, scheduling order or other court order), before accommodations are authorized for your client's appearance in court. Also be prepared to advocate for in-person appearance and how the benefits of your client's in-person appearance outweighs any burden imposed on ICE authorities for the transport and escort required to allow your client to attend the family court hearing or child welfare proceeding.

How to Apply the Parental Interest Directive (continued)

- **Ensure a parent or legal guardian's access to visitation.**
  - Advocate for access to adequate contact or non-contact visitation while a parent or legal guardian is in immigration custody, especially as may be required by a family court or child welfare authority.

Note: Be prepared to provide ICE authorities with evidence of visitation requirements imposed by a court (i.e., provide a copy of the reunification plan, scheduling letter or other court order). While in-person, contact visits are preferable, seek alternatives that will allow your client's visitation rights to be preserved (i.e., alternatives to detention, increased telephone access privileges or access to video-conferencing access, etc.).

- **Assist client in coordinating for the care and/or travel of a child(ren) pending or subsequent to a parent's or legal guardian's removal from the United States.**
  - Pursuant to the DHS Directive on Parental Rights, ICE is instructed to "accommodate, to the extent practicable, the detained parent or legal guardian's individual efforts to make provisions for their minor children" at the time of preparing for removal from the United States.

  - ICE accommodations should include, where available, a parent or legal guardian's "access to counsel, consulates and consular officials , courts and/or family members in the weeks preceding removal in order to execute signed documents (e.g., powers of attorney, passport applications, appointments of guardians or other permissions), purchase airline tickets, and make other necessary preparations prior to removal." (*See DHS Directive 11064.1,* section 5.6 for more information).

Note: Advocating and filing for a "stay of removal" may be necessary for ICE to allow a parent or legal guardian, who has been ordered removed, to remain in the U.S. pending any outcome of a family court hearing or child welfare proceeding that may impact custodial rights of the child(ren) in the U.S.

How to Apply the Parental Interest Directive (continued)

- **Facilitate for the return of any parent or legal guardian who has been previously ordered deported and removed from the United States.**
  - Advocate to facilitate the return of a parent or legal guardian who has been removed from the U.S. but is required to attend a family court hearing or child welfare proceeding relating to termination of rights of a child(ren) in the U.S.

  - ICE may require additional safeguards be imposed on a parent or legal guardian upon return to the U.S. that may include, but not be limited to, "detention, electronic monitoring or routine reporting requirements." (*See DHS Directive 11064.1,* section 5.7 for more information).

  - In addition, costs may be incurred by the parent or legal guardian to facilitate his/her return to and stay within the U.S. If costs exceed a client's ability for in-person appearance, all other efforts should be pursued to ensure that the parent or legal guardian has reasonable access to alternative means of communication (i.e., such as standard teleconferencing or videoconferencing) to facilitate his/her court appearance.

  - For those permitted to return to the U.S., ICE may require that the parent or legal guardian agree to the following terms, in writing, prior to return to the U.S.:

    (i) that his/her sole purpose in traveling to the U.S. is to attend their termination of parental rights hearings;
    (ii) that the grant of parole can be terminated by immigration authorities at any time;
    (iii) that he/she is not traveling to the U.S. in order to pursue immigration benefits or relief or protection from removal, or to otherwise circumvent orderly visa and immigration processing;
    (iv) that he/she will depart the U.S. without delay following the conclusion of the final parental rights termination hearing for which they traveled to the United States; and
    (v) that he/she understand that if he/she does not depart the U.S. promptly upon the completion of such hearing, he/she may be subject to removal from the U.S. without further hearing as an "arriving alien."

Note: Be prepared to provide ICE with evidence that in-person appearance at the family court hearing or child welfare proceeding is reasonable, legally necessary and/or deserving of humanitarian consideration.

DHS PARENTAL INTEREST DIRECTIVE

11064.1 Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities

11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities

Issue Date: August 23, 2013
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Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** U.S. Immigration and Customs Enforcement (ICE) is committed to intelligent, effective, safe and humane enforcement of the nation's immigration laws. ICE seeks to enforce immigration laws fairly and with respect for a parent's rights and responsibilities. This directive supplements existing ICE enforcement priority memoranda. This Directive establishes ICE policy and procedures to address the placement, monitoring, accommodation, and removal of certain alien parents. The Directive is particularly concerned with the placement, monitoring, accommodation, and removal of alien parents or legal guardians who are: 1) primary caretakers of minor children without regard to the dependent's citizenship; 2) parent and legal guardians who have a direct interest in family court proceeding involving a minor or child welfare proceedings in the United States; and 3) parents or legal guardians whose minor children are U.S. citizens (USCs) or lawful permanent residents (LPRs).

   This Directive is intended to complement the immigration enforcement priorities and prosecutorial discretion memoranda, as well as other related detention standards and policies that govern the intake, detention, and removal of alien parents. The security and safety of any ICE employee, detainee, ICE detention staff or member of the public will be paramount in the exercise of the procedures and requirements of this Directive.

2. **Policy.** ICE personnel should ensure that the agency's immigration enforcement activities do not unnecessarily disrupt the parental rights of both alien parents or legal guardians of minor children Particular attention should be paid to immigration enforcement activities involving: 1) parents or legal guardians who are primary caretakers; 2) parents or legal guardians who have a direct interest in family court or child welfare proceedings; 3) parents or legal guardians whose minor children are physically present in the United States and are USCs or LPRs. ICE will maintain a comprehensive process for identifying, placing, monitoring, accommodating, and removing alien parents or legal guardians of minor children while safeguarding their parental rights.

3. **Definitions.** The following definitions apply for the purposes of this Directive only.

3.1. **Custody.** The period of time during which a person has been arrested or detained by ICE under its civil immigration enforcement authorities, is physically present in an ICE-owned, -leased, or -contracted detention facility pursuant to such authorities, or is being transported by ICE or an ICE contractor (including for the purposes of removal from the United States) pursuant to such authorities. Custody ends when the person is released from ICE's physical confinement or restraint, including upon transfer to another agency.

3.2. **Initial Placement.** The first facility where an alien is detained by ICE.

3.3. **Parental Rights.** The fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law. The rights of legal guardians of minor children to make decisions concerning those children as provided for and limited by applicable law.

3.4. **Family Court or Child Welfare Proceeding.** A proceeding in which a family or dependency court or child welfare agency adjudicates or enforces the rights of parents or minor children through determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or other legal obligations in the context of parental rights.

4. **Responsibilities.**

4.1. **Enforcement and Removal Operations (ERO) Field Office Directors (FODs)** and their staff or designees have responsibilities under Sections 5.1 through 5.7.

4.2. The **ERO Executive Associate Director (EAD)** has responsibilities under Section 5.8 and 5.9.

4.3. The **ERO Field Operations Division** has responsibilities under Section 5.7 (Facilitation of Return).

4.4. The **Parental Rights Coordinator** has responsibilities under Sections 5.1, 5.8, and 5.10 (Training).

4.5. The **Field Point of Contact (POC) for Parental Rights** in each ERO Field Office have responsibilities under Sections 5.1, 5.2, and 5.8 (Implementation through Collaboration and Information Sharing).

4.6. **ICE Office of Detention Policy and Planning (ODPP)** has responsibilities under Section 5.10 (Training).

5. **Procedures/Requirements.**

5.1. Field Points of Contact for Parental Rights ("Field POCs").

1) Each ERO FOD shall designate a specially trained coordinator at the supervisory level in his or her Field Office to serve as the Field POC for Parental Rights for his/her area of responsibility (AOR). These Field POCs will regularly communicate with the Parental Rights Coordinator (See 5.8) and report to ERO HQ on the progress of implementing this Directive. The Field POCs will also participate in all relevant training offered by HQ ERO on the subject of this Directive.

2) Each Field POC shall receive and address public inquiries related to the parental rights or family ties of detained alien parents or legal guardians of minor children. Careful consideration should be given to cases involving parents or legal guardians who are primary caretakers, those who have a direct interest in family court or child welfare proceedings, and those whose minor children are USCs or LPRs. Inquiries may be received from detained or non-detained aliens, their family members, attorneys or representatives, advocacy groups, state and local family courts, and/or child welfare services, among others.

3) Information regarding how to contact the Field POCs shall be posted and publicized at detention facilities within each AOR and on the ICE website. Information will be made available in multiple languages to the extent practicable.

5.2. Prosecutorial Discretion and Identification.

1) ***Prosecutorial Discretion.*** FODs shall continue to weigh whether an exercise of prosecutorial discretion may be warranted for a given alien and shall consider all relevant factors in this determination, including whether the alien is a parent or legal guardian of a USC or LPR minor, or is a primary caretaker of a minor. While the FODs may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible.

2) ***Identification.*** ICE may receive information that identifies an alien as a parent or legal guardian of a USC or LPR minor, or as a primary caretaker of a minor at any time during the alien's arrest, processing or detention.

   If such information is sufficiently credible to confirm the alien's status as a parent or legal guardian of a USC or LPR minor, or as a primary caretaker of a minor, FODs should reevaluate any custody determination for the alien to the extent permitted by law and in accordance with existing ICE policy.

   Once a detained alien has been determined to be a parent or legal guardian of a USC or LPR minor, or as a primary caretaker of a minor, the FOD or Field POC should also enter this information into ENFORCE.

5.3. Initial Placement and Subsequent Transfers.

1) If the alien's child, children, or family court or child welfare proceedings are within the AOR of initial apprehension, the FOD shall refrain from making an initial placement or from subsequently transferring the alien outside of the AOR of apprehension, unless deemed necessary by the FOD for the reasons outlined in Section 5.2(3) of ICE Policy 11022.1, Detainee Transfers (January 4, 2012) ("Detainee Transfer Directive"). FODs shall also note any transfers outside the AOR in the updated Detainee Transfer Checklist (attached).

2) Further, and subject to detention space availability, the FOD will initially place the detained alien parent as close as practicable to the alien's child(ren) and/or to the location of the alien's family court or child welfare proceedings (if any).

5.4. Nature of the Individual's Participation in Family Court or Child Welfare Proceedings.

1) *In-person appearance* -- When a detained alien parent or legal guardian's presence is required to participate in family court or child welfare proceedings in order for him or her to maintain, or regain, custody of his or her child(ren) and:

   a) The detained alien parent or legal guardian or his or her attorney or other representative requests with reasonable notice an opportunity to participate in such hearings;

   b) The detained alien parent or legal guardian, or his or her attorney or other representative, has produced evidence of a family court or child welfare proceeding, including but not limited to, a notice of hearing, scheduling letter, court order, or other such documentation;

   c) The family court or child welfare proceedings are located within a reasonable driving distance of the detention facility where the detained alien parent or legal guardian is housed;

   d) Transportation and escort of the detained alien parent or legal guardian would not be unduly burdensome on Field Office operations; and

   e) Such transportation and/or escort of the detained alien parent or legal guardian to participate in family court or child welfare proceedings does not present security and/or public safety concerns,

The FOD shall arrange for the detained alien parent or legal guardian's in-person appearance at family court or child welfare proceedings, if practicable.

2) *Participation by video or standard teleconferencing* – If it is impracticable to transport the detained alien parent or legal guardian to appear in-person in a family

court or child welfare proceeding, due to distance or safety or security concerns, the FOD should work with both the detained alien parent or legal guardian and the family court or child welfare authority to identify alternative means for the detained alien parent or legal guardian to participate in the proceeding. For instance, if it is technologically feasible, and approved by the family court or child welfare authority, the FOD may facilitate a detained alien parent's or legal guardian's appearance or participation through video or standard teleconferencing from the detention facility or the Field Office.

In all cases, if the detained alien parent or legal guardian does not wish to attend and/or participate in a family court or child welfare proceeding, ICE will not interfere with the detained alien parent's or legal guardian's decision, which shall be documented in the detainee's A-File.

5.5. Visitation.

1) In some cases, parent-child visitation may be required by the family court or child welfare authority in order for a detained alien parent or legal guardian to maintain or regain custody of his or her minor child(ren). If a detained alien parent or legal guardian, or his or her family member, attorney, or other representative produces documentation (e.g. a reunification plan, scheduling letter, court order, or other such documentation) of such a requirement, FODs shall facilitate, to the extent practicable, the required visitation between the detained alien parent or legal guardian and his or her minor child(ren).[1]

   a) Such special visitation may include contact visitation, within the constraints of safety and security for both facility staff and detainees.

   b) These special arrangements shall not limit or otherwise adversely affect the detained alien parent or legal guardian's normal visitation rights under the relevant detention standards, or the safe and efficient operation of the detention facility.

2) While in-person visitation is preferred and should be made available whenever practicable, if it is technologically feasible and approved by the family court or child welfare authority, FODs may permit parent-child visitation through video or standard teleconferencing from the detention facility or the Field Office.

[1] Pursuant to ICE detention standards, at facilities where there is no provision for visits by minors, upon request, FODs shall arrange for a visit by children, stepchildren, and/or foster children within the first 30 days. After that time, upon request, ICE shall consider a request for transfer, when possible, to a facility that will allow such visitation. Upon request, FODs shall continue monthly visits, if transfer is not approved, or until an approved transfer can be effected. *See* NDS 2000 (Section H.2.d); PBNDS 2008 (Section H.2.d); PBNDS 2011 (Section I.2.b).

5.6. Coordinating Care or Travel of Minor Children Pending Removal of a Parent or Legal Guardian.

1) Where detained alien parents or legal guardians who maintain their parental rights are subject to a final order of removal and ICE is effectuating their removal, FODs or their appropriate designees should accommodate, to the extent practicable, the detained parent or legal guardian's individual efforts to make provisions for their minor children. Such provisions may include the parent or legal guardian's attempt to arrange guardianship for his/her minor children to remain in the United States, or to obtain travel documents for their child(ren) to accompany them to their country of removal.

2) FODs will coordinate, to the extent practicable, within their local detention facilities and within the Field Office to afford detained alien parents or legal guardians access to counsel, consulates and consular officials, courts and/or family members in the weeks preceding removal in order to execute signed documents (e.g., powers of attorney, passport applications, appointments of guardians or other permissions), purchase airline tickets, and make other necessary preparations prior to removal.

3) In addition, the FOD may, subject to security considerations, provide sufficient notice of the removal itinerary to the detainee or through the detained alien's attorney or other representative, so that coordinated travel arrangements may be made for the alien's minor child(ren).

5.7. Facilitation of Return.

1) If a lawfully removed alien (or his or her attorney, family member, consular official or other representative) provides to ICE verifiable evidence indicating that he or she has a hearing or hearings related to his or her termination of parental or legal guardianship rights before a family court or child welfare authority in the United States, and the court or child welfare authority has determined that the removed parent or legal guardian must be physically present, rather than participating via other means, ICE may, on a case-by-case basis, while taking into account security and public safety considerations, facilitate the return of the alien to the United States by grant of parole for the sole purpose of participation in the termination of parental rights proceedings.

2) ICE shall consider facilitating the return of a removed parent or legal guardian in compelling humanitarian cases. Aliens who are allowed to return must acknowledge in writing that they may be subject to additional safeguards, including but not limited to, detention, electronic monitoring or routine reporting requirements. Prior to being paroled back into the United States, alien parents or legal guardians must confirm, in writing: (i) that their sole purpose in traveling to the United States is to attend their termination of parental rights hearings; (ii) that the grant of parole can be terminated at any time; (iii) that they are not traveling to the United States in order to pursue immigration benefits or relief or protection from removal, or to otherwise circumvent

orderly visa and immigration processing; (iv) that they will depart the United States without delay following the conclusion of the final parental rights termination hearing for which they traveled to the United States; and (v) that they understand that if they do not depart the United States promptly upon the completion of such hearing, they may be subject to removal from the United States without further hearing as an arriving alien. Additionally, facilitation of return under this Directive will not relieve an alien of any ground of inadmissibility, deportability, or ineligibility for immigration benefits or relief or protection from removal.

3) The alien will be responsible for incurring all costs associated with returning to United States to participate in the termination of parental rights hearings; the alien will also incur all costs for departing the United States at the conclusion of the hearing.

4) Requests to facilitate return will be considered and accommodated on a case-by-case basis, taking into account security and public safety considerations and other relevant factors, such as whether the family court or relevant child welfare authority will permit the removed alien to participate through alternative means, e.g., through video or standard teleconferencing.

5.8. Implementation through Collaboration and Information Sharing.

1) The ERO EAD shall designate a Parental Rights Coordinator.

2) The Parental Rights Coordinator shall be responsible for:

   a) Serving as the primary point of contact and subject matter expert for all FODs and Field POCs, regarding the parental rights of detained aliens.

   b) With the assistance of relevant ERO divisions responsible for data collection and analysis, evaluating on an ongoing basis information collected from ENFORCE, Risk Classification Assessment (RCA) and other relevant ICE information technology systems regarding detained alien parents or legal guardians and sharing with FODs and Field POCs, on an ongoing basis, relevant information about detained alien parents and legal guardians within each AOR.

   c) Assisting FODs and Field POCs in utilizing information about detained alien parents and legal guardians to help ensure compliance with this directive, including:

      i. the appropriate exercise of prosecutorial discretion with respect to detained aliens who are determined to be the primary caretaker of a minor child, or who are determined to be the parent or legal guardian of a USC or LPR child;
      ii. appropriate initial placement decisions and transfer decisions for detained alien parents or legal guardians;

iii. the appropriate provision of escorted trips to family court or child welfare proceedings for detained alien parents or legal guardians;
iv. appropriate visitation within ICE facilities; and
v. appropriate efforts, to the extent practicable, to allow a detained alien parent or legal guardian to make provisions for their minor children, including through increased access to counsel, consular officials, family and dependency courts, child welfare authorities personnel, and/or family members or friends in order to arrange guardianship, or to obtain travel documents or otherwise make necessary travel arrangements, for his or her children.

d) Coordinating as necessary with other relevant ERO program offices, FODs, state or local family court or child welfare authority personnel, consular officials and others to facilitate the timely response to issues or complaints relating to the parental rights of detained aliens received by ICE.

e) Working as necessary with relevant ICE program offices and consular officials to facilitate the return to the United States of certain lawfully removed aliens by grant of parole for the sole purpose of participation in the termination of parental rights proceedings.

3) To the extent practicable, the FODs and the Field POCs shall utilize information collected from ENFORCE, RCA, and other relevant ICE information technology systems regarding detained alien parents and legal guardians to perform the functions described in Section 5.8(2)(c) of this Directive.

5.9. Outreach.

1) With support from other relevant ICE program offices and in coordination with U.S. Department of Homeland Security (DHS) entities and the U.S. Department of Health and Human Services' Administration for Children and Families, the ERO EAD or his or her designee shall work with representatives of family and dependency courts and child welfare authorities to develop methods for improving communication and cooperation between the immigration enforcement, family or dependency court, and child welfare systems.

2) In cooperation with non-governmental organization stakeholders, the ERO EAD or his or her designee shall ensure the dissemination to all over-72-hour facility law libraries relevant resource guides, including materials prepared by non-governmental organizations and reviewed by ICE, regarding dependency proceedings and the intersection of these proceedings with immigration enforcement and detention.

5.10. Training.

1) The Parental Rights Coordinator, in consultation with relevant ICE and DHS program offices – to include other relevant ERO program offices, the ICE Office of Training

and Development, Office of Detention Policy and Planning, and the DHS Office for Civil Rights and Civil Liberties – shall develop training materials to assist FODs, Field POCs, and other relevant Field Office personnel in the implementation of this Directive.

2) Training shall cover, at a minimum, the means by which ICE officers and personnel will safeguard the parental rights of aliens they encounter – through identification, placement, monitoring, accommodation, and removal – while fulfilling their obligation to enforce the immigration laws.

6. Recordkeeping. None.

7. Authorities/References.

7.1. INA § 212(d)(5), 8 U.S.C. § 1182(d)(5).

7.2. 8 Code of Federal Regulations (CFR) §212.5

7.3. ICE Policy 10075.1, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011).

7.4. ICE Policy 10072.1, Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens (March 2, 2011).

7.5. 2011 Performance-Based National Detention Standard, "5.2 Trips for Non-medical Emergencies."

7.6. ICE Policy 11022.1, Detainee Transfers (January 4, 2012).

8. Attachments.

8.1. Detainee Transfer Checklist (updated).

9. No Private Right. Notwithstanding the provisions of this Directive, ICE retains its discretion to remove or detain any alien to the extent permitted by law, irrespective of an alien's pending family court or child welfare proceeding. These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

John Sandweg
Acting Director
U.S. Immigration and Customs Enforcement

FAMILY LAW OFFENCES THAT RESULT IN CRIMNAL CONVICTIONS
&
THEIR POTENTIAL IMMIGRATION CONSEQUENCES

Family Court Act §812

FAMILY LAW OFFENSES THAT RESULT IN CRIMIAL CONVICTIONS & THEIR POTENTIAL IMMIGRATION CONSEQUENCES*

FAMILY COURT ACT §812

OFFENSE & PENAL LAW	POTENTIAL IMMIGRATION CONSEQUENCE
Attempted Assault **NY PL §110/120.00** (class B misdemeanor)	An assault offense may be considered a "crime involving moral turpitude" (CIMT) if the offense includes a finding of specific intent to inflict bodily harm. Thus, NY PL §120.00(1) has been found to be a CIMT offense. See *Matter of Solon*, 24 I. & N. Dec. 239 (B.I.A. 2007). NOTE: An assault offense involving only reckless conduct (i.e., with no required showing of "serious bodily injury") as in subsection 2 of NY PL §120.00 or requiring only negligent conduct as in subsection 3 of NY PL §120.00 have been found not to be a CIMT. *See Matter of Fualaau*, 21 I. & N. Dec. 475 (B.I.A. 1996) and *Matter of Perez-Contreras*, 20 I. & N. Dec. 615 (B.I.A. 1992).
Assault in the 3rd Degree **NY PL 120.00** (class A misdemeanor)	A conviction of subsection 1 can result in a finding of an "aggravated felony" (AF) crime of violence if a term of imprisonment of one year is imposed. An AF ground of deportation may result in mandatory detention, deportation and removal from the United States. An assault offense may be considered a crime involving moral turpitude (CIMT) if the offense includes a finding of specific intent to inflict bodily harm. Thus, NY PL §120.00(1) has been found to be a CIMT offense. See *Matter of Solon*, 24 I. & N. Dec. 239 (B.I.A. 2007). NOTE: An assault offense involving only reckless conduct (i.e., with no required showing of "serious bodily injury") as in subsection 2 of NY PL §120.00 or requiring only negligent conduct as in subsection 3 of NY PL §120.00 have been found not to be a CIMT. *See Matter of Fualaau*, 21 I. & N. Dec. 475 (B.I.A. 1996) and *Matter of Perez-Contreras*, 20 I. & N. Dec. 615 (B.I.A. 1992).
Assault in the 2nd Degree **NY PL 120.05** (class D felony)	A conviction can result in a finding of an AF crime of violence if a term of imprisonment of one year or more is imposed which may result in mandatory detention, deportation and removal from the United States. In addition, a conviction may support a finding of deportability and inadmissibility for a CIMT offense if the sentence imposed is not a year or more of imprisonment. If the record of conviction includes reference to a firearm being involved in the offense, a finding of guilt in subsections 2 or 4 may support a ground of deportation for a firearm-related conviction. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt involving subsections 1, 2, 3, 6, 7, 8, 9 and 10(b) may support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Menacing in the 2nd Degree NY PL 120.14 (class A misdemeanor)	A conviction can result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed which may result in mandatory detention, deportation and removal from the United States. In addition, a conviction may support a finding of deportability and inadmissibility for a CIMT offense if the sentence imposed is not one year of imprisonment. If the record of conviction includes reference to a firearm being involved in the offense, a finding of guilt may support a ground of deportation for a firearm-related conviction. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.

*This chart is intended primarily to assist in identifying potential immigration consequences resulting from a conviction of the above-listed family law offense. Since the landscape of federal immigration law continues to dramatically evolve and specific immigration consequences will vary depending on each individual's unique history, this chart is a general guide and should not replace the direct immigration legal advice and/or consultation required to address any potential immigration consequences that may result from a specific family law offense matter that results in a criminal conviction. In addition, this chart should not be used or cited as legal authority.

Menacing in the 3rd Degree NY PL 120.15 (class B misdemeanor)	A conviction may support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Reckless Endangerment in the 2nd Degree NY PL 120.20 (class A misdemeanor)	For jurisdictions outside of the U.S. Court of Appeals for the Second Circuit, a conviction involving a sentence imposed of one year or more may result in a finding of an AF crime of violence and can result in mandatory detention, deportation and removal from the U.S. Note: Consider *Leocal v. Ashcroft*, 543 U.S. 1 (2004) to support the argument that a conviction does not support an AF crime of violence ground of deportation within the jurisdiction of the U.S. Court of Appeals for the Second Circuit if a sentence of one year of imprisonment is imposed. A conviction may support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of an individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may support a finding of deportation based on a crime of domestic violence if outside of the jurisdiction of the U.S. Court of Appeals for the Second Circuit. *See above note*. If the record of conviction references involvement of a child, a finding of guilt may also support a finding of deportation based on a crime against a child.
Reckless Endangerment in the 1st Degree NY PL 120.25 (class D felony)	A conviction can result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed which may result in mandatory detention, deportation and removal from the United States. In addition, a conviction may support a finding of deportability and inadmissibility for a CIMT offense if the sentence imposed is not one year of imprisonment. If the record of conviction includes reference to a firearm being involved in the offense, a finding of guilt may support a ground of deportation for a firearm-related conviction. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Stalking in the 4th Degree NY Pl 120.45 (class B misdemeanor)	A conviction may support a finding of deportability and inadmissibility for a CIMT offense. In addition, a conviction will likely support a ground of deportation as a crime of stalking and may support a ground of deportation as a crime against a child if the record of conviction references involvement of a child as a victim. A conviction may also trigger possible deportation for a crime of domestic violence if the record of conviction references an individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16) if outside of the jurisdiction of the U.S. Court of Appeals for the Second Circuit.
Stalking in the 3rd Degree NY PL 120.50 (class A misdemeanor)	A conviction can result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed following a finding of guilt of subsection 3 (i.e., and of subsections 1, 2 and 4 for jurisdictions outside of the U.S. Court of Appeals for the Second Circuit) which may result in mandatory detention, deportation and removal from the United States. A conviction may also support a finding of deportability and inadmissibility for a CIMT offense. In addition, a conviction will support a ground of deportation as a crime of stalking and, if the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), will likely support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Stalking in the 2nd Degree NY PL 120.55 (class E felony)	A conviction can result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed which may result in mandatory detention, deportation and removal from the United States. A conviction may also support a finding of deportability and inadmissibility for a CIMT offense.

	If the record of conviction includes reference to a firearm being involved in the offense, a finding of guilt in subsection 1 may support a ground of deportation for a firearm-related conviction. In addition, a conviction will support a ground of deportation as a crime of stalking and, if the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), will likely support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Stalking in the 1st Degree NY PL 120.60 (class D felony)	A conviction can result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed which may result in mandatory detention, deportation and removal from the United States. A conviction may also support a finding of deportability and inadmissibility for a CIMT offense. In addition, a conviction will support a ground of deportation as a crime of stalking and, if the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), will likely support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Criminal Obstruction of Breathing or Blood Circulation NY PL 121.11 (class A misdemeanor)	A conviction would likely result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed which may result in mandatory detention, deportation and removal from the United States. A conviction would likely support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Strangulation in the 2nd Degree NY PL 121.12 (class D felony)	A conviction would likely result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed which may result in mandatory detention, deportation and removal from the United States. A conviction would likely support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Strangulation in the 1st Degree NY PL 121.13 (class C felony)	A conviction would likely result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed which may result in mandatory detention, deportation and removal from the United States. A conviction would likely support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Sexual Misconduct NY PL 130.20 (class A misdemeanor)	A conviction can result in a finding of an AF "sexual abuse of a minor" if lack of consent involves a minor or may also support an AF "rape" offense. A conviction may also be a crime of violence if a term of imprisonment of one year is imposed if record of conviction evidences lack of consent by forcible compulsion. An AF offense may result in mandatory detention, deportation and removal from the United States. A conviction may also support a finding of deportability and inadmissibility for a CIMT offense in a finding of guilt of subsections 1 and 2 (i.e., if lack of consent involved a minor) and possibly of subsection 3 for a sentence that is imposed of less than a term of one year of imprisonment. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Forcible Touching	A conviction can result in a finding of an AF crime of violence if a term of imprisonment

NY PL 130.52 (class A misdemeanor)	of one year is imposed or if the record of conviction references involvement of a child, a finding of guilt will support an AF "sexual abuse of a minor" ground of deportation. An AF offense may result in mandatory detention, deportation and removal from the United States. A conviction may also support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.
Sexual Abuse in the 3rd Degree NY PL 130.55 (class B misdemeanor)	A conviction can result in a finding of an AF "sexual abuse of a minor" ground of deportation if the record of conviction references involvement of a child which may result in mandatory detention, deportation and removal from the United States. A conviction may also support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of a child, a finding of guilt may also support a finding of deportation based on a crime against a child.
Sexual Abuse in the 2nd Degree NY PL 130.60 (class A misdemeanor)	A conviction can result in a finding of an AF crime of violence if a term of imprisonment of one year is imposed or if the record of conviction references involvement of a child, a finding of guilt of subsection 2 will support an AF "sexual abuse of a minor" ground of deportation. An AF offense may result in mandatory detention, deportation and removal from the United States. A conviction may also support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of a child, a finding of guilt may also support a finding of deportation based on a crime against a child.
Criminal Mischief in the 4th Degree NY PL 145.00 (class A misdemeanor)	A conviction of subsection 4 (i.e., and of subsections 1, 2 and 3 for jurisdictions outside of the U.S. Court of Appeals for the Second Circuit) may support an AF crime of violence ground of deportation if a sentence of one year of imprisonment is imposed. An AF crime of violence offense may result in mandatory detention, deportation and removal from the U.S. A finding of guilt of subsections 1, 2 and 4 may also support a finding of deportability and inadmissibility for a CIMT offense.
Disorderly Conduct NY PL 240.20 (violation)	A finding of guilt of this violation will not substantiate a criminal ground of deportation or inadmissibility in support of removal.
Harassment in the 2nd Degree NY PL 240.26 (violation)	A conviction may also support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of an individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt of subsection 1 may support a finding of deportation of a crime of domestic violence. In addition, a finding of guilt of subsections 2 or 3 may also trigger a ground of deportation for stalking.
Harassment in the 1st Degree (includes conduct related to stalking) NY PL 240.25 (class B misdemeanor)	A conviction may also support a finding of deportability and inadmissibility for a CIMT offense. If the record of conviction references involvement of an individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt may also support a finding of deportation based on a crime of domestic violence for jurisdictions outside of the U.S. Court of Appeals for the Second Circuit. In addition, it may trigger a ground of deportation for stalking.
Aggravated Harassment in the 2nd Degree NY PL 240.30 (class A misdemeanor)	A conviction of subsections 3 or 4 may support an AF crime of violence ground of deportation if a sentence of one year of imprisonment is imposed which may result in mandatory detention, deportation and removal from the U.S. In addition, a conviction may support a finding of deportability and inadmissibility for a

	CIMT offense if the sentence imposed is not one year of imprisonment. If the record of conviction references involvement of a child or individual recognized as a victim of domestic violence (i.e., as defined in 18 U.S.C. §16), a finding of guilt to subsections 3 or 4 may also support a finding of deportation based on a crime of domestic violence and/or crime against a child.

FORMS OF RELIEF TO PREVENT REMOVAL

FORMS OF RELIEF TO PREVENT REMOVAL*

The chart referenced below is not an exclusive list and does not expressly provide all requirements and bars to the forms of relief discussed above. Further analysis is recommended when seeking to pursue any of the below-listed forms of relief. The original below-referenced chart was originally produced by Bryan Lonegan, Immigration Law Unit of the Legal Aid Society of New York. Revisions of the chart were provided by Paromita Shah of the National Immigration Project and the New York State Defenders Association Immigrant Defense Project.

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

· A child is eligible for SIJS if:
The child is deemed to require long term foster care (i.e., under age of 18 yrs and a juvenile court has determined that family reunification is no longer viable) or
· Child was committed to the custody of a state agency or dep't due to abuse, neglect or abandonment.

· The applicant must also be under 21 yrs of age and unmarried at the time of obtaining SIJS.

·If a juvenile is in DHS custody, DHS' consent to the juvenile court's jurisdiction must be obtained before dependency proceedings are initiated.

·Must establish:
·juvenile's date and place of birth
·date and manner of entry into US
·current immigration status
·whereabouts and status of parents
·evidence of abuse, neglect or abandonment
·reasons why not in child's best interest to return to native country
·type of proceedings before the juvenile court.

SPECIAL VISAS

T VISA: TRAFFICKING VICTIMS PROTECTION ACT OF 2000
· Subject to "severe trafficking"
· Agree to assist in enforcement or
is less than 18 yrs old and
· Would suffer "extreme hardship involving unusual and severe harm upon removal"
·Limited waiver for crimes

S VISA: INFORMANT VISA
·For alien who provides important information on a criminal org or terrorist org
·Need written agreement with law enforcement

U VISA: VICTIM OF A CRIME
· Suffered substantial physical or mental abuse as a result of being a crime victim for certain crimes
(i.e., trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation)
· Possesses information of crime
· Helpful in prosecution as certified by gov't official

ADJUSTMENT OF STATUS

If the alien is admitted, paroled and has an approved petition, he/she may adjust if:
· The alien is eligible to receive an immigrant visa
· The alien is admissible, and
· An immigrant visa is immediately available
****NOTE:* If alien entered without inspection, petition must be filed on or before April 30, 2001 pursuant to INA §245(i)**

FAMILY PREFERENCE CATEGORIES:
·Spouse of USC
·Parent of USC (USC child +21 yrs)
·Child of USC (child unmarried & -21 yrs)**

****AGING OUT PROBLEM:**
****Immediate Relative Child must be -21 yrs of age ONLY at the time petition (i.e., Form I-130 Petition) is filed pursuant to CSPA**

OTHER FAMILY PREFERENCES:
1st ·Unmarried child (+21 yrs) of USC
2A ·Spouse of LPR and unmarried child (-21 yrs) of LPR
2B ·Unmarried child (+21yrs) of LPR
3rd ·Married child of USC
4th ·Siblings (+21 yrs) of USC

CANCELLATION OF REMOVAL FOR LPRs

· **LPR for 5 yrs**
· **7 years residence in US before:**
  * **served Notice to Appear or**
  * **commits inadmissible or deportable offense**
· **No Aggravated Felony conviction**
· **Positive outweighs negative factors**

WAIVERS

INA §212(c) WAIVER FOR LPR

· **LPR**
· **7 yrs domicile in US**
·**Pled guilty before 4/24/96 to an inadmissibility or deportable offense referred to in inadmissibility grounds**
· **Not served 5 yrs or more term of imprisonment**
· **Positive outweighs negative factors**

INA §212(h) WAIVER

· **If a crime renders alien inadmissible, waiver is available for certain inadmissible offenses if**
• **Not a drug offense (except for one time simple possession of 30 gms of marihuana)**
• **not murder or torture**
* **Alien is spouse, parent, son or daughter of USC or LPR and**
* **Denial of alien's admission would be an extreme hardship for relative**
* **AG must consent**

-OR-

· **Activities of inadmissibility occurred more than 15 years before the date of admission, visa application or adjustment of status and admission is not contrary to the national welfare, safety or security of the US. Applicant must show rehabilitation. (*exception: 15 years not required to waive inadmissibility for prostitution*).**

• **If LPR, needs 7 yrs. residence + no Agg Fel**
• **VAWAs don't need to show hardship to relative**

CANCELLATION OF REMOVAL FOR NON-LPRs

· **10 years presence required:**
· **10-yr presence stops when:**
  * **served Notice To Appear or**
  * **commits inadmissible or deportable offense**
  * **single absence of +90 days or**
  * **aggregate absence of +180 days**
· **Good moral character for 10 yrs**
· **To depart would cause extreme hardship to LPR/USC spouse, child, parent**

VAWA CANCELLATION

· **If USC or LPR spouse or parent is abusive, alien can get cancellation**
· **Continuous presence for 3 years**
· **Good moral character**
· **Be admissible and no Aggravated Felony**

ASYLUM	**WITHHOLDING OF REMOVAL**	**CONVENTION AGAINST TORTURE**
· Unable or unwilling to return where alien persecuted or has a well founded fear of persecution on account of: · race, · religion, · nationality, · membership in a particular social group, or · political opinion · Generally, rule requires that an application be filed within one year of arrival in US (absent certain exceptions such as "changed circumstances") · Barred if convicted of an Agg Fel · Barred if convicted of "particularly serious crime" (drug trafficking is presumptively a PSC) · Asylees can apply to adjust status after one year and use 209(c) waiver of inadmissibility, if necessary	· Prohibits return of alien where life or freedom would be threatened because of: · race, · religion, · nationality, · membership in a particular social group, or · political opinion · Barred by PSC · Barred by Agg Fels w/ aggregate sentence of five years	· Would suffer severe pain and suffering · Intentionally inflicted · For an illicit purpose · By or at the instigation of or with acquiescence of a public official who has custody and control of victim · Not arising from lawful sanction
TEMPORARY PROTECTED STATUS (TPS)	**VOLUNTARY DEPARTURE**	**MANDATORY DETENTION**
· For designated countries · Must be admissible · Barred by felony or any 2 misdemeanors	· Not for arriving aliens · No Aggravated Felony conviction · No prior removal order · Granted up to 120 days to depart *If requested at end of proceedings*: · Physically present for 1 yr+ · Good moral character for 5 yrs+ · Granted up to 60 days to depart	· Applies only to those released from custody after 10/9/98 * **Arriving aliens** are ineligible for bond * **For LPR** * 2 CIMTs * 1 CIMT w/1yr sentence within 5 years of admission * Agg Fel * Controlled substance offense * Firearms offense * **For EWI** * One CIMT (subject to petty offense exception) * Controlled substance offense * Drug trafficking offense * 2 or + offenses with aggregate of 5 yrs * Prostitution * Domestic violation or violation of protection order