CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

SPECIAL CONSIDERATIONS RELATED TO CHILDREN WHEN WORKING WITH REUNITED ASYLUM-SEEKING FAMILIES

- **Background on Border Enforcement Procedures**
  - Pre-Late Spring 2018
    - Generally, when DHS apprehended and detained a parent and child at or near the border, DHS detained the family together and placed the family in expedited removal or simply put the family into removal proceedings together. If subject to expedited removal and the parent expressed a fear of return and passed their credible fear interview, then the parent and child were placed in removal proceedings together in a consolidated proceeding. Often these families were released on their own recognizance, granted humanitarian parole, and required to comply with an order of supervision that required them to check in with ICE ERO on a regular basis. These documents almost-always include the address of the guest's "sponsor" who had communicated with ICE their willingness to receive the guests. DHS would file a motion to change venue to the immigration court jurisdiction where the family was going to reside with the sponsor after release. *See* EOIR Immigration Court Listings. Alternatively, though less frequent, DHS would file the Notice to Appear (NTA) with the immigration court that had jurisdiction over the geographic region corresponding to the families' sponsor's address. The families would then have their order of supervision appointments with the ICE Field Office location nearest to their sponsor's address. *See* ICE Field Offices.
  - Late Spring 2018: "Zero Tolerance" Policy and Family Separation[1]
    - Multiple case postures exist in family separation cases. In general, in these cases, DHS referred the parent for criminal prosecution forcing the child to become "unaccompanied." DHS then referred the child to the Office of Refugee Resettlement (ORR).[2] Therefore, by separating the families, ICE enacted different removal proceedings for the parent and the child.

[1] For further information on the government's "zero tolerance" policy, see these two helpful resources: CLINIC, Timeline: Family Separations Under the "Zero Tolerance" Policy and CLINIC, Fact Sheet on Family Separation (Aug. 18, 2018).

[2] Though the government generally refers to these children as "UACs," this practice pointer will use the term "Unaccompanied Child" and abbreviation "UC." A UC is defined as a child under the age of eighteen without lawful immigration status who does not have a parent or legal guardian in the United

- Parents
    - Following criminal prosecution, DHS commenced expedited removal against the parent,[3] and if they expressed a fear of return, and passed the credible fear interview, DHS placed them into removal proceedings before the IJ. If they did not pass the credible fear interview, they could have requested review of that denied credible fear before the IJ, and if that the IJ affirmed the denied credible fear, they were issued an expedited removal order. Some of those parents were then deported, and others, because of the litigation around family separation, were issued humanitarian paroled despite being issued an expedited removal order. DHS served some parents a NTA. Other parents were released without a credible fear interview or an NTA. Most of these parents are seeking asylum before the IJ (although some may still be in the credible fear process).
- Children
    - Pursuant to the TVPRA, UCs are not subject to expedited removal. Therefore, UCs who were separated were generally served with an NTA and placed into removal proceedings while the parent faced expedited removal. However, in some of these family separation cases, DHS served the child with an NTA, but DHS never filed the NTA with the Immigration Court. This is significant because the removal proceedings do not actually commence until DHS files the NTA with the Immigration Court. In other cases, the child never received an NTA at all and are not in removal proceedings.
- These families were subsequently reunited and released pursuant to the court order in *Ms. L v. ICE*, Case No. 3:18-cv-00428 (S.D. Cal. 2018). Many of these families are eligible for relief pursuant to the settlement agreement in *Dora v. Sessions*, Case No. 1:18-cv-1938 (D.D.C. filed Aug. 17, 2018).
    - For example, if a parent did not pass the initial credible fear interview and has an expedited removal order – they are entitled to a new interview with an asylum officer with respect to their credible fear claim.
        - *See* CLINIC Resources on *Dora* Settlement.

- **DHS Venuing Procedures for Formerly Separated Families**

States or for whom no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g).

[3] In some instances, the parent may have had a previous removal order, and in those cases, the parent would have been subject to reinstatement of removal, and if they expressed a fear of return, and passed a reasonable fear interview, they were put into withholding only proceedings.

- Most of these family separation cases beginning in the Spring of 2018 were originally venued in the place of detention, and not the region where the family has moved, even if they provided their address upon release. This means that most of the families were venued at immigration courts along the U.S.-Mexico border including the El Paso Immigration Court.
    - Given that it is inconvenient (or nearly impossible) for these families to travel, often very far distances, to the court of detention, you generally will want to file a motion to change venue for either or both the parent and child to the Immigration Court with jurisdiction over their residence. *See* 8 C.F.R. § 1003.20, ICPM Chapter 5.10(c), *Matter of Rahman*, 20 I&N Dec. 480 (BIA 1992), OPPM 18-01.
        - ASAP has helpful resources for preparing a *pro se* motion to change venue, which can be useful as a general guidance.
        - Will need to submit evidence of the client's new address like a copy or photo of mail received at the address that bears the postmark. If the client lacks this evidence, consider sending the client mail and having the client take a photo of the postmarked envelope as evidence of the new address. Alternatively, if the client has a lease or a bill in his or her name, that can also serve as evidence.
        - You may need to do written pleadings with the Change of Venue. *See* ICPM Chapter 5.10(c).
            - If you don't have the NTA, you can state that you are unable to plead because you don't have the NTA or you can always just contest all the allegations and charge if not prepared to do the pleadings.
        - Note that some IJs request more than the INA, the regulations, and *Matter of Rahman* require for changes of venue (such as a completed I-589). Consider consulting with CLINIC to learn if the IJ has these additional requirements.

- **Considerations for Children's Cases Given the Various Case Postures**
    - Parents Seeking Asylum: Parents are generally seeking asylum before the Immigration Court (unless they are still in the credible fear interview process). On the I-589, the parent must list their spouse and all children on their I-589 and, if the parent is granted asylum, the child can be granted asylum as a derivative (as long as the child is not subject to any bars to asylum). However, there are some other considerations for representing these children.
        - If the child is NOT in removal proceedings (never served NTA OR served NTA, but it was not filed with the Immigration Court) and the parent is seeking asylum before the IJ
            - The child's name and basic biographic information must be included on the parent's I-589 (on pages 2-3).
                - You can choose whether to check the box on the I-589 to "include" the child in the parent's application. Note that if the child is not in removal proceedings, the IJ cannot grant derivative

status because the IJ doesn't have jurisdiction over the child. Only USCIS has jurisdiction to grant derivative asylee status to someone not in removal proceedings.
    - It is possible that by checking the box to include the child on the application, that could prompt DHS to put the child into proceedings. Of course, there is also a chance DHS could put the child in proceedings at any time regardless of what box is checked.
- Whether or not the box on the I-589 is checked to "include" the child, if the parent is granted asylum by the IJ, then parent can file a Form I-730 on their child's behalf with USCIS so that the child can be granted derivative asylum – it just must be filed within 2 years of the date asylum was granted.
    - To receive derivative asylee status, the child must be under 21 years old and unmarried on the date the asylum application was filed. Even if it takes years for the parent's I-589 to be adjudicated, so long as the child was under 21 at the time of filing, they can still apply for and obtain derivative asylum status. Note that if the child marries,[4] then they will lose the ability to obtain derivative status.
        - *See* Memorandum from William Yates, Ass. Director of Operations, USCIS, The Child Status Protection Act – Children of Asylees and Refugees (Aug. 17, 2004).
    - If the IJ denies the parent's asylum case, the child will obviously not get derivative status, but the child also will not have a removal order so long as DHS never placed him/her in removal proceedings.
- The child can file for asylum affirmatively if they have their own fear of return (even if related to parent's claim). Because they are not in proceedings, the child would file the I-589 with the asylum office (AO), which is part of U.S. Citizenship and Immigration Services.
    - Proceeding on an I-589 before the AO offers some benefits:
        - The AO interview process is much less adversarial than the Immigration Court hearing;
            - Some asylum offices are more liberal in their view of asylum law than some Immigration Judges (although this varies widely by jurisdiction); and

[4] Note that if a child is considering marriage, counsel must advise them of the immigration consequences of such marriage. Marriage will render the child no longer a "child" for purposes of the INA and will mean the individual can no longer derive asylee status if their parent is granted asylum. On the other hand, marriage to a U.S. citizen or lawful permanent resident may open other avenues of immigration relief.

- The applicant gets two opportunities to have their asylum claim considered – by the asylum office, and if not granted, by the IJ.
- If parent's case for asylum is denied, the child still has opportunity for relief.
- Or if the parent's case for asylum is denied (for example based on the one-year filing deadline (OYFD) or discretion), but the parent is granted withholding of removal or CAT (for which there is no derivative status), child has their own opportunity for status.
- If the AO grants the child asylum, the parent is not a derivative on the child's application. However, the AO's grant of asylum for the child could help convince an IJ that the parent's case should also be granted.

- Proceeding on the I-589 before the AO has some risks:
  - Filing the child's I-589 affirmatively could prompt DHS to file the NTA with the Immigration Court. But DHS could at any time choose to file the NTA with the Immigration Court.
  - If the AO declines to grant the request for asylum, the child's case will be referred to the Immigration Court, and the child will then be issued an NTA and placed in removal proceedings.

- You could affirmatively request ICE to file an NTA for the child and consolidate the child's case with the parent's case before EOIR.
  - However, there is a practical issue of who to contact at ICE to effectuate this and how long it will take. You want to ensure that you file the child's I-589 prior to the OYFD so practically, you may need to file the I-589 affirmatively before DHS files the NTA.
- If the child is placed in removal proceedings, and the asylum application and any other requested forms of relief are denied by the IJ, the child will be issued an order of removal.

- <u>If the child is in removal proceedings</u>
  - If the child is very young or in school, consider filing or making a motion to waive the presence of the child before the Immigration Court for a particular hearing or all hearings. Generally, it is advisable that the children attend the first master calendar hearing and then file or make a motion to waive the child's presence.
  - If the parent is in removal proceedings, you generally want to file a motion to consolidate the child's case with the parent's case.[5]

[5] Generally, these parents and children fled their home country together, and they have aligning immigration interests and substantially overlapping facts so consolidation is beneficial. There may

- In the consolidated proceedings:
    - The parent will check the box to "include" the child on the I-589 application, and that way if the IJ grants the I-589 for the parent (principal applicant), the IJ can at the same time grant derivative asylum status to the child.
    - If the child has their own claim for asylum (even if it is related to their parent's claim), then the child should also file a separate asylum application as a principal applicant.
        - Generally, a child who is in removal proceedings and is not a UC files their I-589 application defensively with the Immigration Court in the first instance. Whereas, a child who is in removal proceedings and is a UC historically has benefited from TVPRA protections that include being able to file the I-589 with USCIS first. *See* INA § 208(b)(3)(C).
            - A 2013 USCIS memo, known as the "Kim Memo," assessed UC status at the time of apprehension by CBP and maintained that that UC status designation remained thereafter regardless of subsequent reunification with a parent. In 2018, the Board of Immigration Appeals issued a decision, *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018), holding that the immigration court, and not the asylum office, had initial jurisdiction over an asylum application filed by a respondent who was previously determined to be a UC but turned 18 before filing. Meanwhile, the asylum office continued to follow the Kim Memo and accept I-589s filed by individuals who were initially designated as UCs. However, a new USCIS memo dated May 31, 2019 rescinded the "Kim Memo," depriving USCIS of jurisdiction over those who were initially determined to be UCs upon entry but were over 18 or reunified with a parent prior to filing the asylum application, thus denying many children that first non-adversarial opportunity to present their asylum case. *See* Memorandum from John Lafferty, Chief Asylum Division, Updated Procedures for Asylum Applications, (May 31, 2019); CLINIC, New USCIS memo denies access to non-adversarial affirmative asylum procedures for many vulnerable children (June 13,

sometimes be a tactical reason for deciding not to consolidate the cases. Obviously, in some circumstances, the interests of the parent and child may not align, for example, if there is an abusive relationship. In such cases, the attorney would have a conflict of interest and could not ethically represent both the parent and the child.

2019). On August 2, 2019, the U.S. District Court in Greenbelt, Maryland issued a temporary restraining order (TRO) blocking implementation of the Lafferty Memo. The order in *J.O.P. v. DHS* restores the prior 2013 Kim Memo until September 3, 2019, and requires USCIS to rescind any adverse decisions already issued under the new policy. Please visit the CLINIC webpage for documents related to this litigation.

In the separated family context, children who were forcibly separated them from their parents were designated as UCs. Pursuant to the *Dora* settlement, "class members who have not been reunified with their parent(s) as of the effective date of this agreement will be afforded existing procedures for unaccompanied alien children…." Those children who have since been reunified with a parent and are in removal proceedings will file the I-589 with the IJ. As with any asylum applicant who is not in proceedings, including children, the I-589 is filed directly with the AO.

- **Special Considerations for Children Seeking Asylum**
    - Considerations of whether to file an I-589 with the child as the principal applicant (meaning that the child files his or her own application as opposed to only being included on the parent's application)
        - If child is in proceedings and has any fear of return, then there is no downside to filing the I-589.
        - If child is not in proceedings and it is not clear whether they really have a fear of return or if they have a very weak asylum claim, then you must inform the child and the responsible adult who has custody of the child of the options (including all the risks and benefits) so they can make the best decision about whether to file their own Form I-589.
            - You must advise of the likelihood of success on the merits of the application and the various outcomes that are possible.
                - Note that while children must meet the same definition of "refugee" found at INA § 101(a)(42)(A) as adults, there is some U.S. and international case law, as well as Immigration Court and other guidance that directs adjudicators to account for the age of child applicants in assessing asylum claims and in the procedures to follow.
                    - EOIR notes explains that "Immigration cases involving children are complicated and implicate sensitive issues beyond those encountered in adult cases," and thus has designed special policies and procedures for cases involving juveniles. *See* Memorandum from MaryBeth Keller, Chief Immigration Judge, Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (Dec. 20, 2017).
                    - The U.N. Committee on the Rights of the Child notes that the refugee definition "must be interpreted in an age and

gender sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children." U.N. Comm. On the Rights of the Child, *General Comment*. No. 6 (2005): *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, Rep. on its 39th Sess., May 17-June 3, 2005, U.N. Doc. CRC/GC/2005/6 Sept. 2005

- For a much more in-depth understanding of representing children in asylum cases, please refer to the Center for Gender and Refugee Studies, Children's Asylum Manual (April 2016), available by request.

- You must advise about any considerations regarding the one-year filing deadline (OYFD).
  - If the child entered the United States less than one year ago, they can still timely file their Form I-589 and it is important to so advise. If they wish to pursue asylum, it is very important to meet the OYFD.
  - If the child has missed the OYFD or if they decide not to file now, but may want to in the future, there may be some arguments that they can file under an exception to the one-year filing deadline (but note that these are just arguments):
    - Statutory Exceptions to the OYFD under INA § 208(a)(2)(D):
      - "changed circumstances that materially affect the applicant's eligibility for asylum"
      - "extraordinary circumstances relating to the delay in filing the application within the [one-year filing] period"
        - The regulations at 8 CFR § 208.4(a)(5)(i) include a non-exhaustive list of "extraordinary circumstances," including, a "[l]egal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the 1-year period after arrival." The Asylum Office OYFD Lesson Plan defines "minor" as under 18 for the *per se* extraordinary circumstances exception and does not distinguish between accompanied or unaccompanied children. USCIS, *Asylum Officer Basic Training Course: One-Year Filing Deadline* (Mar. 23, 2009), AILA Doc. No. 16102840, http://www.aila, at p. 15. In an unpublished BIA decision, *A-D-*,

AXXX-XXX-526 (BIA May 22, 2017) (unpublished), https://www.scribd.com/document/351904250/A-D-AXXX-XXX-526-BIA-May-22-2017, the BIA affirmed the "bright line" rule that children under 18 are "minors" and should be found to meet the extraordinary circumstances exception to the OYFD. The BIA also found that consideration of age, for those between ages 18 and 21, may be relevant to the extraordinary circumstances exception, but must be analyzed on a case-by-case basis. *Id.*

- Some children may benefit from the joint interim stay agreement in *Mendez Rojas v. Johnson*, 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018) as long as they are class members and as long as that agreement is in place. *See* AIC and NWIRP, Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications, FAQ (Aug. 2, 2018).
    - Note that many of these formerly-separated children are not going to qualify as class members. However, as children who were forcibly separated from their parents due to government malfeasance, they likely have a strong argument for an extraordinary circumstances exception to the OYFD. Even if the parent should have ensured that the child met the OYFD, the traumatization the U.S. government caused the parent through the family separation "zero tolerance" policy and the long-term effects of the trauma likely played a role in the parent missing the OYFD. Explore the same arguments used in *Dora* to establish extraordinary circumstances.
- This CLINIC Practice Advisory for DACA recipients also provides a longer discussion of the OYFD and exceptions to the OYFD. While the advisory is targeted at DACA recipients, some of the arguments may be applicable to recently-arrived children. *See* CLINIC, Practice Advisory: Overcoming the One-Year Filing Deadline for Asylum for DACA Recipients.

- **Resources for Working With Children Asylum Applicants**
  (Some of the resources are specifically related to working with UCs, but include information generally applicable to working with children seeking asylum, whether unaccompanied or not)
    - Center for Gender and Refugee Studies, Children's Asylum Manual (April 2016), available by request at https://cgrs.uchastings.edu/news/cgrs-releases-childrens-asylum-manual
    - USCIS, Minor Children Applying for Asylum Themselves, https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves
    - Kids In Need of Defense, Chapter 5, Asylum and Related Relief, https://supportkind.org/wp-content/uploads/2015/04/Chapter-5-Asylum-and-Related-Relief.pdf
    - Immigrant Legal Resources Center, Unaccompanied Immigrant Children Resources (Sept. 10, 2014), https://www.ilrc.org/sites/default/files/resources/ilrc_uac_best_resources_final_9_10_14.pdf
    - Kids In Need of Defense, Resources for Children's Asylum Claims (June 17, 2015), https://supportkind.org/resources/childrens-asylum-claims/
    - United Kingdom: Home Office, *Processing an Asylum Application from a Child*, 2 November 2009, available at: https://www.refworld.org/docid/4f3cf5922.html

- **Considerations Regarding Special Immigrant Juvenile Status**
    - The INA defines a child as someone who is under 21 years of age and unmarried. *See* INA § 101(b)(1). Children who have been abused, abandoned, or neglected by at least one parent may be eligible for Special Immigrant Juvenile Status (SIJS), a form of relief that provides a pathway to lawful permanent resident status, and ultimately U.S. citizenship. *See* INA § 101(a)(27)(J); 8 CFR § 204.11. To obtain SIJS benefits, a child must undergo three-part process that starts in the state "juvenile" court with jurisdiction over the family/child, then proceeds to USCIS with the filing of an I-360 petition, and ends with applying for Adjustment of Status (Lawful Permanent Residence) with either USCIS or the IJ via Form I-485.
        - State Juvenile Court Predicate Order Criteria
            - What qualifies as a state "juvenile" court depends on the particular state and the laws of that state. Some state "juvenile" courts do not have jurisdiction over those 18 and over while some states have jurisdiction up to the child turning 21 years of age. Those states that have jurisdiction up to the age of 21 have purposefully extended their jurisdiction so that the state "juvenile" court could assist immigrant children who were 18 and over yet under 21.
                - NY, MD, CA, CO, WA, CT, MA, NJ have extended their courts' jurisdiction up to the age of 21
            - The SIJS process starts with the filing of the case before the state "juvenile" court. Usually, when the child lives with one parent, the parent will file a custody or guardianship-related matter. Whether these

one-parent cases are viable depends on the state "juvenile" court and any precedential cases on the issue. Please reach out to CLINIC for further information. We will connect you to a local family law practitioner or a local non-profit that handles SIJS cases.

- If the state "juvenile" court accepts and adjudicates the matter, the state "juvenile" court will issue an order that includes findings that will support the Form I-360 petition for SIJS. These findings are:
    - That the child is dependent on the court, or is in the custody of a state agency or department or an individual or entity appointed by the court;
    - That the child cannot be reunified with one or both of the parents because of ANY of the following:
        - Abuse,
        - Abandonment,
        - Neglect, or
        - A similar basis under state law;
    - That it is not in the best interests of the child to return to the country of nationality or last habitual residence of the child or child's parents
        - The order should cite state law provisions regarding the "best interests of the child" standard and the order should not cite to the INA.

- Form I-360 SIJS Petition Eligibility Criteria
    - Have a valid order from the state "juvenile" court
    - Child must be under the age of 21 when USCIS received the I-360
    - Be currently living in the United State both at the time you file the SIJS petition and at the time USCIS makes a decision on your petition.
    - Be unmarried
    - Be eligible for USCIS consent, which means that the child sought the juvenile court order to obtain relief from abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit
- <u>Form I-485 Adjustment of Status Eligibility Criteria</u>
    - Jurisdiction over the I-485
        - Even if the child is eligible for to seek adjustment of status, USCIS and the IJ will lack jurisdiction over the application if the child has an *in absentia* order of removal issued by the IJ. If there is such an order of removal, it must be reopened via a motion to rescind and reopen the removal order.
    - Prove inspection and admission or inspection and parole into the United States.
        - Those with an approved SIJS-based I-360 are deemed paroled for the purpose of applying for adjustment of status. This means that

USCIS will consider the child paroled when adjudicating the I-485 regardless of how he or she arrived in the United States.

- Be eligible to receive an immigrant visa via an approved I-360 with current priority date
    - Check the Employment-Based Fourth Preference (EB-4) Category on the most current U.S. Department of State Visa Bulletin the child's country of origin and compare the date under "final action" with the priority date on the approval notice for the I-360. If the Visa Bulletin Employment-Based Fourth Preference (EB-4) Category date is the same or later than the date on the approval notice for the I-360, then the priority date is "current."
- Not be subject to bars to adjustment of status
- Be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief; and
- Merit a favorable exercise of USCIS' discretion.

- For purposes of formerly separated families, some children may have been abused, abandoned, or neglected by the other parent, the parent who did not bring them to the United States, rendering them potentially eligible for SIJS. However, SIJS eligibility is only one consideration in deciding whether to pursue SIJS for one of these cases.
    - **Timing:** As noted above, to obtain SIJS benefits, a child must undergo a long, three-part process that starts in state "juvenile" court, then proceeds to USCIS with the filing of an I-360 petition, and ends with applying for Adjustment of Status (Lawful Permanent Residence) with either USCIS or the IJ. To add to the long duration of this three-part process, children from certain countries face a visa backlog (4th preference –Employment-Based Visas) that affects the I-360 petition and thus renders the process even longer. These countries include El Salvador, Honduras, and Guatemala, the same countries from where formerly separated families hail. It may thus take many years for these children to be eligible to apply for Adjustment of Status.
        - **Timing Effect:** Because it may take years for the child to benefit from SIJS benefits, it is likely that the IJ will have issued a decision on the parent's case or, at best, the parent's case will be on appeal to the BIA or the Court of Appeals. This timing incongruence sets up a situation wherein the parent has to decide whether to take the child with him/her or leave the child in the United States in someone else's care so that the child can finish pursuing SIJS-based Adjustment of Status. Unfortunately, SIJS and SIJS-based Adjustment of Status is only available to children present in the United States meaning that if the child departs the United States, the child will forgo SIJS benefits. If the parent wants to leave the child in the United States in someone else's care, there may be a trusted adult in the United States willing to care for the child, but often there is no such person, which could place the child in an unstable environment or risky situation. A trusted adult could be a parent's older child who is willing to care for his or her younger sibling.

Of course, leaving a child in the United States in someone else's care also leads to family separation, which may compound the trauma from the prior U.S. government-inflicted separation. Furthermore, those children that have obtained Lawful Permanent Residence or U.S. Citizenship through SIJS are prohibited from sponsoring a parent in the future. Therefore, the chance of future legal reunification through the child is slim.

- **Cost:** Finding pro bono representation for an SIJS case can be difficult. It is difficult to find an attorney who is willing and able to represent the case in the three relevant fora: state court, USCIS, and Immigration Court. Instead, children will often need two pro bono attorneys: a pro bono attorney with family law competency and authorized to appear in the state "juvenile" court with jurisdiction, and a pro bono attorney with immigration law competency. It is also likely that one or both attorneys will charge a representation fee instead of being willing to take the case pro bono. Furthermore, there are costs associated with pursuing SIJS such as gas, parking, and mail. Many of these parents will struggle to pay these costs due to their likely unstable economic situation.
    - **Effect of Costs:** Given the likely monetary costs associated with finding representation for an SIJS case, it is even more important for families to consider the difficult decisions presented by the timing incongruence between pursuing an SIJS case and presenting an asylum and related relief application to the IJ. The monetary costs of finding representation and pursuing SIJS may prove high for asylum-seeking families and, if they do not have a plan to ensure that the child can fully pursue SIJS in the future—however long it takes—that will be money wasted.
    - Where the child is not bearing the age of 18 or 21 and the child is eligible for SIJS, consider pursuing asylum first because 1) The one-year filing deadline for asylum sets a time limit and thus must be prioritized, and 2) A grant of asylum provides a faster path to Lawful Permanent Residence and U.S. citizenship. If the IJ denies the asylum cases and/or the BIA dismisses, the family may revisit whether the child should pursue SIJS as there is no deadline that applies to SIJS. For SIJS, the main temporal consideration is the child's age and if the state of residence provides the state "juvenile" court has jurisdiction until the age of 18 or 21.
        - Caution: To ensure that SIJS remains an option after unsuccessfully seeking asylum, ensure that the testimony and documents provided in support of the asylum application do not contradict a potential SIJS case. A record created for asylum purposes may impact the SIJS case.
- If the parent and child want to pursue SIJS after considering the effects of the timing and cost of seeking this relief in addition to other available relief, we advise that the attorney representing the family on the asylum claim not be the same attorney pursuing SIJS to avoid a potential conflict of interest.

- **Other Available Immigration Relief**
    - As with any individual being represented, including children, you must be aware if they are or become eligible for other forms of immigration relief. Some more common forms of relief that children may be eligible for or become eligible for during the course of representation include:
        - **U visa**
            - The U visa is a non-immigrant visa for individuals who are victims of crime and provide assistance to law enforcement officials. *See* INA § 101(a)(15)(U). Once an individual is granted U non-immigrant status and are in that status for 3 years and reside continuously in the United States, they can apply for lawful permanent resident status.
                - Basic requirements (See USCIS, Victims of Criminal Activity: U Nonimmigrant Status, https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status):
                    - Individual is a victim of qualifying criminal activity.
                    - Individual has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
                    - Individual has information about the criminal activity. If the individual is under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on your behalf.
                    - Individual was helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime. If the individual is under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on your behalf.
                    - The crime occurred in the United States or violated U.S. laws.
            - USCIS has jurisdiction over the U visa application, even if the individual is in removal proceedings or has a final order of removal. Thus, an individual pursuing asylum or related relief in immigration court (or before USCIS) can simultaneously apply for a U visa.
                - As a pre-requisite to applying for the U visa, a certifying law enforcement agency must sign a Form I-918, Supplement B, and confirm that the individual was helpful, and currently being helpful, or will likely be helpful in the investigation or prosecution of the case.

        - The individual files the Form I-918 (Petition for U Nonimmigrant Status), the signed Form I-918, Supplement B (which must have been signed within the preceding 6 months), and if there are any grounds of inadmissibility requiring a waiver, the Form I-192 (Application for Advance Permission to Enter as Nonimmigrant) with USCIS.
    - There is a tremendous back-log in U visas due to the annual cap on the number of visas issued (10,000 annually), which has been reached for many years. Thus, it can take many years to be granted U non-immigrant status, even if a person meets all of the legal requirements for such status.
    - Note that if the individual is in removal proceedings, a motion to continue the case can be made based on a pending U visa application. *See Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012); *see also* CLINIC, Practice Advisory: Seeking Continuances in Immigration Court in the Wake of the Attorney General's Decision in *Matter of L-A-B-R*, Dec. 6. 2018, https://cliniclegal.org/sites/default/files/resources/defending-vulnerable-popluations/L-A-B-R-practice-advisory-12.6.2018.pdf. Due to the backlog, and recent case law regarding motions to continue, the IJ may not grant a continuance. An individual can pursue a U visa even if they have a removal order (though will require a waiver of inadmissibility) and can pursue a U visa from abroad.
    - If a principal applicant for a U visa is under 21 years old, certain relatives, including parents, a spouse, and unmarried children under the age of 21, can qualify for derivative U visa status (so long as they were not the perpetrator of the qualifying crime).
- **Violence Against Women Act (VAWA)-related relief**
    - **VAWA Self-Petition:** Children who have been abused by a U.S. citizen or Lawful Permanent Resident parent may qualify to file a self-petition under VAWA (Form I-360) with USCIS. *See* USCIS, Battered Spouse, Children & Parents, https://www.uscis.gov/humanitarian/battered-spouse-children-parents#child.
        - The basic requirements for the VAWA self-petition are:
            - The individual is a child of a U.S. citizen or Lawful Permanent Resident abuser, or is the child of a U.S. citizen or Lawful Permanent Resident abuser who lost citizenship or lawful permanent resident status due to an incident of domestic violence.
                - "Child" is defined in INA § 101(b)(1). In addition, a child may still file a VAWA self-petition after the age 21 but before the age 25 if the applicant can demonstrate that the abuse was the main reason for the delay in filing.

        - The person has suffered battery/extreme cruelty by the U.S. citizen or permanent resident parent.
        - The person has resided with the abusive parent.
        - The person is a person of good moral character (a child under 14 years of age is presumed to be a person of good moral character).
        - Children may also qualify as a derivative on a parent's VAWA self-petition.
    - A child with an approved I-360 VAWA self-petition may apply for adjustment of status if there is a visa available and they meet the requirements for adjustment of status and any required waiver(s) of inadmissibility.
- **VAWA Cancellation of Removal:** Children may also qualify to apply for VAWA cancellation of removal before the IJ. INA §240A(b)(2). If the IJ grants the VAWA cancellation of removal case, the child will automatically become a Lawful Permanent Resident.
    - The basic requirements for VAWA Cancellation are:
        - Have been battered by or subjected to extreme cruelty from a parent who is or was a USC or LPR, or is the parent of a child in common with the USC or LPR abuser, and the child has suffered abuse;
        - Have been present physically in the United States for three years immediately preceding the date of the application;
        - Have been a person of good moral character during the period of physical presence;
        - Have not been inadmissible under INA §212(a)(2) (criminal grounds) or §212(a)(3) (security grounds);
        - Not be inadmissible or deportable due to certain criminal, security, or marriage fraud violations; and
        - Demonstrate that removal from the United States would result in extreme hardship to the applicant or the applicant's parent.
    - A child in removal proceedings should consider both a self-petition and VAWA cancellation of removal but may not qualify for a self-petition. Among those who would not qualify for a self-petition, but may qualify for VAWA cancellation are:
        - Those abused stepchildren whose parent has been divorced from the abusive parent for over two years;
        - Those who were victims of child abuse by a USC or LPR parent while under 21 years of age, but who did not file their VAWA self-petition while they were under 21 and who are now over 21 years of age; and

        - Those abused children who cannot establish that they have ever resided with the USC or LPR abuser parent.
- A further discussion of the process for these forms of relief is beyond the scope of this practice pointer. Please contact CLINIC if you believe the child may qualify for VAWA-related relief.