

Introduction to Immigration Removal Proceedings for Minors and Common Forms of Relief



Esperanza Immigrant Rights Project
Training for Pro Bono Attorneys
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Today's Presentation

- ◆ Basic Immigration Concepts
- ◆ Removal Proceedings for Unaccompanied Children
- ◆ Common Forms of Relief for Esperanza Clients



Today's Presenters

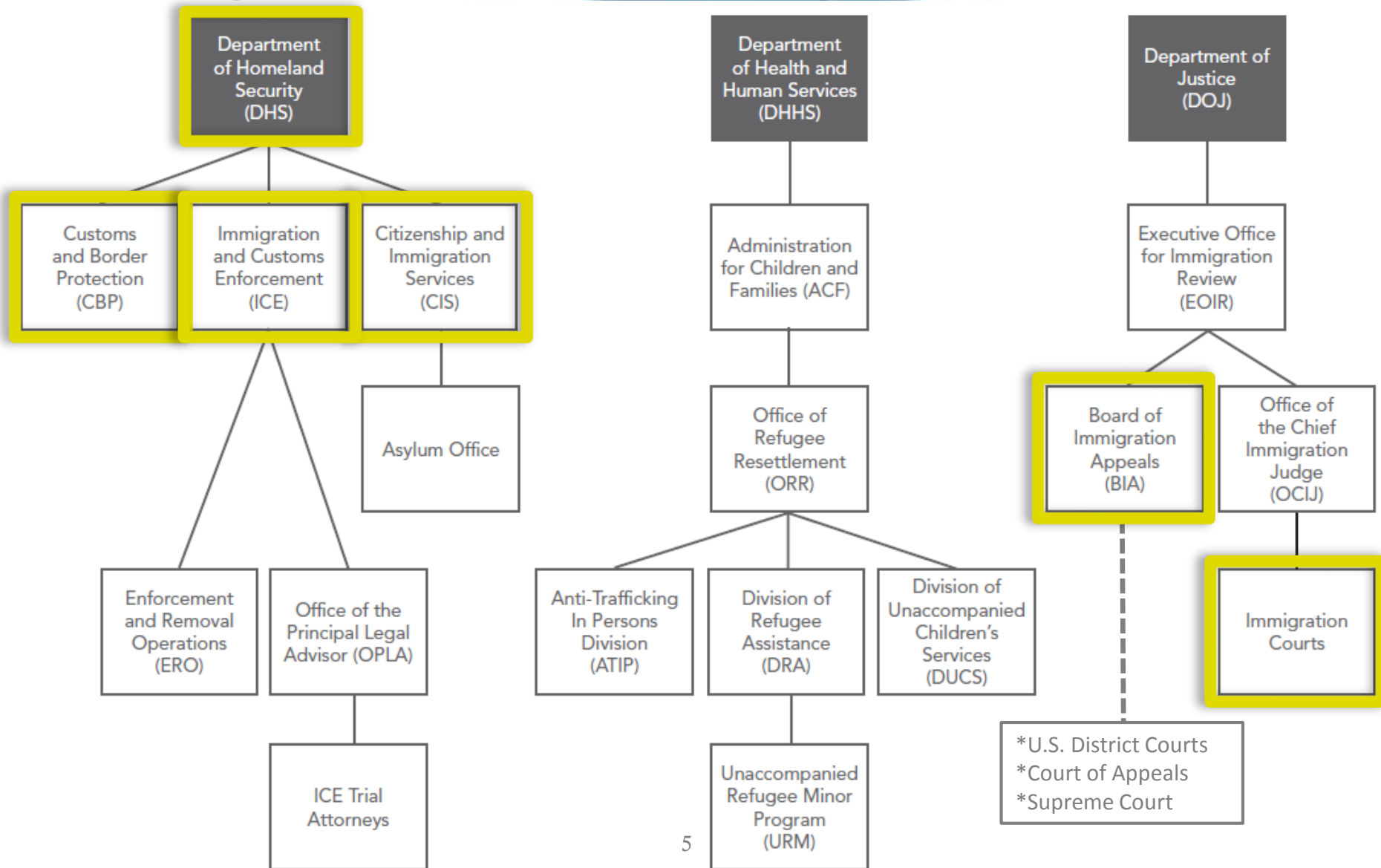
- ◆ Evelyn Naik, Staff Attorney
- ◆ Kelsey Provo, Staff Attorney
- ◆ Heidy Pineda, Staff Attorney



I. Basic Immigration Concepts



Agencies that Interact with UCs



Immigration Law Abbreviations

- ◆ **INS** – Immigration and Nationality Service
- ◆ **DHS** – Department of Homeland Security
- ◆ **CBP** – Customs and Border Patrol
- ◆ **USCIS** – US Citizenship and Immigration Services
- ◆ **ICE** – Immigration and Customs Enforcement
- ◆ **IJ** – Immigration Judge
- ◆ **BIA** – Board of Immigration Appeals
- ◆ **EOIR** – Executive Office of Immigration Review
- ◆ **DOJ** – Department of Justice
- ◆ **INA** – Immigration and Nationality Act
- ◆ **AFM** – Adjudicator's Field Manual

Immigration Law Abbreviations (*cont.*)

- ◆ **TVPRRA** – Trafficking Victims Protection Reauthorization Act
- ◆ **UC (UAC)** – Unaccompanied Alien Children
- ◆ **UM (UAM)** – Unaccompanied Alien Minors
- ◆ **SIJS** – Special Immigrant Juvenile Visa
- ◆ **CAT** – Convention Against Torture
- ◆ **LPR** – Legal Permanent Residence (Green card holder)
- ◆ **USC** – US citizen
- ◆ **AOS** – Adjustment of Status
- ◆ **EWI** – Entry without inspection
- ◆ **NTA** – Notice to Appear
- ◆ **MTR** – Motion to Re-open
- ◆ **MCH** – Master Calendar Hearing
- ◆ **PSG** – Particular Social Group
- ◆ **DV** – Domestic Violence
- ◆ **EAD** – Employment Authorization Document
- ◆ **A Number** – Alien Registration Number

Sources of Law

- ◆ **Immigration and Nationality Act (INA)**

- ◆ Sets out the general structure of immigration law
- ◆ Can be found in **volume 8 of the U.S. Code.**

- ◆ **Immigration Regulations**

- ◆ Expands upon the INA
- ◆ Provide definitions, details and explain procedures omitted from the INA.
- ◆ The regulations are found in **volume 8 of the Code of Federal Regulations.**

- ◆ **USCIS internal policy memorandums**

- ◆ Although not technically a source of law, can provide guidance to USCIS officers and immigration practitioners on how USCIS interprets the law.

- ◆ **Policy memos**

- ◆ Policy memos can be found in the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site and other policy and other sites.
- ◆ These sources will ultimately be replaced by the **USCIS Policy Manual.**

- ◆ **Written Opinion and Decisions**

- ◆ Published decisions that raise new issues can be cited.
- ◆ Unpublished decisions cannot be cited, but should be referred to as guidance.

Where can I find the law?

- ◆ **INA and Regulations:**

- ◆ <https://www.uscis.gov/laws>

- ◆ **Agency policy:**

- ◆ <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>

- ◆ **Case Law:**

- ◆ <https://www.justice.gov/eoir/ag-bia-decisions>

- ◆ https://www.ca9.uscourts.gov/guides/immigration_outline.php

What does a person need to be admitted into the U.S.?

1. A Visa

- Types of visas include: *immigration visas, work, family, and non-immigrant such as visitors or students.*

2. Person must be admissible

- To be admissible, the law cannot prohibit the person's entry
- Consider grounds for inadmissibility and deportability

3. Travel documents

- An I-94 is typically issued on arrival.
- I-94s were previously paper, now they can be accessed on-line at:
<https://i94.cbp.dhs.gov/I94/consent.html>

Inadmissibility & Deportability

Inadmissibility:

INA §212(a)

- ◆ Grounds for inadmissibility include:
 - ◆ Health reasons
 - ◆ Criminal acts or convictions
 - ◆ National security
 - ◆ Public charge
 - ◆ Fraud and others
- ◆ These grounds apply to:
 - ◆ Entry to the U.S.
 - ◆ AOS **applications**
 - ◆ **Removal proceedings** for EWI
 - ◆ **LPRs re-entering** the US
- ◆ *Special rules for minors*

Deportability:

INA §237(a)

- ◆ Grounds for deportability include:
 - ◆ Being inadmissible at the time of entry
 - ◆ Certain criminal convictions
 - ◆ Falsification of documents
 - ◆ Security related grounds
 - ◆ Public charge
 - ◆ Unlawful voter and others
- ◆ The grounds apply to any person in the U.S., whether or not they were lawfully admitted and whether or not they have remained in lawful status.

II. Removal Proceedings for UCs

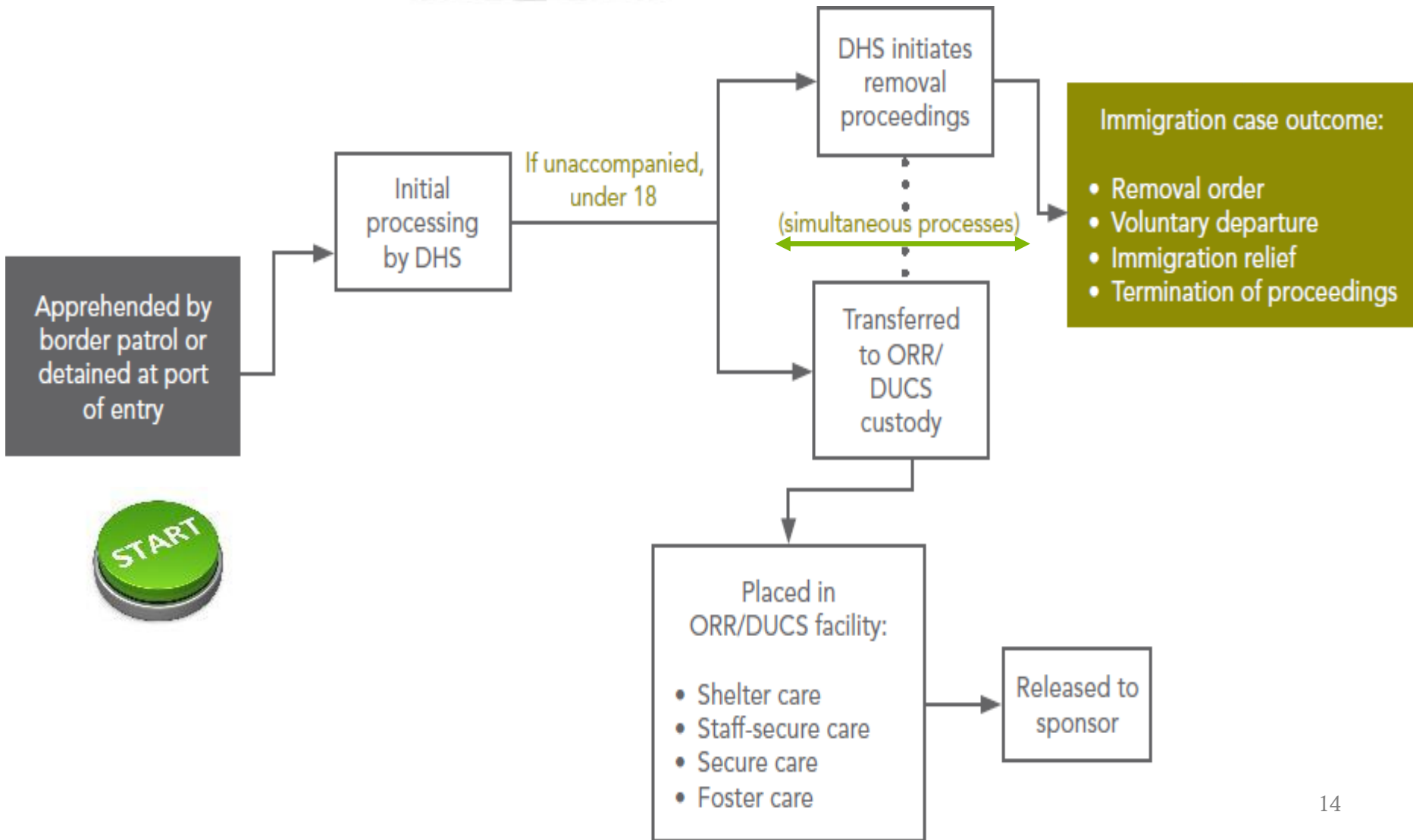


Who are UCs?



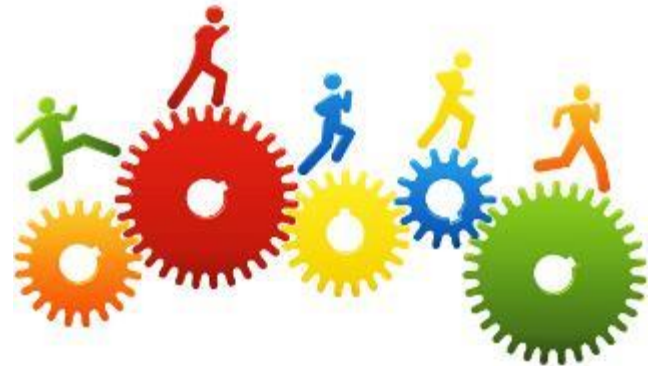
- ♦ Children under 18 years (at the time of apprehension)
- ♦ Who enter the U.S. without a parent
- ♦ Have no lawful immigration status
- ♦ Most UCs come from Guatemala, El Salvador and Honduras
- ♦ UC status extends beyond the minor's 18th birthday
 - ♦ *Unless or until this status is affirmatively terminated by DHS.*

The Minor's Process



The Process - *General*

- ◆ **Arrest / Apprehension**
- ◆ **Notice to Appear (NTA)**
 - ◆ ICE initiates removal proceedings with the filing of a NTA in front of the EOIR.
 - ◆ Burden on ICE to prove removability
 - ◆ Minors may contest removability or claim some form of legal relief
- ◆ **MCHs**
- ◆ **Merits / Individual Hearings**
- ◆ **IJ Decision**
- ◆ **BIA Appeal**
- ◆ **Petition U.S. Circuit Courts of Appeal**



Rights in Removal Proceedings *Children*



Guidelines for Children's Cases

◆ U.S. Child-Sensitive approach:

- ◆ Considering the child's age, maturity and development.
- ◆ Recognizing children's rights and vulnerabilities
- ◆ Giving children the benefit of the doubt
 - ◆ See DOJ, Guidelines for Children's Claims (1998)
 - ◆ See USCIS, Asylum Officer Basis Training, Guidelines for Children's Claims (2009)
 - ◆ See Operating Policies and Procedures Memorandum: Guidelines for Immigration Court Cases Involving UC (2007).

◆ International Guidelines

- ◆ UNHCR urges signatories to the refugee convention to consider child's “**mental development and maturity,**” and in a manner consistent with children's rights under international laws and norms.



Working with UC clients

What do you think are some of the challenges in working with UC clients?

Working with UC clients



Working with UC Clients

♦ What challenges can I anticipate?

- ♦ Communication
- ♦ Cultural Differences
- ♦ Trauma Survivors
- ♦ Child's Capacity



Loyalty and confidentiality cannot be stressed enough!

How do I know if my UC client consented to representation?

Consider asking the follow questions:

- ◆ Do you know what country you are in now?
- ◆ Do you want me to help you stay here?
- ◆ Can I help you in the court room? Can I help you in your interviews for asylum?
- ◆ Can I help you explain to the judge why you want to stay here?



General advice for UC client meetings

- ◆ Avoid typing or going through notes during meetings
- ◆ Be clear, direct and gentle in questioning
- ◆ Help your client be organized by
 - ◆ putting appointments and instructions in writing
 - ◆ calling with appointment reminders
 - ◆ giving them a folder to keep papers in

Patience. Flexibility. Compassion.

III. Common Forms of Relief for Esperanza Clients



Common Forms of Relief for UCs

- ◆ Asylum
- ◆ SIJS (Special Immigrant Juvenile Status)
- ◆ U Visa – victims of crime
- ◆ T Visa – victims of trafficking
- ◆ Family Petition

Basic Concepts of Asylum



Asylum – “Essential Elements”

1. Well-founded fear

2. of persecution

3. by the government

4. on Account of (“nexus”)

5. a protected ground

Race, religion, nationality, political opinion, membership in a particular social group (PSG)

More information: U.S. law – Asylum Definition

- Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is **unable or unwilling to return** to, and is unable or unwilling to avail himself or herself of the protection of, that **country because of persecution** or a **well-founded fear of persecution** on account of **race**, **religion**, **nationality**, **membership in a particular social group**, or **political opinion**. INA §101(a)(42)(A), 8 USC §1101(a)(42)(A).

More Information: Asylum Reading and Resources

- ❖ INA §101(a)(42); 208; 235(b); 241(b)
- ❖ 8 CFR §208; 1208
- ❖ INS V. Cardoza Fonseca, 480 U.S. 421 (1987).
- ❖ Matter of Mogharrabi, 19 I&N 439 (1987).
- ❖ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status
- ❖ 9th Circuit Immigration Law Outline
- ❖ Asylum Officer Basic Training Course – Guidelines for Children's Asylum Claims
- ❖ Unaccompanied Minors Resource Center
- ❖ Public Counsel Asylum Manual

Special considerations for UCs under the TVPRA

- Under the **TVPRA**, children who arrive without the protection of an adult receive special accommodations
- The most significant benefits for UCs seeking **asylum** are:
 - 1) the **one year deadline** does not apply to UCs and they can file within a “reasonable time”
 - (2) they can present their case to an **asylum officer** in a non-adversarial environment
 - 3) **case law is favourable** to children (younger the better)
 - 4) the **internal relocation requirement** does not apply to UCs.

1. Well-Founded Fear

- What constitutes a well-founded fear?

- Is any type of fear sufficient?

1. Well-Founded Fear

- ◆ Reasonable Probability of harm
 - ◆ 10% probability (lower than preponderance of the evidence)
 - ◆ INS V. Cardoza Fonseca, 480 U.S. 421 (1987).
- ◆ Subjective and Objective Fear
 - ◆ Subjective: requires a showing that the alien's fear is genuine.
 - ◆ Objective: a reasonable person would fear the persecution
 - ◆ In children, the objective component may compensate for lack of subjective fear in children
 - ◆ Matter of Mogharrabi, 19 I&N Dec. 439, 445 (BIA 1987).
- ◆ Consider child-specific country of origin information
- ◆ Family sending child away or family's own fear can be considered the child's well-founded fear.

2. Persecution

- 💧 Can the harm be anonymous?
- 💧 Is there a universal definition of persecution?

2. Persecution

- ◆ Persecution is not defined in the INA
- ◆ Different cases have provided insight into the meaning of persecution:
 - ◆ “an extreme concept marked by the **infliction of suffering or harm**...in a way regarded as offensive.” [Li v Ashcroft](#), 356 F.3d 1153, 1158 (9th Cir. 2004)
 - ◆ **Physical harm** has consistently been treated as persecution. [Chand v. INS](#), 222 F.3d 1066, 1073-74 (9th Cir. 2000)
 - ◆ **Threats of serious harm**, particularly when combined with confrontation or other mistreatment, may constitute persecution. [Mashiri v. Ashcroft](#), 383 F.3d 1112, 1120-21 (9th Cir. 2004)
 - ◆ “Persecution may be **emotional or psychological**, as well as physical.” [Mashiri v. Ashcroft](#), 383 F.3d 1112, 1120 (9th Cir. 2004)

2. Persecution

- Substantial **economic deprivation** that constitutes a threat to life or freedom may constitute persecution. *Baballah v. Ashcroft*, 367 F.3d 1067, 1076 (9th Cir. 2004); *Desir v. Ilchert*, 840 F.2d 723, 727-29 (9th Cir. 1988)
- Permanent or serious** injuries **do not need to be established**. *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25–26 (BIA 1998)
- The **cumulative effect of harms and abuses** that might not individually rise to the level of persecution may support an asylum claim. *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998)
- The court “look[s] at the **totality of the circumstances** in deciding whether a finding of persecution is compelled.” *Guo v. Ashcroft*, 361 F.3d 1194, 1203 (9th Cir. 2004)

What is NOT persecution?

- ◆ **Minor disadvantages** or trivial inconveniences do not rise to the level of persecution. *Kovac v. INS*, 407 F.2d 102, 107 (9th Cir. 1969).
- ◆ “...**generalized poverty** or “mere economic disadvantage alone **does not rise to the level of persecution.**” *Gormley v. Ashcroft*, 364 F.3d 1172, 1178 (9th Cir. 2004)
- ◆ **Dangerous country conditions** alone do not constitute persecution

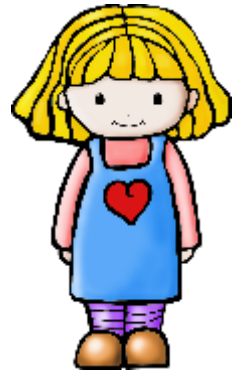
REMEMBER:

The harm **MUST** be particularized to the applicant.

More Information:

Ninth Circuit Decisions on Children's Asylum Cases

- ◆ A child's reaction to injuries, is different to an adult's, and must be considered in evaluating whether harm rises to the level of persecution.
 - ◆ See *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007)
- ◆ Persecution of a child's family members must be considered in evaluating persecution of a child.
 - ◆ *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 13-1 (9th Cir, 2012)
 - ◆ *Rusak v. Holder*, 734 F.3d 894, 897 (9th Cir. 2013)
- ◆ The majority of circuit courts have not recognized that children's asylum claims should be treated differently from adults claim.



More Information:

2: Persecution of Children- *International Law*

- ◆ The violation of a child's core economic, social, or cultural rights may constitute persecution.
- ◆ Rights enshrined in the Convention of the Rights of the child include:
 - ◆ Registration with authorities at birth (Art. 7.1)
 - ◆ Acquiring a nationality (Art. 7.1)
 - ◆ to remain with one's family (Art. 9.1)
 - ◆ to receive an education (Art. 28)
 - ◆ to be protected from economic exploitation (Art. 32)
 - ◆ child trafficking and child abuse (Optional Protocol)

Past vs. Future Persecution

“...who is unable or unwilling to return ... because of persecution or a well-founded fear of persecution”

- ◆ Past persecution establishes a legal presumption of future persecution.
- ◆ DHS can rebut this presumption with proof, by a preponderance of the evidence, that circumstances have changed
 - ◆ Humanitarian asylum is still an option – coming up
- ◆ Past persecution is not essential - establishing a **well-founded fear of future persecution is sufficient**, though it can be more difficult to prove.

Future Persecution – *Two Routes*

- ◆ To establish future persecution an applicant can show:
 - ◆ (1) That she will **be singled out individually** for persecution
 - OR
 - ◆ (2) Establishes that there is a pattern or practice in his or her country . . . of persecution of a group of **persons similarly situated to the applicant** on account of a protected ground;
and
 - ◆ The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable. [8 C.F.R. § 1208.13\(b\)\(2\)\(iii\)](#)

Future Persecution – *Member of Disfavored Group*

- ◆ No need to show pattern or practice of persecution
- ◆ Must show:
 - ◆ the risk level of membership in the group (i.e., the extent and the severity of persecution suffered by the group) and
 - ◆ individual risk level (i.e., whether the alien has a special role in the group or is more likely to come to the attention of the persecutors making him a more likely target for persecution).” [Mgoian v. INS, 184 F.3d 1029, 1035 n.4 \(9th Cir. 1999\)](#).
- ◆ The more serious and widespread the threat is to the group, the less individualized the threat needs to be to the applicant.
- ◆ Evidence: This standard does not alter the quantitative standard of proof, only the type of evidence that needs to be submitted and in what proportion.

Future Persecution – *Warnings*

- ◆ **Establishing future persecution may be difficult if:**
 - ◆ Applicant continued to live in home country after persecution
 - ◆ Applicant's family continues to live in home country
 - ◆ Applicant returned to home country
 - ◆ Applicant was issued a passport or travel document from home country

3. By the Government

Who must cause the persecution?

3: By the government

- Source of the persecution must be:
 - the government,**
 - a quasi-official group,
 - or persons or groups that the **government is unwilling or unable to control.**
- [Avetovo-Elisseva v. INS, 213 F.3d 1192, 1196 \(9th Cir. 2000\)](#)

3. By the government – *of Children*

- ◆ Persecutors are often **non-state actors**, including the minor's family
 - ◆ [Faruk v. Ashcroft, 378 F.3d 940, 943 \(9th Cir. 2004\)](#)
 - ◆ [Mohammed v. Gonzales, 400 F.3d 785, 796 n. 15 \(9th Cir. 2005\)](#)
- ◆ Children are often dismissed by law enforcement or sent back to an abusive situation,
- ◆ Or they may depend on a parent/guardian's willingness to seek out protection on their behalf
- ◆ **Reporting may be futile** where the government does not protect children. Evidence of this includes:
 - ◆ absence of child welfare services
 - ◆ high incidence of violence against children
 - ◆ killing of street children
 - ◆ high child labor rates

4. On account of – “Nexus”

- ◆ The applicant must show that the persecution is on account of one of the five protected grounds.
- ◆ In other words, the reason the government targeted or will target them is because of a protected ground.
- ◆ This is referred to as “nexus” and is often one of the harder elements to establish.

4. On account of – “Nexus”

- ◆ A protected ground must be:
 - ◆ At least one of the central reasons for the persecution
 - ◆ But it does not have to be the only reason or the most important
 - ◆ *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009)

4. On account of – “Nexus” *for Children’s Cases*

- ◆ A child need not articulate the **subjective intent** of the persecutor
- ◆ The adjudicator may rely on **objective evidence**
- ◆ When the harm is a culturally-accepted practice, adjudicators look to **severity of harm** and whether the reasons for inflicting the harm **involve a protected ground**
- ◆ **Punitive intent** on the part of the persecutor is not required
 - ◆ *Matter of Kasinga*, 21 I. & N. Dec. 357,365 (BIA 1996)
 - ◆ *Pitcherskaia v INS*, 118 F.3d 641, 646-47 (9th Cir. 1997).

5. Protected Ground – *Race and Nationality*

- ◆ Claims of race and nationality persecution often overlap.
 - ◆ *Duarte de Guinac v. INS*, 179 F.3d 1156, 1160 n.5 (9th Cir. 1999) (Quiche Indian from Guatemala).
- ◆ Recent cases use the more precise term “ethnicity,” “which falls somewhere between and within the protected grounds of race and nationality.”
 - ◆ *Shoafera v. INS*, 228 F.3d 1070, 1074 n.2 (9th Cir. 2000) (ethnic Amhara in Ethiopia)

5. Protected Ground – *Religion*

Persecution on the basis of religion may involve:

- ◆ “[P]rohibition of membership of a religious community, or worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practice their religion or belong to a particular religious community.”
- ◆ The rights to freedom of thought, conscience and religion, including the right to change religion, and to teach and practice religion, or worship in private or public are enshrined in the Universal Declaration of Human Rights and the Human Rights Convention.
- ◆ Handbook on Procedures and Criteria for Determining Refugee Status, U.N. Doc. HCR/IP/4/Eng./REV.2 (ed. 1992) (“UNHCR Handbook”), para. 72.

5. Protected Ground – *Political Opinion*

- ◆ **First**, the applicant must show that he held (or that his persecutors believed that he held) a political opinion.
- ◆ **Second**, the applicant must show that his persecutors persecuted him (or that he faces the prospect of such persecution) because of his political opinion.”
 - ◆ *Navas v. INS*, 217 F.3d 646, 656 (9th Cir. 2000) (internal citation omitted).
- ◆ Having a political opinion is not, in and of itself enough - the political opinion must motivate potential persecutors.
 - ◆ *Njuguna v. Ashcroft*, 374 F.3d 765, 770 (9th Cir. 2004).

More information:

5. Protected Ground – *Political Opinion*

- ◆ The political opinion may be **actual** (eg party member) or **imputed** (eg assumed that a person holds a view because of the activity or opinions of family members). *Desir v. Ilchert*, 840 F.2d 723 (9th Cir. 1988)
- ◆ Maintaining a **neutral political position** can also constitute a political opinion. *Sangha v. INS*, 103 F.3d 1482, 1488 (9th Cir. 1997)
- ◆ However, neutrality must be an **affirmative choice** and not the result of mere apathy. *Lopez v. INS*, 775 F.2d 1015, 1016–17 (9th Cir 1985).

5. Protected Ground – *PSG*

What do you need to form a PSG?

- ◆ A common immutable characteristic
 - ◆ Fixed, unable to change
- ◆ Particularity
 - ◆ Not subjective
 - ◆ Provides a benchmark for determining who falls in the group
- ◆ Social Distinction
 - ◆ Society's perception and recognition of the group
- ◆ Recent BIA cases:
 - ◆ [Matter of M-E-V-G-, 26 I&N Dec. 227 \(BIA 2014\)](#)
 - ◆ [Matter of W-G-R-, 26 I&N Dec. 20 \(BIA 2014\)](#)

For more information:

5. Protected Ground – *PSG*

- ◆ **Persecution cannot define the PSG.** *Mohammed v. Gonzales*, 400 F.3d 785, 798 (9th Cir. 2005)
- ◆ **Seminal case:** A “collection of people closely affiliated with each other, who are actuated by some common impulse or interest.” *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985)
- ◆ **The Ninth Circuit:** “[A] ‘particular social group’ is one **united by a voluntary association**, including a former association, or by an innate characteristic that is so fundamental to the identities or consciences of its members that **members either cannot or should not be required to change** it.” *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1092-93 (9th Cir. 2000) (Mexican gay men with female sexual identities constitute a particular social group). Cf. *Arteaga v. Mukasey*, 511 F.3d 940, 945-46 (9th Cir. 2007) (membership in violent criminal gang was not membership in a social group)
- ◆ PSGs are “**not amorphous, overbroad, diffuse, or subjective.**” must be **defined** by characteristics that provide a clear benchmark for determining who falls in the group. Exists if the **society in question recognizes it** (as opposed to the perception of the persecutor)
 - ◆ As opposed to *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) - “perception of the persecutors may matter most.”

5. Protected Ground – *PSG: Domestic Violence and Gender*

- ♦ Long history of asylum claims based on domestic violence (DV)
 - ♦ For background to issue and government recommendations see DHS brief for: [Matter of R-A-](#), 22 I&N Dec. 906 (BIA 1999); [Matter of L-R-](#)
- ♦ In 2014, in [Matter of A-R-C-G-](#), 26 I&N Dec. 388 (BIA 2014), the BIA recognized the PGS, “**Married women in Guatemala who are unable to leave their relationship.**”
 - ♦ This was the first case establishing binding precedent to support domestic violence survivors seeking asylum in the US.
 - ♦ The result: **PSG consisting of Gender + Nationality + Status in domestic relationship** (unable to leave; treated as property)

How does this help our clients?

5. Protected Ground – *PSG*

Can you think of a PSG?

5. Protected Ground – *PSG*

- ◆ Some examples of PSGs:
 - ◆ Family
 - ◆ Children with disabilities
 - ◆ Children of landowners
 - ◆ Sexual Orientation
 - ◆ Gender
 - ◆ Status in the family

Humanitarian Asylum

Although Humanitarian Asylum is not a separate form of relief, if the **government rebuts the past persecution presumption**, a victim of past persecution may be granted humanitarian asylum if they can show:

- ◆ **Compelling reasons** for being unwilling or unable to return to the country arising out of the severity of the past persecution, 8 C.F.R. §1208.13(b)(1)(iii)(A);
- ◆ A **reasonable possibility** that he or she may suffer other serious harm upon removal to that country. 8 C.F.R. §1208.13(b)(1)(iii)(B).

Bars for Asylum – Special Rules for Minors

- ◆ One-year filing deadline, safe third country, and internal relocation bars **DO NOT apply to Unaccompanied Children (UCs)**
- ◆ Whether or not they apply to non-UC minors is unclear, though there are legal arguments to be made that they do not. (because being a minor is an exceptional circumstance to exempting the 1 year deadline; and because it is never reasonable or safe to relocate as a minor)

General Bars to Asylum

- ◆ **One-year Deadline**, INA §208(a)(2)(B), 8 CFR §208.4(a)(2)
 - ◆ Exceptions: Changed Circumstances or Extraordinary Circumstances, INA §208(a)(2)(D); 8 C.F.R. §208.4(a)(4), (5).
- ◆ **Convictions:**
 - ◆ Convicted of a “Particularly Serious Crime” INA §208(b)(2)(A)(ii)
 - ◆ For Asylum, a conviction for an “Aggravated Felony” = PSC. INA §208(b)(2)(B)(i). See Def. of Agg. Fel. at INA §101(a)(43)
- ◆ **Outside the U.S. for a serious, non-political crime.** INA §208(b)(2)(A)(iii)
- ◆ **Firm Resettlement in a 3rd Country**, INA §208(b)(2)(A)(vi); 8 CFR 208.15
- ◆ **Persecutor Bar**, INA §208(b)(2)(A)(i)
- ◆ **Terrorist or Danger to the Security of the U.S.**, INA §208(b)(2)(A)(v) and (iv), respectively

Basic concepts of SIJS



Special Immigrant Juvenile Status (SIJS)

- What is SIJS?
- An avenue to lawful permanent residence for children who have been:
 - Abused
 - Abandoned
 - Neglected
 - Or, something similar under state law

General Requirements for SIJS

- ◆ Under 21 years of age (time of filing freezes the age)
- ◆ Unmarried (having children is okay)
- ◆ Have a valid predicate order from a state juvenile court with SIJS eligibility findings
- ◆ Be admissible for adjustment of status (note waivers available and certain inadmissibility grounds don't apply)
- ◆ Be present in the United States

Overview of Applicable Laws

- ◆ INA § 101(a)(27)(J) : sets the general requirements for SIJS
- ◆ 8 C.F.R. § 204.11 [not reflecting TVPRA amendments effective March 2009]: sets out further requirements for SIJS
- ◆ INA § 245(h): provisions affecting the adjustment of status under SIJS
- ◆ State law: rules for court jurisdiction and procedures

Three Steps

State Juvenile
Court—
Predicate Order
with Eligibility
Findings

Petition
(I-360) for Visa
Classification—
USCIS has
exclusive
jurisdiction

Application for
Lawful
Permanent
Residence
(I-485)

Stage One:

The State Juvenile Court

- ◆ In CA, *any* CA Superior Court can make findings as a “Juvenile Court” for immigration purposes. [B.F. v. Superior Court, 207 Cal.App.4th 621 \(2012\)](#)
- ◆ Traditional “Juvenile Courts” in CA
 - ◆ Immigration regulations define the term “juvenile court” as “a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.” [8 C.F.R. § 204.11\(a\)](#)
- ◆ Examples Juvenile Courts include:
 - ◆ Probate Court (Guardianship proceedings)
 - ◆ Dependency Court (Sec. 300 of the Cal. Welfare and Institutions Code)
 - ◆ Delinquency Court (Sec. 602 of the Cal. WIC)
 - ◆ Family Court
 - ◆ Adoption Court
 - ◆ Note: most juvenile courts in CA must assert jurisdiction over the child before she turns 18 years old; some courts may keep jurisdiction until age 21

Stage One: The State Juvenile Court continued...

Why must we go to juvenile court?

- ◆ Pursuant to INA §101(a)(27)(J) [as amended by TVPRA of 2008] , a child is eligible for an SIJS visa if they have been “declared dependent on a juvenile court located in the United States or placed under the custody of an individual or entity appointed by a state or juvenile court, within the meaning of INA”

What is a Juvenile Court?

- ◆ Immigration regulations define the term “juvenile court” as “a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a)

AB 900

- 💧 AB 900 aligns state law with Federal law
- 💧 Since January 1, 2016, Probate Court jurisdiction is expanded to allow the court:
 - 💧 to appoint a guardian for 18-20 year old wards in connection with a SIJS petition
 - 💧 to extend existing guardianships up until 21 years of age for the purpose of allowing ward to complete SIJS
- 💧 Consent of the ward required
- 💧 Non-minor ward retains adult decision making authority (CA Probate Code § 1510.1)
- 💧 Tip: Questions from Judges regarding the need for the guardianship **explain to judge**

Stage One: The State Court Eligibility Findings

- ◆ The **child has been declared dependent** on a juvenile court located in the United States or placed under the custody of an individual or entity appointed by a state or juvenile court
- ◆ The child's **reunification** with one or both of his or her parents is **not viable** due to **abuse**, **abandonment**, **neglect** or other similar basis under state law
- ◆ It is **not in the “best interest” of the child** to be returned to his or her parents' previous country of nationality or country of last habitual residence

Abuse, Abandonment and Neglect

- ❖ Abuse, abandonment, and neglect are not defined in the Immigration and Nationality Act - **look to State law** [*see some examples below*]
- ❖ California Welfare and Institution Code
 - ◆ Abuse - § 300(a)
 - ◆ Neglect - § 300(b)
 - ◆ Abandonment - § 300(g) - the death of a parent may be likened to abandonment (see *In re Vanessa P*, 38 Cal.App.4th 1763 (1995))
- ❖ California Penal Code 111652.2 – criminal neglect
- ❖ California Family Code 2603 and 7822(3)(b)– abuse and abandonment

Reunification not Viable

- ◆ Reunification with **one or both** parents not viable
- ◆ This is decided from a fact-specific analysis based on the minor's exposure to abuse, abandonment, or neglect
 - ◆ I.e., A child should not be returned to home where they may be abused, or a child should not be returned to a home where he will be inadequately cared for
 - ◆ Note: immigration law requires failed reunification with one parent only
 - ◆ *See* Matter of A-R-J, San Antonio Immigration Court, August 10, 2009

SIJS Process

- ◆ **Notice of Hearing** – must be provided to minor's relatives within the second degree within fifteen calendar days of hearing
- ◆ **Service** – Personal service required to parents – different if in another country (telephone, fax, mail). Check country specific requirements.
- ◆ **Declaration of due diligence** - use remedy notice and service shortcomings.
- ◆ **Social Service Investigations** – pursuant to Probate Code
- ◆ **Probate Notes** – to identify deficiencies in your filing

The Hearing

What should I expect from the hearing?

Immigration Portion of SIJS

I-360

- ◆ The I-360 is the form used to submit the Special Immigrant Juvenile Status petition.
- ◆ Once this petition is approved, it provides the UC with a visa and legal status to avoid deportation.
- ◆ Proceedings can be terminated once the I-360 has been approved.

I-485

- ◆ The I-485 is the application used to become a Legal Permanent Resident.
- ◆ This application can be filed one year after the I-360 was granted.

****This process needs to be completed before the minor turns 21.**

Is this *everything* I need to know to take a UC case?



Is this *everything* I need to know to take a UC case?

- 💧 NO! This training is intended to be an introduction and to motivate you to learn more and get involved.
- 💧 **When you take a case from Esperanza, you will be provided guidance on law, procedure and practice, sample documents and one-on-one guidance.**
- 💧 This training will be repeated periodically – you are welcome to come again.
- 💧 Stay tuned for information about further trainings on different topics to help you get ready.

In the meantime...

- ◆ **Esperanza is always looking to recruit pro bono attorneys**
- ◆ Attorneys have the opportunity to get involved in various ways:
 - ◆ Take an asylum or SIJS case
 - ◆ Volunteer to be a Guardian Ad Litem
 - ◆ Volunteer to help with research tasks
 - ◆ Volunteer in our office on actual cases
 - ◆ Assist with Pro Se Clinics
 - ◆ Assist with Immigrant Court Help Desks

Get involved

To get involved contact:

- ◆ Kimberley Plotnik Esq.,
Pro Bono Coordinator
- ◆ [E: kplotnik@ccharities.com](mailto:kplotnik@ccharities.com)
- ◆ Ph: 213-251-3594

