OCR GRID UPDTAE FOR IMMIGRATION FACT SHEET

Early Release Copy

(Entire Fact Sheet included, changes highlighted in yellow)

INTRODUCTION

Generally speaking, Colorado child protection laws and policies neither create nor recognize distinctions in availability of protections and services based on immigration status. From a practical perspective, however, lack of immigration status may interfere with a child's or family's access to public services and ability to comply with requirements of treatment plans and reunification efforts. Additionally, undocumented individuals, particularly those who may be involved with child protection, delinquency, or criminal proceedings, face a very real threat of detainers or "holds" by Immigration and Customs Enforcement (ICE), deportation proceedings, civil immigration detention, and—ultimately—removal from the United States, further complicating efforts to work toward reunification and achieve permanency for children.

> **TIP:** Because of the immediate and long-term impact of lack of immigration status, RPC and GALs should identify immigration issues as early as possible and work to resolve them in a manner consistent with the best interests of the child and/or client. Creativity in minimizing costs of services, maximizing access to federal and state funding steams, and using alternative resources will promote the Children's Code's stated purposes of securing care and guidance for each child subject to its provisions; preserving and strengthening family ties whenever possible; and—for those children who have been removed from their parents' custody—securing the necessary care, guidance, and discipline to assist them in becoming responsible and productive members of society. *See* § 19-1-102.

> **TIP:** Immigration law is complicated and subject to frequent substantive and procedural changes. The information provided in this fact sheet is intended as a very general overview. When immigration issues arise, D&N attorneys should contact an experienced immigration attorney familiar with the best practices and trends of local immigration offices and consulates.

BENEFITS ELIGIBILITY

Although a detailed discussion of public benefits eligibility for noncitizens in Colorado is beyond the scope of this fact sheet, the following is a brief overview of some eligibility issues that may impact a family's ability to participate in services and to be successful in reunification efforts.

1. Generally

An undocumented child in Colorado has the same right to protection from abuse or neglect as does a US citizen child. Once a child is removed from his or her home through a D&N proceeding, immigration status should not affect that child's ability to access services and placement. Neither the Children's Code nor Volume 7 bases the provision of child welfare services or procedures on a child's immigration status, although immigration status may affect the source of the funding for services and placement. *See* 8 U.S.C. § 1611(a) (limiting eligibility for federal public benefits to specified benefits or "qualified aliens").

Funding and Rate Issues Fact Sheet

All persons residing in the United States, regardless of status, are eligible for the following federal public benefits: emergency Medicaid, required immunizations, disaster relief, and in-kind, non-means-tested community services (e.g., fire and police protection, victim's advocacy). *See* 8 U.S.C. §1611(b); Final Order of the Attorney General, 66 Fed Reg. 3613 *at* 3615 (Jan. 16, 2001). Absent specific statutory exceptions or unless an individual is a "qualified alien," that person will not be entitled to other federal public benefits. 8 U.S.C. § 1611(a).

Colorado statutes limit access to Medicaid and other means-tested benefits for undocumented adults. *See* § 24-76.5-103; *Soskin v. Reinerton*, 353 F.3d 1242 (10th Cir. 2004). However, services benefiting children under the age of 18 are specifically exempted from these statutory bars. § 24-76.5-103(1); 9 CCR 2503-1 § 3.140.12.

> **TIP:** Immigrant (legal and undocumented) eligibility for various federal benefit programs depends on a variety of factors, including length of residency, type of status, and the benefit sought. The National Immigrant Law Center maintains excellent updated charts regarding program eligibility. *See* **http:// nilc.org/guideupdate.html**.

2. Education

Public compulsory education is also a mandated service for undocumented children. *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed. 2d 786 (1982). Prior to the passage of the Colorado ASSET Legislation (Senate Bill 13-033) in 2013, Colorado did not recognize undocumented students as in-state residents for determining tuition at higher education institutions, forcing undocumented students to pay nonresident tuition rates. Colorado ASSET now allows undocumented students to pay in-state tuition at Colorado's public colleges and universities as long as they meet certain qualifications. In general, a student will need to demonstrate that she or he, 1) has attended a Colorado high school

for three years right before graduating, 2) is admitted to a participating college within twelve months of graduating, and 3) has signed an affidavit, stating he or she is not legally present in the U.S., but is seeking or will seek status when eligible. Undocumented children and also those granted Deferred Action for Childhood Arrivals (DACA) (see below) do not qualify for federal financial aid, and even US citizen children of undocumented parents may have difficulty in obtaining federal student aid because of their parents' lack of valid social security numbers and proof of qualifying income required to complete the Free Application for Federal Student Aid (*available at* www.FAFSA.ed.gov).

> **TIP:** Undocumented students evaluating higher education options should consider researching private scholarships and loans. Frequently, these options have fewer restrictions and may be more broadly available to undocumented youth because they are not as dependent on federal and state eligibility restrictions. *See* **http://unitedwedream.org/blog/6-scholarship-opportunities-undocumented-students/, http://www.finaid.org/otheraid/undocumented.phtml, http://www.goldendoorscholars.org/.**

3. Unaccompanied Refugee Minor (URM) Program

When family reunification is not possible, children certified as trafficking victims, approved for Special Immigrant Juvenile Status, or granted refugee or asylee status may qualify for URM placement, case management, and other services, funded by the federal Office of Refugee Resettlement. *See* http://www.acf.hhs.gov/programs/orr/programs/urm and https://sites.google.com/a/state.co.us/cdhs-dcw/for-professionals/programs/URM. URM placements in Colorado are approved by the Colorado Refugee Services Program. *Id*. At the time of this writing, URM services in Colorado are provided by Lutheran Family Services and supervised by Denver, Clear Creek, and El Paso county human services departments and courts.

> **TIP:** URM program eligibility can be a critical resource for qualifying children and should be explored with an immigration lawyer whenever possible.

JURISDICTION AND CUSTODY MATTERS

Creation, implementation, and enforcement of US immigration law fall under the clear purview of the federal government. *See generally* U.S. Const. Art. I, § 8, Art. VI; *Chamber of Commerce of the U.S. v. Edmonson*, 594 F.3d 742, 764–66 (10th Cir. 2010) (discussing Supremacy Clause). Immigration law is considered civil in nature, and interior enforcement and removal (the legal term now used for deportation) operations are administered at the sole discretion of Immigration and Customs Enforcement (ICE), an agency of the Department of Homeland Security. ICE

lodges charges of removability with the nation's immigration courts against individuals suspected of immigration law violations. Because immigration courts, presided over by administrative civil law judges, are entities of the Department of Justice Executive Office of Immigration Review and not of the federal courts, many procedural protections do not apply. The Federal Rules of Evidence and the right to counsel at government expense, for example, do not apply in the context of removal proceedings. *See Matter of Wadud*, 19 I&N Dec. 182, 188 (BIA 1984); 8 U.S.C. § 1229(b). Other constitutional protections in the criminal context, such as mandatory warnings regarding self-incrimination and prohibition against *ex post facto* application of new laws, do not apply in the immigration context. *Matter of E-RM-F- & A-S-M-*, 25 I&N Dec. 580 (BIA 2011); *Seale v. INS*, 323 F.3d 150, 159–160 (1st Cir. 2003). Hearsay statements are admissible. 8 C.F.R. § 1240.7(a).

While removal proceedings are pending against a person, ICE may exercise broad discretion in determining whether to detain the individual. 8 U.S.C. § 1226. Once a person is in federal immigration custody, ICE is authorized to transfer the person to any ICE-contracted facility in the country, most often without notice to a detainee's attorney or relatives. *See generally* 8 C.F.R. § 236.1 *et seq*.

> **TIP:** To locate a person suspected of being in ICE custody, use the locator system available at **https://locator.ice.gov**. Note that the person's "Alien Registration Number" ("A Number") or exact name and date of birth, as entered into the ICE database, is required to yield accurate results. Information about juveniles in immigration custody is not available on this site, but such information may be obtained by an immigration attorney of record, parent, or legal guardian directly from the arresting ICE officer or the Office of Refugee Resettlement, Division of Unaccompanied Children's Services.

In Colorado, adult arrestees formally taken into custody and juveniles committed to, entering into a community placement from, and/or paroling out of the Division of Youth Corrections who cannot establish US citizenship are automatically reported to ICE. *See* § 29-29-103; Policy 16.14, *Committed Undocumented Juveniles*, John Gomez, Director, Colorado Department of Human Services, Division of Youth Corrections (June 19, 2006). ICE then, using its discretion, determines whether to issue an ICE "hold" or "detainer" over the person, notifying the custodian that the custodian must continue to hold the person for up to 48 hours, excluding weekends and holidays, after the person would otherwise be subject to release (e.g., by posting bail/bond, serving a sentence, parole, or dismissal of charges). *See* 8 C.F.R. §§ 236.1, 287.7. If ICE fails to take custody of the individual in the 48-hour window, release is mandatory. 8 C.F.R. § 287.7.

> **TIP:** An adult immigration detainee unable to secure release during the pendency of removal proceedings will face challenges in complying with court-ordered treatment in any pending D&N proceeding. Additionally, individuals in ICE custody will be transferred for nonimmigration-related court appearances only if

> the court in question issues a writ to ICE. Practitioners should remain mindful that a parent's lack of status, immigration detention, and, ultimately, removal or deportation do not, in themselves, affect parental rights. When ultimate reunification with a detained parent is appropriate, parent's counsel and the GAL should keep appraised of the status of the immigration case and should work creatively to promote compliance with treatment plans (e.g., sending materials from court-ordered parenting classes to parents in detention). GALs and parent's counsel may have information that would assist in the release of a parent and should work with immigration attorneys to share that information with the immigration judge when doing so would serve the best interests of the child/client. To avoid adverse consequences in the removal case, any participation or release of information in removal proceedings should be done only upon advice and approval of experienced immigration counsel.

Some special procedures apply to youth placed in removal. Unless a specific exception applies, ICE may not detain a child under the age of 18 in its custody for longer than 72 hours (including weekends and holidays). *See Reno v. Flores*, 507 U.S. 292, 298, 113 S.Ct. 1439, 123 L.E.2d 1 (1993) (describing consent decrees requiring placement of juveniles in acceptable facilities within 72 hours); Memo, McNary (Dec. 13, 1991) *reprinted in* 69 No. 6 Interpreter Releases, 189, 205 (Feb. 10, 1993); 8 C.F.R. §§ 236.3(c), (d), 1236.3(c), (d) (describing role of juvenile coordinator and procedures for interim detention of juveniles). Options for placement of children in removal proceedings include: (a) release of the child to a parent or guardian; (b) placement of the child with another adult relative; (c) placement of the child with a responsible adult designated by a parent; (d) placement of the child at a location with contracted bed space with the Division of Unaccompanied Children's Services (DUCS) under the Office of Refugee Resettlement (ORR) with the Administration for Children and Families at the federal Department for Health and Human Services; or (e) in the case of Mexican children, voluntary repatriation into Mexico's federal social services custody if "elected" by the child. *See* 8 C.F.R. §§ 236.3, 1236.3. *See also* **http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services**. At the time of this writing, there are no DUCS-contracted facilities in Colorado. The majority of facilities are concentrated along the southern border with Mexico and on the East and West coasts, and they are nearly always at or above capacity. *Id.*

> **TIP:** Whenever a child, parent, or special respondent in D&N and/or delinquency proceedings is determined to have immigration issues, and particularly when a person has an ICE hold or is in ICE custody, counsel should make appropriate referrals for immigration counsel immediately. It is also a good practice for undocumented youth, families, and service providers to have a plan in place, including agreement about nuanced use of the right to remain silent in ICE interviews. Disclosure of names and addresses of documented relatives; facts of domestic violence, child abuse, or other victimization; and presentation of

"equities," as well as letters of support and recommendation from teachers, therapists, caseworkers, GALs, client managers, parole/probation officers, certificates of completion of anger management, offense specific, and other treatment programs, may all be helpful. Answering questions about country of origin, entry into the United States, overstaying visas, and related inquiries about self or family will likely result in substantiating charges of removability.

CONSULATES

Consulates are available to assist noncitizen parents and children. Consulates may also assist child welfare workers with noncitizen children in county custody with obtaining birth certificates and other identity documents and with locating and evaluating relatives in the home country for potential placement. Occasionally, consulates may be able to fund or provide some services, such as document translation and service referrals (both locally and in the home country). It should be noted that some consulates are much more responsive and capable of offering assistance than others.

TIP: It is critical to recognize that consulates must abide by their own countries' laws and that their constituents are the citizens and nationals of the consulate's home country. This may mean that, in child protection cases, consular services, interests, and priorities will not always align with the best interests of a child, particularly in instances in which child protection laws differ significantly in the home country from Colorado law or in which a child and/or the child's family have a fear of returning to their home country, where they may experience persecution. Special care should be used in sharing the background of a child's D&N case with the consulate, and confidentiality should be maintained to the extent practicable in obtaining appropriate consular assistance.

TIP: To find the consulate serving any given group of foreign nationals in Colorado, conduct an Internet search for the embassy for the country in question. Almost without exception, contact information for consular affairs and various jurisdictions/locations will be available on the embassy website.

TIP: Keep a good record of communications and attempted communications with a consulate. When US Citizenship and Immigration Services (USCIS) is presented with evidence that a consulate failed to respond or indicated it was unable or unwilling to intervene, the USCIS may move more quickly in granting Special Immigrant Juvenile Status (see below).

PATHS TO LAWFUL STATUS

1. **Special Immigrant Juvenile Status (SIJS)**

Special Immigrant Juvenile Status provides a mechanism for some undocumented children who have been abused, neglected, or abandoned by one or both parents to such an extent that parental reunification is no longer a viable option to obtain lawful permanent residency (i.e., a "green card"). *See generally* 8 U.S.C. § 1101(a)(27)(J). Congress created SIJS to facilitate greater access to social services and improved opportunities for court-involved youth. SIJS approval results in not only lawful permanent residency but also eligibility for assistance from the Unaccompanied Refugee Minor (URM) Program, discussed above. The cornerstone of a SIJS case is a court order from a presiding juvenile court (D&N, delinquency, probate, and, under some circumstances, domestic relations) containing all of the following findings:

- ✓ The child is under 21 years of age and unmarried.
- ✓ The child is a juvenile court "dependent" (meaning the subject of proceedings in which the presiding court is authorized to make findings regarding the best interests, care, and custody of the child in question).
- ✓ The child cannot be reunited with one or both parents because of parental abuse, abandonment, or neglect.
- ✓ It is not in the child's best interests to be returned to the country of his or her origin. 8 U.S.C. § 1101(a)(27)(J).

TIP: Motions and orders for SIJS predicate findings may be prepared by GALs, county attorneys, or juvenile defense attorneys, or jointly by any combination of these practitioners, and should be reviewed by an immigration attorney prior to submission to the court. Motions should contain enough factual information to make clear that the presiding court has a reasonable basis for making the findings. Overly detailed motions are not necessary, and ultimately, the practitioner may wish to consult with experienced immigration counsel about striking an ideal balance between respecting the child's right to privacy and providing enough information to US Citizenship and Immigration Services (USCIS) to persuade it that the order is not fraudulent or issued solely to facilitate immigration status. *See* Memo, Yates, Assoc. Dir. Operations, USCIS, HQ/AND 70/23 (May 27, 2004), available at **www.uscis.gov**.

Congress amended the SIJS statute in 2008 in several significant ways, intending to broaden and clarify eligibility. The amendments also now mandate that SIJS cases be adjudicated within 180 days. Pub. L. 110-457 § 235(d)(2). The relevant regulations at 8 C.F.R. § 204.11 have yet to be amended to reflect these statutory changes but continue to control eligibility to the extent not in conflict with 8 U.S.C. § 1101(a)(27)(J). Practitioners familiar with the old statute (and outdated regulations) will recall that, formerly, a child must have been determined to be "eligible for long-term foster care" and must have continued to be "dependent upon the juvenile court," which was construed

to mean that to obtain SIJS the juvenile case must remain open until residency was granted. These findings, which proved problematic for a number of reasons, have been eliminated. It is now clear that if a case closes for reasons related to the SIJS applicant's age, SIJS eligibility continues. It is also possible to argue successfully that SIJS continues to be an option for children whose cases have been resolved by adoption, guardianship, and other permanency arrangements, provided that the core findings continue to be true (i.e., parental reunification is not an option because of abuse, abandonment, or neglect, and it is not in the child's best interests to return to his or her country of origin). The "one or both parents" language is also new, as of 2008, and because of the rarity of such cases and the absence of guiding regulations, immigration law expertise and familiarity with local USCIS adjudication trends and practices are essential to proceed in a "one parent" case.

> **TIP:** It is extremely helpful, if possible, to have a human services caseworker present at the final SIJS interview stage with USCIS. If the caseworker is unavailable or the case is closed prior to final adjudication of the SIJS application, a letter from the caseworker describing generally the case history and why parental reunification continues to not be viable is also very useful, as is an explanation of why the case might close despite the core SIJS predicate order and findings continuing to be true. This will avoid the need for questioning the SIJS child applicant about the dependency case at the final USCIS interview, when a decision whether to grant SIJS and residency is made.

As with "one parent" cases, consultation with an experienced immigration practitioner is warranted in cases in which juvenile proceedings may close prior to adjudication of the SIJS petition.

> **TIP:** A child granted residency via SIJS will never be able to serve as an anchoring relative to petition for immigration status for either parent, even in cases in which parental rights have not been terminated. This is an important consideration in some cases in which one parent's whereabouts are unknown and/or there are no specific allegations of abuse or neglect against a parent. Several other forms of status (discussed below) allow for other family members to apply as derivatives, and these should be considered in strategizing about what status may be in a child's best interests (e.g., having a parent, even a noncustodial parent, with status and work authorization may have long-term benefits).

2. VAWA

Under the Violence Against Women Act (VAWA), 8 U.S.C. § 1154, the undocumented spouse and/or child of an abusive US citizen or lawful permanent resident may apply for lawful permanent residency. This process is often referred to as "self-petitioning" (similar

to SIJS) and is an option when the applicant lacks the healthy family support needed to pursue "normal" immigration channels, which involve an anchoring relative with status who petitions on behalf of family members. This option is intended to prevent a victim's lack of immigration status from adding to the power and control dynamic exerted by abusers who already have immigration or citizenship status. While residency applications are pending under VAWA, applicants are first provided with "deferred action" and work authorization. "Abuse" is defined under VAWA as battery or "extreme cruelty" and need not be physical in nature but can also include pervasive psychological or emotional abuse. "Any credible evidence" is sufficient to demonstrate the abuse; thus, sustained allegations of abuse or neglect or even police, hospital, medical, or other reports generated in connection with a dependency case may be useful to an applicant in substantiating a claim. The gender of the applicant is irrelevant (despite the "VAWA" title referring solely to women), and many derivative family members of the principal applicant may also qualify, despite not being a target of abuse themselves. VAWA recipients are eligible for a broad range of federal and state public benefits.[1]

3. U Visa

The "U Visa" or U Nonimmigrant Status (8 U.S.C. § 1101(a) (15(U)) allows victims of specified serious crimes who have suffered substantial physical or mental abuse to obtain up to four years of temporary, nonimmigrant status (with work authorization) and, ultimately in many cases, to apply for lawful permanent residency after three years if they have been, are being, or are likely to be helpful in the investigation or prosecution of the crime. To obtain U status, the crime victim must provide a "certification" from a government agency (local, state, or federal) with investigatory or prosecutorial authority in criminal matters indicating the victim's cooperation with the investigation or prosecution of the crime. The certification must be completed on a special form, the I-918 Supplement B (*available at* **www.uscis.gov**), along with all other immigration applications, by any official designated by the agency's head to complete such certifications. Regulations specifically mention that when Child Protection Services has authority to investigate criminal child abuse and neglect allegations, it may provide the necessary certification. 8 C.F.R. § 214.14(a)(2). When a crime victim is under the age of 16, a parent, guardian, or "next friend" may provide the required assistance with law enforcement. U status is available not only to crime victims but also to spouses, children, and siblings in many situations, provided that the applicant(s) was not involved in the criminal activity resulting in victimization. It is also available in cases in which the

[1] As mentioned elsewhere in this fact sheet, for complete, updated charts regarding public benefits eligibility, see NILC's website: **www.nilc.org**.

primary victim (typically a child) is a US citizen but a supportive, cooperative family member is not. In such a case, an undocumented parent, for example, may demonstrate that he or she has suffered substantial harm as an "indirect" victim. Finally, it is worth noting that unlike several other categories of status mentioned here, U status does not result in broad eligibility for public benefits, although work authorization and the fact of status alone may result in greater ability to meet parenting and treatment plans.

> **TIP:** Referring a family for assistance and providing support (e.g., corroborating letters of support) in obtaining U status can protect vulnerable family units from deportation or other unnecessary separation. The U status work authorization available to single parents after domestic violence or sexual abuse by a partner, for example, may provide the single parent with the capacity to move out of a safehouse or shelter, provide a more stable living environment for the children, and assist with breaking out of the cycle of power and dependency common in violent relationships.

4. T Visa

Although still relatively rare, a growing number of T Visas are being issued to foreign-born victims of "severe forms of trafficking." 8 U.S.C. § 1101(a)(15)(T). Federal law defines severe forms of trafficking as (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion *or* in which the person induced to perform the act is under the age of 18; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102. Notably, human trafficking does not require human smuggling across an international border, but rather it is the force, fraud, or coercion to compel labor or services that constitutes trafficking. Obtaining a T Visa also requires demonstrating compliance with reasonable requests for assistance in the investigation or prosecution of the trafficking in cases involving victims 18 years of age and older and several other requirements. Trafficking victims "certified" by ORR/ACF/HHS are entitled to a wide range of federal benefits identical to those available to asylees and refugees. In the case of unaccompanied minors, certification as a trafficking victim also entitles the child to Unaccompanied Refugee Minor (URM) status, which allows for federal foster care placement, currently available and administered in Colorado by Lutheran Family Services in several Front Range counties under the review of local child protective services and the state refugee services coordinator. Like U status, the T Visa results in the possibility of lawful permanent residency after three years.

TIP: The Colorado Network to End Human Trafficking (CoNEHT) has a 24-hour hotline to assist with screening and identifying victims of human trafficking: 1-866-455-5075. CoNEHT is also available to provide "pre-certification" services, including shelter; medical, dental, and mental health services; and comprehensive case management services. The National Human Trafficking Resource Center (NHTRC) also operates a useful multilingual 24-hour hotline: 1-888-373-7888.

5. Asylum

Children and youth are often more vulnerable to persecution in their home countries, but they are also uniquely disadvantaged in seeking asylum in the United States because they may not be able to articulate the basis for the persecution they fear and/or they are presumed to be too young to be targeted on a protected ground by governments or groups that the government cannot or will not control. To qualify for asylum, an applicant must demonstrate that he or she meets the definition of "refugee" found in the 1951 UN Refugee Convention, Article I—namely, that he or she is a person who is outside any country of such person's nationality and unable or unwilling to avail himself or herself of the protection of that country because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. UN Convention Relating to the Status of Refugees, 189 U.N.T.S. 137; *see also* 8 U.S.C. § 1158(a). Asylum and related protections are not available to individuals fleeing civil war, famine, natural disasters, pervasive crime, or poverty. Because submission of "frivolous" applications carries severe consequences under immigration law, referral to experienced immigration counsel on these matters is critical.

TIP: Asylees and refugees are eligible for a broad range of state and federal benefits. Some, such as employment and housing assistance, are time-limited and only available immediately after obtaining asylum status. For assistance in determining eligibility and locations for services sought, review ORR's website at **http://www.acf.hhs.gov/programs/orr/resource/state-of-colorado-programs-and-services-by-locality**.

TIP: Children's and women's asylum law continues to be an area of emerging practice and precedent. Asylum protection may be available to victims of severe domestic violence, human trafficking, forced gang recruitment, and other "novel" theories in which government may not be the feared persecutor but may simply be unable or unwilling to control persecutors who target individuals because of their youth, gender, family membership, and the like. The Center for Gender and Refugee Studies (**http://cgrs.uchastings.edu**) at the University of California's Hastings College of the Law serves as a valuable clearinghouse and repository of

information for these cases and is recommended to any practitioner interested in learning more about these cases.

TIP: There are several other forms of humanitarian protections available to victims of persecution or torture in the country of origin. The information provided here is skeletal in nature and referral to immigration counsel is necessary to assess eligibility for asylum-related protections any time an individual indicates a fear of returning to his or her home country.

6. Deferred Action for Childhood Arrivals and Executive Action

Deferred action is a discretionary decision by the Department of Homeland Security not to pursue enforcement of the immigration laws against a person for a specific period of time – essentially, a pause of enforcement. Deferred Action for Childhood Arrivals or "DACA" is the same. Announced on June 15, 2012, DACA provides approved applicants with a two-year "pause" of deportation/enforcement of the immigration laws, along with permission to work legally in the U.S. However, a grant of DACA does not alter an individual's existing immigration status or provide a path to citizenship or residency. In most cases, though, employment authorization through DACA will allow a person to obtain a valid social security number and a Colorado driver's license. To establish eligibility for DACA, individuals must demonstrate that they: 1) are at least 15 years old; 2) arrived and established residence in the United States before reaching their 16th birthday; 3) continuously resided in the United States from June 15, 2007 to the present; 4) were physically present in the United States on June 15, 2012, as well as at the time of requesting deferred action from USCIS; 5) entered without inspection before June 15, 2012, or that their lawful immigration status expired on or before June 15, 2012; 6) on the date of application, are in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are honorably discharged veterans of the U.S. Coast Guard or the U.S. Armed Forces; 7) have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, and do not otherwise pose a threat to national security or public safety. Submitting a request for DACA does not affect any other pending immigration applications such as filing for a U Visa or pending family-based petitions.

TIP: On November 20, 2014, President Barack Obama announced the creation of a deferred action program for parents of U.S. citizens and lawful permanent residents who met certain criteria (called DAPA) and an expansion of the existing DACA program. The DACA expansion modified the criteria for applicants by eliminating the upper age cap of 31 years, moving the beginning date of continuous residence from June 15, 2007 to January 1, 2010, and extending

employment authorization to a period of three years instead of two years. However, at the time of this writing, due to a federal court order, USCIS did not begin accepting requests for the expansion of DACA or DAPA as originally planned. Instead, in *Texas v. United States*, the court issued a temporary injunction on DAPA and DACA expansion. On May 26, 2015, the Fifth Circuit Court of Appeals denied the government's request for an emergency stay. As a result, the hold on DAPA and DACA expansion continues while the Fifth Circuit considers the government's appeal of the preliminary injunction itself. The court's temporary injunction does not affect the original DACA requirements (those outlined prior to the expansion). Individuals may continue to come forward and request an initial grant of DACA or renewal of DACA under the guidelines established in 2012.

7. Other Means of Obtaining Lawful Status

There are numerous other ways to obtain status. In working with immigrant families, it is always worth exploring status of relatives to identify potential automatic claims to US citizenship, which are possible if a parent or grandparent is or was a US citizen at any time before a child turned 18 years old. 8 U.S.C. §§ 1401(c)–(e), 1431. Other documented relatives may also be in a position to petition for their family members to become residents, although this process may require returning to a home country with a high risk of denial of reentry to the United States and waiting lists that run 5–20 years long. *See generally* 8 U.S.C. §§ 1151–1159. Additionally, there are temporary protections or grants of "deferred action" to some categories of individuals designated as low priority for removal. "Temporary Protected Status" (or "TPS") is available, upon presidential designation, to populations from countries that suffer from natural disasters or severe civil strife. 8 U.S.C. § 1254a. [took out info about DREAMERs]

> **TIP:** As previously mentioned, a person's status or prospective eligibility for status often can only be determined by experienced immigration counsel.

RESOURCES

Assistance in this complex, ever-changing area of law is available from several resources, including the following:

Rocky Mountain Immigrant Advocacy Network (RMIAN) Children's Program. Provides free consultations, direct representation, and technical support for undocumented children and their service providers. Also provides detention program "Know Your Rights" presentations and individual orientations for detained adults in deportation proceedings in Aurora, Colorado, with pro bono representation for qualifying individuals. **www.rmian.org** or 303-433-2812.

College in Colorado. Initiated by the Department of Higher Education, CIC's Colorado ASSET-focused website (**http://www.ciccoloradoasset.org/**) has fantastic resources for undocumented students in Colorado, including legal resources regarding ASSET and scholarship opportunities.

National Immigration Law Center (NILC). Leading national experts in public (federal, state, and local) benefits eligibility for noncitizens. **www.nilc.org**.

Immigrant Legal Resource Center (ILRC). Extensive free online resources, including a "Judicial Benchbook" on immigration issues arising in juvenile courts. In addition, ILRC offers, for purchase, thorough and user-friendly manuals on various forms of immigration status, including SIJS. Note that although many ILRC materials refer to California-specific law and practice, the overwhelming majority of its resources may be of considerable use to practitioners in other states. **www.ilrc.org**.

US Citizenship and Immigration Services (USCIS). Official government website with immigration applications and instructions, case tracking, guidance memos, and so forth. Caveat: information available on the website and provided on the USCIS 1- 800 number may be confusing or misleading; this resource should not replace consultation with an experienced immigration attorney. **www.uscis.gov**.