

# IMMIGRATION ISSUES IN DELINQUENCY CASES



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# MOST IMPORTANT TAKE-AWAYS

- Non-citizen juveniles involved with the juvenile justice system are at risk of:
  - being identified by the Department of Homeland Security, Immigration and Customs Enforcement (ICE);
  - being taken into ICE custody
  - Being placed in removal (deportation proceedings).
- Even minors can be ordered removed by an immigration judge.
- If you determine that a juvenile you are working with may not be a U.S. citizen, please consult with an immigration attorney to mitigate the immigration consequences of the case!

- **RMIAN Programs & Services**
- **Overview of U.S. Immigration Law**
- **Removal Proceedings for Minors**
- **Intersection of Federal Immigration Law and CO Child Welfare Law**
- **Immigration Consequences of Juvenile Delinquency Adjudications**
- **Potential Immigration Relief Options for Juveniles**

## **AGENDA**

# RMIAN PROGRAMS & SERVICES



# RMIAN PROGRAMS & SERVICES

## Children's Program

- Direct representation or referral to volunteer attorneys for indigent, immigrant children in Colorado
- Legal orientation presentations for children at downtown immigration court
- Training and mentoring
- Education and outreach

## Detention Program

- Near-daily legal orientation presentations to detainees at the immigration detention facility in Aurora, CO
- Informational individual consultations
- Possibility of referral to staff or volunteer attorney
- *Pro se* assistance to unrepresented individuals

# **RMIAN's Human Trafficking Project**

**Support for potential survivors of human trafficking identified through the Detention Program and Children's Program.**

- **In-depth trafficking screening**
- **Coordination of legal assistance and social services support**
- **Education and training about human trafficking to service providers**

**RMIAN is a founding member of Colorado Network to End Human Trafficking (CoNEHT) and provider of legal assessments in response to CoNEHT hotline calls.**

**24-hour CoNEHT hotline: 1-866-455-5075**

# OVERVIEW OF IMMIGRATION LAW

# SOURCES OF LAW

- Administrative Law Regime + Power to Detain and Deport (INA Sections 212 & 237)
- Sources of Law:
  - Immigration & Nationality Act (Title 8 of U.S. Code)
  - Title 8 of the Code of Federal Regulations
  - Board of Immigration Appeals Precedential Decisions; Administrative Appeals Office
  - Circuit Court decisions
  - Internal Agency Policy & Guidance (Memos)

# AGENCIES

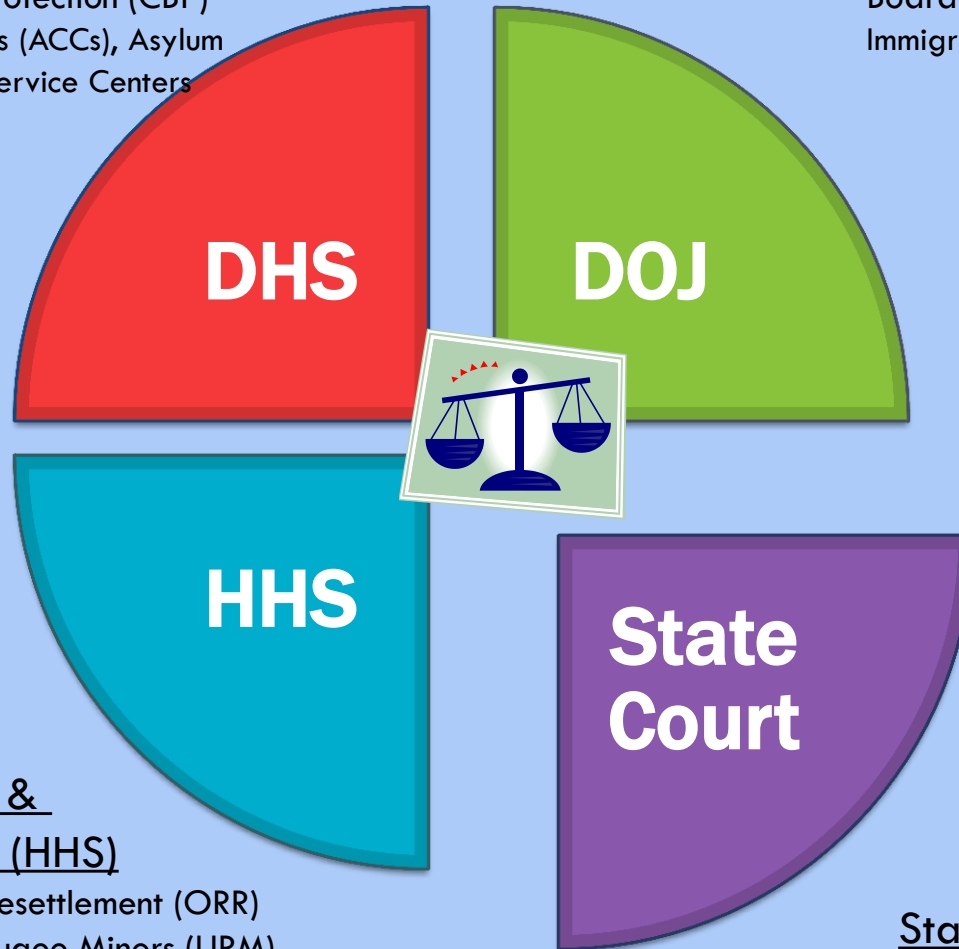
- Department of Homeland Security (DHS)
  - Citizenship & Immigration Services (USCIS)
  - Immigration & Customs Enforcement (USICE)
    - ERO: Enforcement & Removal Operations
    - OCC: Office of Chief Counsel
  - Customs and Border Protection (CBP)
- Department of Justice
  - Executive Office for Immigration Review (EOIR): IJs and BIA
- Department of Health & Human Services
  - Office of Refugee Resettlement (ORR)

## Dept. of Homeland Security

Citizenship & Immigration Services (CIS)  
Immigration & Customs Enforcement (ICE)  
Customs & Border Protection (CBP)  
ICE Officers, Attorneys (ACCs), Asylum  
Office Interviewers, Service Centers

## Dept. of Justice

Executive Office for Immigration Review  
(EOIR)  
Board of Immigration Appeals (BIA)  
Immigration Judges (IJs)



## Dept. of Health & Human Services (HHS)

Office of Refugee Resettlement (ORR)  
Unaccompanied Refugee Minors (URM)  
Div. Of Unaccompanied Children's Services (DUCS)  
Shelter Workers, Therapists, Field Coordinators

## State Courts

Juvenile Courts & SIJS Predicate  
Orders

# REMOVAL PROCEEDINGS FOR MINORS

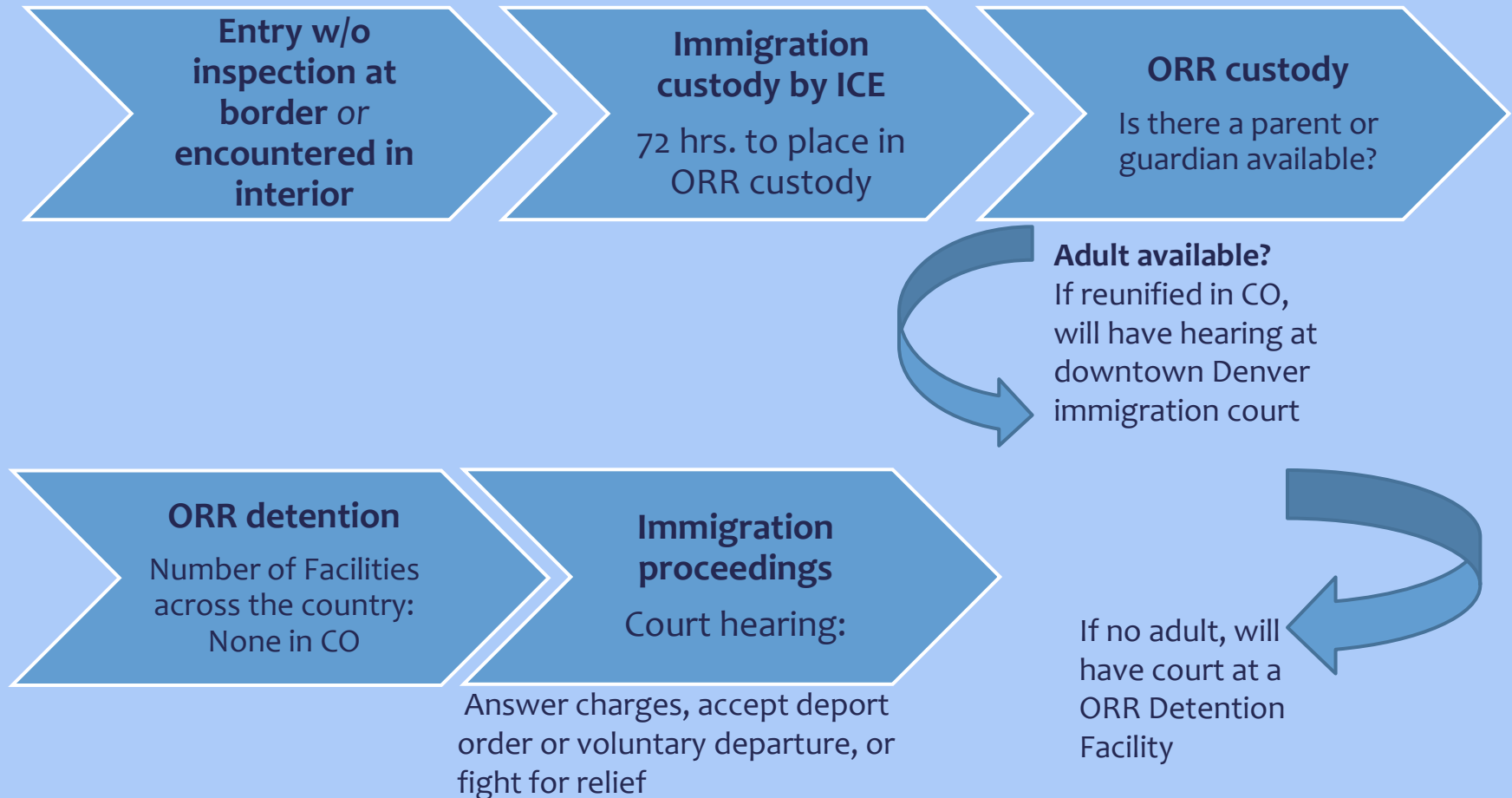
# AND KIDS WITHOUT STATUS ARE REALLY DEPORTED?!

- Children largely treated procedurally and substantively the same as adults under immigration law.
  - No right to counsel at government expense!
- Kids identified for removal proceedings through CBP/ICE apprehensions, local LEA contact, family breakdown, CIS application denials, etc.
- In Colorado: youth released to ORR “Sponsors,” paroling from DYC, or riding on a parent’s removal case are most common scenarios seen in immigration court.

# REMOVAL PROCEEDINGS

- No GAL, no court-appointed attorney, no PD-like system (it's admin law), no best interest standard in removal proceedings
- Some guidelines around interviewing (not enforceable, agency-generated)
- Some protections for minor asylum applicants
- Priority Docket in Denver Immigration Court
- No FRE: hearsay is admissible, no discovery
- No Miranda warning or other warnings about self-incrimination

# IMMIGRATION CUSTODY TIMELINE FOR CHILDREN



# **INTERSECTION OF FEDERAL IMMIGRATION LAW AND CO LAW**

# COLORADO CHILDREN'S CODE

- State authority to implement and administer child protective services originates in traditionally recognized state role of *parens patriae* with regard to children who are not adequately cared for by their guardians.
- Colorado's Children's Code neither creates nor recognizes distinctions based on alienage or immigration status and mandates provision of appropriate services to any child found in Colorado.

# DEFINITION OF “CHILD” IN IMMIGRATION LAW

- **General:** under 21 & unmarried for family-based immigration categories, see INA section 101 definitions, and for SIJS
- **Unaccompanied Alien Child (UAC), 6 U.S.C. § 279(g)(2)**
  - **has no lawful immigration status in the United States:**
  - **has not attained 18 years of age**
  - **with respect to whom-**
    - **there is no parent or legal guardian in the United States:**  
**or**
    - **no parent or legal guardian in the United States is available to provide care**
  - not status, but a designation with certain advantages, i.e., asylum filings, VD at government expense, potentially SIJS-eligible; and certain disadvantages, i.e., will be detained if encountered at border or interior
  - Federal custody determinations (ORR v. DHS) depends on age and whether a UAC or not, see 8 CFR Section 236.3(a)

# DEFINITION OF “CHILD,” CON’T.

- **Unaccompanied Refugee Minor (URM)**
  - Federal foster (Office for Refugee Resettlement) care for UACs who are granted asylum, SIJS, are eligible for a T Visa, suffer refugee family breakdown, or entered alone as refugees
  - Applications to State Refugee Coordinator (no guarantee “home state” will provide placement)
  - Colorado: LFS URM Program for 5+ years
  - not status, but a designation that makes child eligible for federal foster care placement and public benefits

# IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY

# JUVENILE ADJUDICATIONS

- Typically, adjudications of delinquency are NOT considered criminal convictions for immigration purposes (not a ground of inadmissibility or removability)
  - “...juvenile delinquency proceedings are not criminal proceedings, ...acts of juvenile delinquency are not crimes, and ...findings of juvenile delinquency are not convictions for immigration purposes.” *Matter of Devison*, 22 I&N Dec. 1362, 1365 (BIA 2000).
  - *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981); *Matter of C-M-*, 5 I&N Dec. 327 (BIA 1953)

# BUT BEWARE

- Juvenile adjudications may be used as evidence that a juvenile has violated a conduct-based ground of inadmissibility or deportability.
  - Drug Trafficking is the most dangerous
    - Reason to believe that the young person is, has been, or has assisted, a drug trafficker
- Juvenile adjudications will be taken into consideration as a matter of discretion in all applications for status (and bond, if over 18 years and detained) and must be mitigated with evidence of rehabilitation, treatment, passage of time, family connections, etc.
- Direct-filed cases
  - Avoid transfer to adult court

<b>Delinquency Disposition</b>	<b>Immigration Penalty</b>	<b>Immigration Waiver Available?</b>
Prostitution (being the prostitute, not the customer)	Inadmissible for engaging in prostitution	Waivers are often available
Sale, possession for sale, cultivation, manufacture, distribution, delivery, other drug trafficking offenses	Inadmissible when DHS/ICE has "reason to believe" participation in drug trafficking	No waivers except for the S, T, or U visa.
Repeated drug findings, finding of abuse, addiction to drugs	Inadmissible and deportable for drug addict or abuser	Waivers often available
Suicide attempt, torture, mayhem, repeated sexual offenses against younger children (predator), perhaps repeated alcohol offenses (showing alcoholism)	Inadmissible for mental disability posing threat to self or others	Waivers may be available
Use of false documents and fraud offenses relating to false claim to citizenship	Inadmissible and deportable for false claim to U.S. citizenship	Waivers may be available, e.g., SIJS and U visa
Violations of protective or "no-contact" orders designed to prevent repeated harassment, credible threats of violence, or bodily injury	Deportable where court finds violation of domestic violence protective order designed to prevent repeated harassment, credible threats of violence, or bodily injury	Some waivers are available

## CONDUCT-BASED GROUNDS OF INADMISSIBILITY & DEPORTABILITY

# POTENTIAL IMMIGRATION RELIEF OPTIONS FOR JUVENILES

# BASIC TYPES OF IMMIGRATION STATUS

- **U.S. Citizens (USC)**—born here, naturalize, or derive from parents
  - **Lawful Permanent Resident** (LPR; “green card” holders)
  - **Immigrant Visas** (ex.: family-based petitions for residency)
  - **Non-Immigrant Visas** (tourist, student, temporary work)
  - **Asylees & Refugees** – suffered or fear persecution
  - **Undocumented/“Illegal”\* Immigrants**
    - Entry Without Inspection (EWI)
    - Visa overstays/violations
- \* Being present in the U.S. without immigration documentation is a CIVIL violation, not a crime!

# SPECIAL IMMIGRANT JUVENILE STATUS

- Under 21 and unmarried
- Under jurisdiction of State “Juvenile Court”
  - Probate (guardianship), Domestic Relations (custody), Dependency & Neglect, Delinquency, Adoption
- Cannot reunite with one or both parents due to past parental abuse, abandonment, neglect or “similar basis under state law”
- Not in child’s best interest to return to country of origin
- A two-step process involving a CO State court and USCIS.

# SIJS RESOURCES

- SIJS Manual, available at [www.ilrc.org](http://www.ilrc.org)
  - ILRC, *Obtaining Special Immigrant Juvenile Findings in Delinquency Courts*
- USCIS website: [www.uscis.gov](http://www.uscis.gov)
- National Children's Center SIJS Resources at [www.refugees.org](http://www.refugees.org)
- SIJS Caseworker's Toolkit at [www.brycs.org/sijs](http://www.brycs.org/sijs) (for children in federal custody)
- [www.rmian.org](http://www.rmian.org) – SAMPLE ORDERS

# U VISA FOR VICTIMS OF SERIOUS CRIMES

- **Qualifying Crimes:**
  - Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Female Genital Mutilation, Felonious Assault, Fraud in Foreign Labor Contracting, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Stalking, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint, Other Related Crimes, attempt, conspiracy, or solicitation to commit any of the above and other related crimes.
- **Must show cooperation with law enforcement via law enforcement certification (from police, sheriff, DA, Department of Labor, etc.)**
- **Must have suffered serious physical or emotional harm as a result of crime**
- **Benefits:** Work authorization, protection against deportation, 4 years of temporary residence in U.S. (can apply for LPR status after 3 years), option to apply for some family members as derivatives

# DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- See [www.uscis.gov](http://www.uscis.gov) website, search “DACA” for FAQs and additional information
- What is DACA?
  - Not the DREAM Act, but a form of prosecutorial discretion
  - Not a pathway to lawful permanent residency or citizenship
  - 2-year permission to stay in U.S.
  - Work Permit/Authorization
  - Closure of pending deportation cases (sometimes)
  - Social Security Number eligibility
  - Driver’s License & State I.D. eligibility without appointment

# DACA REQUIREMENTS

- Arrival in U.S. before turning 16 years old
- Continuous residence from 6/15/2007 to Present
- In school, graduated from high school, or obtained G.E.D.
- At least 15 at time of applying (unless in deportation proceedings) and 30 or under on 6/15/2012
- No serious criminal convictions
- No gang activity
  - DACA Expansion and DAPA on hold due to *Texas et.al. v. Holder*

# T VISA FOR VICTIMS OF TRAFFICKING

- Defined as a **victim of severe trafficking** under the trafficking victims protection act, 2000.
- Have **complied with any reasonable request for assistance in investigation or prosecution of acts of trafficking**  
OR are under 18 years of age at time of application  
—or, according to some interpretations, at the time the trafficking occurred  
\*Certification from law enforcement suggested, but not required.
- **Physically present in the U.S. because of trafficking.** This does not necessarily mean the trafficking had to have occurred in the U.S.
- Would suffer **extreme hardship** involving unusual or severe harm if removed from U.S.
  - Benefits: Work authorization, protection against deportation, 4 years of temporary residence in U.S. (can apply for LPR status after 3 years), option to apply for some family members as derivatives

# ASYLUM

- Unable or unwilling to return to home country because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.
- Typically, must apply within one year of entering the U.S.
- Other related forms of status: Withholding of Removal, Protection Under Convention Against Torture

**THANK YOU!**

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