

## WORKING WITH NON-CITIZEN JUVENILES AND FAMILIES:

### RISKS, REALITIES & PATHWAYS TO STATUS



Presented by:

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RMIAN  
Children's  
Program

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- Overview of RMIAN's Services
- Understand Basic Immigration Terms, Agencies, and Statuses
- Discuss Immigration Concerns and Realities for Court-Involved Youth and Families
- Understand implications of pleas, admissions & adjudications
- Review Potential Immigration Relief Options for Juveniles and Families

#### OBJECTIVES

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## RMIAN'S PROGRAMS

### ■ DETENTION PROGRAM:

Serves adult immigrants detained at the GEO/ICE immigration detention center in Aurora, Colorado.

### ■ SOCIAL SERVICE PROJECT

### ■ ANTI-TRAFFICKING PROJECT



### ■ CHILDREN'S PROGRAM

Serves immigrant youth and families who have suffered abuse, abandonment, neglect, trafficking or crime with **free** legal services:

- Case screenings and assessments.
- Direct legal representation.
- Referral to pro bono attorneys.
- Education and outreach.
- **OCR litigation support**

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# IMMIGRATION TERMS, AGENCIES, AND STATUSES

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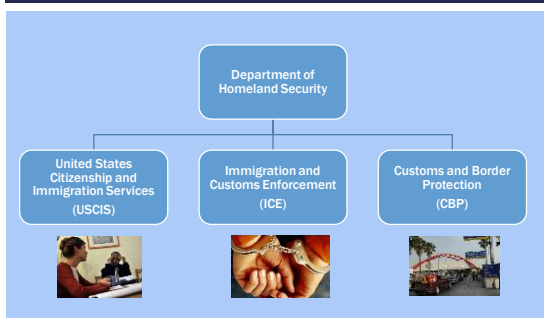
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## DEPARTMENT OF HOMELAND SECURITY (DHS)




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## EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR)




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## TYPES OF IMMIGRATION STATUS

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- U.S. citizen (by birth or naturalization)
- Lawful Permanent Resident (LPR) ("greencard")



- Asylee/refugee
- Visa – e.g. student visa, tourist visa, U or T visa
- No status "undocumented" – Entry Without Inspection (EWI) or visa overstay

More Important than ever for people to try to apply for status, undocumented at high risk for detention and removal

Many kids don't know their status! Refer to Immigration attorney

## PREVIOUS ENFORCEMENT PRIORITIES

- National Security Risks,
- Those Caught Trying to Cross Illegally,
- Gang Members,
- Convicted Felons,
- Convicted of Multiple or Serious Misdemeanor Crimes,
- Recent Final Orders of Deportation
- Prosecutorial discretion for long-time residents without criminal history, deferred action for childhood arrivals (DACA), parents of US citizens (DAPA-never implemented)
- More deportations than any other administration, resurgence of family detention

## ENFORCEMENT UNDER TRUMP

*"If you're in this country illegally, you should be uncomfortable. You should look over your shoulder, and you need to be worried."*  
Director Thomas Homan

- Anyone who has committed acts which constitute a chargeable criminal offense;
- Anyone who has been charged or convicted of any offense
- fraud or willful misrepresentation with a governmental agency;
- abused public benefits;
- Any final order of removal
- **In the judgment of an Immigration officer, otherwise pose a risk to public safety or national security.**

**Dramatic Increase in detention/deportation of non-crimeals**

## ARE KIDS REALLY DEPORTED?

- Children largely treated the same as adults under immigration law.
  - No right to counsel at government expense! MOST children unrepresented
  - No GAL, no court-appointed attorney, no PD-like system (it's admin law), no best interest standard in removal proceedings




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## IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY

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## JUVENILE ADJUDICATIONS

- Adjudications of delinquency are NOT considered criminal convictions for immigration purposes (do not typically trigger grounds of inadmissibility or removability) **HOWEVER**
- Juvenile adjudications will be taken into consideration as a matter of discretion in all applications for status
- Juvenile adjudications may be used as evidence that a juvenile has violated a **conduct-based** ground of inadmissibility or deportability that doesn't require a conviction or admission.
  - ie-Drug Trafficking:

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## TWO RAYS OF LIGHT FOR KIDS IN DYS

### ■ FORMER DYS POLICY 16.14 **ABOLISHED!!**

- DYS SHALL notify ICE when juveniles can't prove legal residency at:

- Assessment
- Commitment
- Parole or release

- Undoc kids shall be treated same,
- Provided with same services

### ■ **DETAINERS NOT HONORED BY DYS (OR COUNTY JAILS)**




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## HOWEVER...

- Even if juvenile avoids or paroles from DYS- at risk for ICE detention at probation/parole and court hearings
- Kids committed TO YOS (DOC FOR UNDER 24) subject to DOC policies of ICE cooperation
- No ICE juvenile detention facilities in CO- can be shipped out of state to secure ORR facilities
- Even if kids avoid detention, can be placed in deportation proceedings and deported
- ONCE 18, kids at risk of ICE detention in CO
- Parents, caregivers at risk of ICE detention, removal

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## POTENTIAL IMMIGRATION RELIEF OPTIONS FOR JUVENILES AND FAMILIES




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## CONSIDER RELIEF FOR ALL FAMILY MEMBERS

### BEST INTEREST OF THE CHILD & PERMANENCY GOALS

HELP ENSURE FAMILY UNITY, EVERYONE'S SAFETY, STABILITY




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## SPECIAL IMMIGRANT JUVENILES

Pathway to permanent residency, citizenship for youth:

- Under 21\*, unmarried, and in the U.S.
- Under jurisdiction of State or "Juvenile Court"
  - \*Generally requires kids to be under 18
  - Probate (guardianship), Domestic Relations (custody), Dependency & Neglect, Adoption, Delinquency
- **State or Juvenile Court must find that child:**
  - Cannot reunite with **one or both** parents due to abuse, abandonment, neglect or similar basis under state law
    - Doesn't matter where or when abused/neglected
    - CO law not federal or foreign law apply
  - Not in child's best interest to return to country of origin
- A two-step process involving a CO State court and Immigration Officers (USCIS).

**Q: Was child abused, neglected or abandoned by parent(s)?**

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## SPECIAL IMMIGRANT JUVENILE STATUS: PROCESS

- GAL identifies undocumented kid in D&N or delinquency, refers to RMIAN for screening→
- GAL & RMIAN work together to draft/submit motion & SIJS order into D&N, JD, APR or guardianship with required factual findings and citations to Colorado law regarding:
  - jurisdiction; custody; abuse/abandonment/neglect →
- State court enters order →
- Child files petition for SIJ designation with USCIS→
  - SUPPOSED to be 180 days, really over a year and counting...
- If approved, file for permanent residency once greencard numbers are available for that country
  - BACKLOG= LONG wait for permanent residency, work permit, actual protected status for kids from Guatemala, Honduras, El Salvador (and Mexico) currently processing Feb 2016 (Oc
- 5 years after permanent residency—apply for citizenship
- Pathway ONLY for the child—Child can NEVER petition for either parent

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## U VISA FOR VICTIMS OF SERIOUS CRIMES

**(LONG)** pathway to residency, citizenship for:

- Victims of **qualifying crimes** (domestic violence, felonious assault, sexual abuse) and certain family members
  - Can be "indirect victim" i.e. parent of US citizen child victim
  - Crime must be reported
- Cooperation with law enforcement: **REQUIRED law-enforcement certification**
- Suffered **substantial physical or emotional harm**
  - Key= reporting crime, cooperation, not status of abuser or relationship

**Q: Was the child or their family member ever a victim of a crime in the US that was reported to police?**

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## VIOLENCE AGAINST WOMEN ACT (VAWA)

- Pathway to legal permanent residence, citizenship for victims of domestic violence or child abuse and their family members
- Must be the spouse, parent, or child of an abusive U.S. citizen or lawful permanent resident
  - Immigration status of abuser and marriage are the KEY
  - Doesn't matter if domestic violence ever reported (but helps)

**Q: Was the child abused by USC/LPR parent or step-parent? Was the child's parent abused by USC/LPR spouse?**

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## T VISA FOR VICTIMS OF TRAFFICKING

- Pathway to Permanent Residence for victims of trafficking and certain family members
- Victim of a severe form of sex or labor trafficking:
  1. Commercial sex under 18 (or by force, fraud, coercion) or
  2. labor/services through force, fraud, coercion
- Drug trafficking! Prostitution/Porn--Screen kids carefully charged with drug possession/distribution, involved in porn, prostitution--refer to RMIAN.

**Q: Was child or their family member a victim of sex or labor trafficking? Is foreign national child being charged with drug distribution that could be the result of force, coercion?**

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## DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

- Deferred Action for Childhood Arrivals (DACA) is result of executive order signed on June 15, 2012 by Obama.
- It was rescinded by the Trump administration on September 5, 2017
- A Federal Court ordered USCIS to resume processing RENEWAL (not new) applications in Jan. 2018.
- Gets you two years of work authorization, not a status or pathway to permanent residency
- Unclear future of DACA!

**Q: Has child lived in the US since age 15 or younger, have they resided here since 2007 or before, did they attend/are they attending school here?**

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## ADJUSTMENT OF STATUS:



Applying for permanent residency (a "green card") in the U.S. based on a family or employment relationship

- Generally only for those who entered with a visa (or filed pre-2001)
- Applicant must have a *visa immediately available*—LONG backlogs (20+ years in some categories).
- Applicant must be admissible (or have inadmissibility waived)

**Q: Does child have LPR or USC parent or spouse?**

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## ASYLUM

- Pathway to residency/citizenship for those who are fear return because of persecution on account of:
  - Race; Religion; Nationality; Political opinion or
  - Membership in a particular social group
- Typically, must apply within one year of entering the United



- Many people from Central America currently fleeing to US to seek asylum

**Q: Is child afraid to be returned home and why?**

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THANK YOU!

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