

# Unaccompanied Immigrant Children

## **Moderators:**

**Honorable Dana Leigh Marks, President of the  
National Association of Immigration Judges,  
Immigration Judge, San Francisco**

**Honorable Renée L. Renner, Immigration Judge, San  
Diego (Personal Capacity)**

## PANEL MEMEBRS

Dr. John Martin, PhD., - Director, Immigration and the States Courts Initiative, Human Trafficking and the State Courts Collaborative, Center for Public Policy Studies

Rosalind Oliver, Esq. – Supervising Attorney for Pro Bono Programs, Los Angeles, Kids in Need of Defense (KIND)

Elizabeth Camarena, Esq. – Associate Director of Casa Cornelia Law Center, San Diego, California

# Scope Of The Unaccompanied Immigrant Child Upon Various Jurisdictions

Unaccompanied Immigrant children not only impact the Immigration Court system, but most court jurisdictions, including:

State Courts- In family law matters, such as custody, child support, international relocation/travel, etc; juvenile courts; and certifications for certain immigration visas.

Federal Courts- Jurisdiction over international kidnapping and application of the Hague Convention on Civil Aspects on International Child Abduction *Sanchez v. Holder, Case No. 12-50783 (W.D. TX, 8/1/14)*, decision after remand by 5<sup>th</sup> Circuit on March 3, 2014: and

Class Action Lawsuits Regarding Appointment of Attorneys, Due Process Rights of Detained Children, etc. Examples include:

*J.E.F.M., et al. v. Holder, et. al., Case No. 2:14-cv-01026, (W.D. WA filed on July 17, 2014)* regarding appointment of counsel for unaccompanied minors;

*Ornelas-Hernandez v. Holder, Case No. 2.82-cv-01107-MMM-VBK, (C.D. CA, July 7, 2014)* regarding a temporary restraining order reviving parts of a 1988 permanent injunction on processing El Salvadorans who seek asylum as it applies to current unaccompanied children; and

*Flores v. Reno, Case No. 85-4544-RJK(Px), Stipulated Settlement Agreement (C.D. CA 1997)*, regarding release of unaccompanied minors to persons other than their parents.

# **Unaccompanied Immigrant Children and State Court Proceedings**

**National Association of Women Judges  
October 2014**

**John A. Martin  
Center for Public Policy Studies  
Immigration and the State Courts Initiative**



# Areas of Misalignment Between Federal Immigration Law and State Courts

## Sources of Misalignment

- **Inherent Tension Between State Court Purpose and Role and Immigration System Role in American Society**
- **Historically State Court Needs Not Considered in Federal Immigration Law, Policy and Practice**
- **State Court Actions and Interdependencies Between State Courts and Immigration System Often Expose Inconsistencies, Lack of Clarity, and Other Weaknesses of Federal Immigration Law, Policy, and Practice**

## State Court v. Federal Immigration System Purpose and Roles

- Purposes and Roles of State Courts include: punishment; separating the dangerous from rest of society; rehabilitation; restoration/making victims whole; protecting the vulnerable; adjudication disputes between individuals; doing individual justice in individual cases; assuring justice and the appearance of justice; and maintaining official records.
- Federal Immigration Purposes and Roles include determining who should be in the US for how long and under what conditions; who should not be in the US and why; and who should become a US Citizen.



## **Key Points of Misalignment in Cases Involving Unaccompanied Minors**

- **Best Interests of the Child Determination in Federal Immigration Law and State Law**
- **The Effect of Immigration Detention on Dependency Cases**
- **The Federal Immigration Consequences of State Juvenile Delinquency Dispositions**
- **Children may not be represented by counsel in immigration proceedings**

## Unaccompanied Children and Human Trafficking

- No family support available
- Isolation from positive aspects of society and sources of help because of numerous factors including undocumented status, language and cultural differences, homelessness, lack of food
- Likelihood of contact with traffickers

## How Immigration Issues Might Arise in a Dependency Case

- Immigration status of parents or children can have consequences for decisions regarding placement, foster care, or conditions for family reunification
- A dependency case may form the basis for an application for Special Immigrant Juvenile status
- An immigration court does not consider the best interests of the child in removal proceedings, so a removal decision may separate a family that the juvenile court wants to keep together
- Foster parents have engaged in human trafficking of children in their care

# Unaccompanied Children and Dependency Cases

- Appointment of GAL or CASA
- Adjudication of Dependency Disposition and Placement
- Post Disposition Review

## **Nexus of Immigration Status and Delinquency Cases**

- **Admissions made in a delinquency proceeding could affect a juvenile's eligibility for SIJ status, naturalization, or other immigration benefits**
- **Admissions made in a delinquency proceeding could make a juvenile deportable**
- **Conviction of a juvenile who is tried as an adult is a conviction for immigration purposes**
- **Juvenile detention centers are used by traffickers to recruit new victims**
- **A delinquency proceeding can be the basis of an application for SIJS**

# Unaccompanied Children and Delinquency Matters

- **Diversion**
- **Appointment of GAL and CASA**
- **Adjudication**
- **Jurisdiction of Disposition May Differ From Jurisdiction of Adjudication**
- **Disposition and Sentencing**

## Special Immigrant Juvenile Status

- **Special Immigrant Juvenile Status is an immigration benefit that provides a pathway to lawful status for abused, neglected, or abandoned juveniles who meet certain statutory requirements.**
- **The issue will come before a juvenile court judge in the form of a motion by the attorney for the juvenile requesting the judge to issue an order with certain required statutory findings that enable the juvenile to file for SIJS. This order is not a decision by the judge that the juvenile is eligible for SIJS.**
- **The determination of eligibility is made by the United States Citizenship and Immigration Service (USCIS).**

## T Visa

- **The T visa is a non-immigrant visa available for individuals who have been the victims of human trafficking and meet the following requirements:**
  - **The person is the victim of a severe form of trafficking. Federal immigration law classifies any sex trafficking of a person under age 18 as severe trafficking.**
  - **If the person is 18 or older, the person is complying with a reasonable request to assist in the investigation or prosecution of the traffickers.**
- **The maximum length of stay under the T visa status is four years, unless extended. The holder of a T visa is eligible to apply for lawful permanent resident status after three years. The person must show good moral character.**



## U Visa

- **U visas are non-immigrant visas with a duration of up to four years for a non-citizen who: (1) has suffered severe physical or mental abuse as a result of being a victim of criminal activity; (2) has been, is being, or is likely to be of help to a Federal, state, or local investigation of the criminal activity causing the abuse; and (3) has certification from a Federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in prosecuting the criminal activity**
- **The perpetrator need not be a US Citizen or LPR**
- **There is no qualifying relationship required**
- **After three years in U visa status, person may be able to adjust status to lawful permanent residence**

## U Visa Required Certification

- **The applicant must have certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in prosecuting the criminal activity that he or she has been, is being, or is likely to be of help to a federal, state, or local investigation of the criminal activity causing the abuse.**
- **A judge can make the certification if the judge has knowledge that the applicant meets the above requirements.**

**John A. Martin**

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**Human Trafficking and the State Courts  
Collaborative**

**<http://www.htcourts.org>**

**Center for Public Policy Studies**

**<http://www.centerforpublicpolicy.org>**



# The importance of pro bono:

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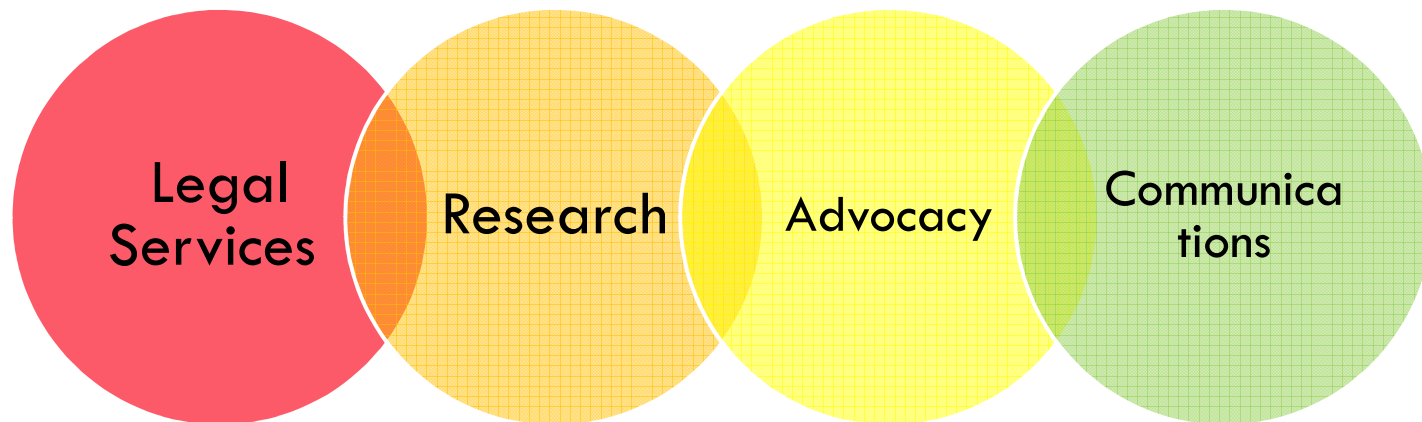
- NO appointed counsel in immigration court
- Law not designed to accommodate children's needs
- High stakes: return to dangerous conditions; separation from family



- Rewarding work with tangible impact
- Enhancing skill at negotiation, witness prep, direct exam...
- Mentorship at each step

# How KIND works

- 8 field offices located where unmet need is greatest:  
NY-NJ-Boston-Baltimore-DC-Houston-Los Angeles-Seattle
- Children are referred to KIND for know-your-rights & initial interview
- KIND has trained 3,000+ attorneys; we mentor pro bono counsel throughout the case.



# How will we work together?

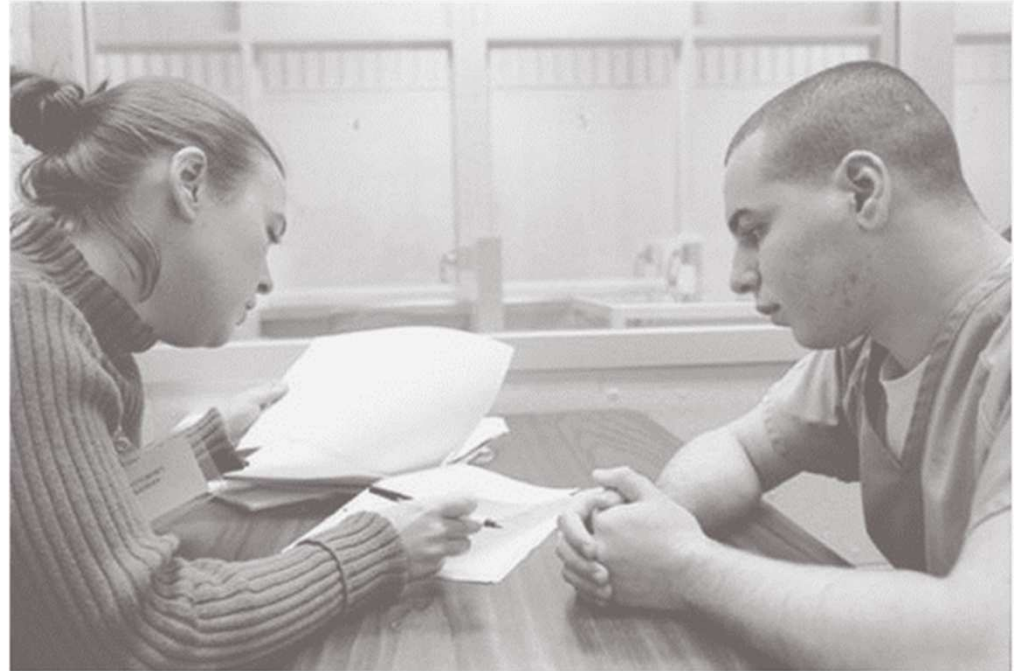
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## With KIND:

- Case screened by KIND
- Formulate strategy
- Samples, checklists, comments on drafts, guidance at each step

## With your client:

- Meetings at your office
- Work with an interpreter
- Drafting documents
- Preparing testimony
- Attending court



# Overview of Casa Cornelia Law Center Legal Services for Unaccompanied Immigrant Children

Casa Cornelia Law Center

2760 Fifth Avenue, Suite 200, San Diego, CA 92103

Telephone: 619-231-7788

[www.casacornelia.org](http://www.casacornelia.org)

# Children's Program

Who are the unaccompanied minors in San Diego?

Mexico – 36%

Guatemala – 28%

El Salvador – 24%

Others came from Honduras, Ecuador,  
Eritrea, Somalia, Iraq



Traveled by foot, train, motor vehicle or international flights



# A Tsunami of Unaccompanied Children reaching the U.S.

FIGURE 1:  
**Influx of Unaccompanied Children into the United States**



# Morphing of our Children's Program to serve those in need....

## Pre Surge of 2011

- SWK
  1. Average stay was 45-60 days
  2. Children attended their first Master Calendar Hearing in San Diego
  
- Casa Cornelia
  1. Conducted legal consultation with **every** child at SWK facilities
  2. Represented **all** children detained children in court Or
  3. Trained and mentored Volunteer Attorneys to do court representation
  4. Prepared and filed application for relief including Special Juvenile Immigrant Status, Asylum, U Visas, T Visa, Citizenship, where applicable
  5. Know Your Rights (KYR) and Court Preparation for all children at SWK

# Morphing continued.....

## ~November 2011 to November 2013

### □ SWK

1. Average stay of 21 days
2. Physical appearance at hearing drastically decreased

### □ CCLC

1. Legal consultation with **every** child at SWK facilities
2. Represented **all** children once detained in San Diego
3. Prepared and filed applications for relief, including Motion to Change Venue, Waiver of Physical Presence, where applicable
4. KYR and Court Preparation for all children at SWK

# Current state

## December 2013 to Present

### □ SWK

1. ORR policy= 7-10 day stay for all children
2. Almost 0 children present for court hearing

### □ Casa Cornelia

1. Represents ALL children physically at SWK at time of hearing and/or for whom CCLC staff or VA are attorney of record
2. Double up on KYR presentations and Court Preparation
3. Increase on referral and advocacy efforts for those who have potential immigration relief with Office of Refugee Resettlement and legal service agencies
4. Provide information for local non-profits for those who are detained at SWK but were not seen by our attorneys

# Available Resources

Human Trafficking & States Court Collaborative- link to website and Quick Bench Reference/Information Cards- <http://www.htcourts.org/information-cards.htm>

KIND- Link to website- <http://supportkind.org/en/about-us/resources>

A Treacherous Journey: Child Migrants Navigating the US Immigration System- KIND publication- [http://supportkind.org/dmdocuments/macArthur\\_summary\\_v4.pdf](http://supportkind.org/dmdocuments/macArthur_summary_v4.pdf)

KIND Fact Sheet

[http://www.supportkind.org/dmdocuments/Fact Sheet FINAL 8.29.2013 PDF.pdf](http://www.supportkind.org/dmdocuments/Fact_Sheet_FINAL_8.29.2013_PDF.pdf)

Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Children- link to Appleseed 2011 <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>

# More Resources

Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection – UNHCR Report-

[http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf)

The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers and Researchers, Vera Institute-

<http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>

“WHICH WAY HOME” , 89 minute 2009 Academy Award Nominated Documentary on children riding “The Beast” from Central America through Mexico to the U.S. Border – viewing on Hulu-

<http://www.hulu.com/#!watch/295708>

<http://whichwayhome.net/about.html>

# Congressional Resources

Assistant Secretary Greenberg, Health and Human Services  
Congressional Testimony- July 9, 2014-

<http://www.hhs.gov/asl/testify/2014/07/t20140709a.html>

Congressional Research Services- Unaccompanied Alien Children-Legal  
Issues: Answers to Frequently Asked Questions- July 18, 2014

[https://docs.google.com/file/d/0B\\_6gbFPjVDoxeUNsbIM3MFlrSU0/edit](https://docs.google.com/file/d/0B_6gbFPjVDoxeUNsbIM3MFlrSU0/edit)

Congressional Research Services- Memorandum Unaccompanied Alien  
Children: Current Law Governing Removal From the United States and  
Selected Proposed Legislation- July 30, 2014

[https://docs.google.com/file/d/0B\\_6gbFPjVDoxRnM0b2NtakdOMWw2d2pwMFJhMzVPWU5xR3IJ/edit](https://docs.google.com/file/d/0B_6gbFPjVDoxRnM0b2NtakdOMWw2d2pwMFJhMzVPWU5xR3IJ/edit)

# USCIS Resources

United States Citizenship & Immigration Services- T visa information- (Human Trafficking & Other Crimes)-

<http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes>

United States Citizenship & Immigration Services- U visa information- (Victims of Criminal Activity)-

<http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

United States Citizenship & Immigration Services- Special Juvenile Visa information- <http://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij>



# MORE USCIS RESOURCES

United States Citizenship & Immigration Services– Information for Juvenile Courts-

[http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information for Juvenile Courts -FINAL.pdf](http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information%20for%20Juvenile%20Courts%20-FINAL.pdf)

United States Citizenship & Immigration Services- TRVPA Information

[http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files/Memoranda/2009/TVPRA\\_SIJ.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files/Memoranda/2009/TVPRA_SIJ.pdf)

United States Citizenship & Immigration Services- Deferred Action for Childhood Arrivals (DACA) Toolkit: Resources for Community Partners

[http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA Toolkit CP 072914.pdf](http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA_Toolkit_CP_072914.pdf)



**QUESTIONS**

