Overview of ORR Detention and Review of Immigration Fundamentals

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PRESENTERS

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2015 justice AmeriCorps Webinar Series

• Presented by CLINIC and KIND
• Jan – April: two webinars per month
• May – November: one webinar per month
• Topics:
  – Removal proceedings series
  – Advanced Asylum and SIJS issues
  – Other relevant topics
Next Webinar

- **January 29, 12:30pm Eastern:**

  Understanding the Special Needs of Unaccompanied Immigrant Children

  Ronald Gutierrez, LCSW, Legal Services for Children (San Francisco, CA)

- This toolkit provides background reports, legal authority and agency memoranda, and advocacy tools for working with unaccompanied children.
TODAY’S AGENDA

• Overview of ORR Detention
  – Apprehension/Detention/Release of UAC

• Review of:
  – Immigration Law Basics
  – Key Definitions
  – Inadmissibility v. Deportability
  – The NTA and Responding to the NTA
  – Relief from Removal
Questions?

Please post your questions and we will address as many of them as possible, roughly at the midway point or at the conclusion of the webinar.
Apprehension

• **At or Near Border:**
  – Most minors are apprehended trying to cross the U.S.-Mexico border or shortly after crossing by Customs and Border Patrol (CBP)

• **Internal:**
  – Immigration arrest may also take place anywhere in the U.S. at various points during the juvenile or criminal justice process
Referral to Office of Refugee Resettlement (ORR)

If a person who appears to be a UAC is taken into Department of Homeland Security (DHS) custody, CBP or Immigration and Customs Enforcement (ICE) places him/her in a temporary DHS detention facility, ensuring that he/she is not housed with unrelated adults.
Referral to Office of Refugee Resettlement (ORR)

- DHS officers attempt to determine whether the person is younger than 18 and unaccompanied
- DHS can release a child to a parent or adult relative, but many fear to come forward
- Once they determine that person is a minor and unaccompanied, an officer interviews the child
- Referral to ORR is then made
- UAC should be transferred to ORR custody **within 72 hours** of identification. During the surge, delays as long as 25-30 days were being seen in the field
Office of Refugee Resettlement (ORR)

ORR / Division of Children Services / Unaccompanied Alien Children Program
Mexico and Canada

- Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), special rules apply to children who come from Mexico and Canada.

- These children may request a hearing before an immigration court judge or may request to return immediately to their home country through a process called “voluntary return.”

- If they choose the latter option, CBP conducts a screening. The minor is referred to ORR if:
  - He/she may have been a victim of trafficking or is at risk of being trafficked if she/she returns to home country, or
  - He/she has credible fear of persecution, or
  - He/she is incapable of making an independent decision to withdraw an application for admission into the U.S., or
  - CBP official cannot make a determination re: above criteria within 48 hours.
FY2014 Statistics

• In FY2014, CBP apprehended 68,541 unaccompanied children at the border.

• 57,496 children were referred from DHS to ORR (compared to app. 25,000 in 2013, 14,000 in 2012, and 7,000 in 2011).

• The highest percentage of unaccompanied children referred to ORR were from Honduras (34%), Guatemala (32%), and El Salvador (29%). Less than 2% were from Mexico and < 3% from all other countries.

• ORR saw an increase in the number of female unaccompanied children, and also in the number of children under 14 years old.
Intake and Placement with ORR

• ORR maintains a network of shelters around the country
• Minors should be placed in the “least restrictive setting” appropriate to their ages and special needs
• Facility types:
  – Shelter
  – Staff-secure
  – Secure
  – Transitional (short-term) foster care
  – “Camps” and other emergency facilities (i.e. Lackland Air Force Base) used during a bed shortage
• Minors are transferred to emergency shelter facilities only if they pass the medical/mental health screening and will be quickly reunified with a sponsor (normally a parent)
ORR SHELTER SERVICES

Classroom Instruction
Vocational Education
Medical Services
Recreation
Group Therapy
Individual Counseling
Religious Services
Family Reunification
Legal Services

- Know Your Rights (KYR) Orientations
- Individual Screenings
- Court Preparation
- Court Appearances
- Pro Bono Recruitment, Training, & Mentoring
- Representation of some minors
- Preparation for release and reunification
Release from ORR Custody

- Average length of stay in ORR custody for FY 2014: **29 days** (down from 30 - 35 days in 2013)

![Pie chart showing release reasons]

- **91%** Reunification with a sponsor
- **5%** Return to Country of Origin
- **3%** Age Out
- **0%** Change in Immigration Status
- **1%** Run Away
FAMILY REUNIFICATION

Order of Preference for Sponsors:

- Parent “Category 1”
- Legal guardian
- Adult relative
- Individual/entity designated by parent/guardian
- Licensed program
- Adult individual/entity when no other alternative
Reunification Process

- Interview child to identify special needs and potential sponsors.
- Reach out to potential sponsors and parents/LG
- Required documentation:
  - Proof of relationship between sponsor and minor
  - If sponsor is not parent or LG, parent or LG must provide documentation of their relationship to minor and a notarized letter designating the adult who will care for the UAC upon release
  - Family Reunification Packet (age, gender, address, household composition, employment, immigration status)
  - Fingerprints (criminal record, history of abuse)
All Potential Sponsors Must

- Have a “clean” background check;
- Have enough income to support the child;
- Be committed to the child’s safety and well-being, including enrollment in school.
- Ensure the child will appear at all future immigration court hearings and DHS appointments.
HOME STUDIES – FOLLOW UP

Post-release ORR case managers are assigned to any case for which safety and well-being of UAC, sponsor family unit, or community are questionable.

Mandatory TVPRA categories:

- Victim of severe form of trafficking in persons
- Special needs with disability (ADA)
- Victim of physical or sexual abuse = health or welfare significantly harmed
- Proposed sponsor presents risk of exploitation or trafficking to child
What happens if reunification is not possible?

- If the minor qualifies for legal relief and is < 17.5 years old, they can be transferred to long-term foster care (LTFC).
- If the minor qualifies for relief but is > 17.5, they may be able to transfer to LTFC or another shelter served by a LSP willing to take urgent age-out case.
- If the minor does not qualify for relief, VD/DO is only an option.
Legal Orientation Program for Custodians (LOPC)

- Group Orientations (in-office and in-court)
- Individual Screenings
- Change of Venue/Change of Address
- Pro Se Asylum Workshops
- Court Appearances as Friend of Court
- Social Service Referrals
- Pro Bono Placement
LOPC Locations

- Atlanta, Georgia
- Boston, Massachusetts
- Charlotte, North Carolina
- Dallas, Texas
- Harlingen, Texas
- Houston, Texas
- Long Island, New York
- Los Angeles, California
- Miami, Florida
- New York City, New York
- Newark, New Jersey
- San Francisco, California
- Washington, D.C., Maryland, Northern Virginia
Immigration and Nationality Act

• INA

• “The statute”

• Framework, big picture
STATUTORY AND REGULATORY CITATIONS

• **INA: Immigration and Nationality Act**
  – Cites to INA have parallel cites in U.S. Code, e.g. INA § 235 = 8 USC § 1255

• **CFR: Code of Federal Regulations**
  – Regulation section corresponds to statutory section. Sample cite: 8 CFR § 235.1
What Other Rules Are There?

• USCIS internal guidance
  – Adjudicators Field Manual
  – Policy Manual
  – Policy Memoranda

• DOS internal guidance
  – Foreign Affairs Manual
Court Hierarchy

• Administrative Courts
  - Board of Immigration Appeals
  - Immigration Court

• Judicial Courts
  - U.S. Supreme Court
  - U.S. Circuit Courts of Appeals
  - U.S. District Courts
IMMIGRATION LAW UNIVERSE

- **U.S. Citizens**
  - By birth in US
  - By acquisition
  - By derivation
  - By naturalization

- **Aliens**
  - Immigrants
  - Asylees + refugees
  - Nonimmigrants
  - Undocumented
WHO IS A LAWFUL IMMIGRANT?

- Intends to reside permanently in U.S.
- Authorized to work in most jobs
- Authorized to travel abroad and return
- Still subject to loss of status
- Can’t vote
- Can petition and immigrate certain family members
- Can apply to naturalize after period of time
WHO IS A NONIMMIGRANT?

Visa alphabet soup

B – tourists
K – fiancé(e)s
F – students
H – temporary workers
R – religious workers
T – trafficking victims
U – victims of crimes
WHO IS “UNDOCUMENTED”? 

- Entered U.S. without papers or “without inspection” (EWI)
- Entered U.S. with status but status has expired
- Entered U.S. with status but violated status
YOU CAN’T COME IN/YOU MUST LEAVE

Two ways to bar noncitizens from U.S.:

• **Inadmissibility** Grounds = INA §212(a)

• **Deportability** Grounds = INA §237(a)
CONSEQUENCES

• Exceptions
• Waivers
• If no exception or waiver applies, individual may be barred from entry or a benefit, or subject to removal
<table>
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<tr>
<th>INADMISSIBILITY GROUNDS: INA § 212(a)</th>
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<tr>
<td>• Health-related grounds</td>
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<td>• Criminal-related grounds</td>
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<td>• National security grounds</td>
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<td>• Public charge</td>
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<td>• Labor protection grounds</td>
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<td>• Illegal entry and immigration violations</td>
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<td>• Documentation requirements</td>
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<td>• Military service in the U.S.</td>
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<td>• Prior removals or unlawful presence in the U.S.</td>
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<td>• Miscellaneous grounds</td>
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DEPORTABILITY GROUNDS:
INA § 237(a)

- Inadmissibility at time of entry
- Crime grounds
- Failure to register/False Documents
- Security Related Grounds
- Public Charge
- Unlawful Voters
Inadmissibility - Where is the law?

- **Statutory Cites**
  - INA § 101(a)(13): defines admission
  - INA § 212(a): grounds of inadmissibility
  - INA § 240(c)(2): burden of proof
  - INA § 235(a),(c): applicants for admission

- **Regulatory Cites**
  - 8 CFR § 1.1(q)
  - 8 CFR § 235
  - 22 CFR §§ 40.9 - 40.67

- **Case Law**
Deportability – Where is the law?

• Statutory Cites
  - INA § 237(a) - categories of deportable people
  - INA § 240(c)(2) and (3) – burden of proof

• Regulatory Cites
  - CFR §1240.8 - burden of proof in removal proceedings

• Case law
SUBJECT TO INADMISSIBILITY

• Noncitizens who entered without inspection
• Noncitizens paroled into U.S.
• Noncitizens arriving at border or port of entry
• Noncitizens applying for visa or adjustment of status
Gloria entered U.S. EWI in 1996 and has remained ever since. If Gloria is apprehended by ICE and placed in removal proceedings, she will be charged with being inadmissible because she is present in the U.S. without ever being admitted.
SUBJECT TO DEPORTABILITY

• Apply to noncitizens who were “inspected and admitted”
• LPRs
Deirdre, from Ireland, came to the US on a student visa in 1999 and dropped out of school the following year. Since then, she has been working with a fake green card. Last month, she was arrested by ICE when she was traveling on an Amtrak train in northern NY. Deirdre is subject to grounds of deportability because ....
BURDEN OF PROOF

• **Inadmissibility**: alien must show “clearly and beyond doubt” eligible for admission

• **Deportability**: ICE must show by “clear and convincing evidence” that alien is deportable as charged
DEFINITION OF CONVICTION

• A formal judgment of guilt entered by a court; or
• Withholding of adjudication, where
  – judge/jury finds alien guilty; or
  – alien enters guilty plea; or
  – alien enters "nolo contendere"; or
  – alien admits sufficient facts to warrant finding of guilt, and
  – judge orders some form of punishment, penalty or restraint on liberty.
• Juvenile Justice Involvement
  – Juvenile delinquency adjudications are not “convictions” for immigration purposes, regardless of the severity of the underlying offenses. See Matter of Devison, 22 I&N Dec. 1362 (BIA 2000)(en banc).
  – If asked about a criminal “conviction,” the minor can deny having a conviction for immigration purposes – but he must admit arrests.
  – A juvenile adjudication is not a crime of moral turpitude and thus not a statutory bar to admissibility under INA § 212(a).
  – Juvenile adjudications may, however, trigger conduct-based grounds of inadmissibility and can factor into DHS/EOIR’s exercise of discretion.
“IMMIGRATION HISTORY”

• Immigration history may affect eligibility to enter U.S. or qualify for immigration benefits

• Immigration history:
  – all periods in U.S, and manner of entry
  – any detentions or arrests by immigration officers
  – any prior expulsion orders (deportation, exclusion, removal, expedited removal)
INITIATION OF REMOVAL PROCEEDINGS: THE NOTICE TO APPEAR

- Notice to Appear (NTA) is filed with the Immigration Court
- Basic elements of NTA:
  - Describes category:
    a. arriving alien
    b. present without admission
    c. admitted but deportable
  - Factual Allegations
  - Underlying legal charge
  - Hearing date, time, place
THE NTA: THE FIRST STAGE OF DEFENSE

• The NTA can be used to challenge the government’s case:
  – Ensure that the NTA was served properly
  – Deny the factual allegations and/or legal charge when appropriate

• If the NTA is successfully challenged, there is no legal basis for your client to be in removal proceedings
RELIEF FROM REMOVAL

- Is your client a U.S. citizen?
- Birth
- Derivation of citizenship
- Child Citizenship Act of 2000
- Naturalization
RELIEF FROM REMOVAL

Available from DHS

- Prosecutorial discretion
  - DACA
  - DAPA
- Adjustment of status/212(h) waiver
- Asylum
- TPS
- VAWA/U/T
- SIJS

Available from IJ:

- Cancellation of Removal Part A (LPRs)
- VAWA Cancellation
- Cancellation of removal Part B (non-LPRs)
- Adjustment/212(h) waiver/209(c) waiver
- Asylum
- Withholding
- CAT relief
- Voluntary departure
- Termination for natz
- NACARA 203
- 212(c) relief
VOLUNTARY DEPARTURE

• Pre-hearing or prior to conclusion of proceedings:
  – 120 day maximum VD period &
  – Must forego relief

• At no cost to the UAC

• Discretionary
Asylum

• Protection for people who fear persecution on basis of race, religion, nationality, political opinion, or membership in a particular social group
• Persecuted in the past, and/or has “well-founded fear” of future persecution
• Discretionary

• Common Asylum Claims From Immigrant Children:
  – Membership in Particular Social Group:
    • Domestic Violence
    • Gang Based
U and T Non-Immigrant Status

• U Visas
  – Victim of certain crimes in the U.S.
  – Helpful to law enforcement

• T Visas
  – Victim of severe form of human trafficking
Special Immigrant Juvenile Status

• For immigrant children who are victims of abuse, abandonment or neglect
• Abuse may have occurred in the U.S. or abroad
• Provides a pathway to legal permanent residence
• Intersection between state court and immigration law
Prosecutorial Discretion

• DHS has discretion as to when to initiate removal proceedings
• One 11/20/14, DHS issued new guidance setting forth enforcement priorities
• DACA and DAPA are forms of PD
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