



JUVENILE DEFENDER'S GUIDE TO

# Immigration Issues in Juvenile Proceedings

This guide is designed to provide necessary information to juvenile defenders representing children whose juvenile court involvement may trigger immigration consequences. Although a finding of delinquency is not a “conviction” for purposes of immigration (and, thus, does not have the same dire consequences as a conviction), a juvenile arrest, charge, or adjudication may nonetheless trigger immigration consequences. Furthermore, if a youth or a member of the youth’s family is undocumented, contact with the juvenile

justice system may put that individual at risk of immigration enforcement, including detention and deportation.

While this resource is intended to highlight general best practices and issues to be aware of at each stage of a juvenile proceeding, **always consult with an immigration attorney**<sup>1</sup> if you think your client could be at risk for immigration consequences and/or is potentially eligible for immigration relief.

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<sup>1</sup> You can search for a nonprofit legal services provider in your area by entering your zip code at <https://www.immigrationlawhelp.org>. The American Immigration Lawyers Association (AILA) also has an “Immigration Lawyer Search” feature that can help you find an immigration lawyer near you. AILA’s Immigration Lawyer Search, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, <http://www.aialawyer.org/> (last visited July 14, 2017).

# Agencies Involved in Immigration

**CBP** – Customs and Border Protection; the agency in charge of securing the borders

**ICE** – Immigrations and Customs Enforcement; the agency in charge of enforcing immigration law violations in the interior of the United States

**USCIS** – United States Citizenship and Immigration Services; the agency in charge of administering immigration benefits, for example, processing applications for green cards

**DHS** – United States Department of Homeland Security; the agency that oversees USCIS, CBP, and ICE

**INS** – Immigration and Naturalization Service; no longer exists, was replaced by DHS



## NOTE

*An “undocumented” immigrant is a person who came to, or stayed in, the United States without legal documentation. Referring to someone as “illegal” is not only inaccurate (because being in the United States without proper documentation is a civil, not criminal, offense), but also dehumanizing and marginalizing.<sup>2</sup>*

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<sup>2</sup> See, e.g., Jose Antonio Vargas, *Immigration Debate: The Problem with the Word Illegal*, TIME (Sept. 21, 2012), <http://ideas.time.com/2012/09/21/immigration-debate-the-problem-with-the-word-illegal/>.



# The First Meeting

## Determining Your Client's Immigration Status

All attorneys have an ethical duty to be aware of and advise their clients regarding all consequences of court involvement that could affect immigration status.<sup>3</sup> To provide adequate counsel on potential consequences, it is important to determine your client's immigration status and counsel them accordingly.

### PRACTICE TIP

**Rather than asking “are you a United States citizen” (which some children may not know), you can start with questions such as:**

- Where were you born?
- Where were your parents and grandparents born, or where did they grow up?

## Definitions of Citizenship

- A child born in the United States, Puerto Rico,<sup>4</sup> the United States Virgin Islands, or Guam is a citizen.<sup>5</sup>
- A child born in American Samoa is considered a “non-citizen national,” but not a United States citizen.<sup>6</sup>
- “Acquired” citizenship: A child born to a United States citizen parent may be a United States citizen.<sup>7</sup>
- “Derivative” citizenship: A child of a naturalized United States citizen may be a citizen.<sup>8</sup>

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<sup>3</sup> See *generally* Padilla v. Kentucky, 559 U.S. 356 (2010) (holding that under the Sixth Amendment, defense attorneys have a duty to counsel clients on immigration consequences of criminal convictions). See also NAT'L JUVENILE DEFENDER CTR., NATIONAL JUVENILE DEFENSE STANDARDS 25 (2012) (“Counsel must be aware of all consequences that stem from court involvement,” including consequences that “could affect the client’s . . . immigration status.” Counsel “must advise the client regarding such matters, or when appropriate, recommend the client contact a specialized attorney.”).

<sup>4</sup> Anyone born before July 1, 2010 in Puerto Rico was required to obtain a new birth certificate from the Puerto Rican government. Birth certificates issued before that time are invalid. The new, more secure birth certificates were issued to address immigration fraud concerns. If your client was born in Puerto Rico before July 1, 2010 and does not have the new birth certificate, they should apply for one on [www.pr.gov](http://www.pr.gov) as soon as possible to avoid suspicion of immigration fraud. PUERTO RICO BIRTH CERTIFICATES LAW 191 OF 2009 (AS AMENDED) FACT SHEET, PR.GOV, <https://serviciosenlinea.gobierno.pr/Salud/pdf/FAQ.pdf>.

<sup>5</sup> 8 U.S.C. § 1402 (1952); 8 U.S.C. § 1406 (1952); 8 U.S.C. § 1407 (1952).

<sup>6</sup> 8 U.S.C. § 1408(1) (1988); Tuaua v. United States, 788 F.3d 300 (D.C. Cir. 2015) (holding that the Citizenship Clause does not grant birthright citizenship to persons born in American Samoa). A person born in American Samoa can apply to become a naturalized citizen.

<sup>7</sup> 8 U.S.C. § 1431(a)(1) (1952). See also *Acquisition & Derivation Quick Reference Charts*, IMMIGRANT LEGAL RESOURCE CTR. (Sept. 8, 2017), <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>.

<sup>8</sup> See sources cited *supra* note 7. See also *Citizenship through Naturalization*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization> (last visited July 26, 2017) (“Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national” upon fulfillment of “requirements established by Congress in the Immigration and Nationality Act (INA).”).

If your client is unsure of their status, you may be able to determine their status by asking about documentation they or their parents/guardians may have. See the Appendix for a full list of documentation denoting immigration status.

## PRACTICE TIP

Children can experience shame about not being citizens, so it is important to establish that you are on their side, will not judge them no matter the answer, do not work for Immigration and Customs Enforcement (ICE) (which people may know or refer to as la migra or inmigración), and will not share information regarding status with anyone. Explain that you are asking so that you can best help defend them and not hurt their immigration situation, and that you will work just as hard for them no matter their status.

# The Charges

## Dangers to Your Client: Inadmissibility and Deportability

**Grounds of inadmissibility**, at 8 USC § 1182(a). A noncitizen who is inadmissible for crimes may be unable to obtain any new status, admission to the United States, waiver of a crime, or other new government benefit. However, being inadmissible will not take away a previously obtained lawful status. The only exception is if the person with lawful status leaves the United States after becoming inadmissible. In that case, the person can be denied admission back into the United States.

**Grounds of deportability**, at 8 USC § 1227(a). A noncitizen who has been lawfully admitted to the United States, but is convicted of an offense that makes them deportable, can lose their lawful status and be “removed” (deported), unless they can apply for some relief from removal. In contrast, if an undocumented person is convicted of an offense the conviction does not change their immigration status but may hasten removal proceedings by alerting authorities to their presence in the United States.

Both inadmissibility and deportability are grounds to begin proceedings to remove<sup>9</sup> a person from the United States. Generally, grounds of inadmissibility and deportability are conviction-based, so juvenile adjudications would not qualify. For example, it is very rare for a minor who has lawful permanent residence or other legal status to be deportable as a result of a delinquency adjudication. However, some juvenile offenses are considered “bad acts” and a charge or finding can trigger grounds of inadmissibility or in some narrow cases deportability, even without an adult “conviction.”

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<sup>9</sup> Removal is “expulsion . . . from the United States,” and may be “based on grounds of inadmissibility or deportability.” *Glossary*, U.S. CUSTOMS AND IMMIGRATION SERVICE, <https://www.uscis.gov/tools/glossary> (last visited July 25, 2017). Removal usually involves a proceeding before an immigration judge. 8 U.S.C. §§ 1229 (2006), 1229a (2006).



## Charges to Avoid

While any juvenile charges or adjudications that result in findings of guilt or involvement can trigger potential immigration consequences,<sup>10</sup> certain offenses can constitute grounds for inadmissibility or deportability and defense attorneys should be extremely diligent to avoid such charges. The chart below details some offenses that may carry serious immigration consequences for youth, and notes whether forms of relief<sup>11</sup> are potentially available.

For some of these offenses, **waivers of inadmissibility may be available**. A waiver of inadmissibility is a form of “forgiveness” for a ground of inadmissibility, and can “waive” the application of that ground of inadmissibility. To apply for a waiver, your client would complete a form that explains why their inadmissibility should be “waived,” or forgiven. The person requesting the waiver may need to prove that it is for humanitarian purposes, family unity, or when it is otherwise in the public interest, though the standards for waivers differ. Waiver approvals are a matter of discretion. If one of these charges is unavoidable, consult with an immigration attorney about the potential qualification for a waiver.

Delinquency Charge/ Disposition <sup>12</sup>	Immigration Consequence	Waiver/Forms of Relief Availability
<b>Prostitution:</b> A pattern or practice of sexual intercourse for financial or other material gain	<b>Inadmissible</b>	Waivers may be available
<b>Drug trafficking:</b> Sale, possession for sale, cultivation, manufacture, distribution, delivery, other offenses constituting drug trafficking	<b>Inadmissible if “reason to believe” participation in drug trafficking</b>	No waivers except: <ul style="list-style-type: none"> <li>• T Visa (for victims of human trafficking)</li> <li>• U Visa (for victims of defined “serious crimes”)</li> </ul>

*Charges to Avoid cont. on following page*

<sup>10</sup> An Executive Order from January 25, 2017 concerning immigration has been interpreted to encourage broader enforcement of immigration law, leading to increased potential for detention and removal following any contact with law enforcement. Exec. Order. No. 13, 767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

<sup>11</sup> Forms of relief are types of status that can be applied for, can stop removal proceedings, and can allow a person to remain legally in the United States. See U.S. CITIZENSHIP AND IMMIGRATION SERV., IMMIGRATION RELIEF FOR VULNERABLE POPULATIONS: HUMAN TRAFFICKING, CRIME VICTIMS, DOMESTIC VIOLENCE AND CHILD ABUSE (2011), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/T-U-VAWA-relief.pdf> (describing forms of immigration relief, their eligibility requirements, and their associated immigration benefits).

<sup>12</sup> IMMIGRANT LEGAL RES. CTR., IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY 1-2 (2015) [hereinafter IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY], [https://www.ilrc.org/sites/default/files/resources/juvenile\\_delinquency\\_cheat\\_sheet\\_ilrc\\_feb\\_2015\\_final.pdf](https://www.ilrc.org/sites/default/files/resources/juvenile_delinquency_cheat_sheet_ilrc_feb_2015_final.pdf).

<p><b>Drug abuse or addiction:</b> Repeated drug findings, finding of current abuse or addiction under the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (within last year) triggering inadmissibility, or any addiction or abuse since admission to U.S. triggering deportability</p>	<p><b>Inadmissible or deportable</b></p>	<p>Waivers may be available</p>
<p><b>Behavior showing a mental condition that poses a current threat to self or others:</b> including suicide attempt, torture, mayhem, repeated sexual offenses against younger children, perhaps repeated alcohol offenses, other offenses constituting drug trafficking</p>	<p><b>Inadmissible</b></p>	<p>Waivers may be available</p>
<p><b>False claim to U.S. citizenship:</b> Use of false documents and fraud offenses relating to false claim to citizenship</p>	<p><b>Inadmissible or deportable</b></p>	<p>Waivers may be available, including:</p> <ul style="list-style-type: none"> <li>• Special Immigrant Juvenile Status (SIJS) (form of relief available to children under juvenile court jurisdiction who meet certain eligibility requirements)</li> <li>• U Visa</li> </ul>
<p><b>Violations of protective or “no-contact” orders</b> designed to prevent repeated harassment, credible threats of violence, or bodily injury</p>	<p><b>Deportable</b></p>	<p>Waivers may be available</p>

**WARNING! While gang-related activities** are not automatic grounds for inadmissibility or deportability, they are a significant negative factor in any discretionary decision, and are a top priority for immigration apprehension, detention, and deportation. The same is true for charges related to sexual and violent offenses, or where a weapon is referenced in a charging document or arrest report. Although these may not automatically make a young person inadmissible or deportable, they will be taken into account for discretionary purposes, can negatively impact a child’s chance of getting immigration status, and can draw attention to an otherwise unknown youth, making them a priority for removal.<sup>13</sup>

<sup>13</sup> *Id.* See also KIDS IN NEED OF DEFENSE, REPRESENTING CHILDREN IN IMMIGRATION MATTERS, ch. 10 p. 4 (2015) [hereinafter REPRESENTING CHILDREN IN IMMIGRATION MATTERS].

## PRACTICE TIPS

Consult with an immigration attorney if a client faces charges involving gang activity, sex, violence, or if a weapon is referenced in the charging document or arrest report.

Because false claim to citizenship is a ground for both inadmissibility and deportability, it is important for your client not to make any statements or sign anything regarding legal status without an attorney present.

Reduce the risk of immigration consequences by advocating for pre-adjudication diversion, unless you think your client may be eligible for SIJS, which requires juvenile court jurisdiction. If diversion is not possible, negotiate with the prosecutor to charge your client with an offense less likely to trigger immigration consequences.

**AVOID** transfer to adult court, because “even misdemeanor convictions in adult court can carry dire immigration consequences.”<sup>14</sup>

## Record Clearance and Confidentiality<sup>15</sup>

**Record clearance.** In many states, a juvenile delinquency record can be cleared. Sealing, expungement, expunction, deletion, or erasure are all forms of record clearance, and are defined differently, depending on the state. Moreover, record clearance may only affect court records and not records maintained by state, local, or tribal law enforcement, including fingerprint and/or DNA records.

Clearing a juvenile delinquency record may prevent the record from being shared with the federal government and appearing on a client’s FBI rap sheet, which the government often uses to meet their burden of proof in immigration proceedings. In some cases, however, records may have already been shared with the federal government before the young person’s record was cleared, or that state’s record clearance law does not prevent the state from sharing cleared records with the FBI. The federal government’s investigation may also have commenced before the young person was eligible to have their record cleared. Additionally, even when a state law provides that the juvenile adjudication does not exist once the record has been cleared, the applicant may still need to disclose the incident, since the state’s law does not apply to the federal government. If the young person fails to disclose the cleared record, it may appear that they are engaging in fraud.

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<sup>14</sup> WASHINGTON DEFENDER ASS’N IMMIGRATION PROJECT, PRACTICE ADVISORY FOR JUVENILE DEFENDERS REPRESENTING NONCITIZENS 1 (2011).

<sup>15</sup> IMMIGRANT LEGAL RESOURCE CTR. & PUBLIC COUNSEL LAW CTR., FREQUENTLY ASKED QUESTIONS: DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) AND JUVENILE DELINQUENCY ADJUDICATIONS AND RECORDS (2013), [https://www.ilrc.org/sites/default/files/documents/ilrc-faq-daca\\_juv\\_del\\_adjud\\_records-2013-04\\_15.pdf](https://www.ilrc.org/sites/default/files/documents/ilrc-faq-daca_juv_del_adjud_records-2013-04_15.pdf).



Although a youth may still have to disclose juvenile delinquency arrests, charges, and adjudications on their application for lawful status, clearing a juvenile record can still confer benefits. Having the record in an FBI rap sheet surrenders control over how that record is characterized. If the information is not on the FBI rap sheet, the only information that may be readily available in the proceedings is that possessed by the youth and counsel. Clearing the record gives the youth much more control over when and how to disclose the information, and may be evidence of rehabilitation.

## PRACTICE TIP

For your client to control the flow of information, ensure that you retain copies of the record clearance order, as well as other important documents such as the petition and the order of dismissal or termination for your client, because it may be impossible to obtain copies of these documents later on, and they can be valuable evidence in immigration proceedings.



**Confidentiality issues.** Probation and other juvenile justice officials are increasingly turning over court records and other information to ICE, which may be used in deportation proceedings. However, this sharing of information may violate state confidentiality laws.

It is increasingly important that defenders share their expertise concerning confidentiality laws with immigration practitioners, because knowledge of these laws can provide important defenses in immigration proceedings. These defenses can include contesting a government attorney's sharing of juvenile delinquency court records to prove deportability and/or denial of a discretionary benefit in removal proceedings.





# Family Involvement

Non-citizen parents of youth in the juvenile justice system may also fear, and be vulnerable to, immigration consequences. Undocumented parents, who face serious deportation risks of their own, may be afraid to come to court with their child, which can give the court the mistaken impression that the child lacks parental supervision or support. For similar reasons, parents may also be afraid to visit their children in detention. In consultation with an immigration attorney, evaluate the circumstances and try to find a means of parental involvement with the least potential risk.

## PRACTICE TIP

If a child's parents cannot safely come to court or visit them in detention, work with the family to identify another family or community member who could instead, or find out if the court will allow for the parent to appear by phone or by presenting their position in a letter to the court or written affidavit.

## NOTE

*Some immigrant children are “unaccompanied children,” who have no parent or guardian in the United States able to provide care and physical custody.<sup>16</sup> However, many of these youth reside, or intend to reside, with a family member in the United States. Most unaccompanied children come to the United States fleeing violence in their home countries, particularly gang or cartel violence.<sup>17</sup> Upon apprehension, unaccompanied children are detained by the Office of Refugee Resettlement (ORR), where they may either be reunified with relatives or placed in foster care.<sup>18</sup>*

<sup>16</sup> ANGIE JUNCK & RACHEL PRANDINI, IMMIGRANT LEGAL RES. CTR., BEST PRACTICES FOR REPRESENTING UNACCOMPANIED CHILDREN IN REMOVAL PROCEEDINGS 4 (2015), <https://www.americanbar.org/content/dam/aba/administrative/immigration/UACBestPractices.authcheckdam.pdf> (presentation describing best practices for representing unaccompanied children).

<sup>17</sup> *Id.* at 6.

<sup>18</sup> See HAYLEY UPSHAW & ANGELA VIGIL, LEGAL SERV. FOR CHILDREN, IMMIGRATION & THE JUVENILE JUSTICE SYSTEM 15 (2014); *About Unaccompanied Alien Children's Services*, OFFICE OF REFUGEE RESETTLEMENT, <https://www.acf.hhs.gov/orr/programs/ucs/about> (last visited July 25, 2017). Recently, policy shifts have resulted in arrests of parents and relatives who have either paid smugglers

# Detention and I.C.E.

“Immigration detainers” or “ICE hold requests” are requests from ICE to hold a person in jail past the time they would otherwise be released (up to 48 hours excluding federal holidays and weekends) so ICE can take custody of that person for purposes of deportation, regardless of the charge. According to ICE’s current policies, they can place a hold on any individual whom they have probable cause to believe is removable.<sup>19</sup> This detainer can keep your client in detention even if they otherwise would be released, and can trigger or facilitate the process of deportation.

ICE holds are affected by racial profiling, in particular by juvenile detention officials questioning Latino-looking youth about their birthplace at booking and then sharing that information with ICE. Ninety-three percent of individuals subject to immigration detainers upon arrest are Latino, although they only comprise 77 percent of the United States undocumented population.<sup>20</sup>

## PRACTICE TIP

Because ICE may become alerted by local officials and then request an interview and hold once a child is in state or local custody, argue against any type of detention and advocate for community-based services, placement at home, or some form of non-custodial supervision.

## Strategies for I.C.E. Holds

An ICE hold request is just that — a *request*. It is not equivalent to a criminal arrest warrant.<sup>21</sup> Complying is always a matter of law enforcement discretion. “Sanctuary cities” are cities or counties that have policies of refusing to comply with ICE hold requests and with other requests of ICE. Many of these sanctuary cities have policies of not complying with ICE hold requests for youth and adults<sup>22</sup> because federal courts have found key aspects of ICE’s detainer system unconstitutional and in violation of federal statutes.<sup>23</sup> Even in an area without those policies, compliance is always discretionary.

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to bring their children into the United States, or who have simply taken in undocumented children. This results in more placement of unaccompanied children in foster care. See Caitlin Dickerson, *Trump Administration Targets Parents in New Immigration Crackdown*, NY TIMES (July 1, 2017), <https://www.nytimes.com/2017/07/01/us/trump-arrest-undocumented-immigrants.html>.

<sup>19</sup> *Detainer Policy*, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/detainer-policy> (last visited October 5, 2017).

<sup>20</sup> IMMIGRANT LEGAL RES. CTR., ICE HOLD POLICY TALKING POINTS 2 (2014).

<sup>21</sup> *Id.* at 1.

<sup>22</sup> See SELENA TEJI, CTR. ON JUVENILE AND CRIMINAL JUSTICE, THE UNNECESSARY DETENTION OF UNDOCUMENTED YOUTH 2 (2013), [http://www.cjcj.org/uploads/cjcj/documents/cjcj\\_juvenile\\_ice\\_hold\\_factsheet.pdf](http://www.cjcj.org/uploads/cjcj/documents/cjcj_juvenile_ice_hold_factsheet.pdf); LENA GRABER & NIKKI MARQUEZ, IMMIGRANT LEGAL RESOURCE CTR., SEARCHING FOR SANCTUARY: ANALYSIS OF AMERICA’S COUNTIES AND THEIR VOLUNTARY ASSISTANCE WITH DEPORTATIONS (2016), [https://www.ilrc.org/sites/default/files/resources/sanctuary\\_report\\_final\\_1-min.pdf](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf).

<sup>23</sup> See, e.g., *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305, No. 3:12-cv-02317 (D. Or. Apr. 11, 2014) (holding that the



## PRACTICE TIP

To avoid an ICE hold request, you can advise your client (if they are not a citizen or lawful resident) to refuse to speak or give information on place of birth if they are in state custody and also to refuse to speak with ICE, if they have not already, or request to have their lawyer present. However, there can be a risk of negative consequences, like a detention hold or other retaliation, for refusing to cooperate. Defenders must explain this risk to their client and work to challenge this practice if it occurs.<sup>24</sup>

If your client is subject to an ICE hold, you should challenge the detention facility's compliance with the hold by raising it with the detention facility directly or with the court. You should also ensure that the client is not held longer than 48 hours on an ICE hold after they would otherwise be released. If this happens, you could challenge the extended detention with a writ or with a claim of false imprisonment. Finally, if the client is subject to an ICE hold, but is likely not deportable (has some type of lawful immigration status and has not committed or been convicted of a deportable offense), or has some other unique circumstances, e.g., victim of a crime or trafficking or has a pending immigration application, consult with an immigration attorney to ask ICE to remove the hold request. ICE has a hotline for individuals who believe themselves to be citizens, and for victims of crimes who are subject to detainer, so they can request that the hold be removed.<sup>25</sup> ICE has discretion not to detain victims of crimes.

Remember, an ICE hold may not exceed 48 hours, excluding weekends and federal holidays. After 48 hours, the facility must release them.

## WARNING!

Even in sanctuary cities, there is always a danger of ICE arrests. For example, sometimes ICE shows up at courthouses to make arrests.<sup>26</sup> Dealing with ICE hold issues can be complicated, so if you believe your client may be at risk of, or subject to, an ICE hold, **consult with an immigration advocate familiar with immigration enforcement practices.**

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ICE detainer did not provide sufficient proof — probable cause — to allow the local jail to detain Ms. Miranda-Olivares for ICE regardless of her lack of immigration status and charges, and therefore, they could be held liable for unlawfully holding her). See also IMMIGRANT LEGAL RESOURCE CTR., IMMIGRATION DETAINERS LEGAL UPDATE: KEY COURT DECISIONS ON ICE DETAINERS AS OF JULY 2017 (2017), [https://www.ilrc.org/sites/default/files/resources/ice\\_detainer\\_cases\\_july\\_2017.pdf](https://www.ilrc.org/sites/default/files/resources/ice_detainer_cases_july_2017.pdf) (noting that other federal courts around the country have similarly ruled against the constitutionality and legality of ICE detainers).

<sup>24</sup> LENA GRABER, NAT'L IMMIGRATION PROJECT OF THE NAT'L LAWYERS GUILD, THE ALL-IN-ONE GUIDE TO DEFEATING ICE HOLD REQUESTS 12 (2012).

<sup>25</sup> *Id.*

<sup>26</sup> See Jonathan Blitzer, *The Trump Era Tests the True Power of Sanctuary Cities*, THE NEW YORKER (Apr. 18, 2017), <http://www.newyorker.com/news/news-desk/the-trump-era-tests-the-true-power-of-sanctuary-cities>; Daniel Denver, *The False Promise of Sanctuary Cities*, SLATE (Feb. 17, 2017), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2017/02/the\\_false\\_promise\\_of\\_sanctuary\\_cities.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2017/02/the_false_promise_of_sanctuary_cities.html).

# Determining Your Client's Potential for Immigration Relief

In addition to looking out for potential immigration consequences to your client, you should be aware of various forms of immigration relief. The chart below details possible immigration opportunities and potential for eligibility.<sup>27</sup> If you think your client may be eligible for one or more of these forms of relief and your client wants to pursue the possibility, consult with an immigration attorney.

Immigration Opportunity	Eligibility
<p><b>Special Immigrant Juvenile Status (SIJS)<sup>28</sup></b></p>	<p>A child under juvenile court jurisdiction, who is dependent on the court or placed in the custody of an individual, entity, state department or agency, e.g., a probation department, whom the court has found cannot be reunified with one or both parents due to abuse, neglect, abandonment or a similar basis in state law, and for whom it would not be in the child's best interests to return to the home country.</p> <p><b>PRACTICE TIP</b></p> <p>Look out for potential SIJS eligibility, since requests for SIJS status can be filed by juvenile defenders in open delinquency cases, and that may be a child's only opportunity to get legal status.<sup>29</sup> USCIS accepts SIJS applications for children until the age of 21.</p>
<p><b>Violence Against Women Act (VAWA)</b></p>	<p>A child who has been physically, psychologically, or emotionally abused by a U.S. citizen or permanent resident parent, or whose parent has been abused by a U.S. citizen or permanent resident spouse. The child must demonstrate "good moral character."<sup>30</sup></p>

<sup>27</sup> IMMIGRANT LEGAL RES. CTR., IMMIGRATION OPTIONS FOR UNDOCUMENTED IMMIGRANT CHILDREN 1-9 (2013) [hereinafter IMMIGRATION CONSEQUENCES FOR UNDOCUMENTED IMMIGRANT CHILDREN]; IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY, *supra* note 12, at 1-2.

<sup>28</sup> See IMMIGRANT LEGAL RES. CTR., SPECIAL IMMIGRANT JUVENILE STATUS AND OTHER IMMIGRANT OPTIONS FOR CHILDREN & YOUTH (4th ed. 2015).

<sup>29</sup> ANGIE JUNCK ET AL., *supra* note 16, at 65.

<sup>30</sup> Alleged commission of a violent crime by the youth can be offset if there is a connection between the abuse and the crime allegedly committed by the child. IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY, *supra* note 12, at 2.

<b>U Nonimmigrant Status (“U” Visa)</b>	A child who is the victim of one of the defined “serious crimes.” <sup>31</sup> A child of a deceased parent victim may also qualify. The child (or if under 16, the child’s parent) must have information about the criminal activity and be willing to be helpful in the investigation or prosecution of the crime.
<b>T Nonimmigrant Status (Trafficking or “T” Visa)</b>	A child who is the victim of a “severe” <sup>32</sup> form of human trafficking, including labor and sex trafficking, who would suffer extreme hardship upon removal. <sup>33</sup>
<b>Asylum</b>	A child who fears persecution in their home country based on race, religion, political opinion, nationality, or membership in a particular social group (which can include cases of domestic violence or harm by gangs).
<b>Temporary Protected Status (TPS)</b>	A national of a current TPS designated country <sup>34</sup> who has been in the U.S. since a required date.
<b>Family Immigration (Family Visa)</b>	A child who has a certain qualifying relationship with a U.S. citizen or lawful permanent resident. This relative must be willing to help the child through the process. <sup>35</sup>

<sup>31</sup> See DEP’T OF HOMELAND SEC., U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE FOR STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT 3 (2017) (listing qualifying crimes).

<sup>32</sup> IMMIGRATION OPTIONS FOR UNDOCUMENTED IMMIGRANT CHILDREN, *supra* note 27, at 4.

<sup>33</sup> These children may be difficult to identify either because they do not perceive themselves as victims, are ashamed of what they’ve done, owe a debt to their traffickers, or have been threatened by their traffickers. The work of building trust with your client is especially important in identifying them as victims. *Id.* See also REPRESENTING CHILDREN IN IMMIGRATION MATTERS, *supra* note 13, at ch. 1 pp. 1-9 (describing good strategies for working with immigrant children).

<sup>34</sup> See *Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/temporary-protected-status#Countries%20Currently%20Designated%20for%20TPS> (last visited July 26, 2017) (listing TPS designated countries).

<sup>35</sup> See *Family of U.S. Citizens*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/family/family-us-citizens> (last visited July 26, 2017) (for more on qualifying relationships and relevant forms).



## NOTE

*Deferred Action for Childhood Arrivals (DACA) is no longer available as a form of immigration relief. DACA was previously available to youth who came to the United States before the age of 16, continuously resided in the United States since 2007, were currently in school or had graduated from school, were under the age of 31, and present in the United States as of June 15, 2017.<sup>36</sup> As of September 5, 2017, USCIS was no longer accepting new DACA applications. As of October 5, 2017, USCIS was no longer accepting renewal DACA applications.<sup>37</sup>*

# Language Access

If your client speaks English as a second language, they have a right to an interpreter.<sup>38</sup> This applies equally to parents and guardians who speak English as a second language, because youth should not translate for their parents or the court. A youth may waive their right to an interpreter, but this ideally should be done in consultation with both the interpreter and the attorney.

Judges often have discretion over granting interpreter requests,<sup>39</sup> and the judge may wish to ask a few questions to determine your client's or client's family member's English proficiency.<sup>40</sup>



<sup>36</sup> See *U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/daca> (last visited July 7, 2017). *But see* Benjamin Oreskes & Shelby Grad, *Essential California: Trump's Mixed Message on DACA Frustrates "Dreamers" and Foes of Illegal Immigration*, LA TIMES (July 25, 2017), <https://www.uscis.gov/family/family-us-citizens> (discussing shifting DACA policy).

<sup>37</sup> IMMIGRANT LEGAL RESOURCE CENTER, END OF DACA: FREQUENTLY ASKED QUESTIONS (FAQS) (2017), [https://www.ilrc.org/sites/default/files/resources/ilrc\\_daca\\_faqs\\_0.pdf](https://www.ilrc.org/sites/default/files/resources/ilrc_daca_faqs_0.pdf).

<sup>38</sup> 42 U.S.C.A. § 2000d (1964) (guaranteeing that "no person in the United States shall . . . be excluded from participation in . . . any program or activity receiving Federal financial assistance" which has been interpreted to include a right to an interpreter). See *also* LAURA ABEL, BRENNAN CTR. FOR JUSTICE, LANGUAGE ACCESS IN STATE COURTS 8 (2009).

<sup>39</sup> AMERICAN BAR ASSOC., STANDARDS FOR LANGUAGE ACCESS IN COURTS 50 (2012).

<sup>40</sup> See *id.* at 44 (2012) (for examples of questions judges are recommended to ask). See *also* MN JUDICIAL BRANCH, BENCH CARD: COURTROOM INTERPRETING 1 (2012).



## PRACTICE TIP

If your client speaks conversational English, it may appear that they do not need an interpreter, but their English proficiency may still be limited. If your client has any hesitation about their ability to understand and participate in the proceedings in English, err on the side of requesting an interpreter immediately and for all proceedings.

## PRACTICE TIP

Prepare your client for possible questions that the judge may ask to determine English proficiency. For example, a judge may ask, “How did you get to court today?” While the judge is looking for an answer such as, “My parents drove me,” it may sound like the judge is asking about the offense that brought the client to court, so you may want to warn your client that this is not what is being asked. Judges sometimes also ask biographical questions like “Please tell me about your country of origin,” which you may need to step in to prevent if your client should not respond.





## Conclusion

Contact with the juvenile delinquency system can have life-altering consequences for immigrant children and their families. By building trust with your client, taking proactive steps early in a case, and knowing when to consult with an immigration attorney, defenders can mitigate the immigration consequences facing youth.

Because immigration law and policy is complicated and constantly in flux, if your client is potentially affected by any situation described by this guide, you must consult with an immigration attorney, preferably one who is familiar with the immigration consequences of juvenile court involvement.

# Appendix

## Documentation of Immigration Status

Immigration Status <sup>41</sup>	Definition	Documentation
<b>U.S. Citizen</b>	Person with all rights and benefits of U.S. citizenship; cannot be deported	<ul style="list-style-type: none"> <li>• U.S. Passport</li> <li>• U.S. Birth Certificate</li> <li>• U.S. Certificate of Citizenship</li> <li>• U.S. Certificate of Naturalization</li> </ul>
<b>Lawful Permanent Resident</b>	Non-citizen authorized lawfully to remain permanently in the U.S.	<ul style="list-style-type: none"> <li>• “Green card” (not actually green in color) stating RESIDENT ALIEN; legal status is not lost if the card is expired/misplaced</li> <li>• Card coded “CR” for conditional permanent resident</li> <li>• Passport stamp: “temporary evidence of lawful admission for permanent residence”</li> <li>• Stamp or handwritten note on an I-94 Arrival/Departure Record</li> </ul>
<b>Refugee or Asylee</b>	<p><b>Refugee:</b> a person outside the country of their nationality who cannot return due to persecution<sup>42</sup></p> <p><b>Asylee:</b> a refugee already living in the U.S. or seeking admission at a point of entry<sup>43</sup></p>	<ul style="list-style-type: none"> <li>• Stamp in passport or I-94 and document stating “admitted as a refugee pursuant to section 207 of the INA”</li> <li>• Asylum letter or court order</li> <li>• Employment authorization: A-3 (refugee) or A-5 (asylee) status</li> </ul>

*Documentation of Immigrant Status cont. on following page*

<sup>41</sup> SEJAL JOTA AND JOHN RUBIN, IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA 11-15 (2008). This document also has a sample list of questions that can help you determine a client’s immigration status. *Id.* at 17-18.

<sup>42</sup> 8 U.S.C. § 1101(a)(42) (2014).

<sup>43</sup> *Refugees & Asylum*, U.S. CITIZENSHIP & IMMIGRATION SERVICE, <https://www.uscis.gov/humanitarian/refugees-asylum> (last visited July 26, 2017).



<p><b>Nonimmigrant Visa Holder</b></p>	<p>Person with permanent residence outside the U.S. who legally resides in the U.S. on a temporary basis</p>	<ul style="list-style-type: none"> <li>• I-94</li> <li>• I-797 Notice</li> </ul>
<p><b>Temporary Lawful or Protected Status</b></p>	<p>Person from a TPS designated country who may legally reside in the U.S. but is not on a path to lawful permanent residence</p>	<ul style="list-style-type: none"> <li>• Temporary visa</li> <li>• Passport stamp: “temporary evidence of lawful admission for permanent residence”</li> </ul>
<p><b>Pending Application for Status</b></p>	<p>Person with a pending application for legal status</p>	<ul style="list-style-type: none"> <li>• Application for status<sup>44</sup></li> </ul>
<p><b>Out of Status</b></p>	<p>Person who overstayed their legal permission to reside in the U.S.</p>	<ul style="list-style-type: none"> <li>• Expired I-94 authorization</li> </ul>
<p><b>Undocumented</b></p>	<p>Person with no legal permission to reside in the U.S.</p>	<ul style="list-style-type: none"> <li>• No valid legal documentation from the U.S.; may have documentation from another country</li> </ul>



<sup>44</sup> This does not constitute permission to remain in the U.S., but ICE may be more lenient with respect to deportation. SEJAL JOTA AND JOHN RUBIN, IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA 15 (2008).



## Additional Resources

### **CAIR Coalition: <https://www.caircoalition.org/>**

- Detained Children’s Program provides legal services to unaccompanied immigrant children detained or formerly detained by the Office of Refugee Resettlement (ORR) at juvenile facilities in Maryland and Virginia.

### **Immigrant Defense Project: <https://www.immigrantdefenseproject.org>**

- National nonprofit that provides legal advice and guidance to help win justice in immigration and criminal courts. IDP is a founding member of the Defending Immigrants Partnership, which ensures high-quality legal representation for indigent immigrant clients in criminal and civil matters.

### **Immigrant Legal Resource Center: <https://www.ilrc.org/>**

- National nonprofit resource center that provides immigration legal trainings, technical assistance, and educational materials, and engages in advocacy and immigrant civic engagement to advance immigrant rights. ILRC is a founding member of the Defending Immigrants Partnership, which ensures high-quality legal representation for indigent immigrant clients in criminal and civil matters.

### **Kids in Need of Defense: <https://supportkind.org/about/>**

- National organization for the protection of children who enter the United States immigration system alone, strives to ensure that no such child appears in immigration court without representation.

### **National Juvenile Defender Center: <http://njdc.info/>**

- National nonprofit that provides leadership on juvenile indigent defense and due process deprivations that young people face in the delinquency system by providing training, technical assistance, policy development, community-building, leadership opportunities, legislative advocacy, litigation support, and research.

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