

PART I: INTRODUCTION AND OVERVIEW

CHAPTER 1

INTRODUCTION AND OVERVIEW

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§ 1.1 Introduction and Overview to This Manual

The United States has been the preferred destination for immigrants from around the world since at least 1960, with approximately 20 percent of the world’s immigrants living here as of 2017.¹ According to data from the most recent census and the 2016 American Community Survey, the states with the highest number of foreign-born residents are California, Texas, New York, and Florida.² However, the growth of the immigrant population is not limited to states with a traditionally large immigrant presence.³ Between 2010 and 2016, the states with the largest percent growth in immigrant populations were South Dakota, South Carolina, North Dakota, Tennessee, and Delaware.⁴ Immigrant youth form no small part of the foreign-born population in the United States. Approximately 24 percent of children in the United States are either immigrants or the children of immigrants.⁵ Many children of immigrants are citizens, having been born in the United States, although their parents may or may not have legal immigration status. Others are immigrants themselves. In 2016, there were approximately 2.1 million foreign-born children living in the United States.⁶ Some immigrant children are without legal status, but have

¹ Jie Zong, Jeanne Batalova, and Jeffrey Hallock, *Frequently Requested Statistics on Immigrants and Immigration in the United States* (Feb. 2018), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Numbers> [hereinafter *Frequently Requested Statistics*].

² Migration Policy Institute, *Immigrant Population by State, 1990-Present*, <https://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-state-1990-present?width=1000&height=850&iframe=true>.

³ *Id.*; see also *Frequently Requested Statistics*, *supra* note 1; Pew Hispanic Center, *A Statistical Portrait of the Foreign-Born at Mid-Decade*, Table 11: Change in Foreign-Born Population by State, 2000-2005 (2006), <http://www.pewhispanic.org/files/2013/09/2005-Foreign-Born.pdf>.

⁴ See note 1.

⁵ Annie E. Casey Foundation, *Race for Results: Building a Path to Opportunity for All Children*, 9 (2017), <https://www.aecf.org/m/resourcedoc/aecf-2017raceforresults-2017.pdf>.

⁶ See *Frequently Requested Statistics*, *supra* note 1.

grown up almost entirely in the United States and consider this country their only home. Some of these youth do not know the language spoken in their native country and left so long ago that they have no memory of the place. Other children and youth are more recent immigrants who may be completely unfamiliar with the legal system and customs in the United States.

Immigrant children and youth may travel to the United States with parents, an adult relative, or a family friend. Some come to the United States with their parents as infants or young children. Increasingly, children and youth come to the United States unaccompanied, without their parents or a legal guardian, making their way by foot, bus, train, cargo ship, or plane.⁷ These youth have often endured unspeakably traumatic experiences in their countries of origin and come to the United States fleeing violence, persecution, and extreme poverty. A 2013 United Nations High Commissioner for Refugees (UNHCR) study found that many unaccompanied children were motivated to come to the United States by two main factors: violence by gangs and violence in the home.⁸ Some of these youth receive the assistance of smugglers or “coyotes.” Still others are victims of illegal trafficking, and are forced to engage in sex-work or to work in slave-like conditions in factories, as domestic servants, or in restaurants.⁹ Many assume extraordinary debt to come to the United States and in some cases, solely to help their impoverished families. Often, these youth endure dangerous and exploitative work conditions in order to pay off these debts.

Particularly for unaccompanied immigrant youth, the journey to the United States is often extraordinarily arduous and dangerous. Countless youth have been robbed, beaten, or sexually assaulted along the way. Sometimes youth languish for many days without food or water as they cross the desert. Hundreds of youth have lost a limb or sustained other disabling injuries trying to jump on or off trains across Mexico.¹⁰ Many youth embark on the journey to come to the United States, never to be heard of again; these youth may have been killed, died from an accident along the way or during the trek across the dessert, or been kidnapped and trafficked by gangs along the way.

Prior to 2012, an annual average of between 7,000 to 8,000 such unaccompanied children were apprehended at the southern border annually.¹¹ In Fiscal Year 2012, the number jumped dramatically to 13,625 children referred to the Office of Refugee Resettlement (ORR), the federal agency charged with custody of unaccompanied children. This number again jumped in Fiscal Year 2013 to 24,668 referrals from the Department of Homeland Security (DHS) to ORR. In Fiscal Year 2014, ORR received an unprecedented number of referrals from DHS, with 57,496

⁷ See ORR, *ACF Fact Sheet, Unaccompanied Alien Children Program* (June 15, 2018), <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf> [hereinafter *UAC Fact Sheet*].

⁸ UNHCR, *Children on the Run* (2013), 6, <http://www.unhcrwashington.org/children> [hereinafter *Children on the Run*].

⁹ According to a U.S. Department of State estimate, more than 44,000 survivors of trafficking were identified in 2013, but more than 20 million victims of trafficking have not been identified. U.S. Dep’t of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, Introduction (June 2014), <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>.

¹⁰ See Sonia Nazario, *Enrique’s Journey: The Story of a Boy’s Dangerous Odyssey to Reunite with his Mother* (2006).

¹¹ *UAC Fact Sheet*, *supra* note 7.

unaccompanied children referred.¹² Since then, the annual numbers of unaccompanied children have remained high, leading to a sustained influx of immigrant children each year. In 2017, 41,456 unaccompanied children were apprehended at the U.S. border, which is more than twice as many children as were apprehended in 2011, before the “surge.”¹³ To address the huge increase in unaccompanied children being placed in ORR custody, the Department of Health and Human Services (under whose umbrella ORR operates) has opened additional shelters to house such children. As of August 2018, ORR operated more than 100 shelters in 17 states.¹⁴ DHS has also opened additional family detention centers in response to the sharp increase in the number of family units crossing the southern border, discussed in greater detail in **Chapter 18**.

The sharp increase in arrivals over the last 6 years is largely due to the migration of children from Guatemala, Honduras, and El Salvador, a region of Central America known as the “Northern Triangle.”¹⁵ Studies have found that, while there may be multiple reasons that a child leaves her home country, “children from the Northern Triangle consistently cite gang or cartel violence as a prime motivation for migrating.”¹⁶ A 2013 report by the UNHCR found that 48% of unaccompanied children interviewed as part of the study shared experiences of how they had been personally affected by violence in the region by organized armed criminal actors, including gangs and drug cartels, as well as state actors.¹⁷

Once children arrive in the United States, however, their struggles are not over. Children and youth without legal immigration status are exceptionally vulnerable in the United States. Many undocumented youth face discrimination and burdensome fears of deportation that drive them, and any family they may be with, into the shadows. The need to remain invisible marginalizes them and their families, and undermines their ability to access basic necessities. As a whole, undocumented youth are more likely to live in poverty,¹⁸ less likely to have health insurance, and more likely to encounter barriers to accessing public benefits and social services than U.S. citizen youth.¹⁹

Importantly, there are many avenues available for undocumented youth to obtain lawful immigration status in the United States to eliminate their fear of deportation and ensure that they

¹² KIND, *Briefing Book on Unaccompanied Children* (March 2018),

<https://supportkind.org/resources/briefing-book-on-unaccompanied-children/>.

¹³ *Id.*

¹⁴ ORR, *Unaccompanied Alien Children Frequently Asked Questions* (July 2018),

<https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-frequently-asked-questions>.

¹⁵ American Immigration Council, *Children in Danger* (July 2014),

<http://www.immigrationpolicy.org/special-reports/children-danger-guide-humanitarian-challenge-border> [hereinafter *Children in Danger*].

¹⁶ *Id.* at 2.

¹⁷ *Children on the Run*, *supra* note 8, at 6.

¹⁸ Jeffrey S. Passel, *Demography of Immigrant Youth: Past, Present and Future*, 21 *Immigrant Children* 1, p. 33 (Spring 2011),

http://www.futureofchildren.org/futureofchildren/publications/journals/journal_details/index.xml?journalid=74; see also *Frequently Requested Statistics*, *supra* note 1.

¹⁹ See, e.g., Univ. of Cal. Center for Poverty Research, *Poverty Research and Policy in the U.S.: Building a Path to Mobility* (Apr. 2016), https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-poverty_research_and_policy_in_the_us.pdf.

have access to the benefits and services they need. In 2008, Congress, recognizing the unique nature of unaccompanied children and youth, provided broader legal protections and access to services through the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457) (TVPRA). It was signed into law on December 23, 2008. Unfortunately, President Trump’s administration has aggressively tried to eliminate or undermine these protections, and although the TVPRA remains good law as of the time of this manual’s writing, numerous bills and policies have been introduced to limit its effect.²⁰

This manual seeks to provide background and guidance on the immigration options available to children and youth. It will cover various forms of immigration relief, with a special emphasis on Special Immigrant Juvenile Status (SIJS). While this manual is primarily intended to guide advocates and attorneys representing or working with undocumented youth, this manual is also useful in working with youth who have legal status and face various immigration related issues, whether it be fighting back against removal charges, seeking to change status, or applying for citizenship.

This manual is divided into four parts:

Part I: Introduction and Overview, Chapters 1–2. This chapter provides introductory information on basic terms and principles of immigration law as they apply to children and youth, a summary of immigration relief options for youth, and an overview of the immigration process (both affirmative and defensive). **Chapter 2** provides background on particular developmental issues that are unique to children and youth, practice tips for advocates working with these youth to address these issues, and tips for avoiding re-traumatization.

Part II: Special Immigrant Juvenile Status (SIJS), a Form of Immigration Relief for Abused, Neglected, or Abandoned Children, Chapters 3–9. **Chapter 3** provides a basic overview of SIJS. For many child welfare workers and non-legal advocates curious about SIJS, or supporting a child who is applying for SIJS, it will provide all the information needed. **Chapters 4–6** are designed to answer more specific questions about SIJS eligibility, the adjustment of status portion of the SIJS application, and risks and benefits of applying. **Chapter 7, Part One** is a basic primer on the various state court systems that may play a role in SIJS findings, including dependency, delinquency, guardianship, custody and adoption, and **Part Two** of the chapter provides procedural guidance in obtaining SIJS findings in juvenile courts. **Chapter 8** provides information on the affirmative SIJS application process and how to complete the forms. **Chapter 9** provides information on the defensive SIJS application process for those children and youth who are in removal (or deportation) proceedings.

Part III: Other Forms of Immigration Relief, Chapters 10–16. This part of the manual provides information on other potential ways in which children and youth can obtain lawful status including U nonimmigrant status (**Chapter 10**), relief under the Violence Against Women Act (**Chapter 11**), asylum (**Chapter 12**), family-based visas (**Chapter 13**), citizenship and naturalization for children (**Chapter 14**), T nonimmigrant status (**Chapter 15**) and other

²⁰ KIND, *Death by a Thousand Cuts: The Trump Administration’s Systematic Assault on the Protection of Unaccompanied Children* (May 2018), https://supportkind.org/wp-content/uploads/2018/05/Death-by-a-Thousand-Cuts_May-2018.pdf.

immigration-related laws that may help children, including temporary protected status and cancellation of removal, among others (**Chapter 16**).

Part IV: Special Issues in Representing Children and Youth, Chapters 17–18. **Chapter 17** covers the immigration consequences of juvenile delinquency, discusses immigration enforcement in the juvenile justice system, and provides a basic overview of the immigration consequences of criminal conduct. **Chapter 18** covers detention-related issues of immigrant children and youth, including how they are apprehended and the bases for their detention and release.

The **Appendices** to this manual contain many useful documents, including quick reference guides, a sample screening intake form, sample motions, court orders and other papers that you can present to a juvenile court judge in SIJS cases or to the immigration court or immigration authorities, practice advisories, a copy of the relevant law, regulations, and U.S. Citizenship and Immigration Services (USCIS) memoranda, and sample completed copies of application forms. See **Appendices**. Note that it is easy to obtain the immigration forms you will need for the application from the USCIS website (www.uscis.gov), by calling the USCIS toll-free number 1-800-870-3676, or from an immigration practitioner.

§ 1.2 Lawful Immigration Status and Forms of Immigration Relief Available to Children and Youth

A. Lawful immigration status: What is it and why is it important?

“Immigration status” is a term that refers to a person’s classification under U.S. immigration laws. Immigration status determines the rights, privileges, and benefits to which individual children and youth are entitled, and the possible consequences they will face when charged with a violation of law.

Under immigration laws, any person in the United States *who is not a U.S. citizen* (which can be a complex determination) is referred to as an **alien**. This manual will not use that term, except when quoting the statute directly. Instead, it will use the term noncitizen. A noncitizen who has a **green card** has permanent lawful immigration status and is called a **lawful permanent resident**. A noncitizen can have many other different types of lawful status in the United States as well, such as having asylum, a U visa, a T visa, a visitor’s visa, or temporary protected status. A noncitizen may also have been granted prosecutorial discretion or deferred action (such as pursuant to DACA)—which is not lawful status but can provide protection from deportation (and work authorization, for deferred action). These categories are described in more detail below. A noncitizen with no lawful immigration status is said to be **undocumented**.

Life in the United States can be terribly difficult for an undocumented person. They might be **deported or removed** (forced to leave the United States) if caught by immigration authorities. Further, the person cannot obtain **employment authorization**, and so cannot work legally. The person is often not eligible for many public benefits. In most states, undocumented young people

are not eligible for in-state tuition at state colleges and universities, and therefore may have to overcome more barriers to attend college.²¹

NOTE: U.S. citizenship. It is important to determine whether the child or youth may be a U.S. citizen. U.S. citizens are not subject to federal immigration laws and therefore, cannot be removed or be refused admission to the United States.

Individuals can obtain citizenship in a number of different ways. They may be born in the United States or apply to become a citizen through the process of naturalization. This is the process by which someone immigrates to the United States, obtains lawful permanent resident status, and then becomes a citizen after a certain period of time; note that children under 18 cannot naturalize. A person can also acquire or derive citizenship from a U.S. citizen parent, such as if the person's parent was a U.S. citizen at birth and met certain criteria, or if the person was a lawful permanent resident and the parent naturalized.²² Under certain circumstances, a person may be able to acquire citizenship if U.S. citizenship can be traced through the lineage of their U.S. citizen parent(s) or even in some instances, grandparent(s) or great grandparent(s), even if the child was born abroad and lived abroad for most of their life. The vast majority of U.S. citizens, however, acquire their citizenship because they are born in the United States.

With the rise in immigration enforcement, more U.S. citizens are mistakenly placed in removal (or deportation) proceedings. In the decade between 2007 and 2017, 693 U.S. citizens were held in county jails under immigration detention orders, and 818 U.S. citizens were in immigration detentions centers during the same time period; that amounts to roughly 150 mistaken detentions of U.S. citizens per year.²³ The Trump administration is also challenging the U.S. citizenship of thousands of recorded U.S. citizens who were born along the Texas border.²⁴

Noncitizen categories. A person who is not a U.S. citizen and falls within one of the categories listed below is a noncitizen. A noncitizen is *always* subject to the possibility of deportation/removal regardless of their circumstances. Most noncitizen children and youth are removable by virtue of lacking lawful immigration status.

²¹ Note, however, that some states provide exceptions by allowing undocumented immigrants to attend state colleges at the much lower in-state tuition rate. See www.nilc.org for further information.

²² INA § 320.

²³ Steve Coll, *When ICE Tries to Deport Americans, Who Defends Them?*, The New Yorker, Mar. 21, 2018, <https://www.newyorker.com/news/daily-comment/when-ice-tries-to-deport-americans-who-defends-them>; see also Victoria Bekiempis, *Why Did Immigration and Customs Enforcement Detain a U.S. Citizen for Three and a Half Years?*, Newsweek, Nov. 6, 2014, <http://www.newsweek.com/why-did-immigration-and-customs-enforcement-detain-us-citizen-3-and-half-years-282509>; Amnesty International, *Jailed Without Justice: Immigration Detention in the USA*, (Mar. 2009), <http://www.amnestyusa.org/immigrant-rights/immigrant-detention-report/page.do?id=1641033>.

²⁴ Kevin Sief, *U.S. Is Denying Passports to Americans Along the Border, Throwing their Citizenship into Question*, Washington Post, Aug. 29, 2018, https://www.washingtonpost.com/world/the-americas/us-is-denying-passports-to-americans-along-the-border-throwing-their-citizenship-into-question/2018/08/29/1d630e84-a0da-11e8-a3dd-2a1991f075d5_story.html?noredirect=on&utm_term=.a4aeda7205b2.

The various noncitizen categories that a person can fall into include:

- Lawful permanent resident (“green card holder”). They are permitted to live and work permanently in the United States and are entitled to the most secure immigration status, short of being a U.S. citizen, as well as many benefits that U.S. citizens hold.
- **Refugee or asylee.** They are granted refuge and status in the United States based on persecution they faced or will face in their home country or country of origin. They can become lawful permanent residents within a certain period of time.
- **Nonimmigrant visa holders.** A nonimmigrant visa holder is a person who obtained a temporary visa allowing them to enter and remain in the United States legally for a specific period of time under specific conditions. Certain visa holders can obtain lawful permanent residency, while others can only be here for a certain period of time. Some common examples of visa holders include tourists, students, temporary workers, diplomats, religious workers, those who are victims of crimes and assisting with an investigation or prosecution of the crime (U visas), informants, and trafficking victims (T visas).

Nonimmigrant visa holders who violate the terms of their visa (e.g., students who drop out of school or tourists who stay longer than permitted) become “undocumented,” meaning they no longer have lawful status in the United States and are subject to apprehension by immigration authorities and removal from the country.

- **Undocumented person.** This is someone who does not have legal status under the immigration laws. Contrary to public perception, undocumented persons are not just those who crossed the border unlawfully, but also include persons whose visas have expired.

Just because a person is undocumented, however, does not mean that person will be removed from the United States. Many undocumented people and children are eligible to apply for lawful immigration status through one of the avenues available under the immigration laws. However, undocumented persons are always at risk of apprehension, detention, and initiation of removal proceedings by immigration authorities. Crossing the border unlawfully or having contact with the juvenile justice system are common avenues by which undocumented youth are apprehended by immigration authorities.

- **DACA recipient.** Deferred Action for Childhood Arrivals provides a work permit and relief from removal for two years to certain eligible undocumented people who came to the United States when they were under the age of 16 and meet certain other eligibility requirements. DACA is not an immigration status, nor does it lead to U.S. citizenship, but it does provide temporary protection from deportation. Further, DACA was not created by federal immigration law the way that many other forms of immigration relief were created. Rather, it is a use of prosecutorial discretion by the executive branch to provide protection from removal from the United States for a certain period of time. In September 2017, the Trump Administration issued a memorandum ending the DACA program.²⁵

²⁵ DHS, *Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA)* (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

However, at the time of this manual’s writing, DACA is the subject of much federal litigation; DACA holders are currently permitted to continue to renew their DACA, but the future of the program is uncertain.²⁶

- **Those in the process of obtaining legal status.** Many persons present in the United States do not have lawful status, but are in the process of obtaining lawful status, which often takes many years. Immigration authorities are aware of their presence in the United States and may defer their removal pending the outcome of their application. Depending upon the lawful status applied for, a person may receive a work permit or employment authorization document (EAD) to work lawfully for a specified period of time while the application is pending.

B. Forms of immigration relief available to children and youth

There are many avenues within the categories discussed above available for undocumented youth to obtain lawful immigration status in the United States. The avenues for obtaining legal status are not only broader for children and youth compared to adults, but the standards for obtaining these forms of relief may be lower and take into account their unique status as minors. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457) (TVPPRA) (discussed in § 1.4) made important procedural and substantive changes to broaden eligibility for immigration legal relief for youth and provide more child-sensitive procedures for those youth in immigration custody and at imminent risk of removal.

Some of the avenues of relief available to children and youth, discussed in greater detail throughout this manual, are:

- **Special immigrant juvenile status (SIJS).** Youth can obtain lawful permanent residence if they are under 21 years old, not married, under the jurisdiction of a juvenile court (which may differ based on the state, but typically includes dependency, delinquency, guardianship, or family court) or committed to the custody of state agencies or departments or to court-appointed individuals or entities, the court has made a finding that the child cannot be reunified with one or both parents due to abuse, neglect or abandonment or a similar basis under law, and it is not in the minor’s best interest to be returned to their home country. To obtain this form of relief, an order from the juvenile court making the above findings is required. See **Chapters 3–9**.
- **Violence Against Women Act (VAWA).** Youth are eligible for lawful permanent residence if they have been “battered or subject to extreme cruelty” (including purely emotional abuse) by a *U.S. citizen or permanent resident spouse, parent, or step-parent*. Youth may also qualify if their parent was a victim of domestic violence. See **Chapter 11**.
- **U and T nonimmigrant status for victims of serious crimes and trafficking.** If the noncitizen child or youth or their parent is a victim of a serious crime or of trafficking, they can obtain a nonimmigrant visa that will put them on a path to permanent residence.

²⁶ See, e.g., NILC, *DACA Litigation Timeline* (Aug. 28, 2018), <https://www.nilc.org/issues/daca/daca-litigation-timeline/>.

U nonimmigrant status is available to noncitizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, possess information concerning the activity, and are helpful to the investigation of the criminal activity.²⁷ In order to qualify for U nonimmigrant status, a judge, prosecutor, investigator (for example, a police agency) or similar official must sign a certification regarding this requirement. See **Chapter 10**.

T nonimmigrant status is available to victims of severe forms of trafficking in persons,²⁸ including sex or labor work, who must comply with reasonable requests for assistance in the investigation or prosecution of the offense (unless they are under the age of 18), and must show they will suffer extreme hardship if removed from the United States. See **Chapter 15**.

- **Asylum.** Youth who fear return to their home country because of an individualized fear of persecution on account of their race, religion, nationality, political opinion, or membership in a particular social group may be able to apply for asylum. If youth express fear of return, they are generally subject to specialized guidelines and procedures for youth in determining whether they have a valid asylum claim. See **Chapter 12**.
- **Cancellation of removal for non-permanent residents.** Noncitizens who have lived in the United States for ten years or more and can show that they have a parent, spouse, or child who is a U.S. citizen or permanent resident who would suffer exceptional and extremely unusual hardship if the person were deported can qualify for this relief and obtain lawful permanent residence. See **Chapter 16**.
- **U.S. citizenship and family immigration.** Some youth may be U.S. citizens without knowing their status, based on U.S. citizenship of parents and in some cases, grandparents. See **Chapter 14**. Additionally, some youth may have U.S. citizen or lawful permanent resident family members in the United States who can help them become a lawful permanent resident. See **Chapter 13**.

WARNING! Immigrant children and youth can be eligible for more than one type of immigration relief. To ensure that youth have the best chance of obtaining lawful immigration status, advocates should carefully screen youth for all forms of relief. A sample screening questionnaire to assist in flagging eligibility is provided at **Appendix A**.

§ 1.3 Immigration System Actors

Immigration laws are made by Congress and enforced by administrative agencies in the executive branch of the federal government. As part of the executive branch's function as enforcer of immigration laws, it may also decide to exercise prosecutorial discretion favorably, and not remove (deport) certain people, for example, as it has done with the DACA program. Practically every immigrant child or youth will come into contact with at least one (and usually several) federal agencies if they decide to apply affirmatively for immigration relief or they are placed in removal proceedings (both discussed in § 1.6). These agencies and actors fall under three

²⁷ INA § 101(a)(15)(U).

²⁸ INA § 101(a)(15)(T).

different federal departments: the Department of Homeland Security (DHS), the Department of Health and Human Services (HHS), and the Department of Justice (DOJ). Each of these departments serves a different purpose within the immigration system, which can be analogized as the enforcer, the caretaker, and the adjudicator or decision maker. It is important to know that they often have conflicting perspectives as to how immigrant children and youth should be treated and thus, the actions of the federal agencies cannot always be easily reconciled.

A. Department of Homeland Security (DHS)

As a result of the Homeland Security Act of 2002, introduced in the aftermath of the September 11th attacks, the former Immigration and Naturalization Service (INS) ceased to exist as an independent agency within the Department of Justice and its functions were transferred to various agencies within the newly formed Department of Homeland Security (DHS).²⁹ The DHS now has primary responsibility for administering and enforcing immigration laws. Three agencies within the DHS handle these responsibilities: U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).³⁰

1. USCIS

U.S. Citizenship and Immigration Services (USCIS). USCIS is responsible for processing and making decisions on all applications for immigration benefits, many of which are filed affirmatively. These include applications for Special Immigrant Juvenile Status, asylum, lawful permanent residency, and citizenship. USCIS can also initiate deportation proceedings by either issuing a Notice to Appear (NTA), or charging document, or referring cases to ICE to do so. USCIS revised its guidance in June of 2018 on when it will issue NTAs in immigration cases, greatly expanding the number of immigration cases it will refer to removal proceedings and increasing its role as an enforcer of immigration law.³¹

2. ICE

Immigration and Customs Enforcement (ICE). ICE is the “interior” enforcement arm of the DHS (i.e., not at the border) and has a goal of identifying and removing all removable persons located within the United States. One of its primary targets is “criminal aliens.”³² It therefore has a strong presence in the criminal and juvenile justice systems, especially in jails, prisons, and sometimes, in youth detention centers. ICE has the authority to arrest, transport, and/or detain (except for certain juveniles) individuals in violation of immigration laws. Not only do ICE attorneys represent the government in removal proceedings, but ICE also coordinates the actual removal of noncitizens who are ordered deported.

²⁹ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (codified in pertinent part in scattered sections of 6 and 8 USC); see H.R. Rep. No. 107-609, pt. 1, at 64 (2002).

³⁰ See DHS, *Department Components*, <http://www.dhs.gov/department-components>.

³¹ USCIS, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (June 28, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.

³² Pres. Donald Trump, *Executive Order: Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017).

It is important to emphasize that ICE's goal is to enforce immigration laws and not to look out for the best interests of children or youth or ensure that they receive due process. Once ICE picks up a youth, it will not tell the youth about their immigration relief options; advocates have also reported that ICE may even dissuade youth from pursuing options available to them and encourage them to accept voluntary removal (deportation without a hearing). This is particularly critical as many children and youth have trouble distinguishing the roles of various persons in the immigration system, e.g., whether a person is their attorney or works for the government, and as such may confide and trust in ICE before realizing ICE's intentions.

There is also a misconception that ICE always has a primary role in the deportation process of minors. In reality, ICE's role with juveniles may be limited where the child is considered "unaccompanied," meaning where there is no parent or legal guardian able or willing to provide for the child's care and custody. In these cases, ICE will handle the initial stages of deportation and detention by identifying and arresting juveniles for removal, but then will transfer these juveniles to the custody of the Office of Refugee Resettlement (ORR, described below). ICE usually only steps into the process again once the youth has accepted deportation or been ordered deported by a court by coordinating their physical removal from the United States. The vast majority of youth apprehended by ICE are deemed "unaccompanied" and are thus detained by ORR. Where the minor is deemed "accompanied," ICE will take a greater role in the deportation process and may detain the minor pending the outcome of removal proceedings. This could be in a family detention center if the child was apprehended with a parent or legal guardian with whom they will be detained, or otherwise in a juvenile jail that ICE contracts with to hold "accompanied" children separate from adults. Outside of the family detention context, little is known about how many accompanied juveniles are detained by ICE and who they are. See **Chapter 18** for more information.

3. CBP

U.S. Customs and Border Protection (CBP). CBP is responsible for inspecting visitors and cargo at ports of entry and tries to secure the borders at the U.S. land, sea, and air ports of entry. CBP is also given the authority to arrest, transport, and detain noncitizens, but unlike ICE, it focuses on those who are caught in violation of immigration laws at the border and ports of entry. Note that CBP has authority to operate within 100 miles of any land or sea border, so many parts of the United States (such as Los Angeles, New York City, Houston, and all of Florida) are within CBP's jurisdiction.

Statistics show that so far in Fiscal Year 2018 alone, over 40,000 unaccompanied children were apprehended by CBP crossing the Mexico-U.S. border.³³ If these minors are from a bordering country, e.g., Mexico, and there are no red flags as to trafficking or persecution, they will generally be sent back in a process called "voluntary return," and will never see a judge or an attorney.³⁴ CBP is also the agency that juvenile justice systems near the border interface with most often. CBP plays a role that is similar to ICE by initially detaining and effectuating the removal of minors.

³³ U.S. Customs and Border Protection, Southwest Border Migrations FY 2018, (Aug. 6, 2018), <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

³⁴ TVPRA § 235(a)(2)(B).

B. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR)

On March 1, 2003, DHS established that custody of “unaccompanied” immigrant children would be placed with the Office of Refugee Resettlement (ORR). ORR, which is a division of the U.S. Department of Health and Human Services, created “DCS”—the Division of Children’s Services—to provide care and services to this population pending the conclusion of the immigration case.³⁵ However, DHS through ICE continued to retain control and oversight of “accompanied” immigrant children. No definition of accompanied is provided by immigration law; there is only a definition of the term “unaccompanied.” See **Chapter 18** for discussion on this classification.

ORR’s philosophy towards minors is different than that of ICE—its mission is grounded in child welfare principles, so it is more concerned with the well-being of children and their particular vulnerabilities. Its work and programs should take into account the unique nature of each child’s situation in making placement and release decisions, though in recent years this has been called into question.³⁶ The agency is mandated to develop a plan to ensure timely appointment of legal representation for children in its custody³⁷ (although in practice many children do not receive legal representation in their removal proceedings). It also works towards reunifying all children in their custody with family members or other close friends where possible.

ORR, like ICE, also has a role working with referring agencies such as the juvenile justice system, however, with different goals in mind. Although minors from the juvenile justice system are often detained upon arrest by ICE or CBP, ORR’s stated priority is to reunify all children with family members where possible, regardless of their record. Unfortunately, advocates currently report long delays in release for youth in secure ORR custody who may have a juvenile record or otherwise be accused of bad acts such as gang affiliation. In order to get reunification approved, social workers working with the minors must ensure that they will comply with their probation terms, participate in rehabilitative and other support programs when released into the community, and not re-offend. This requires working with probation officers to ensure that they know and are cooperating in the minors’ re-entry into the community.

Tension between DHS (ICE) and HHS (ORR): Conflicting federal directives. As noted above, the missions of DHS and ORR are fundamentally at odds with one another and dictate the level of attention paid to the safety and well-being of immigrant children and youth in each agency’s respective custody. DHS’s mission (through its divisions of ICE and CBP) is to enforce immigration laws to ensure the departure from the United States of all removable noncitizens, including unaccompanied youth. For that reason, DHS, at the front end, often encourages the reporting of noncitizen minors for deportation. On the other hand, ORR’s mission is to care for and protect youth and to reunify them with their families where possible. Therefore, ORR, even

³⁵ Women’s Refugee Commission, Orrick Herrington and Sutcliffe, LLP, *Halfway Home: Unaccompanied Children in Immigration Custody*, p. 1 (Feb. 2009) [hereinafter *Halfway Home*].

³⁶ See, e.g., *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017) (finding that all children in ORR custody have the right to request a *Flores* “bond” hearing before an immigration judge, which allows the child to advocate for placement in a less restrictive setting and to inspect the evidence that ORR may be using against the child to determine that they are dangerous).

³⁷ *Halfway Home*, *supra* note 34, at 14.

during the deportation process, often facilitates integration of the minor back into the community. Unfortunately, ORR has increased its cooperation with DHS in recent years, taking on more of an enforcement role. In May of 2018, ORR entered into a Memorandum of Agreement with ICE and CBP under which ORR will share sensitive information on unaccompanied immigrant children, including names, fingerprints, addresses, and phone numbers on the children's parents or sponsors.³⁸ This Memorandum of Agreement is reprinted in **Appendix RR**.

This ongoing tension between the dual goals of taking care of children and enforcing federal laws against them is due to the divided structure of the immigration system for children and youth as well as conflicting laws and policies. DHS exerts significant influence over the treatment of undocumented children who arrive or are initially arrested in the United States. Because DHS is the "gatekeeper," it has the power to exercise its authority in ways that are not always in the child's best interest. For example, even though the Homeland Security Act clearly intended that ORR become the legal custodian for "unaccompanied" children, in some instances, DHS has continued to retain custody of this category of children. See **Chapter 18** on detention. Only once DHS decides to transfer custody to ORR will its more child-friendly approach govern.

To compound this problem, there are conflicting directives from Congress and the Executive Branch. The immigration laws for children and youth passed by Congress, such as the TVPRA, have been more encompassing and protective of children's rights as compared to adults. At the same time, President Trump's administration, and former President Obama's administration as well, have taken a hard line enforcement approach to immigrant youth, including expediting court hearings for a period of time, discouraging youth from applying for relief, building more detention facilities and processing centers, increasing border security, urging Central American leaders to discourage people from journeying north,³⁹ and narrowing interpretations of eligibility for immigration status for youth,⁴⁰ all in an effort to stem the flow of migration, despite ample evidence that a majority of children arriving unaccompanied to the United States are in need of international protection.⁴¹

C. Department of Justice, Federal Circuit Court of Appeals, and the U.S. Supreme Court⁴²

Although the Homeland Security Act transferred many of the Attorney General's (AG) immigration functions to the Department of Homeland Security (DHS), the AG still retains the power to make definitive determinations on questions of law and to review many of the DHS decisions. More importantly, the Executive Office for Immigration Review (EOIR), which

³⁸ Eli Hager, *Trump's Quiet War on Migrant Kids*, The Marshall Project & New York Times, May 1, 2018, <https://www.themarshallproject.org/2018/05/01/trump-s-quiet-war-on-migrant-kids>.

³⁹ See, e.g., Jerry Markon, *Influx of unaccompanied immigrant children slowed again in September*, The Washington Post, Oct. 9, 2014, <http://www.washingtonpost.com/blogs/federal-eye/wp/2014/10/09/influxof-unaccompanied-immigrant-children-slowed-again-in-september/>.

⁴⁰ See, e.g., *Matter of A-B-*, 27 I&N Dec. 316 (BIA 2018) (seeking to limit the instances of private persecution that can qualify an applicant for asylum); Liz Robbins, *A Rule Is Changed for Young Immigrants and Green Card Hopes Fade*, New York Times, Apr. 18, 2018, <https://www.nytimes.com/2018/04/18/nyregion/special-immigrant-juvenile-status-trump.html>.

⁴¹ Children on the Run, p. 6.

⁴² Thanks to Ann Benson for providing much of the original material in this section.

consists of the immigration courts and the Board of Immigration Appeals (BIA), remains under the jurisdiction of the U.S. Department of Justice, headed by the AG. EOIR has the authority to review many DHS decisions, but the AG has the power to overrule decisions made by EOIR. Unfortunately, this setup can allow the immigration courts to be yet another political branch of the government. Attorney General Jeff Sessions has recently used this power to overrule key agency decisions to narrow eligibility for immigration relief,⁴³ and undermine the authority of judges to continue, administratively close, or otherwise exercise discretion in individual immigration cases.⁴⁴ These decisions have spurred renewed calls from immigration judges and advocates to Congress to create an independent judicial court system for immigration cases.⁴⁵

EOIR is composed of the immigration courts and the BIA, the appellate body that reviews the decisions of these immigration courts. While USCIS oversees the paper process (i.e., applications), the immigration courts oversee judicial decisions regarding the immigration process as well as applications filed in court. ICE, USCIS, or the CBP arrest an individual and initiate formal “removal” (deportation) proceedings. These proceedings occur in immigration court and are presided over by an immigration judge (IJ). This judge determines whether the noncitizen should be ordered removed from the United States or, if they qualify, be granted “relief from removal” and permitted to remain.

All noncitizens, as well as the government, have the right to appeal decisions of the IJ to the BIA. The BIA is located in Falls Church, Virginia, and is currently comprised of 15 Board Members, including a Chairman and Vice Chairman,⁴⁶ who have the power to issue decisions that are binding on all immigration judges, as well as ICE, USCIS, and CBP throughout the country. Information on EOIR and the BIA can be found online at <http://www.usdoj.gov/eoir>.

The federal circuit courts of appeal (federal appellate courts) have the power to review decisions made by the BIA. The federal circuit wherein the case arose (i.e., where removal proceedings were concluded) will have the power to review the BIA decision (regardless of the physical location of the noncitizen at the time the appeal is filed).⁴⁷ Federal legislation passed in 1996 placed significant limitations on the powers of the appellate courts in relation to immigration appeals. However, despite these limitations, immigration appeals remain the largest category of cases in many federal appellate courts. Decisions of the federal circuit courts of appeal are binding on the BIA, the immigration judges, ICE, USCIS, and CBP within that circuit.

Either party (the government or the noncitizen) can file a petition requesting the U.S. Supreme Court to review a decision by the federal appellate court. However, unlike the BIA or the federal appellate court, this is not an “appeal of right” (i.e., one that the court is required to hear), but rather is discretionary. The Supreme Court only agrees to review a fraction of the cases it is

⁴³ See, e.g., *Matter of A-B-*, 27 I&N Dec. 316 (BIA 2018) (seeking to limit the instances of private persecution that can qualify an applicant for asylum).

⁴⁴ See, e.g., *Matter of L-A-B-R*, 27 I & N Dec. 405 (BIA (2018) (limiting the reasons immigration judges can issue continuances in immigration cases).

⁴⁵ See, e.g., American Immigration Lawyers Association, *Stop the Corruption of USCIS and EOIR Missions: Ensure Fairness and Consistency in All Immigration Decisions* (Aug. 1, 2018).

⁴⁶ BIA, *Board of Immigration Appeals Practice Manual*, (Mar. 23, 2018), <https://www.justice.gov/eoir/page/file/1079696/download>.

⁴⁷ 8 USC § 1252(b)(2).

requested to hear. However, decisions issued by the Supreme Court are binding on every court and every agency.

Special note on USCIS Administrative Appeals Office (AAO) decisions. When an application is denied by USCIS, there is an administrative appeals process. The body that handles these appeals is the Administrative Appeals Office (AAO). Often, decisions regarding children and youth will appear as AAO decisions. See example at **Appendix E**. CLINIC’s “Index of Unpublished Administrative Appeals Office Decisions on Special Immigrant Juvenile Status” is a valuable resource to help assess a potential appeal of an SIJS denial.⁴⁸

D. U.S. consulates

U.S. consulates are part of the Department of State and at least one U.S. consular office exists in most foreign countries. U.S. consulates play a primary role in the processing and issuance of U.S. visas to foreign nationals who wish to come to the United States and qualify under some type of legal avenue to do so, such as student visas, tourist visas, employment visas, or refugee visas. Family members who are immigrating to the United States and foreign workers coming to work for companies in the United States all must have their visas issued by a U.S. consulate in their home country (or the closest U.S. consulate).

§ 1.4 Immigration Legal Provisions

A. Immigration and Nationality Act and accompanying regulations and memoranda

Immigration law is controlled by a federal law—the Immigration and Nationality Act (INA). The INA appears at Title 8 of the United States Code, 8 USC § 1101 *et seq.* The INA is the subject of constant revision. The INA can be accessed on USCIS’s website at www.uscis.gov under “Laws.”

Corresponding regulations to the INA are contained in 8 CFR § 1.1 *et seq.* These regulations interpret the meaning of the INA and are written by the governmental agency involved in their implementation. The purpose of the regulations is to clarify the laws and set procedures for implementation. Whereas the INA says what the law is, the regulations fill in a lot of details about how the DHS immigration agencies are going to apply the laws. You can access the 8 CFR, immigration regulations, on USCIS’s website at www.uscis.gov under “Laws.”

Finally, there are memoranda or internal operation instructions written and issued by the various federal agencies who work with immigrants. These are internal instructions to the employees of the agency. Their purpose is to instruct the agency employees on agency protocol and practice. Some are numbered and put out in a collection in books, for example, the Foreign Affairs Manual of the Department of State (which can be accessed online at www.state.gov) and the USCIS Policy Manual (which can be accessed on the USCIS website at www.uscis.gov, and has special sections on special immigration juvenile status and SIJ-based adjustment of status at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6.html> and <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html>).

⁴⁸ You can request the index online at <https://cliniclegal.org/index-unpublished-administrative-appeals-office-decisions-special-immigrant-juvenile-status>.

Other times they are issued through policy memoranda authored by a government agency, which also can be accessed on the USCIS website at www.uscis.gov under “Laws.”

B. Cases

The case law governing immigration includes decisions written by various courts, from the BIA to the federal appellate courts to the U.S. Supreme Court. For better or worse, there are not many published cases regarding immigration issues for children and youth from the BIA or federal courts, although there is an emerging body of federal case law on SIJS.⁴⁹ The cases that do exist carry equal legal weight to statutes and regulations. In fact, cases can sometimes be more powerful than statutes and regulations because the cases can define and even overturn statutes and regulations. One such case relevant to children is *Perez-Olano v. Gonzalez*, a case that brought claims against USCIS for overstepping its authority by imposing additional SIJS requirements in regulations that were not stated in the statute. This case was resolved via settlement agreement in late 2010⁵⁰ and supersedes all “practices, policies, procedures and federal regulations to the extent they are inconsistent with the [Settlement] Agreement,” although it has now sunset.⁵¹ See discussion in **Chapter 4**.

C. Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) passed the House and Senate on December 10, 2008, and was signed into law by the president on December 23, 2008. This legislation was designed to bolster federal efforts to combat trafficking and, in the process, to provide critical protections for the tens of thousands of unaccompanied minors who come to the United States each year. The law seeks to create better screening of unaccompanied minors who may be the victims of trafficking or who may fear return to their home country, safer repatriation of any youth removed from the United States, more compassionate environments for children in immigration custody, and broader legal protections and access to services for these youth. The TVPRA has been repeatedly challenged and criticized by the Trump administration, but unless or until it is overturned, the TVPRA remains good law.

Of the thousands of children who enter the United States every year without a parent or guardian, many are victims of trafficking, persecution, or other abuse and violence. Some are fleeing wars and armed conflicts, gang recruitment, domestic violence and slavery. In the past, these youth were detained in overly secure facilities in immigration custody, afforded little legal representation in immigration proceedings, and often returned to their home countries with virtually no safeguards. The TVPRA created a multi-agency response to address these problems by recognizing the enormous vulnerability of these youth and providing special services tailored to their needs. A core tenet of the TVPRA’s changes to the treatment of unaccompanied minors is its emphasis on the child welfare principle of the “best interests of the child.”

⁴⁹ See, e.g., *C.J.L.G. v. Sessions*, 880 F.3d 1122 (9th Cir. 2018); *Budhathoki v. Nielsen*, 898 F.3d 504 (5th Cir. 2018); *Osorio-Martinez v. Attorney General United States of America*, 893 F.3d 153 (3d Cir. 2018).

⁵⁰ Settlement Agreement in *Perez-Olano, et al. v. Holder, et al.*, No. CV 05-3604, (C.D. Cal. Dec. 14, 2010) p. 7, ¶ 19, http://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Signed_Settlement_Agreement.pdf [hereinafter *Perez-Olano Settlement Agreement*].

⁵¹ *Id.* at 5-6.

Screening and repatriation. The TVPRA creates mandatory screening of children brought into federal custody at the border to determine whether they are victims of trafficking or fear persecution. In the case that the child is to be repatriated, the law provides a pilot repatriation program that works with Health and Human Services (HHS), the Department of State (DOS), and the Department of Homeland Security (DHS) to develop and implement best practices for safe-repatriation and reintegration of youth to their home countries.⁵² The agencies are required to report to Congress with data on minors removed from the United States—including age, gender, country of origin, and types of immigration relief requested.

Detention. The TVPRA also provides that children be placed in the least restrictive setting that is in “the best interest of the child” and prohibits children from being placed in secure facilities unless a determination has been made that the child poses a danger to herself or others or has been charged with having committed a criminal offense. For children ultimately placed in secure detention facilities, HHS must review such placement on a monthly basis.

Legal access. The TVPRA expands legal access for unaccompanied minors by requiring “to the greatest extent practicable” that these children have legal representation and authorizing HHS to appoint independent child advocates for trafficking victims and other vulnerable unaccompanied children.⁵³ For years following the implementation of the TVPRA, this was limited to the provision of pro bono legal representation for a small number of children, but did not result in representation in the vast majority of unaccompanied minor cases. More recently, ORR began pilot programs in Houston, Texas and Los Angeles, California to provide legal representation for a limited number of unaccompanied children after they were released from detention. This program was then expanded to provide legal representation for unaccompanied children in nine cities and who meet certain other criteria.⁵⁴ These funds to provide legal representation for children after release from ORR detention were abruptly ended in May of 2018.⁵⁵

The TVPRA also expanded the category of children eligible to apply for Special Juvenile Immigrant Status, a form of legal status for abused, neglected, or abandoned undocumented children. The legislation also exempted unaccompanied minors from the one-year filing deadline for asylum applications and allowed them to apply for asylum with USCIS in a non-adversarial system, rather than in front of an immigration judge in a courtroom. Further, the TVPRA provides no-cost voluntary departure for unaccompanied minors.

While many advocates feel that the TVPRA still falls short of offering the types of legal protections that immigrant children need, the importance of the TVPRA cannot be understated. However, in order to have access to its protections, children need to be identified as children. If you have a client who is a child or youth who has been mistakenly identified as an adult, correct this classification with the appropriate agency (DHS if the child is in custody, EOIR if the child is in court) as soon as possible.

⁵² TVPRA § 235(a)(5).

⁵³ TVPRA § 235(c)(5)–(6).

⁵⁴ ORR, *Services Provided*, <https://www.acf.hhs.gov/orr/about/ucs/services-provided>.

⁵⁵ Meredith Hoffman, *Trump Has Quietly Cut Legal Aid for Migrant Kids Separated From Parents*, Vice, May 31, 2018, https://www.vice.com/en_us/article/a3a798/trump-has-quietly-cut-legal-aid-for-migrant-kids-separated-from-parents.

Determining if and when a child is “unaccompanied,” for purposes of obtaining TVPRA protections. The TVPRA’s critical protections described above apply to “unaccompanied” minors in the United States. The term “unaccompanied alien child” is defined as a child who has no lawful status in the United States, is under the age of 18 and has no parent or guardian in the United States or no parent or legal guardian in the United States who is available to provide care and physical custody.⁵⁶ In an apparent effort to limit the number of youth who are classified as “unaccompanied” minors, DHS issued a memorandum directing USCIS, CBP, and ICE to develop “uniform written guidance and training” on who should be classified as “unaccompanied,” and when and how that classification should be reassessed.⁵⁷ This guidance has not yet been developed, but it could be issued at any time.

NOTE: Publication of proposed *Flores* regulations. On September 7, 2018, the DHS and HHS published proposed regulations that would, once finalized, replace the *Flores* Settlement Agreement. A 60-day period for public comment is currently underway, and litigation arguing that the regulations are inconsistent with the *Flores* Settlement Agreement is likely to be filed. To review the proposed regulations, which would, among other things, impact the unaccompanied minor classification, as well as significantly expand detention of accompanied children in family detention centers and make other changes to the detention conditions for youth in ORR custody, see <https://www.federalregister.gov/documents/2018/09/07/2018-19052/apprehension-processing-care-and-custody-of-alien-minors-and-unaccompanied-alien-children>.

Jurisdiction and interpretation of the term “unaccompanied.” As mentioned above, DHS has directed USCIS, ICE, and CBP to issue uniform guidance on how to classify youth as “unaccompanied.”⁵⁸ Although this guidance has not yet been issued, it is expected to narrow the number of youth who will be classified as “unaccompanied,” and thus can benefit from the protections of the TVPRA. Currently, while both the TVPRA and Homeland Security Act of 2002 are ambiguous as to who has jurisdiction to make the “unaccompanied” child determination, in practice, it has been made principally by CBP and ICE, and to a lesser extent ORR, EOIR, and USCIS. Because children may come before all of these agencies, these agencies should all have authority to make such determinations. Unfortunately, interpretation of the term “unaccompanied,” has varied amongst these agencies and consequently, has led to inconsistent determinations. This confusion has sometimes resulted from the various shifts of a child’s physical custodial status (for example, release from ORR custody into the custody of a parent or non-parent sponsor). Additional issues around the unaccompanied child determination can also arise from the interpretation of a parent or legal guardian “available to provide care and custody.” For example, a child may have parents in the United States who may not want to live with the child because the parent and the child are estranged. Further, many children living with their parents are apprehended in the United States without their parents and their parents do not come forward out of fear for their own deportation. However, many of these parents are able and

⁵⁶ 6 USC § 279(g)(2), as amended by the Homeland Security Act of 2002.

⁵⁷ Sec. John Kelly, *Implementing the President’s Border Security and Immigration Enforcement Improvements Policies*, (Feb. 20, 2017), Sec. L; see also Pres. Donald Trump, *Executive Order on Border Security and Immigration Enforcement Improvements*, (Jan. 25, 2017), Sec. 11(e).

⁵⁸ *Id.*

willing to provide care and custody. Nonetheless, many of these children are classified as “unaccompanied.”

For many years, the “unaccompanied” determination was particularly problematic for advocates, immigration judges, and USCIS officers trying to re-determine who was “unaccompanied” for purposes of the initial jurisdiction of USCIS over UAC asylum applications. Thankfully, in 2013, USCIS issued guidance on its jurisdiction over UAC asylum claims. As of June 10, 2013, asylum offices rely on the previous determination by CBP or ICE that an applicant is a UC, without making a separate factual inquiry into the applicant’s age or unaccompanied status (for example, whether the child is still under 18 or remains “unaccompanied” at the time they file the asylum application), and take jurisdiction over the asylum application.⁵⁹ The one exception to this policy is where there has been an affirmative act to terminate the UAC status by the HHS, ICE, or CBP before the filing of the asylum application (for example, when the child is transferred into ICE custody upon their 18th birthday). However, as noted above, although this Memorandum remains in place as of the time of this writing, additional guidance is expected that will implement changes and narrow the circumstances in which children are treated as unaccompanied minors. In addition, the proposed *Flores* regulations authorize continually reassessing UAC status: “When an alien previously determined to have been a UAC has reached the age of 18, when a parent or legal guardian in the United States is available to provide care and physical custody for such an alien, or when such alien has obtained lawful immigration status, the alien is no longer a UAC. An alien who is no longer a UAC is not eligible to receive legal protections limited to UACs.”⁶⁰ Although this proposed regulation has not yet been implemented and may be changed based on comments received or litigation, it indicates the administration’s goals in this area.

Timing. The unaccompanied determination can be made at any time in the process of a child’s case, but in the vast majority of cases, it is made during the initial apprehension by DHS because the TVPRA requires that DHS refer an unaccompanied minor to HHS custody within 72 hours of apprehension. If a previous determination of unaccompanied status has not been made, asylum offices will make determinations at the time the child files their asylum application.⁶¹ As stated above, under the proposed *Flores* regulations, UAC status could be reassessed throughout the child’s immigration process.

Rescission of TVPRA protections based on change of unaccompanied minor classification. Advocates should argue that the protections of the TVPRA, once triggered, cannot be taken away from a child. The TVPRA’s retroactivity and effective date provide that the statute shall apply “to all aliens in the United States in pending proceedings” before DHS or EOIR or administrative or federal appeals, “on the date of the enactment of this Act.” With this language, advocates should argue that Congress provided TVPRA protections to all persons who have cases still pending

⁵⁹ USCIS Memorandum, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children* (May 28, 2013), <http://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves>; USCIS Memorandum, *Updated Service Center Operations Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children* (June 4, 2013), <http://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves> [hereinafter *June 2013 Memorandum*].

⁶⁰ Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Fed. Reg. 45486, 45529 (Sept. 7, 2018) (to be codified at 8 CFR pts. 212 and 236, 45 CFR pt. 410).

⁶¹ *June 2013 Memorandum*, *supra* note 59.

regardless of whether they still meet the definition of an unaccompanied minor. The BIA has agreed with this interpretation as it has remanded many cases where the child may have been an unaccompanied minor at some point in the proceedings, so that such cases can be adjudicated in accordance with the TVPRA. Further, USCIS's policy guidance on unaccompanied minor asylum claims, discussed above, also supports the proposition that once a child has been classified as unaccompanied, that classification will stay with the child despite changes in age or custody, unless it is affirmatively terminated by ORR, ICE, or CBP. However, as noted above, this policy is expected to change in the near future.

§ 1.5 Grounds of Inadmissibility and Deportability and Waivers

A. Grounds of inadmissibility (formerly grounds of exclusion)

Since 1798, Congress has used its plenary power to deal with foreign “undesirables.” Grounds of inadmissibility, found in INA § 212(a), were developed to identify the kinds of persons whom Congress did not want to admit to the United States. Whenever any non-citizen attempts to enter the United States, that person is subject to being barred from admission based on these categories. Until April 1, 1997 the grounds of inadmissibility were referred to as the grounds of exclusion.

Example: Jaime, an unaccompanied minor, is attempting to enter the United States from Mexico. DHS determines that Jaime does not possess a valid unexpired immigrant visa, reentry permit, border crossing identification, or other valid entry document. Jaime may be found inadmissible and refused admission, unless DHS determines that he is a victim of trafficking or has a credible fear of persecution.

The grounds of inadmissibility do not only apply at the border. Non-citizens already in the United States must prove that they are not inadmissible in order to qualify for many immigration benefits, including Special Immigrant Juvenile Status, immigration through a family visa petition, U or T nonimmigrant status, and temporary protected status. Fortunately, some immigration options for children and youth provide exemptions from certain grounds of inadmissibility. The exemptions depend upon the form of relief for which the child is applying. Even if the child is inadmissible, there are often broad waivers for inadmissibility available to them.

Example: Tariq, who is 16-years-old, has lived in the United States for five years with no lawful status. He was abused by his mother and abandoned by his father and consequently, he entered the child welfare system as a dependent. Despite the fact that Tariq falls within several grounds of inadmissibility including being likely to become a public charge and being present in the United States without being admitted, he is still eligible to apply for Special Immigrant Juvenile Status because these grounds are automatically exempted for SIJS applicants.

Chapters 5 and 17 provide a more thorough discussion of some of the grounds of inadmissibility.

PRACTICE TIP: Many children and youth are exempt from certain grounds of inadmissibility, depending upon the relief for which they are applying. You should check the requirements for each form of immigration relief carefully.

B. Grounds of deportation

The grounds of deportation provide bases for expelling persons from the United States once they have been admitted. Some grounds of deportation are similar, although not identical, to corresponding grounds of inadmissibility. The grounds of deportation are found in INA § 237(a).

Example: Monique is a lawful permanent resident (“green card” holder). At the age of 19 she becomes deportable after she is convicted in adult criminal court of domestic violence. If Monique is placed in removal proceedings, an immigration judge can find her deportable and order her removal. She would lose her permanent resident status and be forced to leave the United States. (Note: If Monique’s criminal case was handled in juvenile court proceedings instead, she would not be deportable under this ground because it requires a conviction, and juvenile delinquency adjudications are not considered convictions for immigration purposes. See **Chapter 17**.)

A discussion of some of the grounds of deportability is in **Chapter 17**.

C. Waivers of inadmissibility and deportability

Some grounds of inadmissibility and deportability can be waived under certain circumstances, at the discretion of an immigration judge, USCIS, or consular officials. Children and youth may have special waivers available to them depending upon the form of immigration relief for which they are applying and the act that they committed. Waivers are granted as a matter of discretion.

The law governing which grounds may be waived and what standards apply may be located in the same sections of the Immigration and Nationality Act as the grounds of inadmissibility or deportability. Other waivers may be set forth in the law governing the specific form of immigration relief for which the person is applying. Waivers for each form of relief are discussed in their respective chapters.

D. When do the inadmissibility and deportability grounds apply?

While this area is complex, and each case must be individually researched and analyzed, there is a fairly simple way to visualize which grounds might apply in which circumstances. A noncitizen who wants to get something from the immigration authorities generally must be admissible. For example, if children want to be admitted at the border or obtain legal status, i.e., a green card, they generally will need to overcome the grounds of inadmissibility. *Issues about the grounds of inadmissibility are usually what will affect undocumented children and youth the most.*

By contrast, a noncitizen child or youth who has some lawful immigration status and is trying not to lose it will immediately face the grounds of deportation. A lawful permanent resident (LPR) who is deportable can be placed in removal proceedings and removed, at which time the LPR will lose permanent resident status. On the other hand, an LPR who is inadmissible but not deportable can afford to sit tight. As long as the LPR does not leave the country (and therefore might have to apply to re-enter) and does not want to apply for any new benefit, such as U.S. citizenship, the fact that they have committed some act causing them to be inadmissible (but not deportable), will not cause them to lose the immigration status that they have: it may just block them from getting anything new.

Analogy: The family dinner. Think of the United States as a family having dinner, when a stranger comes to the door claiming to be a long-lost cousin. The many questions that would be asked and strict standards that would be applied to the stranger before they are admitted to the house are like the grounds of inadmissibility. Once the stranger has been admitted to dinner, they probably would not be told to leave unless they behaved very badly (or it was discovered that they committed fraud to get in). This somewhat more generous standard represents the grounds of deportability.

WARNING! It is important that advocates individually analyze each case. Some immigration applications have requirements beyond not being deportable or inadmissible. For example, an application for Violence Against Women Act (VAWA) or citizenship requires that the person possess good moral character. Some other immigration applications, such as DACA, do not necessarily require that the client not be deportable or inadmissible, but have entirely separate criteria.

§ 1.6 Overview of the Immigration Process for Children and Youth

A. The affirmative immigration process

The affirmative immigration process generally involves an application for an immigration benefit, i.e., Special Immigrant Juvenile Status, asylum, and/or lawful permanent residence, for which a person may be eligible. Many immigration applications are submitted to U.S. Citizenship & Immigration Services (USCIS). The process generally involves submitting an application packet to USCIS, attending a biometrics appointment for children over a certain age (a background check), attending an interview if scheduled, possibly submitting any additional documentation needed by USCIS, and then issuance of a decision by USCIS. The processes for applying for the different forms of relief covered in this manual are provided in their respective chapters.

Applying affirmatively for a form of immigration relief confers several benefits, including providing enough time to develop a strong case, allowing the youth to have their application adjudicated in a non-adversarial setting, and having control over the case overall, i.e., the information submitted and considered. The risk of submitting an affirmative application (that is, for a child or youth who is not in removal proceedings), however, is that if it is denied and the child has no other way to immigrate, ICE could place the child in removal proceedings and try to deport them. Under the updated Notice to Appear (NTA) guidance issued by USCIS in June of 2018, USCIS's new policy is that it *will* refer any denied applicants to removal proceedings if they do not have lawful status.⁶² Although it remains to be seen how the new USCIS guidance will be implemented,⁶³ this risk must be considered and factored into the decision whether or not

⁶² USCIS, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTA) in Cases Involving Inadmissible and Deportable Aliens* (June 28, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.

⁶³ As of September 1, 2018, the new USCIS guidance was not yet in effect. USCIS, *Updated Guidance on the Implementation of Notice to Appear Policy Memorandum*, (July 30, 2018), <https://www.uscis.gov/news/alerts/updated-guidance-implementation-notice-appear-policy-memorandum>.

to submit an immigration application. By applying for any form of immigration relief affirmatively, youth are making themselves known to the Department of Homeland Security.

One downside for immigrant children not in removal proceedings is that they may not realize that they need to, and are eligible to, apply for immigration relief until they are already too old for some of the relief options specifically for youth. Remember to tell your clients that any undocumented younger siblings or family members will also need immigration relief, and could benefit by applying sooner rather than later.

B. Removal (or deportation) proceedings

1. Overview

Immigrant children and youth in the deportation process face overwhelming obstacles. They are held to the same standard of proof as adults in fighting their deportation. They are provided with very little information about their legal rights, such as viable defenses against deportation, for which many of them are eligible. They often do not understand the nature of the proceedings due to age, language and cultural barriers, and importantly, may lack access to counsel.

Some improvements have been made, however, to these processes for children and youth. Unaccompanied children and youth in ORR custody are significantly more likely to receive representation due in part to federal, state, and local efforts to increase representation of unaccompanied children. There is also a program in a limited number of jurisdictions, run by the Young Center for Immigrant Children's Rights, to provide child advocates, similar to guardians *ad litem*, to particularly vulnerable youth in custody.⁶⁴ The TVPRA also promotes greater access to legal counsel for unaccompanied immigrant children, encourages the appointment of child advocates for trafficking victims and other vulnerable children, and requires more expansive training of federal officials who work with unaccompanied immigrant youth.⁶⁵

Ultimately, what happens to a child or youth in removal proceedings will depend on various factors including: whether they are considered accompanied or unaccompanied as defined by immigration laws, where they are apprehended by immigration authorities, and the individual circumstances of their situation, including prior immigration and delinquency history, if any. This section will provide the authority for and standards governing removal proceedings and describe generally what happens to minors in the removal (or deportation) process once they have been apprehended. A map of the deportation process for children and youth is provided at **Appendix B**. An in-depth discussion of the apprehension/arrest phase and detention process is covered in **Chapter 18**.

2. Removal proceedings: Admission and the burden of proof

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 created removal proceedings. A removal proceeding is the court process that determines whether someone will be removed (also called deported) from the United States. Removal proceedings are

⁶⁴ For more information, see Young Center, *Child Advocate Program*, <https://www.theyoungcenter.org/child-advocate-program-young-center/>.

⁶⁵ TVPRA § 235(c)(5)–(6); TVPRA § 235(e).

initiated when DHS files a Notice to Appear (in other words, a charging document).⁶⁶ In removal proceedings, DHS may charge noncitizens with being inadmissible⁶⁷ or deportable.⁶⁸ Generally only those noncitizens who have been “admitted” to the United States will face the grounds of deportability in removal proceedings. Those who entered without inspection will face the grounds of inadmissibility.

Thus, a key question in removal proceedings is whether the person has been **admitted** into the United States. To be considered admitted, a person must have made a “**lawful entry ... after inspection**” by a DHS officer.⁶⁹

Noncitizens who entered the United States with inspection, pursuant to a visa of some kind, have been **admitted**. If the DHS brings them into removal proceedings, *the DHS has the burden of proving that the individual comes within a ground of deportability*.

Noncitizens who have not been lawfully admitted into the United States are **seeking admission**. If challenged and placed in removal proceedings, *these people have the burden of proving that they do not come within one of the grounds of inadmissibility*. In some cases the persons simply have no immigration documents and are removed for being inadmissible on that basis. In other cases they may be inadmissible for other reasons.

Who has not been admitted, and therefore is still seeking admission and is subject to the grounds of inadmissibility? Noncitizens who:

- Entered the United States without inspection—for example, avoided a DHS checkpoint by wading across the Rio Grande River from Mexico with a smuggler or coyote;
- Arrived at the border or a port of entry hoping to be admitted but who are stopped and challenged by DHS;
- Are parolees—see INA § 101(a)(13)(B); or
- Are alien crewmen—see INA § 101(a)(13)(B).

A different rule applies to lawful permanent residents who travel abroad and return to the United States. Returning permanent residents are presumed *not* to be seeking admission, *unless* they come within certain exceptions set out in the statute.⁷⁰

There are a few types of removal proceedings. For purposes of children and youth, there are two removal procedures with which advocates should be primarily familiar. A non-citizen can be ordered removed by an immigration judge as described in **Subsection 3** below. A person can also be removed through voluntary removal by agreeing to withdraw their application for admission. This often occurs at the border, although unaccompanied youth, under the TVPRA, should not be voluntarily removed unless they are from a contiguous country and there are no trafficking concerns or fear of return. Voluntary removal should not be confused with voluntary departure,

⁶⁶ IIRIRA § 309(c)(1). IIRIRA applies to proceedings on or after April 1, 1997; before then, deportation proceedings were initiated by an Order to Show Cause.

⁶⁷ INA § 212(a). IIRIRA renamed the former grounds of “exclusion” the grounds of “inadmissibility.”

⁶⁸ INA § 237(a). Under IIRIRA INA § 237 replaced former INA § 241 grounds of deportation.

⁶⁹ INA § 101(a)(13).

⁷⁰ See INA § 101(a)(13)(C).

which is a formal order granted by ICE or EOIR only to qualifying immigrants in lieu of a removal order. See **Chapter 16**.

3. *The removal process*

Removal proceedings against an individual start when an immigration official issues a document called a Notice to Appear (NTA), files it with the immigration court, and gives a copy to the individual.⁷¹ Often the person is arrested first and then receives the NTA. The person against whom the NTA is issued is called the **respondent** (the person who responds to the charges). The regulations implementing the removal procedures are found at 8 CFR § 239, § 240, § 1239, and § 1240.

Generally the process for removal proceedings is as follows:

1. **Arrest and detention.** A person can be **arrested and detained** by an immigration official (usually a CBP or ICE official) on suspicion of not having lawful immigration status, or of having received a conviction that makes the person deportable. After the arrest, the official will interview the person. DHS is required by law to provide a notice of rights to children and youth. Nevertheless, few children understand what this interview is about, and information they give is often used against them. See **Chapter 18** on apprehension/arrest.
2. **The Notice to Appear.** The Notice to Appear (NTA) is the formal legal document that charges the person with being removable. In the NTA, the government must state specific facts that show (1) the person is not a U.S. citizen and what their alleged country of citizenship is, (2) the acts or conduct that are allegedly in violation of the law, (3) the legal authority under which the government is conducting the proceedings, and (4) the provisions of the law that the person allegedly violated. The NTA must also contain the time and date of the hearing.⁷² The BIA held that this requirement can be met by a two-step process: an NTA “that does not specify the time and place of [a respondent’s] initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Act, so long as a notice of hearing specifying this information is later sent to the [respondent].”⁷³

Example: In Gabriela’s case, the NTA will state that Gabriela is a citizen of Mexico and not a U.S. citizen. It will state that Gabriela entered the United States without inspection in June 2017 near Calexico, California. (Gabriela herself gave the immigration officer all of this information when she was arrested.) Based on these factual allegations, it will charge Gabriela with being present in the United States in violation of the Immigration and Nationality Act and thus removable.

⁷¹ Certain designated officials of USCIS, CBP, and ICE have the authority to issue a Notice to Appear. See 8 CFR § 239.1.

⁷² *Pereira v. Sessions*, 138 S. Ct. 2105 (2018).

⁷³ *Matter of Bermudez-Cota*, 27 I & N Dec. 441 (BIA 2018).

The government must **serve** the person with a copy of the NTA (give the person a copy). If the person is detained, the government may simply hand the person the NTA. If the person is not in detention, the government may serve the NTA by mail.⁷⁴

3. **The bond hearing.** Bond hearings are not common for children and youth. Children and youth who are deemed “unaccompanied” (under the age of 18 and who do not have a parent or legal guardian who is willing or able to provide for their care and custody), will be in the custody of ORR. For these youth, there is often no bond hearing, but instead a reunification process facilitated by ORR with family members, or a transfer to long-term foster care. Nevertheless, the ORR reunification process is opaque, and in some instances, the youth may want a bond hearing in front of an immigration judge. Previously, ORR’s position was that it had exclusive authority over the release of immigrant youth in its custody. In 2017, the Ninth Circuit disagreed and found that all detained immigrant youth have a right to a bond hearing before an immigration judge.⁷⁵ See **Chapter 18**. If the child or youth has been arrested and is considered “accompanied,” ICE Enforcement and Removal Operations may set an **immigration appearance bond** that the person (or a family member or friend) must post to secure the youth’s release from custody. ICE may also just release the youth on their own recognizance, or subject to an ankle-bracelet monitoring program called Intensive Supervision Appearance Program (ISAP). If a bond is issued, it is supposed to guarantee that the person will come to future hearings and interviews. If the person does not show up, the person will lose the bond money. More information on the bond and release process for unaccompanied and accompanied youth is in **Chapter 18**.
4. **The master calendar hearing.** The next stage in removal proceedings is called the **master calendar** hearing. At this hearing, the person must respond to the charges on the NTA. The judge will most often rule on two questions:
 - a. Is the person really removable, as charged on the NTA? In other words, can ICE prove that the NTA charges are correct?
 - b. If so, should the person be removed, or can the person apply for some kind of **relief from removal** or **means of immigrating**?

If the child can apply for some relief (for example, adjustment of status), the judge may schedule another longer hearing to decide if the youth is eligible for the relief. In some cases, however, the judge may terminate (or end) proceedings for the youth to proceed with an immigration application before USCIS; this happens in some jurisdictions, for example, when a youth has been approved for Special Immigrant Juvenile Status applications. When proceedings are administratively closed, the person is still technically in removal proceedings, and the government could open up the case at any time. If removal proceedings are not terminated, the longer hearing is called the **merits hearing** or “individual hearing.” The judge will also schedule a merits hearing if the person challenges removability and attacks the government’s evidence as being insufficient.

⁷⁴ INA § 239(a)(1).

⁷⁵ *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017).

If the person cannot apply for any relief, and does not qualify for or fight for **voluntary departure** instead of removal, the judge will issue a **final order of removal**. If the person does not challenge the removal order, ICE will remove the person to their country of origin. While the TVPRA provided for a pilot program for the safe repatriation of children, it remains unclear to what extent any of these practices have been implemented.

Voluntary departure. Voluntary departure is a form of discretionary relief that allows a person to depart the United States, instead of undergoing deportation or removal. The INA provides for a grant of voluntary departure at two distinct times. First, immigration authorities may grant voluntary departure prior to the conclusion of removal proceedings.⁷⁶ Second, the immigration judge may grant voluntary departure instead of removal at the conclusion of removal proceedings.⁷⁷ It is easier for the applicant to qualify for the type of voluntary departure that comes prior to the conclusion of proceedings. This fact unfortunately penalizes applicants who pursue relief.

Legally, departing voluntarily is different from and better than having an order of removal on one's record. A person who accepts voluntary departure is not subject to certain bars to re-entry and therefore, may be able to return to the United States if the person qualifies for immigration relief in the future. If the child or youth qualifies and is classified as an unaccompanied minor, then voluntary departure is available at no cost.⁷⁸ If a child is considering voluntary departure in lieu of removal, it should only be requested if the child is actually going to leave the United States and/or the immigration judge denies relief and all appeals fail. Otherwise, the voluntary departure order will convert into a removal order if the child fails to depart and the child will be subject to *additional* penalties that can bar immigration relief in the future.⁷⁹ Voluntary departure is discussed in greater detail in **Chapter 16**.

5. **“Merits hearings” for relief.** If the person has a defense to removal, the judge may set the case over for another hearing on that defense, called a “merits hearing,” or “individual hearing.” The defense could be an attack on the facts or law set out in the NTA, and/or it could be an application for relief. At the conclusion of the merits hearing, the judge may either issue a decision in court or “reserve” the decision to give the judge time to prepare a decision. If the person is ordered removed, the person may appeal the decision to the Board of Immigration Appeals.
6. **Expedited removal process.** Under the TVPRA, unaccompanied children must be placed in removal proceedings under INA § 240 and therefore, should not be subject to expedited removal proceedings.⁸⁰ Only in certain cases, such as when the youth is from a neighboring country and has been properly screened in accordance with the TVPRA, may the child be subject to voluntary removal (withdrawal of their application for admission)—but even here, the child is not subject to expedited removal proceedings.⁸¹ A

⁷⁶ INA § 240B(a)(1).

⁷⁷ INA § 240B(b)(1).

⁷⁸ TVPRA § 235(a)(5)(D)(ii).

⁷⁹ INA § 240B(d).

⁸⁰ TVPRA § 235(a)(5)(D).

⁸¹ TVPRA § 235(a)(2)(B)(i).

youth over 18 years old, however, could be subject to expedited removal, as could an accompanied youth.

After deportation. Once youth are deported, the government provides little to no resources to facilitate reunification with family members. Advocates have found that youth are often dropped off at the border, in the country's capital, or with the country's child welfare agency. The TVPRA attempted to change these practices and provided a pilot repatriation program that worked with several federal agencies to develop and implement best practices for safe-repatriation and reintegration of youth to their home countries. However, on the ground, not much appears to have changed. Many children are dropped off far from home, and their relatives in the home country are often not alerted to when, how, where, or even that the children are returning home. The best time to address what will happen to your clients after they are deported is before they actually leave the United States. Try to identify and contact family members before your clients are deported, and prepare a plan with your clients for what to do upon their arrival.

PRACTICE TIP: Before you practice in any immigration court, read the regulations governing such practice and the Immigration Court Practice Manual (ICPM). The ICPM may be found on the EOIR website at <http://www.usdoj.gov/eoir>. The ICPM contains the rules that the EOIR has made for practice in the local courts. They supplement the general regulations concerning practice in immigration courts, and include important filing deadlines. You must follow the general regulations and the ICPM rules or you may have procedural problems—including missed filing deadlines—that injure your case.

Immigration judges do still retain some discretion regarding setting, extending filing deadlines, motions to continue, and other issues that may arise. If you have questions about local practice, you can speak with an experienced local practitioner. You can also call the immigration court clerk and/or the clerk of the immigration judge before whom your case is pending to clarify how the ICPM is being implemented locally or inquire about your case. If you have filed a motion that is time-sensitive, you can follow-up on the motion with a call to the judge's clerk to ask about the timing on the decision.