

# UNACCOMPANIED IMMIGRANT YOUTH IN DELINQUENCY COURT

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# INTRODUCTIONS



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# AGENDA

- Background Information
  - Socio-cultural history of Northern Triangle
  - Journey to the United States
  - Placement in ORR custody and the Reunification Process
- Advocacy and Intervention While in Juvenile Custody
- Advocacy and Intervention While in ORR Custody

# COMMON ACRONYMS

- Department of Homeland Security (“DHS”)
- Citizenship and Immigration Service (“USCIS”)
- Immigration and Customs Enforcement (“ICE”)
- Executive Office for Immigration Review (“EOIR”)
- Office of Refugee Resettlement (“ORR”)
- Unaccompanied Alien Child (“UAC” - or "UC") - 6 USC § 279(g)(2)

# BRIEF SOCIO-POLITICAL HISTORY OF THE NORTHERN TRIANGLE



**Guatemala:** Civil War, US intervention, Genocide of Indigenous People, Extreme Poverty, Rich linguistic and cultural diversity



**Honduras:** Served as a base for US-Contra activity in neighboring Nicaragua, current president supported by US backed coup, high rates of homicide, politically active populace



**El Salvador:** Civil War, US intervention, Mass deportations of gang affected people in the 90s under IIRAIRA

# JOURNEY TO THE UNITED STATES

## Reasons children leave:

- Community violence
- Gender based violence
- Child abuse
- Extreme poverty

## During the journey children experience:

- Kidnapping
- Physical assault
- Sexual assault
- Trafficking
- Witness violence



# WHAT HAPPENS WHEN A CHILD CROSSES INTO THE US

- If not apprehended, child might:
  - Be held in a "drop house"
- If apprehended, child possibly:
  - Arrested at gunpoint
  - Assaulted by CBP
  - Shackled
  - Placed in "hielera" (ice box)
  - Accused of being an adult
  - Not allowed to brush teeth or bathe for days/weeks
- If child is detained by CBP or ICE, they should be transferred to the custody of the Office of Refugee Resettlement within 72 hours



# ORR PLACEMENT AND REUNIFICATION PROCESS



- A child can be placed in ORR custody anywhere in the country.
- There are several different levels of detention:
  - Shelter (lowest level)
  - Staff Secure (high staff ratio, group homes)
  - Secure (juvenile halls: currently only two in the country)
- Detention facilities *should be* temporary as children have a right to reunification with a family or a family friend in the United States.

\*From Reveal The Center for Investigative Reporting, June 26, 2018



# RISK FACTORS FOR UC INVOLVEMENT IN JJ SYSTEM

Systemic/Institutional: Pushed out of school, lack of supportive resources for UCs, Current xenophobic and anti-immigrant atmosphere in the U.S.

Family: Little adult support in the United States, Strained parent child relationship, Caregiver not able to provide supervision

Individual:  
Trauma + Teen  
Brain  
Coercion  
TBI  
Use of substances

# TIPS AND CONSIDERATIONS

## Considerations:

- If the child was in ORR custody, they have been interviewed by *MANY* adults prior to meeting you
- Child will not immediately be deported following transfer to ICE

## Tips:

- Child might speak another language other than Spanish (Mayan interpreters: <http://www.mayainterpreters.com/>)
- Use the child's language (punishment versus abuse)
- Ask back to assess for child's understanding of your role and the delinquency system
- Ensure to differentiate delinquency from immigration systems
- Find out if the child knows their A number. If so, call EOIR hotline: 1.800.898.7180 (Preferably with child).
- Ensure that the child knows your NAME

# WHAT CAN JUVENILE DEFENDERS DO TO HELP KIDS ONCE THEY ARE IN CUSTODY?

- Check for signed and properly completed immigration forms
  - I-247A and accompanying I-205 or I-200



# I-247 A

Date of Birth: \_\_\_\_\_ Citizenship: \_\_\_\_\_ Sex: \_\_\_\_\_

**1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2).**

- A final order of removal against the alien;
- The pendency of ongoing removal proceedings against the alien;
- Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

**2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).**

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

**IT IS THEREFORE REQUESTED THAT YOU:**

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling  U.S. Immigration and Customs Enforcement (ICE) or  U.S. Customs and Border Protection (CBP) at \_\_\_\_\_. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
  - **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. ~~This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.~~
  - Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
  - Notify this office in the event of the alien's death, hospitalization or transfer to another institution.
- If checked: please cancel the detainer related to this alien previously submitted to you on \_\_\_\_\_ (date).

\_\_\_\_\_  
(Name and title of Immigration Officer)

\_\_\_\_\_  
(Signature of Immigration Officer) (Sign in ink)

**Notice:** If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

- Must have boxes checked under 1 and 2
- Must be signed
- Note: 48 hours

I-205

DEPARTMENT OF HOMELAND SECURITY  
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

File No: \_\_\_\_\_

Date: \_\_\_\_\_

To any immigration officer of the United States Department of Homeland Security:

\_\_\_\_\_  
(Full name of alien)

who entered the United States at \_\_\_\_\_ on \_\_\_\_\_  
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

\_\_\_\_\_  
(Signature of immigration officer)

\_\_\_\_\_  
(Title of immigration officer)

\_\_\_\_\_  
(Date and office location)

To be completed by immigration officer executing the warrant: Name of alien being removed: \_\_\_\_\_

Port, date, and manner of removal: \_\_\_\_\_



Photograph of alien removed



Right index fingerprint of alien removed

\_\_\_\_\_  
(Signature of alien being fingerprinted)

\_\_\_\_\_  
(Signature and title of immigration officer taking print)

Departure witnessed by: \_\_\_\_\_  
(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

Departure Verified by: \_\_\_\_\_  
(Signature and title of immigration officer)

FILE NO. \_\_\_\_\_

Date: \_\_\_\_\_

**To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations**

I have determined that there is probable cause to believe that \_\_\_\_\_ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

**YOU ARE COMMANDED** to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

\_\_\_\_\_  
(Signature of Authorized Immigration Officer)

\_\_\_\_\_  
(Printed Name and Title of Authorized Immigration Officer)

I-200

# ASSESSING FOR TRAFFICKING VICTIM CERTIFICATION



# FIND RESOLUTIONS THAT ADDRESS TRAFFICKING

- Official designation from State as a trafficked victim
  - Does your state have specific laws pertaining to trafficked youth?
- Official designation from an expert or agency
  - Use the designation as a defense to offense



WHAT ARE DEFENSES THAT A DESIGNATION THAT  
TRAFFICKED VICTIM COULD BE USED FOR?



# IN RE M.A. Z.

- Adjudicated at trial for distribution of heroin and cocaine
- Argued Compulsion at Trial Lost
  - Compulsion = imminent use of unlawful force upon self or third person which a person in the same situation could not have resisted
    - i.e. reasonable person



# MOTION TO SET ASIDE JUDGEMENT

- Argued JDB – reasonable child vs. reasonable person
  - Expert trafficking affidavit attached to motion
- Interest of Justice
  - Arrests, detentions, and adjudication exacerbate victims trauma and makes it harder to identify true perpetrator vs. victim.



# TRIAL COURT RULING



- Rejects JDB argument
- Uses Connecticut case law (statutes similar)
  - 2 prong test:
    - Subjective: Was the accused coerced into criminal action (must consider age); and
    - Objective: Level of resistance meets community standards
      - State v. Heinemann, 920 A.2d 278
- Adjudications vacated and charges dismissed

# WHAT IF THERE IS NO TRAFFICKING?





**Immigration!**



**Immigration!**



**Immigration!**

# HOW CAN YOU MITIGATE IMMIGRATION OUTCOMES

- Dismissal Interest of Justice
- Diversion/Informal Adjustment
- Convert to CHINS/FINS/CW
- Plea deal that mitigates immigration consequences
  - Avoid:
    - Crimes of moral turpitude
    - Drug sales, possession with intent to sell, manufacturing, cultivating, delivering, etc.
    - Repeated drug use
    - False Claims to U.S. Citizenship

# LONGER TERM SOLUTION



- Promulgate legislation protecting all victims of trafficking (not just sex trafficked victims)
  - UT Code 76-10-1313(6) – when encountering a child engaged in commercial sex...the child shall be referred to DCFS and not be subject to delinquency proceeding.
- Create working groups and invite all stakeholders (Judges, DCFS/DHS, Prosecutors, Defense, AOC)
  - Create rules about disclosure of information to ICE, placement into state's custody, recognizing labor trafficked youth as victims, etc.
- Educate local agencies, detention centers, advocates about labor trafficking



# LONGER TERM SOLUTION

- Create youth groups/panels where youth can tell story – humanize them
- Partner with local immigration agencies to create tools to identify trafficked youth and connect them to resources



# WHAT HAPPENS AFTER CHILD IS REFERRED TO ICE

When youth is referred to ICE:

- If ICE determines the youth to be *unaccompanied*
  - Youth is transferred to ORR custody
  - However, not uncommon for youth who have been living with parents and legal guardians to be sent to ORR after police arrest





# PLACEMENT IN A HIGHER SECURITY FACILITY



*Yolo County Juvenile Detention Center*

When a youth is referred to ICE after an arrest, they are likely to end back in ORR detention system

- in higher security placements of staff secure or secure facilities
- without a clear understanding of what they are accused of or why they are placed in secure custody

# PLACEMENT IN A HIGHER SECURITY FACILITY

- Often children are extremely distressed, confused, angry and feel betrayed - *Why am I in jail?*
- Likely to be held in ORR custody for months or even years, without a date of anticipated release
- See *Operation Matador* <https://www.nytimes.com/2018/12/27/magazine/ms13-deportation-ice.html>


# PROBLEM

## Immigration Consequences:

- Application denied due to failure to appear
- Application denied for not completing probation

## Delinquency Consequences:

- Warrant for Failure to Appear
- Cannot complete probation



**Child picked up  
by ICE before  
delinquency  
resolved**

## Custody Consequences:

- ORR slow to release child due to pending charges
- ORR won't step down child due to pending charges
- ICE or IJ finds child flight risk for failure to appear

# HOW TO CONTACT YOUTH IN ORR CUSTODY

- Juvenile defender will not be able to locate the youth once in ORR, but if the youth gives us permission, the immigration legal services provider (LSP) will reach out defender
- Juvenile defenders can also reach out to Vera, which can locate the youth and connect the defender to the correct LSP
  - Email Vera at [familyconnect@vera.org](mailto:familyconnect@vera.org)
  - Need: name, date of birth

# IMMIGRATION LEGAL SERVICES FOR CHILDREN IN ORR CUSTODY

- Children are given KYR and legal screening within 7 - 10 days of arrival at a facility
- Often providers do not enter representation or may not do further advocacy if they believe the youth will be released or transferred out of their jurisdiction soon
- LSPs may provide immigration legal representation, advocacy regarding detention, release or stepdowns - *in particular for cases where youth faces prolonged indefinite detention.*



# COMMON FORMS OF IMMIGRATION RELIEF FOR UCS

Special Immigrant Juvenile Status (SIJS - child has been abandoned, abused or neglected by one or both parents)

Asylum (child has fear of return to country of origin)

T Visa (child is victim of a severe form of trafficking in persons, can be labor or sex)

U Visa (child is victim of crime in the United States)

Non-LPR Cancellation of Removal (present in US 10+ years, has USC/LPR parent, spouse or child)

Family Petitions and VAWA (Violence Against Women Act)

DACA (Deferred Action for Childhood Arrivals)



# HOW CAN JUVENILE DEFENDERS SUPPORT KIDS ONCE THEY ARE IN ORR CUSTODY?

- Provide documents on the juvenile case, if allowed under confidentiality laws
- Obtain predicate orders for Special Immigrant Juvenile Status if delinquency case is still open
- Assist LSP in obtaining Law Enforcement Certifications U application (required) or T application (not required but helpful)
- Provide mitigating evidence that might have been gathered during delinquency proceedings
  - Example: proof that child was found to be trafficking victim

# HOW CAN JUVENILE DEFENDERS SUPPORT KIDS ONCE THEY ARE IN CUSTODY?

- Write affidavits, if relevant
  - explaining why a youth did not complete probation or had FTA
  - explaining consequences of violating juvenile confidentiality laws, if applicable
  - contextualizing the youth's behavior and actions
  - advocating that a youth should be released or returned to the original jurisdiction so that they can complete their case/comply with probation
  - supporting eligibility for relief, for waiver of inadmissibility, or for discretion

# HOW CAN JUVENILE DEFENDERS SUPPORT KIDS ONCE THEY ARE IN ORR CUSTODY?



- Connect LSPs with family members who might be able to write letters or provide documents.
- Often the youth do not have family members' phone numbers and there can be a delay on ORR's side to share that information with the youth and with the immigration providers.

# ADDITIONAL RESOURCES

## Immigration Resources

- Immigrant Legal Resource Center, [www.ilrc.org](http://www.ilrc.org)

## Trafficking Resources

- Identifying Victims of Human Trafficking, <https://www.vera.org/publications/out-of-the-shadows-identification-of-victims-of-human-trafficking>
- Administration of Children and Families, Office of Trafficking in Persons, <https://www.acf.hhs.gov/otip>
- Coalition to Abolish Slavery and Trafficking (CAST-LA), <https://www.castla.org/>

## Background Information about Unaccompanied Children

- Children on the Run, UNHCR, <https://www.unhcr.org/en-us/children-on-the-run.html>
- The Flow of Unaccompanied Children through the Immigration System, Vera Institute for Justice, <https://www.vera.org/publications/the-flow-of-unaccompanied-children-through-the-immigration-system-a-resource-for-practitioners-policy-makers-and-researchers>

THANK YOU!

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