Practice Advisory

REPRESENTING UNACCOMPANIED MINORS

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Center for Human Rights and Constitutional Law
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Practice Advisory Forward

The Center for Human Rights and Constitutional Law is a non-profit, public interest legal foundation dedicated to furthering and protecting the civil, constitutional, and human rights of immigrants, refugees, children, prisoners, and the poor. Since its incorporation in 1980, under the leadership of a board of directors comprising civil rights attorneys, community advocates and religious leaders, the Center has provided a wide range of legal services to vulnerable low-income victims of human and civil rights violations and technical support and training to hundreds of legal aid attorneys and paralegals in the areas of immigration law, constitutional law, and complex and class action litigation.

The Center has achieved major victories in numerous major cases in the courts of the United States and before international bodies that have directly benefited hundreds of thousands of disadvantaged persons.

There are many considerations when representing unaccompanied minors, from trauma-informed interview techniques, to awareness of multiple avenues of representation. This Practice Advisory provides practitioners with an overview and resources for representing unaccompanied minors.

Manuals and advisories prepared by the Center are reviewed for improvements and updated to reflect current developments. Please feel free to email me if you have suggested updates or edits to portions of this practice advisory.

Sincerely,

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Center for Human Rights and Constitutional Law
I. Best practices for trauma-informed interview techniques.

Experts in communicating with children traumatized in the immigration and refugee context offer the following guidelines for interviewing children who have survived trauma.

A. Initial matters

- Use interviewing techniques that include transparency, client control, predictability, all of which will help establish trust.
- Conduct interviews in a place where the client feels safe and comfortable. Give the client a sense of control, such as when and where to conduct the interview, where to sit in the interview room, and whether an office door should be open or closed.
- Give the client as much information about the interview as possible, including timing, location, and topics to be covered.
- Talk about an activity the client enjoys before beginning the interview.
- Remind the client that they are an expert in their own right, helping you the lawyer to perform your role.
- Let the client know they can see your notes at any time, and encourage them to take their own notes if they wish.
- Make enough time for these conversations to be able to patiently understand the client’s story.

B. During the interview

- Explain why you will ask certain questions, how certain information will help your representation. This lets the client make an informed decision about how much to disclose and maximizes transparency and client control.
• Trauma and “survival mode” can affect understanding of questions, as well as formulating responses. Regularly check to see if the client is understanding the question, and if you understand the response.
• Creating a clear narrative can be difficult. “Try brainstorming with the client a list of words to describe her experiences and feelings….Help the client break down her answers to organize chronologically the events under discussion. Written or visual sequencing tools can also help, such as working with the youth to draft timelines or create “before” and “after” drawings.”

C. After the Interview

Ask if there is anything else the client would like to tell you or if there is anything you forgot to ask her. Remind them that what they tell you is confidential.

II. Obtaining Therapy

Unaccompanied immigrant youth have faced traumas that require therapy. According to the American Psychological Association,

[a]lmost half (48 percent) report leaving their home country because of experiences of violence (including gang violence, violence perpetrated by organized crime or government and sexual violence), 22 percent report abuse at home, and many report wanting to reunite with parents or other family members living in the U.S. (UNHCR, 2014). Economic deprivation and hardship may have marked the premigration experience. The migration experience then means the loss of the familiar: home, language, belongings, cultural milieu, social networks and social status — without the support of an intact family to buffer against these losses (Derluyn & Broekaert, 2008).

Additionally, UIM are at substantial risk of further victimization while migrating and in custody after migration, and face an uncertain future that could include deportation.
UIMs…are at high risk for mental health problems. Higher rates of anxiety, depression, conduct problems and post-traumatic stress disorder (PTSD) have been found among UIM when compared to their accompanied immigrant counterparts (Derluyn & Broekaert, 2008; Huemer et al., 2009). Across studies, UIM have higher rates of PTSD, with girls at greater risk than boys (Derluyn, Broekaert, & Schuyten, 2008; Huemer et al., 2009). Postmigration, substantial stressors remain, including stays in detention centers, immigration proceedings and social context. The length of stay in detention impacts psychological symptoms for immigrant and refugee youth (Fazel, Reed, Panter-Brick & Stein, 2012).

https://www.apa.org/pi/families/resources/newsletter/2016/06/immigrant-minors

A therapist can also be helpful to preparing a minor’s immigration case, such as in supporting claims of trauma arising out of persecution, and the likelihood of harm if forced to return to their home country.

Unfortunately, few states provide health insurance for unaccompanied minors, so finding quality mental health care for unaccompanied immigrant youth can be difficult. Advocates should reach out to non-profit agencies. In the Los Angeles area, for example, non-profit organizations such as offer counseling free of charge or on a sliding scale.¹ In addition, local universities and hospitals may offer free or low-cost counseling.

III. Legal Advocacy for Unaccompanied Minors

Advocates for unaccompanied immigrant children have multiple avenues for obtaining legal status, including Special Immigrant Juvenile Status ("SIJS"); Asylum, Withholding of Removal or Protection Under the Convention Against Torture; T-Visas; and U-Visas. What follows is a brief summary, with references to more detailed guides for practitioners.

A. SIJS – Abuse, Abandonment or Neglect

There is a three-step process to obtaining legal status through “SIJS”: (1) State court (family court, dependency court, probate court) makes “SIJS findings;” (2) Petition USCIS for SIJS; (3) Request Immigration Court to alter status.

1. The predicate step of obtaining SIJS findings.

As a first step to obtain SIJS, a minor must be within the jurisdiction of a “juvenile court.” In California, the “juvenile, probate, and family court divisions of the superior court” may “make judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101 et seq.). Cal. Code Civ. Proc. Section 155(a)(1); see also Bianka M. v. Super. Ct., 5 Cal.5th 1004, 1013 (2018). Minors who are in the jurisdiction of the family courts or juvenile courts may request that SIJS findings be made in those matters.
California probate courts are specifically empowered to “appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding special immigrant juvenile status.” Cal. Prob. Code section 1510.1.

Probate Code section 1510(a) provides for guardianship of minors:

“A relative or other person on behalf of the minor, or the minor if 12 years of age or older, may file a petition for the appointment of a guardian of the minor. A relative may file a petition for the appointment of a guardian under this section regardless of the relative’s immigration status.”

Recognizing that many UACs were arriving without responsible adults, the Legislature amended this section to include children up to 21 years old, codified at Probate Code section 1510.1:

“(a) (1) With the consent of the proposed ward, the court may appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure.

(2) A petition for guardianship of the person of a proposed ward who is 18 years of age or older, but who has not yet attained 21 years of age, may be filed by a parent, relative, or any other person on behalf of the proposed ward, or the
proposed ward.

(b) (1) At the request of, or with the consent of, the ward, the court may extend an existing guardianship of the person for a ward past 18 years of age, for purposes of allowing the ward to complete the application process with the United States Citizenship and Immigration Services for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

(2) A relative or any other person on behalf of a ward, or the ward, may file a petition to extend the guardianship of the person for a period of time not to extend beyond the ward reaching 21 years of age.

c) This section does not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward’s medical treatment, education, or residence, without the ward’s express consent.

d) For purposes of this division, the terms “child,” “minor,” and “ward” include an unmarried individual who is younger than 21 years of age and who, pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age.

2. Petition USCIS for SIJS

After receiving “SIJS Predicate findings” from the state court, petition the USCIS to grant the Special Immigrant Juvenile Status, using the form I-360,
including evidence of the minor’s age (such as birth certificate or passport), and a copy of the juvenile court predicate order. ²

After USCIS approves a Form I-360 Petition (granting SIJ classification), the minor is eligible to apply for a Green Card by filing Form I-485, Application to Register Permanent Residence or Adjust Status. This is also known as applying for lawful permanent resident (LPR) status or adjustment of status.

3. Adjust Status with Immigration Court

There is typically a delay between the time an I-360 is approved, and when a visa becomes available. Only when the visa becomes available may an Immigration Judge adjust a minor’s status. A minor must wait to file a Form I-485 with the Immigration Court requesting to adjust status until notified by USCIS that a visa is available.

Practi ce Tip: Counsel should determine on a case-by-case basis if applying for SIJ is a good idea. For example, if a minor is not already known to Immigration, and the minor has issues with drugs, it may be counterproductive to identify them to immigration authorities (by filing form I-360 in Immigration Court). Applying for the predicate order (e.g. guardianship) in Probate Court will not identify them to Immigration. It is a good practice to apply for the predicate order, then decide whether to file for SIJ.

² In 2018, the USCIS stopped granting SIJS to minors between 18-21 (the INA defines “minor” as under 21). Advocates have successfully challenged that policy in several states (including California, New York, Maryland), obtaining preliminary injunctions against the USCIS denying SIJS based in the guardianship context.
B. Asylum, Withholding of Removal, CAT

The basic eligibility requirements for asylum are:
- past persecution or a well-founded fear of future persecution,
- because of race, nationality, religion, political opinion, or “particular social group.”
- Government is unable or unwilling to prevent it
- Cannot relocate within home country

Most common claims from children including gang-based cases and cases related to family violence. After Matter of A-B-, it is critical to make a complete record and present full evidence in every case. Advocates must consider and develop any and all evidence that minor has a religious practice, or a political opinion that may be contrary to joining gangs. Advocates should present expert evidence that gangs have targeted for recruitment religious kids, so they aren’t as suspected.

In addition to political opinion and religion, minors may belong to a “particular social group” that has been recognized by society as distinct, and which is targeted for persecution. Each individual case must present evidence to these elements, but examples of successful cases may provide roadmaps for the types of evidence and legal arguments that have successfully resulted in immigration judges ruling that the immigrant belonged to a particular social group.

Find experts through:
Children who experience trauma will have a difficult time talking about it. Identify therapist who ideally can be qualified as an expert and who is willing to testify about the trauma undergone by minor as reaching the level of persecution, and can also discuss the effect of trauma on memory and ability to recall all details of events.

Practice tip:

If approaching 18th birthday, file a skeletal I-589 before they turn 18. UACs who apply for asylum before turning 18 are sent to the USCIS asylum office, not immigration court. Advocates report better success rates in the Anaheim asylum office than before Immigration judges. This can be supplemented later.

Practice Tip:

Children of asylum seekers should file their own I-589. Although they are derivatives of their parents’ asylum, this protects their individual rights in case an IJ decides to grant withholding of removal or CAT, but not asylum.

C. T-Visa (victim of trafficking)

A “T-Visa” or “T nonimmigrant status” is a temporary immigration benefit that enables certain victims of a severe form of human trafficking to remain in the United States for up to 4 years if they have assisted law enforcement in an investigation or prosecution of human trafficking. T-visas offer protection to
victims and strengthen the ability of law enforcement agencies to investigate and prosecute human trafficking.

What is “severe form of trafficking”?

- **Sex trafficking**: When someone recruits, harbors, transports, provides, solicits, patronizes, or obtains a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age; or

- **Labor trafficking**: When someone recruits, harbors, transports, provides, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

To be eligible for a T-visa, a minor (and certain qualifying family members of trafficking victims) must show he or she:

- Is (or has been) a victim of a severe form of trafficking in persons (as defined under 22 U.S.C. § 7102).
- Is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or a port of entry to any of these, on account of such trafficking, including cases where the noncitizen was allowed entry into the United States in order to participate in investigative or judicial processes associated with an act or perpetrator of trafficking.
- And either:
  - Has not attained 18 years of age.
  - Has complied with any reasonable request for assistance in the federal, state, or local investigation or prosecution of

"(i) Exemption for minor victims. An alien under 18 years of age is not required to comply with any reasonable request” and “(ii) Exception for trauma. An alien who, due to physical or
trafficking, or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime

- Or is unable so to cooperate because of physical or psychological trauma And would suffer "extreme hardship involving unusual and severe harm" upon removal.

Practice Pointer: The statute only sets forth the most basic requirements. You should therefore become thoroughly familiar with the T visa regulations, found at 8 C.F.R. § 214.11. At every stage of the process, it is the applicant who bears the burden to prove eligibility for a T visa.

D. U-Visa – victim of particular crime in U.S.

A U-visa is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. A person may be eligible for a U-visa if the crime occurred in the U.S. and if he or she:

- Is a victim of qualifying criminal activity.
- has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- has information about the criminal activity (if under 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information)
- were, are, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime (if under 16 or unable to provide information due psychological trauma, is unable to cooperate with a reasonable request for assistance…is not required to comply with such reasonable request.”
to a disability, a parent, guardian, or next friend may assist law enforcement on your behalf)

- is “admissible” to the United States (or may apply for a waiver).

**IV. Rights of Detained Minors under Flores Settlement**

Finally, it is important to remember that all *detained* immigrant youth are members of the class in the *Flores v. Barr* (“Flores settlement”). The Flores settlement provides for certain standards of treatment in detention, including medical care, education, and recreation, as well as to be released “as expeditiously as possible” from custody to a qualified sponsor.