AILA Texas-Midsouth Chapters Joint Conference

Must (NOT) be 21 to enter: Training 3 and 4 Year Olds in Immigration Law and Representing Children - *Prepared by Julie Flanders, Prof. Hiroko Kusuda and Michelle Saenz-Rodriguez* *


Name , Address, and Nationality of Spouse (Maiden Name, if Appropriate)

Father's Name, Nationality, and Address of Natural
ESTRADA, Mario Ernesto NATIONALITY: EL SALVADOR

Minors Due/Property in U.S. Not in Immediate Possession
None Claimed

Name and Address of (Last)(Current) U.S. Employer

Fingerprinted? ☒ Yes ☐ No

Type of Employment

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, pl
elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)
Left Index fingerprint
FINS: 1195364053

RECORDS CHECKED

CCD Neg
CIS Neg
TECS Neg

SECTION CODES
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Introduction:

In 2014, we saw a crisis at the border with an influx of children entering the United States. This has resulted in special dockets in removal proceedings where hundreds of children are not represented. Within months of border surge, the Executive Office for Immigration Review sent out guidance to its immigration courts nationwide establishing "priority dockets" wherein, any case related to the surge was required to be on a "fast track" through the immigration court system.

In many cases, the immigration judges were resetting cases so fast that many could not even be processed for initial assessment with local agencies and other pro bono efforts that had been mobilized across the nation to provide representation to unaccompanied minors and adults with children who were streaming across the border daily at an unprecedented rate. At its peak, more than 1200 immigrants seeking protection were turning themselves at the Southern Borders of the US.

During a deposition in a federal court in Seattle, Immigration Judge Jack Weil testified as to the ability of children to represent themselves and understand the the nature of the proceedings and the charges that are alleged by the government. When specifically asked about very young children, he testified: "I've taught immigration law literally to 3-year-olds and 4-year-olds," Weil said. "It takes a lot of time. It takes a lot of patience. You can do a fair hearing. It's going to take you a lot of time." When further questioned on the issue, he went on to affirm: "I've told you I have trained 3-year-olds and 4-year-olds in immigration law…. They get it. It's not the most efficient, but it can be done."[1]

This panel will discuss techniques for effectively representing children in removal proceedings and thinking outside the box for other forms of relief.

Who has jurisdiction? UACs and asylum applications

Prior to 1997, the U.S. immigration law did not treat children who seek protection from the United States differently from adults. A class action seeking changes in such unfair treatment ensued, and in 1997, the settlement agreement in *Flores v. Reno* established the nationwide policies for the way children were processed upon apprehension, detention and

[1] https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/

release.[2] The settlement agreement mandated that all children who are apprehended by DHS be held in the "least restrictive setting appropriate to their age and special needs to ensure their protection and well-being." [3] The agreement also mandated that children not be detained with an unrelated adult for more than 24 hours.[4] The agreement further required that children be released to a parent, legal guardian, adult relative, designated individual, or an adult who seeks custody and who is deemed appropriate by DHS.[5]

In 2003 the Homeland Security Act which created DHS and further modified the procedures for the care and the custody of children apprehended by DHS went into effect. The definition a UAC was created by the Homeland Security Act of 2002. A UAC is a child who: (1) has no lawful immigration status in the United States; (2) has not attained 18 years of age; and (3) does not have a parent or legal guardian in the United States or does not have a parent or legal guardian in the United States who is available to provide care and physical custody.[6] The Act also gave jurisdiction over the care and custody of UACs from the DHS to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services. The Act also required that the DHS must transfer the custody of the child who meets the definition of UAC to the ORR within 72 hours of apprehension. The child who does not meet the UAC definition remains in DHS custody.

The Trafficking Victims Protection Act of 2000 and its reauthorization acts in 2005 and 2008 established child welfare values and procedures for UACs. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) made significant changes to the processing of UACs' asylum applications.[7] Such changes include: (1) giving initial jurisdiction over UAC asylum claims to USCIS Asylum Office, even if he or she is in removal proceedings[8]; (2) exempting UACs from the one-year asylum filing deadline; and (3) eliminating the application of the safe third country agreement for UACs.[9] This initial jurisdiction provision is effective on March 23, 2009 (effective date of TVPRA) and applies to all UACs who file for asylum on or after March 23, 2009, as well as to the asylum claims filed by UACs with pending proceedings in Immigration Court or cases on

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[2] *Flores v. Reno*, Case No. CV 85-4544-RJK(Px) Settlement Agreement (C.D. Cal. 1997). *See also* INS Memorandum on Unaccompanied Minors Subject to Expedited Removal (Paul Virtue, Aug. 21, 1997). *See also* 8 C.F.R. §§236.3, 1236.3 (2014).

[3] The Flores Settlement Agreement, *supra, note* 2.

[4] *See id.*

[5] *See id.*

[6] 6 USC §279(g)(2).

[7] Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, at §§235(a)-(d) (effective March 23. 2009).

[8] TVPRA, §235(d)(7)(B).

[9] Joseph Langlois, Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (March 25, 2009).

appeal to the Board of Immigration Appeals (BIA) or on petition for review in federal court.[10]

USCIS initially interpreted these provisions to apply only if the child is a UAC (unaccompanied and under 18) at the time of I-589 filing.[11] However, effective June 10, 20 13, Asylum Offices began accepting a previous determination made by either CBP or ICE that an applicant is a UAC where that determination is in place on the date the applicant files for asylum, without making another factual inquiry into the applicant's age or unaccompanied status, and taking jurisdiction over the asylum case. [12] Asylum Offices will adopt the previous DHS determination that the applicant was a UAC unless there was an affirmative act by HHS, ICE, or CBP to terminate the UAC finding before the applicant filed the initial application for asylum. In cases in which a determination of UAC status has not already been made, Asylum Offices will continue to make determinations of UAC status per current guidance.

> ***Practice Pointer:*** UACs are generally released from ORR custody with a set of documents, one of which is the Verification of Release which bea their photograph and the name and address of the sponsor. If your UAC client does not have or is unable to obtain a government issued document such as passport, the ORR issued document such as the Verification of Release should be accepted as a proper form of identification.

> ***Practice Pointer:*** Although most immigration courts are familiar with the TVPRA provisions regarding UAC asylum procedures, if you represent a client who turned 18 after the UAC designation had been made, it is good to have a copy of the 2013 USCIS Asylum Office memo in the case file so that in case the Immigration Judge is not familiar with the procedure, you can explain that USCIS takes initial jurisdiction over your client's asylum application.[13]

Special Immigrant Juvenile Petitions

In part due to the difficulty of winning Central American asylum claims based on social group, Special Immigrant Juvenile Status (SIJS) has become a common form of relief for

[10] *See id.*

[11] Ted Kim, Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (June 10, 2013); USCIS, Affirmative Asylum Procedures Manual, at 35.

[12] *Id.*

[13] *Id*.

children in immigration proceedings. This protection was enacted in 1990, but was significantly amended by the TVPRA of 2008.[14] SIJS is not limited to unaccompanied minors only, and can be petitioned for both affirmatively and defensively for those in proceedings.

BASIC REQUIREMENTS

The requirements for SIJS are found at INA § 101(a)(27)(J) and 8 CFR § 204.11. However, you should notice there is an inconsistency between the code and the regulations. The TVPRA eliminated the requirement "eligibility for long-term foster care," but the regulations have not been updated. The current basic requirements are:

- Declared dependent on a juvenile court OR placed in custody of an agency, individual, or entity
- Reunification is not viable with *one or both* parents due to abuse, abandonment, neglect or a similar basis under state law
- It is not in the child's best interest to be returned to the country of nationality or last habitual residence
- Unmarried
- Under the age of 21

A juvenile court means "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles."[15] Although the SIJS statute allows filing up until age 21, the state court predicate order must be obtained while the state court has jurisdiction to act as a juvenile court, which in many states is until age 18. In Texas, for many years it was possible to achieve SIJS findings through a declaratory judgement motion even after the child turned 18. However, in recent years a Texas Appellate Court decision[16] has been used by USCIS to deny all post-18 petitions at some field offices, including Houston and San Antonio. There are several appeals pending for post-18 denials, especially in cases where there was state court jurisdiction under the family code section for child support actions at Tex. Fam. Code § 101.003(b).

The definitions for abuse, abandonment, neglect or a similar state law basis are found in your state's family law code. The manner in which you will prove up the facts to build your case will vary by locality, however many courts will accept a sworn written declaration of the child.

[14] TVPRA § 235(d)(1)
[15] 8 CFR § 204.11(a)
[16] *In re J.L.E.O.,* NO. 14-10-00628-CV, (Tex.App. - Houston [14th Dist.] 2011)

Practice Pointer: Be careful not to use outdated statutory language in your pleadings and order. If you see the language "eligible for long-term foster care" in your sample pleadings, you are using samples that are outdated from before the important changes in 2008.

PREDICATE ORDER IN STATE COURT PROCEEDINGS

It is not possible to thoroughly cover state court procedures here, in part due to the fact that these procedures vary by state and even by locality. Some of the issues you will have to consider include standing, personal and subject matter jurisdiction, venue, paternity, child support, and service of process. State court judges also vary with respect to how they approach the special SIJS findings such as abuse, abandonment, and neglect or the best interests finding.

Practice Pointer: It is essential that you partner with a state court practitioner either to be your mentor or to handle this portion of the case. They will guide you with respect to the procedural requirements of the case as well as the nuances of that particular court. At the same time, you will need to ensure that there is sufficient factual detail in the order and that it tracks current SIJS law.

FILING THE I-360

- A new USCIS form I-360 is required as of October 31, 2016.[17] It requires much more detailed responses for SIJS petitioners than it did before. The reason for this is unclear, but the author's opinion is that it may be used to more easily compare information in the I-360 with the I-213 record in search of discrepancies.
- When you submit your I-360 packet, you will include your state court predicate order along with a translated birth certificate.
- Based the DHS "consent" requirement and the memos interpreting it,[18] USCIS has issued many Requests for Evidence and denials around the country claiming the predicate order does not show sufficient detail in order for them to provide their consent. It is necessary to provide a detailed factual order, and if you do not, you may receive a Request for Evidence asking for additional state court documents.
- The *Perez-Olano* Settlement Agreement protect SIJS petitioners from aging out for SIJS or Adjustment of Status who timely file and who have a valid dependency order at the time of filing.[19]

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[17] https://www.uscis.gov/i-360

[18] William Yates, Memorandum #3 -- Field Guidance on Special Immigrant Juvenile Status Petitions (May 27, 2004).

[19] Updated Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement, USCIS PM-602-0117 (June 25, 2015)

- *We are awaiting the details from USCIS on the imminent centralization of I360 adjudications.

ADJUSTMENT OF STATUS AND THE VISA BULLETIN

- It is possible to adjust status in Immigration Court, but more commonly, practitioners choose to terminate proceedings once they obtain an I-360 approval and then apply for adjustment of status with USCIS.
- Some field offices routinely waive I-485 interviews for SIJS holders.
- INA § 245(h) contains special exemptions and waivers for adjustment of SIJS holders.
- SIJS adjustments fall under the EB4 category for Special Immigrants. The November Visa Bulletin states July 2015 as the "final action date" for category EB4 for El Salvador, Guatemala, and Honduras.[20] However, for the month of November, USCIS advised that the chart B "dates for filing" could be used instead, which was current in November for all countries.[21]

PROCEDURES AND PROTECTIONS IN IMMIGRATION COURT

Although unaccompanied minors were included in the 2014 docketing priorities, i.e. the "rocket docket," there are some protections in place for minors in Immigration Court. In most courts, there is one judge who is designated to preside over the juvenile docket. While most of these judges are cognizant and respectful of the EOIR guidelines governing minors, some judges may not be.

In May 2007 EOIR adopted the "Operating Policies and Procedures Memorandum (OPPM) 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Children."[22] The OPPM provides basic guiding principles for IJ's handling these cases. Issues of age, capacity, credibility, and courtroom modifications are addressed. Importantly, the OPPM also states that motions to change venue can be granted without requiring pleadings, and that for the purpose of continuances, children are exempt from case completion goals and age case completion deadlines.[23]

After the 2014 reprioritizing of cases, several memos have been published by EOIR addressing community. The memo from March 24, 2015 states "if an unaccompanied child is applying for Special Immigrant Juvenile (SIJ) status, the case must be administratively closed or reset for that process to occur in the appropriate state or juvenile court. The length

[20] November Visa Bulletin, https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-november-2016.html

[21] https://www.uscis.gov/visabulletininfo

[22] David Neal, Chief Immigration Judge, Operating Policies and Procedures Memorandum (OPPM) 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Minors (May 22, 2007)

[23] Id. at 8

of this process varies by jurisdiction, but several months may be necessary in many locales."[24]

> ***Practice Pointer:*** Know the judges and trial attorneys at your immigration court. There are several issues in flux right now, such as the visa backlog, and these may be responded to differently by different IJs and ICE trial attorneys. For example, most trial attorneys have begun objecting to termination of proceedings when the I-360 priority date is not current.

Thinking Outside of the Box: Common and Uncommon Forms of Relief

Not every case that has resulted from the "2014 Border Surge" will have the option of applying for Asylum, Withholding and CAT or be eligible for Special Immigrant Juvenile Proceedings. In many of these cases, both parents are in the United States and have been her for many years, eliminating the SIJ relief option. In other cases, despite the dangerous and deplorable conditions in Central America, some respondents will not qualify for asylum. Therefore, lawyers and advocates need to be prepared to look for alternative options for children and families who find themselves in removal proceedings.

- **Due Process Arguments**: It is critical in every case to take a very close look at all of the legal documents that are served upon a minor. First thing to determine is whether service was proper and if not, be prepared to challenge it by seeking termination. [25] If the Respondent is under the age of 14, "documents must be served upon the person with whom the minor resides ...and whenever possible, an adult, guardian, relative or friend"[26] It is important to make a record, despite the fact, that an Immigration Judge appears frustrated or dismisses your argument. A due process argument cannot be argued on appeal unless the issue is raised and preserved for the record.

- **Don't be Afraid to Make Creative Arguments:** Our biggest task as immigration lawyers is to find arguments that are creative and that have the potential to forge a path for future cases. In recent years, we have seen the impact of creative interpretations and shifts in the analysis of "crimes involving moral turpitude"[27] as well as the shift in defining which state offenses are considered "aggravated felonies"[28] in immigration proceeds. The only way to create new definitions is to

[24]Brian O'Leary, Chief Immigration Judge, Docketing Practices Relating to Unaccompanied Children's Cases in Light of the New Priorities (Mar. 24, 2015), *published as* AILA Doc. No. 15032702. (Posted 03/27/15)

[25] 8 C.F.R. § 103.5a(c)(2)(ii) (2002)

[26] In re Rosa MEJIA-ANDINO, 23 I&N Dec. 533 (BIA 2002)

[27] See *Matter of Silva-Trevino*, 26 I&N Dec.826 (BIA 2016)

[28] See *Mathis v. United States*, 136 S. Ct. 2243 (2016), and *Descamps v. United States*, 133 S. Ct. 2276

litigate cases. A good advocate should never accept that if an argument is not successful in one case, it cannot be used in another. Immigration Judge are human (most of them) and many of them have differing views on case interpretation and application of existing caselaw.

- **Explore the Possibility of Non-immigrant Relief such as T visa or U visa:** When assessing a case for potential relief, one of the areas that is easily overlooked is non-immigrant visas that have been established for victims of crimes and victims of severe trafficking.[29] There may be cases where either the respondent or a qualifying family member may be eligible for a U visa if they have been a victim of a violent crime or a T visa where either the respondent or a qualifying family member may have been a victim of human trafficking which could include sex trafficking or labor related trafficking.[30] There is a misconception that the T visa requires that someone be trafficked into the country in order to qualify, when in fact, the statute provides a wide range of qualifying definitions. Further, the statute allows for qualifying family members to also qualify for benefits as derivative beneficiaries. Both the U visa and the T visa require cooperation with law enforcement.

- **Post Removal Order of Supervision:** Some respondents may be good candidates for a stay of removal along with an order of supervision (OSUP). For example, if you have a recent arrival from El Salvador but they have one or both parents under TPS status, the government might be willing to grant a stay of removal as long as the parents remain in valid TPS status. There may be other humanitarian factors which could be considered in a request for a stay. Documentation about the equities and any relevant humanitarian factors is critical in order to build a strong foundation for the request. Remember that the decision to grant a stay or an OSUP is completely discretionary and cannot be appealed in any court.

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[29] *Victims of Trafficking and Violence Protection Act* (VTVPA)

[30] Under Federal law, the term "severe forms of trafficking" can be broken into two categories:

Sex trafficking: recruitment, harboring, transportation, provision, or obtaining of 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.

Labor trafficking: recruitment, harboring, transportation, provision, or obtaining of 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. https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-human-trafficking-t-nonimmigrant-status

- **Prosecutorial Discretion (PD):** The Office of Chief Counsel has the ability to grant prosecutorial discretion under the DHS Guidance Memo that was issued on November 20, 2014.[31] Over the past few years, DHS has expanded and clarified the use of PD. The most significant form of PD is the establishment of the enforcement priorities by Secretary Johnson. [32] PD is not only exercised on an agency-wide basis, such as the enforcement priorities outlined in the Johnson Memo, but more importantly it can be exercised by an office or an individual officer. There are 3 priorities outlined in the Johnson memo:

    - **Priority 1 (threats to national security, border security, and public safety)**

      Aliens described in this priority represent the highest priority to which enforcement resources should be directed:

      (a) aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security; (b) aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States; (c) aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 52 l(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang; (d) aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and (e) aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the Immigration and Nationality Act at the time of the conviction.

      The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.

    - **Priority 2 (misdemeanants and new immigration violators)**

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[31] AILA InfoNet Doc. No. 14112002. (Posted 11/20/14)

[32] Policies for the Apprehension, Detention and Removal of Undocumented Immigrants DHS Secretary Jeh Johnson (November 20, 2014)

Aliens described in this priority, who are also not described in Priority 1, represent the second-highest priority for apprehension and removal. Resources should be dedicated accordingly to the removal of the following:

(a) aliens convicted of three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element was the alien's immigration status, provided the offenses arise out of three separate incidents;

(b) aliens convicted of a "significant misdemeanor," which for these purposes is an offense of domestic violence;1 sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above, one for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence); (c) aliens apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014 ; and (d) aliens who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs.

These aliens should be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or users Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.

- **Priority 3 (other immigration violations)**

Priority 3 aliens are those who have been issued a final order of removal on or after January 1, 2014. Aliens described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Resources should be dedicated accordingly to aliens in this priority. Priority 3 aliens should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

Practice Pointer: Please note that just because your client falls within one of the established priorities, that does not mean that they are now allowed to request an exercise of prosecutorial discretion. The memo indicates that there will be other factors that should also be considered even if a respondent fall under one of the enforcement priorities. " In making such judgments, DHS personnel should consider factors such as: extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States;status as a victim, witness or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative. These factors are not intended to be dispositive nor is this list intended to be exhaustive. Decisions should be based on the totality of the circumstances." Jeh Johnson - DHS Policy Memo- November 2014

Ethics & Representing Children in Removal Proceedings

Representing children in immigration court can present many challenging ethical issues for lawyers. Special considerations must be explored in representing children (some less than a year old) in removal proceedings. A good starting point point for guidance is the ABA Model Rules of Professional Conduct as well as State Rules of Ethics in the jurisdiction of representation. The essence of representation in these case is guided by the following:

> *Rule 1.14(a) provides: When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.*
>
> *Comment 1 to Rule 1.14(a) is also instructive: The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental*

capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody (emphasis added). -ABA Model Rules of Professional Conduct

In most child cases before the Immigration Court, the unaccompanied minor has been released into the custody of an adult. The "Sponsor" (term used by ORR) could be a parent or some other relative who has accepted the responsibility of making sure that the child attends her hearings before the Immigration Court. The ethical questions that arises for the lawyer become who gets to make the decisions about representation and the legal strategy that is going to be used in court? At what age can a child take an active role in her case and deciding how to move forward with relief?

Like in any other case, representation must be client driven, that is still true when representing children. The child should be able to participate in the decisions that are being made in her case. This is true even when what the child wants might not be in their best interest. There may be a difference in opinion between the child (client) and the Sponsor who has taken custody of the child. Each jurisdiction may be somewhat different but it helpful to look at the ABA Rules regarding conflict of interest:

Rule 1.7, which provides:
a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation

does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

-ABA Model Rules of Professional Conduct

Practice Pointer: Many of these ethical questions remain unanswered due to the novelty of this type of representation. More than anything, the idea is for the lawyer to be aware of the potential ethical questions that can arise during the representation of unaccompanied minors in Immigration Court. A very good resource for in depth discussion into these issues can be found in the AILA Practice Advisory titled : *Ethical issues in Representing Children in Removal Proceedings* - AILA Doc. 1402240

Conclusion

Now more than ever, representation is needed for the increasingly large number of children who are streaming into the United States seeking protection from the violence in Central America. The courts appear to be moving towards making the representation of children a standard requirement, but the progress has been slow. At the present time, there are literally hundreds of thousands of case making their way through the immigration court system. Furthermore, a large number of those cases involve children who need help in presenting their claims before the court. The representation of children can be a very difficult process for advocates who have never done immigration cases much less a case where the client may be just a toddler. Nevertheless, the inherent injustice of making a three year represent herself in a complex legal proceeding should far outweigh any hesitation or concern on the part of a lawyer considering taking on one of these cases. There are community based organizations all over the nation that have mobilized to help match volunteers with children who have been unable to find representation. Most groups, including AILA and the ABA will provide mentors to help volunteer lawyers in assessing relief and provide guidance and support throughout the period of representation.

*About the Panel:

Julie Flanders: Legal Director at Austin Region Justice for Our Neighbors (ARJFON). Previously she worked as a supervising attorney in the detained minor program at Refugee and Immigrant Center for Education and Legal Services (RAICES) in San Antonio. While there she represented unaccompanied minors in removal proceedings, and held a large number of Special Immigrant Juvenile cases. During law

school at the University of Houston, Julie interned at the University's Immigration Clinic and clerked at the Houston Immigration Court.

Hiroko Kusuda: Clinic Professor and Director of Immigration Law Section of Loyola University New Orleans College of Law, Stuart H. Smith Law Clinic and Center for Center for Social Justice. Under her supervision student practitioners represent clients before U.S. Department of Justice Immigration Courts and the Board of Immigration Appeals, U.S. Department of Homeland Security and federal courts. Professor Kusuda also trains her students to engage in administrative advocacy with federal and state agencies for their clients. Prior to joining Loyola Professor Kusuda was Detention Attorney for Catholic Legal Immigration Network, Inc. (CLINIC), a subsidiary of the U.S. Conference of Catholic Bishops. During her tenure at CLINIC, she represented hundreds of detained immigrants before the Oakdale Immigration Court, conducted the Know Your Rights immigration program at Louisiana detention centers, managed CLINIC's Louisiana Deportation and Detention Representation Project, and provided technical assistance to Catholic diocesan immigration programs created after Hurricanes Katrina and Rita in the Gulf South region.

Professor Kusuda is a frequent guest speaker and moderator at conferences and seminars on various immigration law topics. A long-time member of American Immigration Lawyers Association and mentor on removal defense and asylum law, Professor Kusuda currently serves as the NPO liaison for the New Orleans Immigration Court. She is a co-founder of the Louisiana Immigrant Representation Working Group (LIRWG) whose mission is to improve legal representation of immigrants in Louisiana. She leads the Special Immigrant Juvenile Sub-Group of LIRWG. She is a member of Louisiana State Bar Association and Federal Bar Association. Professor Kusuda received the Elmer Fried Excellence in Teaching Award from American Immigration Lawyers Association in 2016.

Michelle L. Saenz-Rodriguez: In private practice for over 25 years, Michelle is the Founding Partner of Saenz-Rodriguez & Associates, P.C. in Dallas, Texas. Michelle is Board Certified in Immigration and Nationality Law by the Texas Board of Legal Specialization. Michelle is a Member of the Advisory Board for the ABA Commission on Immigration after serving as a Commissioner for three years. Michelle was Chapter Chair for AILA Texas, Oklahoma and New Mexico in 2012. Still active in AILA at both the state and National Level, Michelle is on the AILA National EOIR Liaison Committee as well as the Dallas EOIR Liaison. She has spent the last two years mentoring and training pro bono lawyers in the representation of children and families who have been detained and processed since the summer of 2014. Saenz- Rodriguez & Associates has been named a Top Tier Law Firm in Immigration for the last 15 years. She was also selected as one of the Top Women Lawyers in Immigration Law for 2016 as well as D Magazine's 2016 Best Lawyer in Dallas for Immigration Law. She is a frequent speaker on a variety of immigration law related topics and has spoken all over the United States. She is a huge advocate for the representation of children and detained families and spends much of her time trying to convince lawyers to volunteer in immigration courts nationawide.