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WORKING GROUP ON UNACCOMPANIED MINOR IMMIGRANTS
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
AMERICAN IMMIGRATION LAWYERS ASSOCIATION
COMMISSION ON IMMIGRATION
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE
SECTION OF INTERNATIONAL LAW
COMMISSION ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES
STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
SECTION OF FAMILY LAW
SECTION OF LITIGATION
COMMISSION ON YOUTH AT RISK

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial and tribal
2 governments, courts, and agencies to establish laws, rules, regulations, and policies to implement
3 the following principles:
- 4 (1) Counsel should be appointed for unaccompanied children at government expense at all
5 stages of the immigration process including initial interviews before United States
6 Citizenship and Immigration Services Asylum Offices and at all proceedings
7 necessary to obtain Special Immigrant Juvenile Status, asylum and other remedies;
- 8 (2) Immigration courts should not conduct any hearings, including final hearings, involving
9 the taking of pleadings or presentation of evidence before an unaccompanied child has
10 had a meaningful opportunity to consult with counsel about the child's specific legal
11 options;
- 12 (3) State court judges and staff should receive training to learn to effectively and timely hear
13 and adjudicate petitions or motions on behalf of immigrant children, including for the
14 purpose of making the predicate findings that are required for a child to obtain Special
15 Immigrant Juvenile Status; and
- 16 (4) Due to firm deadlines in federal immigration laws which limit certain immigration
17 remedies by age, state, territorial and tribal courts with jurisdiction should consider
18 implementing specialized calendars to timely hear and adjudicate petitions on behalf
19 of immigrant children to determine predicate matters that are required for the children
20 to apply for Special Immigrant Juvenile Status, including creating expedited processes
21 for children aged 16 and older.

REPORT

Thousands of foreign-born children arrive in the United States each year unaccompanied by their parents or other legal guardians. Some are escaping political persecution, while others are fleeing poverty, gang violence, abusive families, or other dangerous conditions in their home countries. Some children have lost contact with or been abandoned by their families abroad, while others are sent here for safety by parents who remain behind. Here is just one representative example:

J.E., J.F., and D.G. are ten, thirteen, and fifteen years old, respectively. They were scheduled to appear in immigration court on September 4, 2014, in Seattle, Washington. They were born in El Salvador, where their parents ran a ministry and rehabilitation center for former gang members. These activities drew retaliation from local gangs, who killed the children's cousin and then their father: the children watched as gang members murdered him in the street. Several years later, the children themselves became the targets of gangs that threatened them with harm if they refused to join, and they fled to the United States.

When unaccompanied children arrive in the United States, they generally have no predetermined U.S. legal status and no immediate support system. What many of these children face when they arrive in the United States is immediate detention in a foreign culture, a mire of immigration proceedings and the challenge of finding legal assistance involving high standards of proof and complex legal issues. In an area of law compared in complexity to the IRS tax code, a lawyer is critical to prepare a child's claim for immigration relief, gather the required evidence largely located abroad, complete and file the necessary forms pursuant to the regulations, present the case in a court setting and rebut evidence and legal arguments presented by the government, which is represented by an experienced trial attorney. Indeed, "[s]tudies have found that asylum seekers in deportation proceedings are four times more likely to be granted asylum if represented."¹ Though similar statistics are not available for children seeking Special Immigrant Juvenile Status, immigration practitioners have anecdotally stated that the effect of representation is just as great.

ABA COMMITMENT AND POLICY UNDERLYING THE RESOLUTION

The American Bar Association is committed to ensuring fair treatment and access to justice under the nation's immigration laws in accordance with the Constitution. ABA policy has consistently recognized the importance of representation in immigration cases where a lawyer can help a noncitizen understand and effectively navigate the complexities of the U.S. immigration system, a process that can be especially daunting and difficult where language and

¹ American Bar Association, Coordinating Committee on Immigration Law, Report to the House of Delegates (February 2001), p. 4, n. 15, available at www.americanbar.org/content/dam/aba/directories/policy/2001_my_106a.authcheckdam.pdf; see also Asylum Representation in Immigration Court FY 1999, Statistics from the Executive Office for Immigration Review (Apr. 14, 2000); Background Paper on the State of Asylum Representation and Ideas for Change, Institute for the Study of International Migration, Georgetown University (May 2000), p.3.

cultural barriers are present. These problems are multiplied when the applicants for immigration relief are children under the age of 18 who are alone with no adult responsible to care for them. This policy resolution seeks to increase representation and enhance fairness by suggesting changes in the practice of immigration courts as well as the state, territorial and tribal courts that issue orders required for Special Immigrant Juvenile Status. These changes will help strengthen the system of assuring due process for each child and engage counsel for them - both pro bono and government-funded –to help address the crisis of the surge of children facing our immigration courts alone.

This policy resolution seeks to ensure that the most vulnerable children who flee their native lands and seek refuge here have access to counsel at government expense to ensure that no child deserving of protected refugee or Special Immigrant status is relegated, due to incapacity to voice the merits of their cause, to likely removal and danger upon return. Women and children are fleeing to the U.S., in part, because of the sexual discrimination and exploitation that they have suffered. According to a report by the United Nations High Commissioner for Refugees, 70% of 404 children interviewed cited domestic abuse or some other form of violence among their primary reasons for fleeing their homes in Mexico and Central America.² The International Labor Organization estimates that women and girls represent the largest share (55%) of the nearly 21 million victims of forced labor. The rising rate of gender violence and child exploitation in Mexico and Central America has certainly impacted this child crisis, but our broken immigration system exacerbates it.³

This resolution will affirm the ABA’s support for government appointed counsel for unaccompanied children and that immigration proceedings should not proceed where a child is unrepresented because today’s urgent crisis compels a reminder of the fundamental importance of appointment of counsel for the unaccompanied immigrant children that lawyers across America are called on to serve. When children will be seeking Special Immigrant Juvenile Status (SIJS) as a form of immigration relief, counsel should also be appointed at government expense for them to protect the child’s legal rights in the state, territorial and tribal courts from which the predicate orders incorporating the necessary SIJ factual findings will be requested. The resolution further seeks to assure that no child who seeks to remain in the United States has a substantive hearing scheduled without the opportunity for consultation with counsel.

² The U.N. High Comm’r for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, 13 March 2014, available at http://www.unhcrwashington.org/sites/default/files/UAC_Children%20On%20the%20Run_Executive%20Summary.pdf; see also *Children Lose Childhoods in Immigrant Detention “Safe Haven” Centers: Sexual, Physical and Verbal Abuses*, BORDERLAND BEAT: REPORTING ON THE MEXICAN CARTEL DRUG WAR (June 2, 2014, 9:17PM), <http://www.borderlandbeat.com/2014/06/children-lose-childhoods-inimmigrant.html>. For example, one in three teen girls ages 14-18, living in high-crime zones in Guatemala, suffered sexual assault in the previous 12 months. See Holly Burkhalter, Op., *Curb the Child Migration Crisis Begins with Combating Sexual Abuse*, WASH. POST, June 27, 2014, available at http://www.washingtonpost.com/opinions/holly-burkhalter-curb-the-child-migration-crisis-begins-with-combating-sexual-abuse/2014/06/27/00fd58d8-fd5c-11e3-b1f4-8e77c632c07b_story.html.

³ See Letter from Alianza Latina en Contra la Agression Sexual, to President Barak Obama (July 8, 2014), available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/ALAS%20Letter%20to%20Obama_child_refugees_2014_07_08.pdf

Because Special Immigrant Juvenile Status is one key immigration remedy available to many of these children, the resolution seeks to secure training for state, territorial and tribal courts to help them promptly provide the prerequisite orders for this status that fall within their jurisdiction. Finally, the resolution urges state, territorial and tribal courts to consider whether it is necessary to create specialized dockets to ensure the quick and timely adjudication of these matters which are under firm immigration law deadlines. Recognizing that state court jurisdiction over abused, neglected or abandoned youth can range from age 21 down to age 18 in most states, the resolution suggests an expedited proceeding for those children in danger of losing their claims because they "age out" of the Special Immigrant Juvenile Status age range when state court jurisdiction ends. This weighs in favor of considering a special expedited docket for any child within two years of the end of his or her state court jurisdiction. In many states, that is age 16.

In recognition of these problems, ABA leadership has created the Working Group on Unaccompanied Minor Immigrants to assist in mobilizing and engaging pro bono lawyers to represent the thousands of immigrant youth appearing in American courts alone and in need of representation to secure due process for each of their claims.⁴

THE NEED AND WHY REPRESENTATION MATTERS⁵

An "unaccompanied alien child" (unaccompanied child) is a minor who has no lawful immigration status in the United States, and has no parent or legal guardian in the country present or available to provide care.⁶ The Department of Homeland Security (DHS) reports that 68,541 unaccompanied children were processed by Customs and Border Protection (CBP) in the United States between October 1, 2013 and September 30, 2014, as compared to 38,759 in Fiscal Year (FY) 2013, a 77% increase.⁷ While the numbers of unaccompanied children entering the United States at the Southwest border have decreased significantly over the past three months, the numbers will likely rise again in a typical cyclical fashion. This is an unprecedented "surge" that caps a growing trend: 13,625 unaccompanied children entered U.S. custody in Fiscal Year 2012 and 24,668 in Fiscal Year 2013.⁸ Unaccompanied children are turned over to the custody of the Department of Health and Human Services' Office of Refugee Resettlement (ORR) and placed in removal proceedings in which they face deportation. Most are released by ORR if they have family or an adult in the United States able to care for them, after which they continue to defend against removal in immigration court, often without an attorney.⁹

⁴ See *Immigrant Child Advocacy Network*, AMERICAN BAR ASSOCIATION, www.ambar.org/ican

⁵ This section of the report is excerpted from Annie Chen, *An Urgent Need: Unaccompanied Children and Access to Counsel in Immigration Proceedings*, Vol. 16, No. 4 *Children's Rights Lit. Comm.* (ABA Sect. of Lit., Chicago, IL), Summer 2014, <http://apps.americanbar.org/litigation/committees/childrights/content/articles/summer2014-0714-urgent-need-unaccompanied-children-access-counsel-immigration-proceedings.html>.

⁶ Homeland Security Act of 2002, § 279(g)(2).

⁷ See U.S. CUSTOMS AND BORDER PROTECTION, *Southwest Border Unaccompanied Alien Children*, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

⁸ See U.S. DEP'T OF HEALTH AND HUMAN SERVICES, ADMIN. FOR CHILDREN AND FAMILIES, OFFICE OF REFUGEE RESETTLEMENT, UNACCOMPANIED ALIEN CHILDREN PROGRAM FACT SHEET (2013) *available at* http://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

⁹ For a detailed description of the path unaccompanied children follow through the immigration system, see VERA INSTITUTE OF JUSTICE, *FLOW OF UNACCOMPANIED CHILDREN THROUGH THE IMMIGRATION SYSTEM* (2012) *available at* <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.

These children face significant challenges in the immigration system, causing an urgent need for access to counsel in light of the complexity of U.S. immigration laws. Many unaccompanied children have legitimate claims that would grant them legal status under U.S. immigration law but, without representation, they cannot enjoy the due process to which they are entitled or have a fair basis to estimate whether they have a provable claim or not. For example, approximately 40% of unaccompanied children in ORR custody in 2010 were potentially eligible for some kind of relief from deportation.¹⁰ Depending on where an unaccompanied child is released, local legal services organizations and private law firms may be available to provide representation to some children. But these meager resources are already stretched beyond capacity—the current surge in numbers will stretch them even further, meaning that more and more unaccompanied children will lack legal representation. This limited capacity will be further taxed in short order by the tsunami of need if for legal assistance arising from the recently announced executive order regarding deferred action for several million persons.

While the Executive Office for Immigration Review (EOIR) has put in place some measures to provide noncitizens with assistance in obtaining representation which include procedures for recognizing or accrediting organizations that can represent individuals in immigration matters and providing a list of pro bono service providers, less than half of the noncitizens whose proceedings were completed in the last several years were represented. In 2010, almost 60% of noncitizens were unrepresented.¹¹ The figure is substantially higher for those who are detained, with around 84% unrepresented.¹² Rates of representation for proceedings before the Board of Immigration Appeals (BIA) are somewhat better than for those before the immigration courts, but a substantial number of noncitizens are unrepresented there as well.¹³

There is strong evidence that representation affects the *outcome* of immigration proceedings. In fact, the recently released preliminary findings from The New York Immigrant Representation Study, a two-year project of the Judge Robert A. Katzmann Immigrant Representation Study Group, show that “[t]he two most important variables in obtaining a successful outcome in a case (defined as relief or termination) are having representation and being free from detention.”¹⁴ The study analyzed representation in the New York immigration courts, and found that 74% of individuals who were represented and released or never detained had a successful outcome; 18% of individuals who were represented but detained were successful; but only 3% of individuals who were unrepresented and detained were successful.¹⁵ Another study has shown that whether

¹⁰ *Id.*

¹¹ EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, OFFICE OF PLANNING, ANALYSIS, AND TECHNOLOGY, FY 2010 STATISTICAL YEAR BOOK (January 2011), at G1, available at <http://www.justice.gov/eoir/statspub/fy10syb.pdf>.

¹² Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 340-41 (2007) (citing Donald Kerwin, *Revisiting the Need for Appointed Counsel*, INSIGHT (Migration Policy Inst.), April 2005, at 1). For an expanded version of the Refugee Roulette study, with commentary by scholars from Canada and the United Kingdom as well as from the United States, see JAYA RAMJI-NOGALES ET AL., *REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM* (NYU Press 2009).

¹³ *Id.* The CLINIC BIA Pro Bono Project was developed in 2001 to alleviate some of this need at the appellate level, using a network of committed volunteers, trainers, and mentors to safeguard the rights of vulnerable asylum-seekers and long time lawful permanent residents. Since the Project’s inception in 2001, it has secured representation for more than 550 individuals. See *BIA Pro Bono Project*, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., <http://cliniclegal.org/programs/center-immigrant-rights/bia-pro-bono-project/0811/bia-pro-bono-project>.

¹⁴ The New York Immigrant Representation Study, *Preliminary Findings*, at 1, available at <http://www.nylj.com/nylawyer/adgifs/decisions/050411immigrant.pdf>.

¹⁵ *Id.*

a noncitizen is represented is the “single most important factor affecting the outcome of [an asylum] case.”¹⁶ For example, from January 2000 through August 2004, asylum seekers before the immigration courts were granted asylum 45.6% of the time when represented, compared to a 16.3% success rate when the asylee proceeded *pro se*. Between 1995 and 2007, in affirmative asylum cases, which are processed administratively by asylum officers, the grant rate for applicants was 39% for those with representation and only 12% for those without it.¹⁷ In defensive asylum cases, which are heard in immigration court, 27% of applicants who had representation were granted asylum, while only 8% of those without representation were successful. Between 2000 and 2004, in expedited removal cases, 25% of represented asylum seekers were granted relief, compared to only 2% of those who were unrepresented.¹⁸

As noted above, representation also has the potential to increase the efficiency, and thereby reduce the costs, of at least some adversarial immigration proceedings. In short, enhancing access to quality representation promises greater institutional legitimacy, smoother proceedings for courts, reduced costs to government associated with *pro se* litigants, and more just outcomes for noncitizens.¹⁹

Unlike other court systems, immigration courts do not accord a special right to counsel for children. Without counsel, children, even infants, must defend themselves against trained government attorneys who bring evidence against the child in court. Children face a myriad of challenges just like those adults face: they must testify under oath, secure the testimony of witnesses, obtain evidence from abroad, plead to government charges, tell the judge what forms of relief they wish to pursue, file applications for relief and supporting documents in English, testify, and call witnesses, all with no knowledge of the legal norms and customs. In addition, they seldom speak English and must communicate through an interpreter. Faced with these challenges, the existing protections and remedies offered by the laws of the United States are rendered meaningless if these children do not have access to an attorney.

It is a fiction that most of these children lack viable claims to protective immigration relief – a significant number are eligible because they are fleeing oppressive forces or because they have been abused, neglected or abandoned. In a recent report, the United Nations High Commissioner for Refugees found that 58% of 404 unaccompanied children interviewed had potential claims for international protection.²⁰ Among the most common forms of relief that unaccompanied children are eligible for are (1) Special Immigrant Juvenile Status (SIJS) for children who have

¹⁶ GOV'T ACCOUNTABILITY OFFICE, SIGNIFICANT VARIATION EXISTED IN ASYLUM OUTCOMES ACROSS IMMIGRATION COURTS AND JUDGES 30 (2008) (“GOV'T ACCOUNTABILITY OFFICE”). An affirmative asylum case is where the noncitizen files a Form I-589 Application for Asylum, which is reviewed by USCIS in a non-adversarial process.

¹⁷ *Id.* A defensive case is where an individual requests asylum before an immigration judge in response to an expedited removal or other removal action by DHS.

¹⁸ See Charles H. Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices*, in 2 U.S. COMMISSION ON INT'L RELIGIOUS FREEDOM, REPORT ON ASYLUM SEEKERS IN EXPEDITED REMOVAL 239, 244-50 (2005), available at

<http://www.uscirf.gov/government-relations/other-advocacy-materials/3395-uscirfs-expedited-removal-study.html>.

¹⁹ See Catholic Legal Immigration Network, Inc., *et al.*, Petition for Rulemaking to Promulgate Regulations Governing Appointment of Counsel for Immigrants in Removal Proceedings, at 12-13 (June 29, 2009), available at <http://www.immigrantjustice.org/download-document/491-petition-for-rulemaking-appointed-counsel-june-2009.html>.

²⁰ See U.N. High Comm'r for Refugees, *Children on the Run*, *supra* note 2.

been abused, abandoned, or neglected by at least one parent; and (2) asylum for children fleeing persecution in their home countries. Approximately 23% of unaccompanied children are potentially eligible for SIJS and 17% for asylum and related protections.²¹ Other potential forms of relief include the U visa for individuals who have been a victim of certain serious crimes in the United States, and the T visa for victims of severe forms of human trafficking including for any child under the age of 18 engaged in commercial sex acts.²²

Aside from the complexities of navigating Immigration Court, there are separate challenges in seeking to obtain Special Immigrant Juvenile Status. This status is a unique hybrid of family and immigration law that requires three separate steps. First, it requires obtaining an order with specific predicate findings from a state court²³ before filing the SIJS visa petition with USCIS. Only after the state court order and the approved visa petition are obtained may the child apply for lawful permanent residence (green card) from and immigration judge or, if the judge agrees to terminate removal proceedings, from USCIS. The predicate state court order must include certain factual findings, including that a child is unable to reunify with one or both parents because of abuse, neglect, abandonment, or some similar basis under state law, and that it is not in the child's best interest to return to the home country.²⁴ An increasing number of state courts are familiar with this form of relief, but even with growing awareness, some state court judges are confused by the federal immigration laws related to SIJS and others are unaware that they have the authority to make the special findings.

Many other barriers make obtaining Special Immigrant Juvenile Status a challenge:

(1) A state juvenile, probate, or family court must issue the special findings order; however they typically neither provide free legal counsel to children nor even pay for interpreters. These deficiencies, coupled with the fact that these courts and the lawyers who practice in them often are unfamiliar with SIJS, make it difficult to initiate and advance the claim, let alone obtain the predicate order with appropriate language acceptable for USCIS adjudication of the visa petition. The appropriate jurisdictional grounds for filing in state court are varied and depend on the individual state. Examples include a petition for legal guardianship, child custody, juvenile delinquency proceedings, or child dependency proceedings. The complexity of navigating these pro se is virtually impossible for an immigrant child. Even if a child knows that he is eligible for SIJS, questions abound—which court should he file in, and what kind of proceeding is most appropriate to bring? Should the child start the claim, or the adult caring for the child?

²¹ VERA INSTITUTE OF JUSTICE, *supra* note 9.

²² For a detailed treatment of these forms of relief and the associated challenges, see the February 2014 report by Kids in Need of Defense and the Center for Gender and Refugee Studies (CGRS), *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* at <http://cgrs.uchastings.edu/our-work/treacherous-journey>. This article focuses on SIJS and asylum and describes the challenges that children who are eligible face in obtaining these forms of relief. Without adequate assistance of counsel, the complexity of these forms of relief can doom an otherwise viable claim. *See also* USCIS, www.uscis.gov/green-card/special-immigrant-juveniles/history-sijs-status; NCSB, www.ncsb.org/sitecore/content/microsites/trends-2014/home/monthly-trends-articles/unaccompanied-minors-in-state-courts.aspx.

²³ Throughout this report, reference is made to Special Immigrant Juvenile Status requiring orders from different divisions for state courts. Of course, this resolution language recognizes that the requisite orders for Special Immigrant Juvenile Status may also come from territorial and tribal courts. Therefore all the provisions about state courts in this report equally apply to territorial and tribal courts that are responsible for adjudicating these same requisite orders for children subject to their jurisdictions.

²⁴ 8 U.S.C. § 1101(a)(27)(J).

(2) After the state court has issued its special findings order, the child must submit an application for SIJS to the immigration adjudication office at USCIS. An adjudications officer at USCIS may conduct an interview of the child to determine whether to approve or deny the child's SIJS petition. This process can be very stressful and intimidating for a child proceeding pro se. An attorney would ensure that the child files the correct application and documents and that he is prepared to answer questions about his application.

(3) To obtain permanent status, the child must submit an application for lawful permanent residency ("LPR") that is separate and distinct from the SIJS petition. The LPR application may be decided by an adjudications officer at USCIS after an interview or by an immigration judge after a hearing, if the child's removal proceeding has not been terminated. Provision of an attorney would ensure that the child is prepared to present the appropriate claim, include the correct supporting documentation including fees, identity documents and a medical exam, and testify and be cross-examined by the government attorney in immigration court or answer any questions about his application before USCIS.

During all the steps of the SIJS process, the unaccompanied child must continue to appear in immigration court, explain the progress of the SIJS application, and request continuances from the judge to complete the state court process. The complexity of multiple areas of law coupled with multiple legal venues makes SIJS particularly difficult to obtain on a pro se basis. Could anyone imagine their own children navigating this puzzle alone and without the benefit of professionals trained to understand and proceed through it?

Perhaps the most significant obstacle is the pressure of time. Deadlines in federal law require adjudication of all three steps - immigration filing, state court orders, and return to USCIS or immigration court - before the child turns 18 in most instances. The risk of loss of rights due to a child's "aging out" of the system while proceedings are delayed is discussed in detail below.

A CHILD'S RIGHT TO IMMIGRATION COUNSEL AT GOVERNMENT EXPENSE

A hallmark of the U.S. legal system is the right to counsel, particularly in complex proceedings that have significant consequences.²⁵ Immigration proceedings for unaccompanied children can separate children from families they are trying to join to avoid the horrific conditions they fled, can impoverish them, can return them to countries in which they have no functional ties, and can lead to their persecution and personal, physical danger. Despite the dangers of a journey that threatens their lives and safety, parents and caregivers in other nations abandon their children to this fate. Children themselves run away from homes abroad that fail to protect them. As Justice Brandeis wrote more than 80 years ago, removal can result "in loss of both property and life; or of all that makes life worth living." *N. G. Fung Ho v. White*, 259 U.S. 276, 284 (1922). This is particularly true for persons who may qualify for relief from removal under strict U.S. immigration standards.

²⁵ The right to legal representation is a bedrock principle of the ABA as reflected in its stated goals. ABA Goal II "speaks directly to this priority: ""to promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition." Expanding legal representation to unaccompanied children also improves the U.S. system of justice (Goal I), promotes standards of professionalism (Goal V) and enhances public service (Goal X)." American Bar Association, Commission on Immigration, Report to the House of Delegates (February 2006), p.4.

Consistent with its commitment to legal representation, the ABA has adopted several “right to counsel” policies in the immigration field. These policies seek to expand access to retained and pro bono legal representation for persons in removal proceedings, to protect existing attorney-client relationships, and to extend representation to certain vulnerable populations. Of particular concern are persons in removal proceedings (formerly called “exclusion” and “deportation” proceedings), political asylum seekers, unaccompanied minors, individuals with diminished mental capacity, non-citizens whose removal cannot be effected, detained parents with children, and those held in incommunicado detention. The recent border crisis has created a situation of such magnitude that vast numbers of children who should be eligible for protected status either under political asylum laws or SIJS are threatened with being deprived of any meaningful access to legal assistance, putting them in danger of being returned to life-threatening conditions.²⁶

A necessary corollary to a right to counsel for the child herself is that when an adult files a custody, guardianship or other action seeking SIJS findings on behalf of a child, and that adult qualifies for *in forma pauperis* status, counsel should be appointed at government expense for that adult as well. The purpose of providing counsel to the child is to protect her rights. In SIJS proceedings in non-immigration courts, the child’s rights can often only be vindicated when a responsible adult caring for the child files to obtain a predicate order from the state court in order to later obtain SIJS status from USCIS. In those cases, counsel should be provided to the responsible adult, subject to financial eligibility requirements. This is the only effective way to protect the legal rights of children in these proceedings.

Principles of economy and efficiency also militate in favor of this resolution as representation advances both in this context, with the potential of reducing costs sharply. Pro se litigants cause delays in immigration court proceedings and, as a result, impose a substantial financial strain on the government. Countless immigration educators, judges, practitioners, and government officials have observed that the presence of competent, well-prepared counsel on behalf of both parties helps to clarify the legal issues and allows courts to make more principled and better informed decisions. In addition, representation can speed the process of adjudication, reducing detention costs. The Executive Office for Immigration Review confirmed that the involvement of counsel allows the immigration process to run more smoothly and efficiently, and certainly more humanely.²⁷ This is certainly true for the immigration process as it irreversibly affects the destinies of the most vulnerable populations of children.

This resolution is also justified because of the disproportionate number of children arriving at our border who are eligible for some type of protected status. For example, the United Nations High Commissioner for Refugees recently noted that 58% of the children interviewed in a 2013 study “raised potential international protection [needs].”²⁸ Given that more than half of these children self-identify with information indicating a likelihood that they qualify for legal status it seems only just and proper to invest in their protection through representation.

²⁶ See *In re Gault*, 387 U.S. 1, 40 (1967) (noting that counsel is often “indispensable” to any meaningful realization of due process); see also *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948) (noting that “a lad of tender years . . . needs counsel and support if he is not to become the victim first of fear, then of panic.”).

²⁷ ANNA HINKEN, U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, EVALUATION OF RIGHTS PRESENTATION (1999).

²⁸ See U.N. High Comm’r for Refugees, *Children on the Run*, *supra* note 2 at pg. 9.

DUE PROCESS CONSIDERATIONS

The courts have long recognized that children as well as adults in deportation proceedings are entitled to due process protections.²⁹ One of the most important elements of due process is the right to be represented by counsel. This right has also long been recognized in the field of immigration law.³⁰ The Immigration and Nationality Act provides that individuals in removal proceedings "shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing."³¹ Federal regulations recognize an individual's right to counsel in diverse matters and circumstances.³² The courts have long recognized the importance of counsel in deportation proceedings – as one federal appeals panel noted, "[a] lawyer is often the only person who could thread the labyrinth".³³

Two U.S. Courts of Appeals have suggested that where a noncitizen adult's rights would be substantially impaired in the absence of counsel, the government may be required constitutionally to pay for an attorney in immigration proceedings. The U.S. Court of Appeals for the Sixth Circuit dismissed previous case law on this point as relying on an "outmoded distinction between criminal cases and civil proceedings."³⁴ The court then found that "[w]here an unrepresented indigent alien would require counsel to present his position adequately to an immigration judge, he must be provided a lawyer at the Government's expense. Otherwise 'fundamental fairness' would be violated."³⁵ The Ninth Circuit has observed that due process rights may include providing an indigent alien, in that case an adult, with government appointed counsel.³⁶ This argument is only strengthened when considering the needs of children who generally lack the capacity to represent themselves.

The U.S. Supreme Court has recognized that children need special protections. "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty toward children."³⁷ The Court went on to point out that "although children generally are protected by the same guarantees against government deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability."³⁸

²⁹ See *Bridges v. Wixon*, 326 U.S. 135, 147 (1945).

³⁰ See *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990); *Castaneda-Delgado v. INS*, 525 F.2d 1295 (7th Cir. 1975).

³¹ INA § 240(b)(4Xa), 8 U.S.C. § 1229a(b)(4XA) (2000); see also INA § 292, 8 U.S.C. § 1362 (2000).

³² See 8 C.F.R. §§ 3.15(bX5), 240.10(a)(1), 240.48(a), 292.5(b) (2000).

³³ *Castro-O Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988).

³⁴ *Aguilera-Enriquez v. INS*, 516 F.2d 565, 568 n.3 (6th Cir. 1975) (holding that the absence of counsel in the case at hand was not a denial of due process because the petitioner had no arguable defense against being deported so counsel would not have served any meaningful role).

³⁵ *Id.*

³⁶ See *Escobar-Ruiz v. INS*, 787 F.2d 1294, n.3 (9th Cir. 1986), *aff'd en banc*, 838 F.2d 1020 (1988).

³⁷ See *Bellotti v. Baird* 443 U.S. 622, 633 (1979) (quoting *May v. Anderson*, 345 U.S. 528 (1953) (Frankfurter, I., concurring)).

³⁸ See *Bellotti v. Baird*, 443 U.S. 622, 635 (1979).

NO HEARINGS INVOLVING THE TAKING OF PLEADINGS OR PRESENTATION OF EVIDENCE BEFORE MEANINGFUL OPPORTUNITY TO CONSULT WITH COUNSEL

Immigration courts, in the face of the crisis, will make efforts to allow children to find counsel. Immigration courts will often allow non-profit organizations to help children by providing legal information and screening services in the court prior to master calendar hearings, appearing as “Friend of the Court,” or finding counsel by recruiting, training and mentoring private attorneys to represent children *pro bono*. In the face of a crisis of so many children at once, the private bar has heroically stepped up to meet the call, but the numbers are overwhelming and countless children will end up without representation.

In the case of a minor who evidences an intent to stay in the US but no counsel has been found, a case should be continued until counsel can be found. From the very first master calendar appearance, the child respondent is required to make representations and statements which carry serious consequences related to the finding or removability or relating to eligibility for relief which the child should therefore never make uncounseled. To secure due process, no proceeding should take place where a court takes pleadings or evidence is presented before an unaccompanied child has had a meaningful opportunity to consult with counsel about his or her specific legal options. Given the very real inequity of legal proceedings taking place with the able counsel of attorneys from DHS on the other side of the aisle from the lone child, no other remedy but counsel could secure due process. Courts should continue any proceeding until the child is there with the able advice of trained counsel on her side.

Communication with these children can be challenged by language, resources, and the fact that so many of these children are trauma victims from the torture, abuse, neglect or trafficking they experienced in their countries or during their journey to the United States.³⁹ As a result, the ABA already has extensive policy concerning the extra care and effort that must be taken in communicating with a child client and established best practices for how to accomplish this in any legal setting including immigration.

The ABA has long championed the notion that every lawyer has a professional responsibility to provide legal services to those unable to pay.⁴⁰ “Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.”⁴¹ Nowhere is this need and expectation of the best of our profession more apparent than in the immigration context where the stakes are so high and the role that private bar members can play so vital – for their expertise can transform a child’s destiny from terror to hope and normalcy.

But *pro bono* isn’t free. In fact, it can be exceeding costly. Volunteer attorneys who apply their best talents to indigent immigration representation often require significant assistance and guidance from public interest law experts to ensure they deliver first class legal services to *pro bono* clients, especially when their regular practice does not include immigration law. They thus

³⁹ See Walker, Kenniston, Inada, Handbook on Questioning Children: A Linguistic Perspective (American Bar Association Center on Children and the Law, 3rd Ed.)

⁴⁰ ABA Model Rule 6.1.

⁴¹ ABA Model Rule 6.1 Commentary.

require training, mentorship, case review, and guidance from a dedicated and experienced public interest lawyer or other appropriate mentor. These experts are housed in outstanding organizations around the nation committed to the direct representation of immigrant adults and children, as well as the training and recruitment of volunteer attorneys to assist in that effort.⁴²

Of course pro bono is only part of the solution to this legal crisis. As the Association of Pro Bono Counsel (APBCo)⁴³ has argued to the government and to the public, law firms must dedicate their lawyers to assist in this effort but volunteers alone will not meet the extreme demand of the surge of unaccompanied minors.⁴⁴ This resolution emphasizes the need to find counsel - pro bono or government funded - in order to ensure access to justice for every child before the court who has expressed an interest in staying in the United States.

TRAINING JUDGES

This resolution is also in furtherance of the ABA's mandate to defend liberty and pursue justice. Our profession must promote professional excellence and respect for the law and its administration. Improving our system of justice translates to providing heightened access to legal representation and to the American system of justice for all persons; increasing respect for the law and legal process; advancing the rule of law in the world; and preserving the independence of the legal profession and the judiciary. The ABA has long-standing policies exhorting our profession to stay abreast of our professional obligations and legal reforms through regular and appropriate training.

Training for judges is critical to avert injustices that arise from lack of awareness of legal developments. This resolution is necessary because the judiciary itself is expressing a need for training in this uniquely challenging and evolving area of law. For example, ABA members who represent unaccompanied minors in SIJS proceedings are receiving increasing queries from some state judges asking why they are being brought into federal immigration proceedings and who clearly lack an informed appreciation of the vital role that the SIJS statute demands of them.

The ABA is spearheading efforts to humanize our collective response to the border crisis that is affecting countless vulnerable children – many if not most of whom should qualify for protected status under either political asylum laws or those governing SIJS. Their prospects for achieving protected status in accordance with federal law is jeopardized if state judicial officers and their staff are not properly trained and informed on emerging policies and procedures that are critical to protect this vulnerable class. State court judges need to understand the United States' legal

⁴² For an extensive list of organizations and bar associations that serve the community in this way see *Immigrant Child Advocacy Network*, AMERICAN BAR ASSOCIATION, www.ambar.org/ican.

⁴³ The Association of Pro Bono Counsel (APBCo) was established in 2006 as a professional organization for attorneys and practice group managers who run a law firm pro bono practice on a full-time basis. See ASSOCIATION OF PRO BONO COUNSEL, www.apbco.org. Today, APBCo has over 135 members representing 85 of the country's largest law firms. APBCo's mission is to maximize access to justice through the delivery of pro bono legal services by advancing the model of the full-time law firm pro bono counsel, supporting and enhancing the professional development of pro bono counsel, and serving as the voice of the law firm pro bono community.

⁴⁴ See Steven Schulman et al., *Law Firms, Non-profits, Businesses and Government Must Work Together to Solve Border Crisis*, THE HILL (Aug. 11, 2014, 12:00PM), <http://thehill.com/blogs/congress-blog/judicial/214705-law-firms-nonprofits-businesses-and-government-must-work>; see also Letter from Association of Pro Bono Counsel, to Vice President Joseph R. Biden, Jr. (Sept. 19, 2014), available at <http://www.apbco.org/wp-content/uploads/2014/09/APBCo-18-Sept-2014-letter-to-VP-Biden-re-UAM-Crisis.pdf>.

obligations to protect immigrant children, the specifics of eligibility for SIJS under current law, the specific role Congress gave state courts in the fact finding process, and the interplay between state court predicate orders and the ultimate resolution of a child's immigration status by USCIS or an immigration court. There are jurisdictions where training of the judiciary has been proven to improve the adjudication of these critical cases for children. For example, the Los Angeles Juvenile Court has long recognized how critical training on SIJS is to bench officers overseeing SIJS implementation to ensure eligible minors receive the benefit of the highest quality judicial consideration.⁴⁵ That and other courts are leading examples for the nation.

CONSIDERATION OF DESIGNATED DOCKETS

The dependency, family law, probate and other state, tribal and territorial court dockets across the United States are in crisis themselves. Many are reeling from sharp budget cuts and have had to lay off judicial officers and court support staff. Despite this chaotic situation, the SIJS process calls upon these state courts to provide a critical component of the findings required for a child to obtain a visa and remain safe in the United States if they qualify. Children who should qualify for SIJ status may still be removed from the United States by immigration authorities if unable to obtain the orders from the state court ruling that they have been abused, neglected or abandoned and that it is in their best interest to remain in the U.S.

In effect, this means that state court judges are making decisions critical and potentially dispositive as to whether children will access immigration remedies and have the right to stay in the United States. It is an unusual responsibility that requires specialized training to understand the context, the consequences and the nuances of this area of law and practice. In order to meet the unyielding deadlines established by federal law, it may make sense in certain jurisdictions to establish special dockets to hear these cases outside of the regular, and frequently clogged, calendars for dependency, family and probate courts. It may decrease disruption to the regular cases before these local courts for the SIJS matters to be heard separately. It also will likely lend more thoughtful and appropriate adjudication of these matters considering the myriad contexts and unique paths these children have journeyed. It will certainly make it easier for any child who does come to the state court for assistance. As always, each state, territorial or tribal court must decide whether the ABA recommendations, if implemented, would further the purposes of this resolution.

Federal immigration law imposes intense pressure upon on applicants to obtain timely adjudication of these matters. The federal law allows for adjudications before the age of 21. But at the time of the immigration decision, the state court order must still be "in effect." Some states have expanded state court jurisdiction to declare a minor dependent and adjudicate their best interests so an order may be in effect as late as age 19 or 21. The age varies among this group of states. But many states still provide that dependency jurisdiction ends at age 18. For these states, the immigration proceeding must be resolved before the child leaves the state court's jurisdiction. The result is that children nearing the age of 16 are in danger of not being able to take advantage of immigration remedies for which they should otherwise qualify, simply due to the lack of coordinated processes between the two different court systems, state and federal. The issue is amplified by the fact that the federal government's recent funding program allow the

⁴⁵ See Presentation to Judicial Council of California, available at <http://www.courts.ca.gov/documents/jc-20141028-item1-presentation.pdf>

hiring of a number of lawyers to represent immigrant children who arrived in the surge but even these new attorneys will be restricted to representation of children under the age of 16 who are not in the custody of the ORR or HHS.⁴⁶ This resolution seeks thoughtful consideration of resources for expediting processes only where it is needed. Where a child is 16 but there is no chance of the state court jurisdiction ending before age 21, expedited proceeding resources should be saved for other more urgent cases. But because these proceedings may take well over a year to complete, a 16 year old facing an age 18 expiration of jurisdiction in state court should have access to a proceeding that recognizes the need for an expedited process for hearing and adjudicating his or her claim.

The ABA recognizes and respects that courts must decide how to effectively administer all matters coming before them while carefully allocating the limited financial resources available to them for doing so. Because the 2014 surge in arrivals of unaccompanied children will continue to impact state courts for some time to come, the ABA also urges state legislatures to appropriate adequate funds to allow the courts to implement those procedures they may develop for the timely processing of SIJS cases.

INVIGORATING ABA’S LONG STANDING SUPPORT FOR IMMIGRATION RELIEF

The ABA is deeply committed to ensuring fair treatment and access to justice under the nation’s immigration laws. ABA policy has consistently recognized the importance of representation in immigration cases where a lawyer can help a noncitizen understand and effectively navigate the complexities of the U.S. immigration system. Promoting the goals of fairness and efficiency through improvements to our overburdened immigration adjudication system will serve to advance the rule of law (Goal IV) by providing for a fair legal process.

This resolution supports the provision of legal representation to unaccompanied minors who have come to the U.S. with no resources for counsel but with claims for immigration relief. The resolution would advance the interests of the government, protect the principle of due process for these children by protecting the rights of non-citizens facing removal, and help vindicate their bona fide claims.

Consistent with its commitment to legal representation, the ABA has adopted several “right to counsel” policies in the immigration field. These policies seek to expand access to retained and pro bono legal representation for persons in removal proceedings, to protect existing attorney-client relationships, and to extend representation to certain vulnerable populations. Populations of particular concern include persons in removal proceedings, political asylum seekers, unaccompanied minors, non-citizens whose removal cannot be effected, detainees, and those held in incommunicado detention. A brief summary of its policies follows.

- In 1983, the ABA opposed legislative initiatives to limit the right to retain counsel in removal proceedings and in political asylum proceedings. (83M120A)
- In 1990, the ABA supported “effective” access to legal representation by asylum seekers in removal proceedings. In particular, it supported improved telephonic access between detained

⁴⁶ See *Justice of AmeriCorps Legal Services for Unaccompanied Children*, NATIONAL & COMMUNITY SERVICE, <http://www.nationalservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-ameri-corps-legal-services> (describing these new grants for lawyers for these children restricted only to the children under age 16).

asylum seekers and legal representatives; dissemination of accurate lists of legal service providers; and legal orientation programs and materials for detainees. (90M131)

- In 2001, the ABA supported government-appointed counsel for unaccompanied minors in all immigration processes and proceedings. Likewise in 2001, the ABA opposed the involuntary transfer of detained immigrants and asylum seekers to detention facilities when this would undermine an existing attorney-client relationship. It also opposed the construction and use by the Immigration and Naturalization Service of detention facilities in areas that do not have sufficient qualified attorneys to represent detainees. (01M106A)

- In 2002, in response to the post-September 11 arrest and detention of several hundred non-citizens, the ABA opposed the incommunicado detention of foreign nationals in undisclosed facilities. It also supported the promulgation in the form of federal regulations of federal detention standards (originally developed by the ABA) related to access to counsel, provision of legal information and independent monitoring for compliance with these standards. (02A115B)

- In 2004, the ABA adopted its own Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States. These standards call for timely legal rights presentations for all unaccompanied children, the opportunity to consult with an attorney, the right to have an attorney present in all proceedings affecting a child's immigration status, and (if necessary) the right to government-appointed counsel. (04A117)

- In 2006, the ABA adopted a policy supporting the due process right to counsel for all persons in removal proceedings, and the availability of legal representation to all non-citizens in immigration-related matters. This policy also supported the establishment of a system to screen and to refer indigent persons with potential relief from removal — as identified in the expanded “legal orientation program” — to pro bono attorneys, Legal Services Corporation sub-grantees, charitable legal immigration programs, and government-funded counsel; and the establishment of a system to provide legal representation, including appointed counsel and guardians ad litem, to mentally ill and disabled persons in all immigration processes and procedures, whether or not potential relief may be available to them. (06M107A)

- In 2011, the ABA urged legislation for the protection of unaccompanied minors that would assure prompt screening of their eligibility for immigration relief as well as safe and stable family reunification if they are to be repatriated. That resolution also called for federal support to train state and local judges, and attorneys, regarding the intersection of state child welfare laws, immigration laws, applicable international conventions and standards, and Intercountry protocols that affect children who are detained, separated from, or removed from their adult caretakers. (11A103D)

These policies recognize the crucial importance of legal representation in immigration proceedings right now. This resolution particularizes these policies given the immense unmet need for legal representation in immigration proceedings for unaccompanied children facing the "rocket dockets"⁴⁷ now found in immigration courts across the nation. These "rocket dockets" were created in response to a directive in July 2014 from the administration to fast-track the cases and has meant the children receive initial hearings within 21 days and in some cases are given a matter of weeks, instead of months, to find an attorney. Non-profit agencies are doing their best to meet the need but it has exploded in the face of the higher numbers of children in need. Specific reforms are needed in the face of this recent crisis. Significant changes in immigration practice and procedure will profoundly challenge the capacity of state juvenile, probate and family courts properly to adjudicate matters inextricably intertwined with immigration proceedings. This resolution is tailored to redress these matters and help alleviate the impact that they are having on state, territorial and tribal courts in their handling of unaccompanied children's' claims for immigration protection.

Respectfully Submitted,

Christina Fiflis, Co-chair

Mary Ryan, Co-chair

Working Group on Unaccompanied Minor Immigrants

February 2015

⁴⁷ See, e.g. Dianne Solis, *Rocket Dockets May Be Jettisoning Justice for Immigrant Children*, (August 27, 2014), available at <http://www.dallasnews.com/news/metro/20140827-rocket-dockets-may-be-jettisoning-justice-for-immigrant-children.ece>; http://articles.baltimoresun.com/2014-08-20/news/bs-md-immigration-rocket-docket-20140820_1_immigration-cases-u-s-immigration-catholic-charities.

GENERAL INFORMATION FORM

Submitting Entity: Working Group on Unaccompanied Minor Immigrants

Submitted By: Christina Fiflis, Mary Ryan – Co-chairs

1. Summary of Resolution(s).

This resolution urges that counsel be appointed for unaccompanied children at government expense at all stages of the immigration process including initial interviews before United States Citizenship and Immigration Services Asylum Offices and at all proceedings necessary to obtain Special Immigrant Juvenile Status, asylum and other remedies and urges that immigration courts should not conduct any hearings, including final hearings, involving the taking of pleadings or presentation of evidence before an unaccompanied child has had a meaningful opportunity to consult with counsel about his or her specific legal options. Because Special Immigrant Juvenile Status is one key immigration remedy available to many of these children, the resolution seeks to secure training for state, territorial and tribal courts to help them promptly provide the prerequisites for these visas that fall within their jurisdiction. Finally, the resolution urges state, territorial and tribal courts to consider creating specialized dockets to adjudicate SIJ cases and establishing expedited processes for children age 16 and over.

2. Approval by Submitting Entity.

The Working Group on Unaccompanied Minor Immigrants approved the resolution on November 6, 2014.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA has in the past adopted several policies supporting access to counsel in the immigration context. The two policies most relevant to this resolution are: 1) a 2001 policy supporting government appointed counsel for unaccompanied alien children, among other recommendations, and 2) a 2004 policy adopting the *Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*. This resolution would restate the ABA's support for government appointed counsel for unaccompanied children and that immigration court proceedings should not proceed where a child is unrepresented. The resolution seeks to reaffirm these core principles more than 10 years after they were originally adopted because of the timeliness and importance of the issues.

The ABA has several existing policies urging training and education of judges in specific

contexts. This resolution is consistent with and would complement those policies.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

6. Status of Legislation. (If applicable)

S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, passed by the Senate on June 27, 2013, contained a provision that required the Attorney General to appoint counsel, at the expense of the government if necessary, to represent an alien in a removal proceeding who has been determined by the Secretary to be an unaccompanied alien child, is incompetent to represent himself or herself due to a serious mental disability, or is considered particularly vulnerable when compared to other aliens in removal proceedings, such that the appointment of counsel is necessary to help ensure fair resolution and efficient adjudication of the proceedings. There were several bills introduced in the House that had provisions relating to access to counsel for unaccompanied children. No action was taken on any of these bills.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Working Group and other ABA entities will work with the Governmental Affairs Office to engage in advocacy efforts related to supporting government-appointed counsel for unaccompanied children and ensuring that courts do not set hearings involving the taking of pleadings or presentation of evidence before an unaccompanied child has had a meaningful opportunity to consult with counsel about his or her specific legal options. The recommendations on training for state court judges and encouraging state, territorial and tribal courts to consider dedicated calendars for Special Immigrant Juvenile Status cases will be transmitted to relevant state judges, courts and other stakeholders.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals.

Commission on Immigration
Section of Litigation
Section of Individual Rights and Responsibilities
Section of Family Law

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Section of International Law
Judicial Division
Center for Children and the Law
Commission on Youth at Risk
Young Lawyers Division
Center for Human Rights
Standing Committee on Pro Bono and Public Service
Standing Committee on the American Judicial System
Commission on Homelessness and Poverty

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution supports government appointed counsel for unaccompanied children in immigration proceedings and urges that immigration courts should not conduct any hearings, including final hearings, involving the taking of pleadings or presentation of evidence before an unaccompanied child has had a meaningful opportunity to consult with counsel about his or her specific legal options. Because obtaining Special Immigrant Juvenile Status is one key immigration remedy available to many of these children, the resolution seeks to secure training for state, territorial and tribal courts to help them promptly provide the prerequisites for these visas that fall within their jurisdiction. Finally, the resolution urges state, territorial and tribal courts to consider creating specialized dockets to adjudicate SIJ cases and establishing expedited processes for children age 16 and over.

2. Summary of the Issue that the Resolution Addresses

Each year thousands of unaccompanied children enter the U.S. and are placed in immigration removal proceedings. A significant number of these children do not have legal representation because they cannot find and/or afford a lawyer.

One of the few avenues of potential relief for unaccompanied children under the immigration laws is obtaining Special Immigrant Juvenile Status (SIJS). But there are challenges to obtaining SIJS, including that a state court must first make certain factual findings. Some state court judges are confused by the federal immigration laws related to SIJS and others are unaware that they have the authority to grant the special findings. In addition, deadlines in federal law require adjudication of all three steps - immigration filing, state court orders, and return to USCIS - before the child turns 18 in many instances.

3. Please Explain How the Proposed Policy Position will address the issue

The policy would ensure that all children are afforded legal representation by supporting government appointed counsel where necessary and would help ensure the children's due process rights are protected by urging immigration courts not to set hearings where an unaccompanied child has not had a meaningful opportunity to consult with counsel about his or her specific legal options.

For SIJS cases, additional training can help ensure that state, territorial and tribal court judges are aware of and understand their role in these cases. In addition, creating dedicated calendars for SIJ cases and providing expedited processes for children who are 16 years and older will help to ensure that no child is deprived of the opportunity to obtain SIJ status simply because they aged out of eligibility before their court proceedings were finished.

4. Summary of Minority Views

We are not aware of any minority views to date.