



Immigration Issues in Juvenile Court

CPCS

Immigration Impact Unit

2017

Why Do I Need to Know This?

Padilla v. Kentucky
March 2010

Commonwealth v.
Marinho
January 2013

duty to advise of
consequences
**prior to
pleading**

duty to advise
of consequences
prior to trial

duty to negotiate with
prosecutor & advocate
with judge **disposition**
**that mitigates
consequences**

Failure to do so is ineffective assistance of counsel

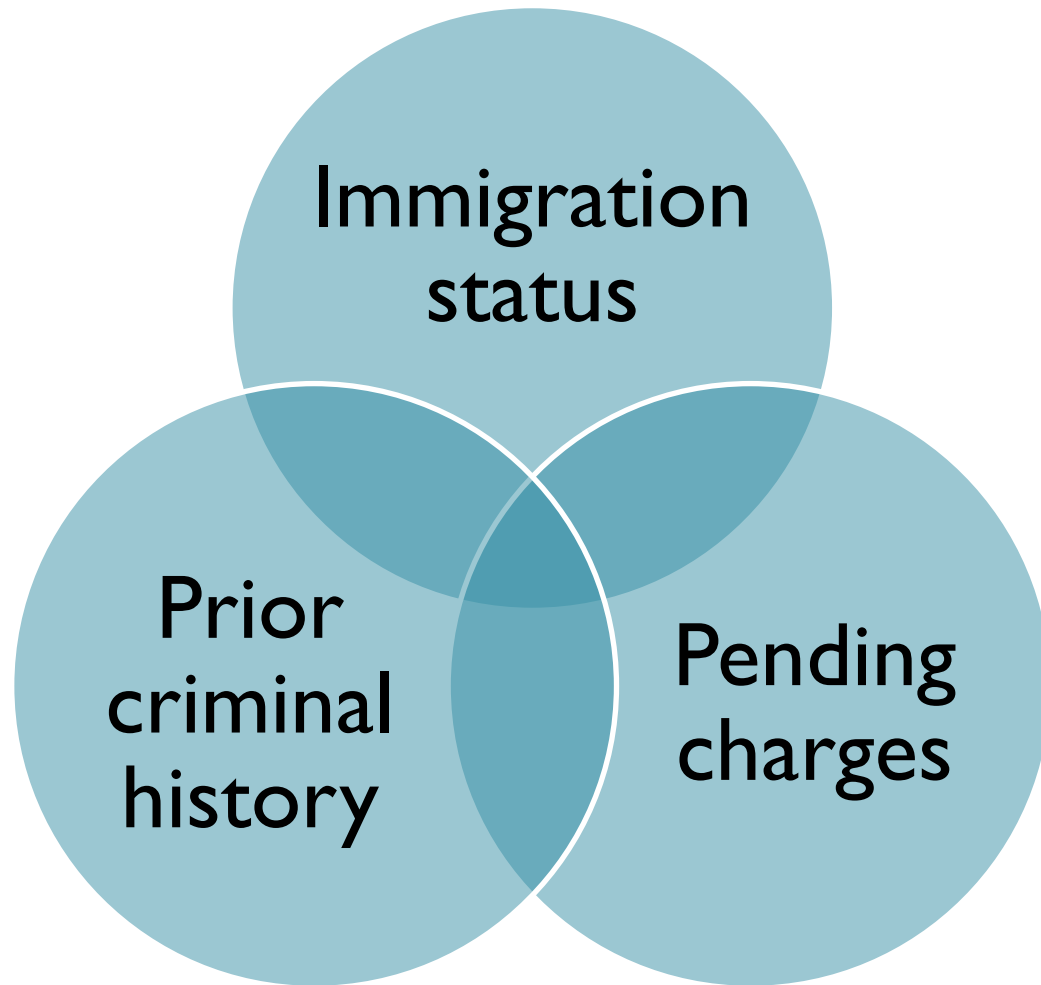
Topics of Discussion

The impact of delinquency on non-citizens

The impact of immigration on children

ICE Enforcement

Special Immigrant Juvenile Status (SIJ) & DACA



Information Gathering

- Immigration status/Immigration History
 - See “Types of Status” slide
 - Any prior contact with immigration?
 - ICE Detainer?
- Family in the U.S. – living situation

Types of Immigration Status

U.S.
Citizen

Legal Permanent Resident

Lawful Non-Immigrants

Refugees & Asylees

Temporary Protected Status

Deferred Action for Childhood
Arrivals (DACA)

Undocumented and Out of Status

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Inadmissibility (8 USC 1182):

- Client leaves U.S. and tries to return, he can be stopped at the border if inadmissible.
- Client never lawfully admitted to the U.S. (i.e. crossed the border illegally) can be removed based on grounds of inadmissibility.
- Client can be denied green card based on grounds of inadmissibility.



Deportability (8 USC 1227)

If client was lawfully admitted to the U.S., she can be removed based on grounds of deportability.




DISCRETION

Delinquency adjudications will be considered as negative factors in discretionary determinations.

Matter of Devison, 22 I & N Dec. 1362 (BIA 2000).

Conviction?

A finding of delinquency is *not* a conviction
for immigration purposes

Delinquency  Conviction

BUT -- Some grounds of inadmissibility or
deportability don't require a conviction, so
juvenile dispositions can still have
immigration consequences

Youthful Offender?

- No cases on MA statute, but...
 - In re Miguel Devison, 22 I & N Dec. 1362 (BIA 2000).
 - Matter of V-X, 26 I. & N. Dec. 147 (BIA 2013)
- Massachusetts YO can never ripen into an adult conviction
- BUT!! Contact IIU for all YO charges

Immigration Consequences for Lawful Permanent Residents

Inadmissibility

- “Reason to believe” drug trafficker
- Engaging in prostitution

Deportability

- “Drug abuser”/addict
- 209A violations

Citizenship

- Five years of “Good Moral Character”

Immigration Consequences for Undocumented Juveniles

Asylum	SIJS	DACA	Green card
<ul style="list-style-type: none">• Discretion	<ul style="list-style-type: none">• Inadmissibility<ul style="list-style-type: none">• “reason to believe”• Drug abuser• prostitution• Discretion	<ul style="list-style-type: none">• Discretion	<ul style="list-style-type: none">• Inadmissibility<ul style="list-style-type: none">• “reason to believe”• Drug abuser• prostitution• Discretion

Leads to ICE Enforcement

Topics of Discussion

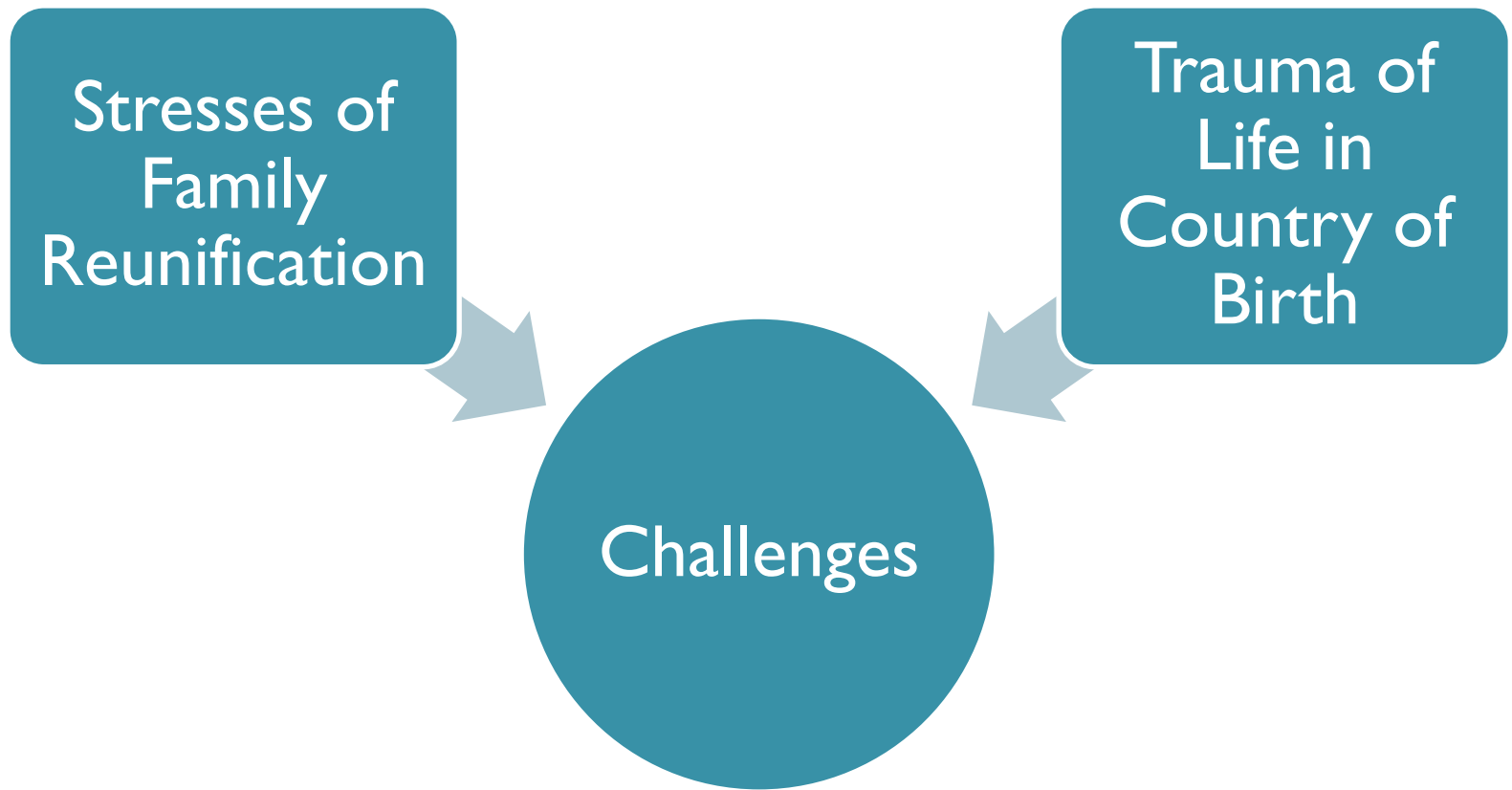
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The Impact of Immigration in State Court



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ICE Involvement with Juveniles

- Which kids is ICE looking for?
 - Executive Order(s)
 - GANGS
- How does ICE find a kid?
 - Secure communities
 - Probation?

Three Executive Orders

- “Border Security” – January 25, 2017
- **“Public Safety in the Interior” – January 25, 2017**
- “Protecting the Nation from Terrorist Entry” (Travel Ban) – January 27, 2017

BUT FIRST....Who is not an enforcement priority?

- A person must already be removable for the enforcement priorities to apply!!
- The Executive Order did not create new criminal grounds of deportability.
- EXAMPLE: An LPR who is not otherwise deportable does not become deportable based on a conviction for trespass.

Interior Enforcement :

Who is a priority?

- Any noncitizen who is already removable, and
 - Has been convicted of *any* crime
 - Has been charged with *any* crime, where such charge has not been resolved
 - Has committed acts that constitute a chargeable criminal offense
 - In the judgment of an immigration officer, poses a risk to public safety or national security

Who else is a priority?

- Anyone who is already removable, and:
 - Engaged in fraud in connection with any government application
 - Abused public benefits
 - Has final removal order
 - Poses public safety or national security risk
- Also, any noncitizen who attempts to enter or entered the US without lawful status in the last 2 years

What else does the interior enforcement memo say?

- More immigration officers – what resources?
- More detention
 - EOIR memo prioritizing detained cases
- 287(g) agreements
- Reinstatement of Secure Communities – not really a change except for more use of detainers

Immigration Enforcement: How our clients get caught

- Secure Communities
- “Criminal Alien Program”
- Detainers
- ICE raids/sweep



Juvenile ICE Detention

- There are no juvenile ICE detention facilities in MA – kids are sent out of state
- Once in ICE custody out of state, virtually impossible to bring back to court
- There is no right to appointed counsel in deportation proceedings

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What is SIJ?

SIJ is a pathway for an undocumented child to pursue a green card.

What is SIJ?

Based on child's
“abuse, abandonment,
or neglect” by parent,
child can apply to
remain in the U.S.

What is required to obtain SIJ?

Predicate
findings in
juvenile court

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graph TD; A[Predicate findings in juvenile court] --> B[Apply for SIJ status with USCIS (I-360)]; B --> C[Apply for a green card with USCIS (I-485)];
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The diagram is a flowchart with three steps. The first step is a purple rounded rectangle containing the text 'Predicate findings in juvenile court'. A light blue arrow points from this box to the second step, which is a teal rounded rectangle containing the text 'Apply for SIJ status with USCIS (I-360)'. Another light blue arrow points from the second step to the third step, which is a teal rounded rectangle containing the text 'Apply for a green card with USCIS (I-485)'.

Apply for SIJ
status with
USCIS (I-360)

Apply for a
green card with
USCIS (I-485)

Why consider getting the predicate order?

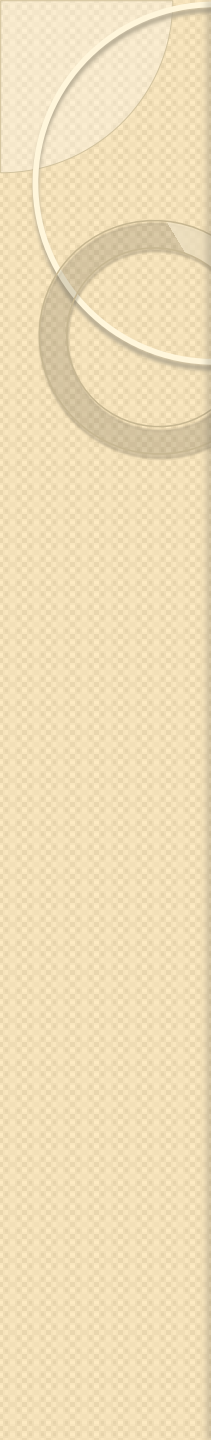
- Kid already in court – no need to find another mechanism
- Juvenile courts are (theoretically) already thinking about “best interest of the child.”
- May improve access to rehabilitative programs, esp. after age 18, which could improve their chances at staying out of trouble
- Lawful status may be MORE important than the delinquency issues

What is the predicate finding?

Predicate findings:

8 USC § 1101(a)(27)(J)

- Meets definition of child;
- Dependent upon a juvenile court;
- Reunification with one or both parents is not viable due to **abuse, neglect, abandonment, or other similar grounds**;
- Not in the child's best interest to be returned to previous country of nationality (or parent's country of nationality)



Recinos v. Escobar

473 Mass. 734 (2016)

- Probate court has jurisdiction until 21
- Juvenile courts have jurisdiction over predicate order requests
- Predicate order is exclusively child welfare determination, which is the “distinct expertise” of state courts.

DACA – What is DACA?

- Deferred Action for Childhood Arrivals is not a change in law
- “Discretionary decision to defer removal action as an act of prosecutorial discretion”
- Not lawful status
- Permission to remain in the U.S. for two years
- May also receive work authorization

Is DACA safe now?

- New DACA applications = not advisable
- Renewal applications = circumstance specific
 - New charges?
 - Lawyer?

Other Forms of Relief

VAWA

- Was the child or his/her parent a victim of domestic violence?

Asylum

- Does the child fear return to home country?

U-visas

- Was the child or his/her parent a victim of a crime?

If yes to ANY of these questions, contact the IIU or an immigration attorney.



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