



IMMIGRATION UPDATES FOR SERVICE PROVIDERS

February 5, 2018

Legal Aid Justice Center
VACOLAO

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

Undocumented with Final Removal Order

AT RISK OF DETENTION/DEPORTATION

Non-citizens

- Lawful Permanent Resident (LPR or “green card” holder)
- Asylee/refugee
- Undocumented
- Out of status (e.g. Visa over-stay)
- Temporary non-immigrant (student, visitor, TPS, DACA)

DO I GET A HEARING BEFORE AN IMMIGRATION JUDGE?

- **BOND Hearing**

- Prior Removal Order?

- NO

- Criminal convictions?

- Depends

- Criminal charges but no convictions?

- Probably YES

- **MERITS Hearing (e.g. asylum, etc.)**

- Prior Removal Order

- No

- No prior removal order

- YES

IF CLIENT HAS NO STATUS

Possible procedural postures for immigration case

- In removal proceedings
 - Previously detected by immigration
 - Know deadlines
- Never in proceedings
 - Otherwise undetected by immigration
 - Detected but never placed in proceedings (rare)
- Has prior removal order
 - May or may not have been physically deported previously

WHY DOES BOND MATTER?

- **IN Detention**

- Less likely to get a lawyer
- Harder to gather evidence of valid claims
- MORE LIKELY TO LOSE AN IMMIGRATION CASE
- AND: harder to make care arrangements for family, not working to contribute to family finances, etc.

- **Non Detained v. Detained Docket**

- Detained = “Rocket Docket” (weeks to months)
 - Less time to prepare case
 - Less time to find a lawyer
 - Only one free phone call upon arrival
 - Expensive to communicate with attorneys, even FREE ones
- Non Detained
 - More time (months to years)
 - Access to attorneys
 - Access to evidence
 - Can lead your life and work (pay for representation, etc.)

TPS UPDATE

EXTENDED: Honduras (through July 2018); South Sudan (May 2019)

ENDING: El Salvador, Haiti, Sudan, Nicaragua

Country	Status	Expiration Date	Estimated Number of TPS Holders
El Salvador	Terminated	September 9, 2019	262,528
Haiti	Terminated	July 22, 2019	58,557
Honduras	Under Review	July 5, 2018	86,031
Nepal		June 24, 2018	14,791
Nicaragua	Terminated	January 5, 2019	5,306
Somalia		September 17, 2018	499
South Sudan		May 2, 2018	77
Sudan		November 2, 2018	1,048
Syria		March 31, 2018	6,916
Yemen		September 3, 2018	1,116

TPS EXPIRATION DATES

Country	Original Designation Year	Reason for Designation	Continuous Physical Presence Required Since	Deadline for Decision on Extension	Expiration Date	Number of Beneficiaries
El Salvador	2001	Aftermath of earthquakes	3/9/2001	1/8/2018	3/9/2018	262,528
Honduras	1999	Aftermath of Hurricane Mitch	1/5/1999	5/6/2018	7/5/2018	86,031
Haiti	2010	Aftermath of earthquake	7/23/2011	N/A	7/22/2019	58,557
Nepal	2015	Aftermath of earthquake	6/24/2015	4/25/2018	6/24/2018	14,791
Syria	2012	Civil conflict	10/1/2016	1/30/2018	3/31/2018	6,916
Nicaragua	1999	Aftermath of Hurricane Mitch	1/5/1999	N/A	1/5/2019	5,306
Yemen	2015	Civil conflict	3/4/2017	7/5/2018	9/3/2018	1,116
Sudan	1997	Civil conflict	5/3/2013	N/A	11/2/2018	1,048
Somalia	2012	Civil conflict	9/18/2012	7/19/2018	9/17/2018	499
South Sudan	2011	Civil conflict	5/3/2016	3/3/2019	5/2/2019	77
Total						436,869

Sources: U.S. Citizenship and Immigration Services, "Temporary Protected Status," accessed November 19, 2017, [available online](#); Jill Wilson, *Temporary Protected Status: Overview and Current Issues* (Washington, DC: Congressional Research Service, 2017), [available online](#).

TPS –EL SALVADOR

TPS To Terminate On:	Sept. 9, 2019
Re-registration period for People Who Already Have TPS:	Jan. 18, 2018 – March 19, 2018
Employment Authorization Document (EAD)Auto-Extended Through:	Sept. 5, 2018
Continuous Residence in U.S. Since:	Feb.13, 2001
Continuous Physical Presence in U.S. Since:	March 9, 2001
TPS Designation Date:	March 9, 2001
Federal Register Notice Citation:	<u>83 FR 2654</u>

WHAT TO DO?

- **RENEW TPS**
 - Honduras and Nicaragua: Renew by February 13, 2018
 - El Salvador and Haiti: Renew by March 19, 2018
- **Talk to a lawyer to see if there are other options**
 - Travel on advanced parole IF possible (talk to a lawyer)
- **Make a plan with family**
- **Consider impact on job/family income**
- **Make yourself heard!**
 - Congress
 - Local legislators (e.g. drivers license laws)

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DACA, ICE ENFORCEMENT, AND LEGISLATION:

THE UPDATE

FOCUS ON KIDS

- **CRIMMIGRATION FOR KIDS**
 - Generally juvenile delinquency is not a conviction
 - BUT impacts discretionary decisions
- **Immigrant Students and Children of Immigrants**
 - Education Issues
- **SIJ**
 - Important benefit for kids
 - Note on SIJ in Arlington

CONVICTION???

In general, a finding of delinquency in Juvenile Court is *not* a conviction for immigration purposes

In re Miguel Devison, 22 I & N Dec. 1362 (BIA 2000).

Delinquency



Conviction

- The standards established in the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. 5031-50 govern whether an offense by a juvenile is considered an act of “delinquency” or a “crime.”

DISCRETION

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

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

IMMIGRATION ENFORCEMENT

WHAT IF MY NONCITIZEN CHILD CLIENT ENDS UP BEING REFERRED TO ICE?

- The Immigration and Customs Enforcement (ICE) agent that arrests the child will decide if individual is accompanied or unaccompanied.
- Unaccompanied Alien Child (UAC)*:
 - Has no lawful immigration status in the U.S.
 - Has not attained 18 years of age; and
 - There is no parent or legal guardian in the in the U.S. or no parent or legal guardian in the U.S. is available to provide care and physical custody

*(6 U.S.C. § 279(g)(2))

WHAT IF MY CLIENT IS DETAINED?

- UACs in custody of ORR have access to services set out in the Flores Settlement Agreement:
 - This includes communication with attorneys assisting in their delinquency/criminal matter
 - Children are not entitled to appointed counsel in immigration court
 - Each shelter has a legal service provider with the goal of assessing defenses against deportation and matching children with pro bono counsel

SPECIAL IMMIGRANT JUVENILE STATUS

Requirements:

- Under 18 years old (dependent on state), unmarried and present in U.S.;
- Cannot be reunified with one or both parents due to abandonment, abuse or neglect, or a similar basis under state law
- Juvenile court must find that it is not in the child's best interest to return to their country of origin or last habitual residence

Ultimate goal is legal permanent residence

- application process for permanent residence is called "adjustment of status"

SIJ IN CHILD WELFARE AND DELINQUENCY CONTEXT

Why consider getting the predicate order?

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

PRECEDENTIAL VIRGINIA DECISION

***Canales v. Torres Orellana*, No. 1073-16-4, 2017 Va. App. LEXIS 153, at *22 (Va. Ct. App. June 20, 2017).**

The Virginia Court of Appeals ruled on the authority of the J&DR and Circuit Courts to make SIJS findings. The Court of Appeals made three findings.

- No *independent* SIJ cases/findings
- JDR courts are permitted but not required to make SIJ findings through normal course of business (applying VA law)
- No specific authority to answer whether it is in the child's best interests to return



BASIC EDUCATION ISSUES FOR IMMIGRANT KIDS AND FAMILIES

EDUCATION BASICS K-12

Federal Protections & Case Law

Plyler v. Doe – Supreme Court (1982)

- All states must offer the same free public education to undocumented school-aged children that it offers other citizen or legally admitted immigrant children

Lau v. Nichols – Supreme Court (1974)

- No discrimination on the basis of national origin, including language proficiency → Meaningful access to education

Castaneda v. Pickard – 5th Circuit (1981)

- 3-part test for determining whether LEP students have meaningful access

FERPA

Parents or adult students may inspect and review the student's educational records, AND request that school records be corrected if they are inaccurate or misleading.

Reviewing Student Records

- Schools must honor a parent's request to see student records (or the student's request to see his/her records if he/she is over 18)
- Parents (or adult students) may request to correct errors in the student's record
 - E.g. providing alternative explanation for a disciplinary incident

Information Sharing

- **Directory Information**
 - Information generally not considered harmful or an invasion of privacy if disclosed
 - Name, Address, Phone Number, Email
 - Date and Place of Birth
 - Dates of Attendance and Grade Level
 - Can be disclosed to third parties without prior written consent
- **Opt-Out**
 - Inform the school or district not to share directory information with third parties without prior consent

ENROLLMENT

In Virginia, divisions have an obligation to enroll “all children of school age throughout the Commonwealth” regardless of their or their caregivers’ immigration status.

Who can enroll?

- “Bona fide” residents – may not reside in the school division solely for school purposes (Va. Code § 22.1-3(A); 1987 WL 271800 (Va. A.G.))
 - ANY student who can show a non-school related reason for living in the division is a bona fide resident

What documentation is required?

- Birth certificate/affidavit of child’s age (Va. Code § 22.1-3.1)
- Proof of residence
- Medical information/proof of immunizations (Va. Code §§ 22.1-270, 271.2)

What documentation CANNOT be required?

- SSN (Va. Code § 22.1-287.02)
- Court orders of guardianship/custody (1987-88 Va. Op. Atty. Gen. 374 (1987) 1987 WL 271800 (Va. A.G.))
 - NOTE: Particularly important for SIJS eligible students

LANGUAGE ACCESS

Families and students must have meaningful access to essential information and to the curriculum regardless of the language that they speak. All schools must conduct a Home Language Survey to determine a family's language needs.

Parents/Caregivers

- The School must make an effort to give parents/caregivers important information in a language they understand
- Schools may send families who do not speak English to a central office to enroll their children in school
- Parents may request interpreters and written/oral translations of school documents
 - NOTE: Interpreters are required for important school meetings – IEP/Disciplinary

Students

- Must have meaningful access to the curriculum – ESL/ESOL and academic courses
- Proficiency depends on speaking, reading, and writing
- Same graduation requirements, Limited SOL exemptions
- Special Education:
 - Language needs are not addressed by special education services, and should be separate
 - Students must have access to special education services if they need them regardless of language ability (no “waiting period”)
 - Special Education evaluations must be done in student's native language

IDEA AND 504 ACCOMMODATIONS

ALL Public Schools must provide Free Appropriate Public Education (FAPE) to students with disabilities.

Schools must locate, identify, and evaluate children, regardless of citizenship or immigration status, who need special education and related services.

Child Find Duties

Suspected disability=student having trouble

- Low grades (a sign, but not required)
- Problems reading or paying attention
- Repeated suspensions
- Poor behavior or fighting in school

If disability suspected by school, school must:

- Refer to Child Study Committee/other school-based team to determine whether to evaluate (OR just initiate evaluations)
- Pre-referral interventions may not be used to delay evaluations
- If parent, child, or other adult suspects a disability, they should notify the school and request evaluations in writing

ELIGIBILITY FOR EDUCATION SERVICES/ACCOMMODATIONS

Qualifying IDEA Disabilities (must affect educational performance and require special education services) – **Provides and IEP**

- Autism
- Deaf-blindness
- Deafness
- Emotional disability
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment

- Other health impairment
- Specific learning disability
- Speech or language impairment (NOT LEP)
- Traumatic brain injury
- Visual impairment including blindness

What if the student requires accommodations but does not qualify under IDEA?

- **504 Plan** – public schools must provide FAPE regardless of disability
 - Accommodations and Modifications
 - For students with “a mental or physical impairment that substantially limits one or more major life activity”

McKinney Vento Act

Enrollment protections and streamlining for youth “who lack a fixed, regular, and adequate nighttime residence.”

Who may qualify?

- Families evicted from housing
- Staying with relatives/friends (“Doubled up”)
- UACs arriving from (or having recently been in) ORR shelters
- Living in emergency or transitional shelters
- Awaiting foster care

Provides for:

- Immediate enrollment in either school of origin or local school
- No proof of residency required
- Immediate enrollment regardless of any dispute about “best interests” school or lack of records/documents

SCHOOL DISCIPLINE

Short-term suspensions (Va. Code § 22.1-277.04)

- Definition: 1-10 school days

Long-term suspensions (Va. Code §§ 22.1-277.05 and 22.1-277.2:1)

- Definition: 11-364 days

Check the Student Code of Conduct for Division/School details

General Principals

- Act Fast!
 - Review appeal deadlines
- Try and intervene at the earliest level (school)
- Advise against talking to school administration about any incident that could result in criminal charges
 - (very restricted 5th amendment and Miranda rights)

GENERAL ED LAW PRACTICE TIPS

- Make educational stability and success a priority
- Know who the “parent” is
- Put every communication in writing, especially with schools
- Meet with child and parent and bring united front on educational objectives
- Inform parent that he or she can “Just say NO!”
- Refer client to an immigration attorney or consult with an immigration attorney if SIJS may be an option (DO NOT go to Juvenile or Family Court without screening for SIJS!)

FOCUS: GANG ALLEGATIONS

1. Gang allegations

1. In School
2. By local law enforcement

2. Information sharing

1. Between school and law enforcement
2. Between law enforcement and ICE

3. Potential repercussions

1. Detention
2. Inadmissibility
3. Removability

FOCUS: FAMILY PREPAREDNESS

- **KYR info Importance of learning and knowing your rights**
 - KYR Packets and Presentations
- **Powers of Attorney**
 - Family preparedness planning:
 - Educate community about the need for a family safety/preparedness plan especially if they are risk for detention or deportation
 - Developing a family preparedness plan includes:
 - Gathering important paperwork;
 - Completing and updating emergency contact lists at school and home
 - Develop plan for childcare and financial issues;
 - Prepare Powers of Attorneys
 - Seek legal guidance or assistance

TAKE-AWAYS FOR SERVICE PROVIDERS

- **Tell all TPS holders from El Salvador and DACA holders to RENEW IMMEDIATELY**
- **Encourage clients to have an immigration check-in**
- **Encourage families to make a family preparedness plan**
- **Work with clients to make plans for social services supports for when they or a family member loses status**
 - Food assistance
 - Medical assistance
 - Income assistance/career and job planning
 - Social emotional services through school
 - Etc.
- **Be Vocal On Behalf of Your Clients!**
- **Not sure what to do? CALL!**



Questions? Concerns? Get in touch!

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