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# **The Reuniting Immigrant Families Act (SB1064) – Helping Families in the Family and Juvenile Court Systems**

**California Administrative Office of the Courts  
San Francisco, March 27, 2013**

# Presentation Overview

1. Introduction
2. Video – We Belong Together
3. The Big Picture – Comprehensive Immigration Reform
4. Immigration Enforcement 101
5. Review Four Components of SB 1064
6. Updates in SIJS
7. Q&A

# About First Focus/First Focus Campaign for Children

**First Focus/First Focus Campaign for Children** is a bipartisan advocacy organization dedicated to making children and families a priority in federal policy and budget decisions.

[www.firstfocus.net](http://www.firstfocus.net)

Primary sponsor for California SB 1064 (de Leon), New York S4185 (Parker) and federal HR6128 (Roybal-Allard). Co-author of “Children’s Principles for Immigration Reform” (signed by over 200 organizations).

<http://ffcampaignforchildren.org/>



# About ILRC

**Immigrant Legal Resource Center** (ILRC) is a national non-profit resource center providing immigration related information and training to judges, attorneys, law enforcement, social workers, and other service providers. Specifically we provide:

- Trainings and Seminars
- Publications and Reference Manuals
- Technical Assistance: “Attorney of the Day” consultation service

**Some examples:** Staff training and policy review for SFDHS, “Beyond the Bench” and “Judicial Law Institute” conferences, juvenile justice/child welfare policy reviews, co-author for “A Social Worker’s Toolkit” for the Migration and Child Welfare National Network.



# About MCWNN

- Began in 2007, the Migration and Child Welfare National Network (MCWNN) is a coalition of organizations and individuals concerned with the intersection of immigration and child welfare. The network has three primary area of focus – research, policy/advocacy, and promising practices.
- MCWNN is hosted by the Jane Addams College of Social Work - University of Illinois. The website includes sample child welfare agency policies, training ppt, research articles, and social worker toolkits. For more information, go to <http://www.mcwnn.uic.edu>



# VIDEO – Tijuana Deported Moms Struggle to Reunite with Kids

<http://newamericamedia.org/2012/10/in-tijuana-deported-moms-struggle-to-reunite-with-kids.php>

*We Belong*  
**TOGETHER**

# Senate Judiciary Hearing on Comprehensive Immigration Reform

- Nearly 70% of women immigrants attain legal status through either a spouse or family member.
- Testimonies regarding abuse women faced, as well as possible discrimination as to who gets admitted to the country.
- Between July 1, 2010 and Sept. 31, 2012, nearly 23 percent of all deportations—or, 204,810 deportations—were issued for parents with U.S. citizen children.
- Prosecutorial discretion rarely exercised.



# FF Campaign for Children: Testimony to Senate Judiciary Committee (March 18, 2013)

- Direct, clear, and reasonable pathway to citizenship, including distinct pathway for immigrants brought to US as children.
- Ensure immigration judges are able to consider hardship to US citizen children in decision regarding their parents.
- Reform immigration enforcement policy to prevent detention of parents whenever possible; ensure parents granted due process and right to make decision about their children's care.
- Require child welfare agencies adopt policies to promote reunification when possible.
- Ensure newly legalized immigrants have equal access to affordable healthcare, nutrition assistance and income supports without additional waiting periods, as well as family tax credits.



# Changing National Immigration Policies

- Deferred Action for Childhood Arrivals (DACA) shows 245,493 approved as of 3/18/13 report. Latest report shows slowing number of applications.
- Jan 2013 new regulation allows certain immediate relatives of US citizens to file a waiver for unlawful presence and await a decision while residing in the US prior to consular processing.
- Failed reauthorization of Violence Against Women Act (VAWA) in 2012; Senate Passes VAWA Act of 2013 in February and President signed into law March 2013.

# Proposal from Bi-Partisan Senate “Gang of 8”

- Under January 2013 plan, most undocumented immigrants can apply to become permanent residents, but only after certain border enforcement measure had been accomplished.
- Creation of a commission from border states that would assess when border security measures completed.
- Require an exit system in place for tracking departures of foreigners.
- Offer major exemptions for DREAMers, giving them faster path to citizenship
- NY Times article (March 17, 2013) says Senate plan will alter waiting periods so 10 years wait for green card, then 3 years for citizenship.

# Several Major Hurdles Ahead

- What does secured border mean?
- Path to citizenship vs. legal status
- Same-sex couples
- Controlling future flow
- Guest worker programs
- Access to benefits



# EIGHT WAYS TO SHRINK IMMIGRATION REFORM



Undocumented immigrants living in the U.S. now will likely have to wait decades for citizenship. But a host of ideas being debated would still disqualify large numbers of them.

HOW MANY PEOPLE WILL BE INELIGIBLE?

- 1** Half of undocumented families could have to sacrifice 1/3 of their income to afford a \$10k penalty.



HALF OF FAMILIES



- 2** 3.6 to 5.8 million could be excluded by an English language requirement.



3.6-5.8 MILLION



- 3** Millions could be excluded for often decades-old crimes like using false papers or pot possession.



MILLIONS



- 4** Over 1.6 million could be left out by a 5 year residency requirement.



1.6 MILLION +



- 5** Over 1 million could be excluded by proof-of-work requirement, a third would be women.



1 MILLION +



- 6** 40,000 gay and lesbian couples could be barred due to the Defense of Marriage Act.



40,000



- 7** An unknown number who have returned or refused to leave after a deportation order could be barred.



?

- 8** 400,000 prospective citizens will be deported this year if current enforcement trends continue.



400,000



Sources:  
 "Unauthorized Immigrants: Length of Residency, Patterns of Parenthood," Pew Hispanic Center, December 2011  
 "Earned Legalization," Migration Policy Institute, January 2011  
 "Same Sex Couples and Immigration in the United States," UCLA Williams Institute, November 2011

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# Increased Number of Unaccompanied Alien Children

- Increased numbers of unaccompanied alien citizens entering the US – 14,000 to date for FY2012
- Profile of UAC have changed with children entering care with higher incidences of trauma, increasing complex needs

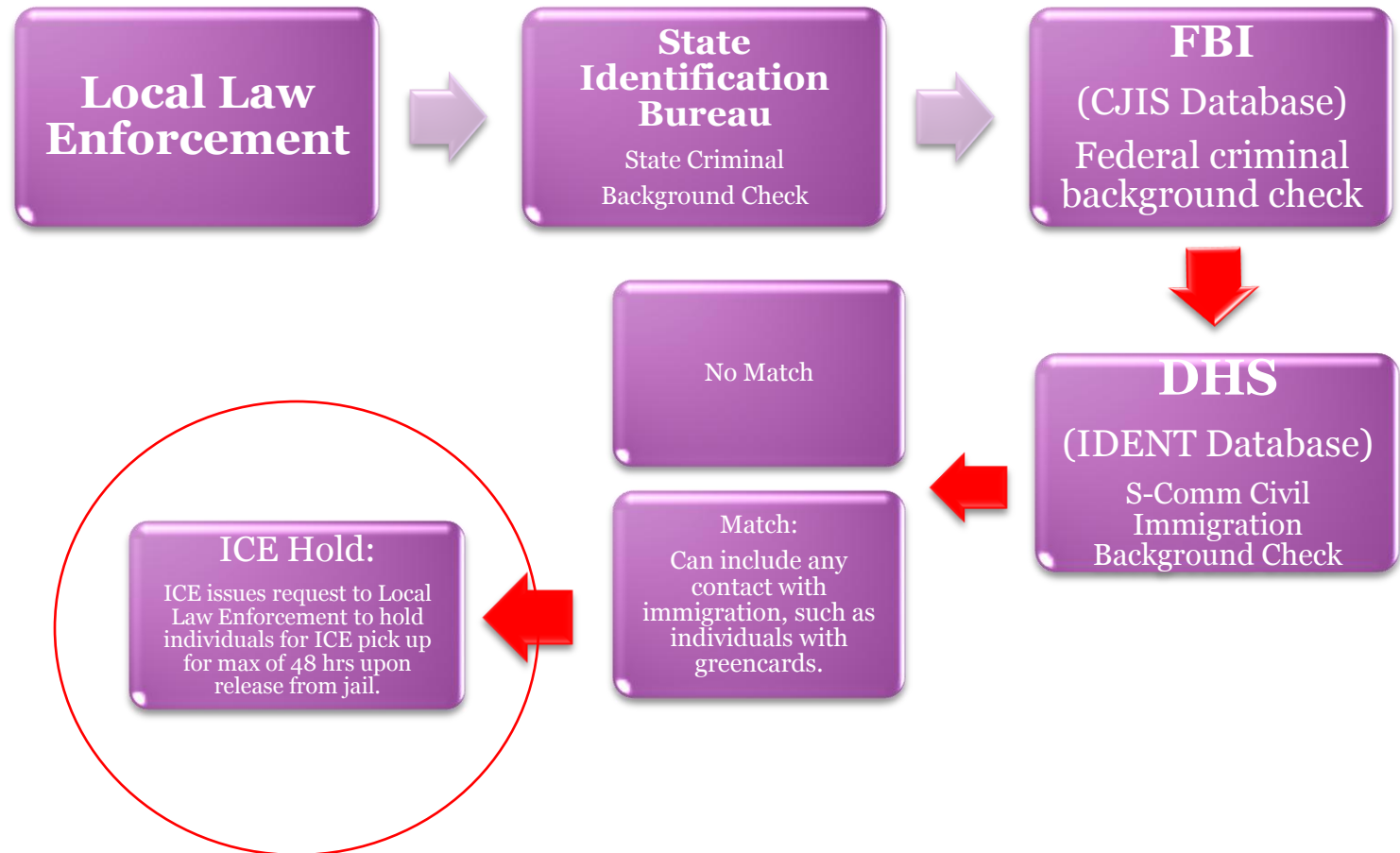


# Secure Communities (S-Comm)



*Diagram from [www.deportationnation.org](http://www.deportationnation.org)*

# ICE's S-Comm Program: Police as “Force Multipliers” for ICE

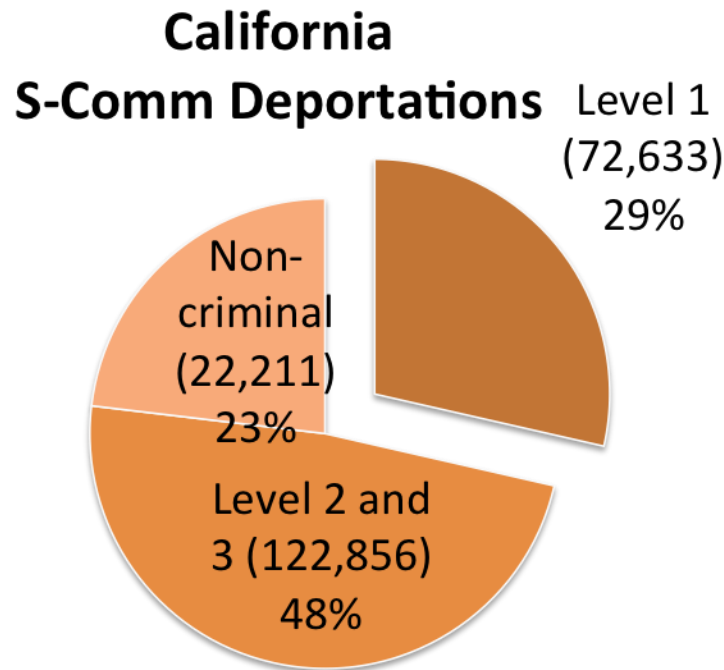


# Growth Industry: Immigration Enforcement

- FY2012 ICE announced record number of deportations (409,849).
  - A quarter of these deportation are of parents of US citizens.
  - Prosecutorial discretion continues to be rarely exercised.
  - ICE quota system for deportation
- Migration Policy Institute report shows US spends 24% more on immigration enforcement than all other federal criminal law enforcement agencies (DEA, FBI, Secret Service, etc.) combined.



# Who has been deported under S-Comm?



**92,033 = TOTAL deportations**

**68% = Non-criminal or level 2 or 3**

Data from ICE for October 27, 2008 through Jan 31, 2013.

[http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interop\\_stats-fy2013-to-date.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf)

# From Jail/Prison to Detention

- After finishing a jail or prison sentence, ICE can place a 48-hr “immigration detainer/hold”
- Each case is different and some individuals are detained by ICE for a few days while others are for weeks, months, or even years
- Some may be deported immediately since they may already have an order of deportation

# After transfer to ICE...

Three things may happen:

1. Sign Deportation Order
2. Hearing before an Immigration Judge
3. Automatic deportation
  - i.e. for those previously deported, if they are undocumented and convicted of an aggravated felony, if they are caught 100 miles from a border

# Release From Detention

- Three main ways to be released from detention:
  - (1) Bond
  - (2) Released on individual recognizance
  - (3) Parole

## **Humanitarian Guidelines (2007 ICE memo)**

- Internal guidelines for expedited release of pregnant women, nursing mothers, and sole caretakers of minor children
- “Prosecutorial discretion” for individuals with longstanding ties to the community, US citizen family members or other characteristics that merit favorable exercise of discretion
- Important that detained parents tell their deportation officers **IMMEDIATELY** if they fit these criteria

# No Right to Appointed Counsel

- U.S. Supreme Court held immigration proceedings are civil, not criminal, and therefore no constitutional right to appointed counsel.
- Detainees must use their own financial resources for an attorney unless they can find pro bono attorney. Thus, most detainees are unrepresented by counsel in immigration proceedings (“pro se”).

# Finding Individuals in Immigration Detention

- To use the ICE online locator system, you will need the legal name, date of birth, country of birth, and Alien #
- No way to call in – Detainees can make outgoing phone calls if they have enough money in their account or place collect calls. Mail can be sent to the facility by putting name and Alien#.



# Having Parents Designate Someone to Act on their Behalf

- Appoint temporary (or permanent) guardianship for their children
- Power of Attorney for any property or money
- Be sure to secure vital documents such as passport, health, and education records prior to deportation or voluntary departure (i.e. difficulty enrolling in overseas school without dual citizenship)
- U.S. citizen children often face difficulties in re-entry into the U.S. without documentation, including power of attorney/guardianship documents

# Role of the Foreign Consulate

- Vienna Convention states all nationals have the right to contact their consulate for an in-person, in-custody interview.
- Consulates can check that arrestees have not been subject to abuses or other rights violations, assist with travel documents, notify families about the deportation process, and assist with process of dual citizenship for children.
- **DO NOT** contact the consulate if the individual have faced or fear persecution in their home country (i.e. asylee or asylum applicants).



# SB 1064: The Reuniting Immigrant Families Act

- On Oct 1, 2012, SB1064 was signed into law by Governor Brown, making it the first bill in the country to address the barriers to family reunification for detained and deported immigrant families in the child welfare system.
  - SB1064 prioritizes keeping children with their families and out of the public child welfare system whenever possible and ensures that separated families receive appropriate care and due process.

# Four Components of SB1064

1. Authorizes the courts to provide an extension in the family reunification period so that child welfare agencies can provide a more diligent search for parents who may be detained or deported, or help find a potential relative placement.
  - Court ordered services may be extended up to a maximum time period not to exceed 18 months. In making such a determination, the Court shall consider a parent who has been arrested and issued an immigration hold, detained by the U.S. ICE, or deported to his or her country of origin.

# Four Components of SB1064

2. Prohibits immigration status alone from being used as a disqualifying factor in determining an individual's suitability to be a placement for a child (including their own parent).
  - Authorizes use of a relative's foreign consulate identification card or passport to be used to initiate fingerprint clearance so that a relative can be a placement for their relative child in the foster care system.

# Four Components of SB1064

3. Requires California Department of Social Services to provide guidance to counties and municipalities to establish Memorandums of Understanding with appropriate foreign consulates in child custody cases.

- Article 37 of the Vienna Convention on Consular Relations clearly states that consular officers have the right to assist their nationals in cases of death, guardianship or trusteeships and that consular post shall be informed without delay. However, there is inconsistent and under-utilization of the consular offices.

- Sample child welfare agencies' policies and procedures

<http://www.f2f.ca.gov/sampleMOUs.htm>

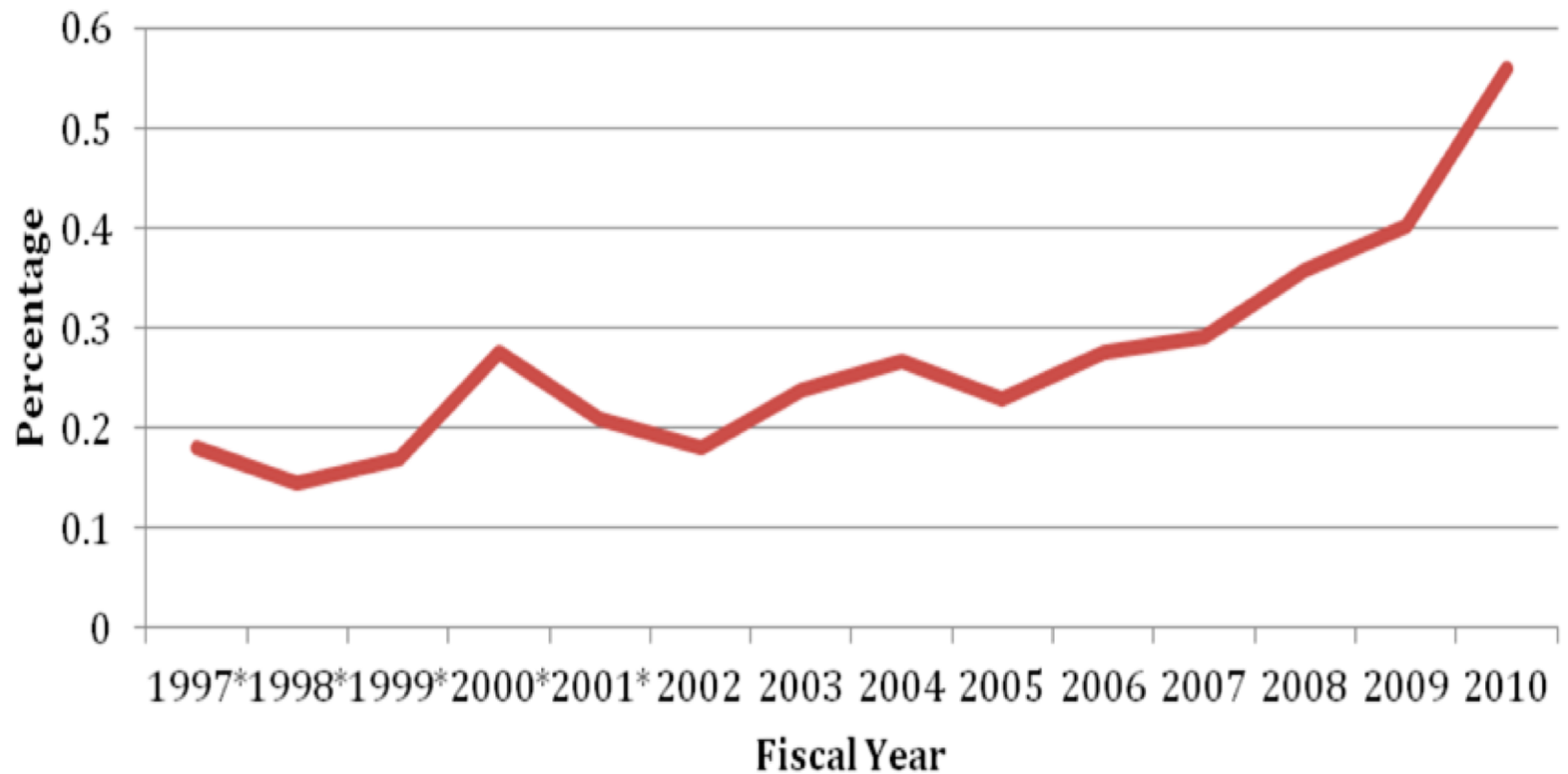
# Four Components of SB1064

4. Requires the California Department of Social Services provide guidance by January 1, 2014 to social workers on assisting children eligible to apply for Special Immigrant Juvenile Status (SIJS), U and T visas, and the Violence Against Women Act.
  - Case workers and court staff are sometimes the first and only person an immigrant child or family encounters who may be able to identify their eligibility for these immigration relief options.

# Undocumented Children

- Many undocumented children in the juvenile court system are eligible for immigration relief options, but they may not be flagged.
  - SIJS was created over 20 years ago, but it is still an underused form of immigration relief. In 2010, a total of 1,492 immigrant youths obtained lawful permanent residency through SIJS. This was a 29% increase from 2009, but the number is small compared to the total of 265,808 immigrants under 21 who obtained lawful permanent residency in 2010.

## Percent of Immigrants Under 21 Obtaining LPR through SIJS



\*Because of available DHS-provided age ranges, Fiscal Years 1997-2001 are a percentage of Total

# Requirements for SIJS

- Under the jurisdiction of a juvenile court
- Dependent on a juvenile court or placed in the custody of a state agency or department **or an individual or entity**
- **Reunification with 1 or both parents** is not viable due to abuse, neglect, abandonment **or a similar basis found under state law**
- Not in the child's best interest to be returned to her home country



# Children's Rights & Mandatory Duties Related to SIJS

- In 2012, in two decisions, the California Court of Appeal determined that children have the “right” to petition the court for SIJS findings.
  - They are entitled to a hearing in which the court would determine whether the findings required for SIJS exist. The court’s duty to make the findings is “mandatory” where these facts exist. *See B.F. v. Superior Court and In re Y.M.*

# Juvenile Court Definition

- A recent Court of Appeal decision makes clear that any California court making judicial determinations about the custody and care of juveniles is a “juvenile court” for SIJS purposes.
  - *See B.F. v. Superior Court*, 143 Cal. Rptr. 3d 730, 736 (App. 2012) (“a superior court sitting as a probate court – not just a juvenile court exercising its jurisdiction set forth in the Welfare and Institutions Code – can make findings required pursuant to [8 U.S.C.] section 1101(a)(27)(J)”).
  - This case involved a guardianship proceeding.

# Obstacle to Obtaining SIJS

- Some juvenile courts believe that by signing an SIJS order they are deciding whether a child will be granted legal status to stay in the U.S.
  - This often leads to misinterpretations of the SIJS statute and/or insertion of additional requirements beyond what are the required predicate findings.
- The juvenile court, however, does not make an immigration decision such as whether the child is eligible for SIJS or may stay in the U.S.

# Function of the Juvenile Court

*The function of the juvenile court in deciding an application for special findings which would permit a juvenile to file an application...as a special immigrant juvenile is limited in scope...The juvenile court need not determine any other issues, such as what the motivation of the juvenile in making application for the required findings might be...whether the USCIS...may or may not grant a particular application for adjustment of status as a SIJ. Whether or not a juvenile's application constitutes a potential abuse or misuse of the SIJ provisions of the immigration law is an issue to be determined by the USCIS.*

•*Matter of Mario S.*, 2012 NY Slip Op 22336 (N.Y. Fam. Ct. Nov. 21, 2012)

# One Parent SIJS?

- A claim of abuse, neglect, or abandonment against one parent while the child resides with the other parent (either non-offending or reunified with by court)
- Challenges to obtaining SIJS predicate orders in one-parent cases
  - Judges have stated that there is no one-parent claim and that SIJS is only meant for children who have been completely abandoned by both parents.
- But national survey of attorneys finds that 100% approval rate involving one-parent SIJS claims were approved by USCIS

# One Parent SIJS Caselaw

- Nebraska Supreme Court in *In re Erick M.*, 820 N.W.2d 639 (2012) held that the SIJS statute requires a petitioner to show proof that reunification is not possible with not just one, but both parents.
- But see *Matter of Mario S.*, 2012 NY Slip Op 22336 (N.Y. Fam. Ct. Nov. 21, 2012), rejected *Erick M.* and held that a youth's return to one parent's custody is not determinative of an application for SIJS findings.

# Requirements for VAWA Self-Petitioning

- Child has an abusive USC or LPR parent.
- Child lived with this abusive parent, in or out of the U.S., and currently is in the U.S.
- Child is unmarried and under 21 – a “child” under immigration law.
- Child has “good moral character.”
- Child must have suffered abuse that amounts to battery or extreme cruelty.

Note: Self-petitioning based on abuse or incest can be done up to age 25 if the abuse and the delay are linked.

# Requirements for the U Visa

- Child has suffered substantial physical or mental abuse as a victim of certain criminal activity.
- Child possesses information about the criminal activity.
- Child provides certification – from a local, state or federal law enforcement official – that the child is being, has been or will be helpful in the investigation or prosecution of the crime.
- Criminal activity took place in the U.S. or otherwise violated U.S. law.

Note: If the child was under 16 when the crime occurred, requirements 2 and 3 can be met by parent, guardian or next friend.



# What Crimes are Covered by the U Visa?

- Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state or local criminal law.

# The Certification: Who Can Sign?

- A certifying official of a certifying agency!
- A certifying agency is “a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.” This includes “child protective services.” 8 C.F.R. 214.14(a)(2).

# The Certification: Who?

- A certifying official is “the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency” or a “Federal, State, or local judge.” 8 C.F.R. 214.14(a)(3).

# The Certification: When?

- The certification can be signed once the certifying official has determined that the child is a victim of the criminal activity, she or her parent/guardian/next friend has information and was, is or will be helpful, and the crime occurred in the U.S. or otherwise violated U.S. law.
- The certifying official need not wait for any charges to be filed or sentences to be handed down – that is not required for U Visa eligibility.

# Requirements for the T Visa

- Child must be or have been a victim of a “severe form of trafficking in persons” which is defined as (1) sex trafficking by fraud or coercion or of someone under 18 or (2) involvement in recruitment, harboring, transportation, provision or obtaining, through fraud or coercion, of a person to be subjected to involuntary servitude, slavery, peonage or debt bondage.
- Child is physically in the U.S. on account of the trafficking or to assist in its investigation or prosecution.
- Child would suffer extreme hardship involving unusual and severe harm upon removal from the U.S.

# Q&A/Next Steps

# Resources from ILRC

<http://www.ilrc.org/info-on-immigration-law/remedies-for-immigrant-children-and-youth>

- Remedies for Children and Youth (ILRC), Includes SIJS materials, fact sheet, etc

<http://www.ilrc.org/resources/special-immigrant-juvenile-status-sijs>

- Fact sheets on immigration options for undocumented children

<http://www.ilrc.org/resources/fact-sheets-immigration-options-for-undocumented-children-updated-for-2010>

- "Living in the US: Guide for Immigrant Youth"

<http://www.ilrc.org/resources/living-in-the-united-states-a-guide-for-immigrant-youth>



# First Focus Policy Resources

- Children's Principles for Immigration Reform (First Focus Campaign for Children, Feb 2013).
- Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare (Sentencing Project/First Focus, Jan 2013).
- Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught up in the Child Welfare System (Immigration Policy Center/First Focus Fact Check, Dec 2012)
- Big Ideas: Children in the Southwest (First Focus, July 2012) including "Families in the Frontline – How Immigration Advocates can build a bridge between the immigrant and child welfare systems " by Lindsay Marshall, The Florence Project
- Caught Between Systems: The Intersection of Immigration and Child Welfare Systems (First Focus, 2010)