



KYR for noncitizen children

CIRA Legal Services

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Agenda

Special treatment for minor non-citizens

KYR: Immigration Enforcement

Avenues for relief from removal

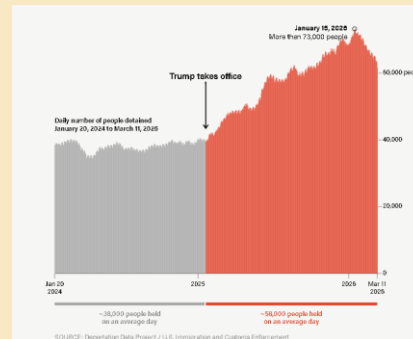
Don't give them a reason

How to access lawyers

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Children in detention by the numbers

- Over 6,200 children have been detained during Trump's second term, up 10x since Biden left office
- Over 3,600 children have been deported from detention since the start of Trump II.
- More than 1,600 children have been detained longer than the 20-day limit under the Flores Settlement Agreement.
- What does that mean for Nebraska?



Source: The Marshall Project

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Special Procedures for Unaccompanied Children

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA) created many exceptions relating to detention, removal proceedings, and benefits applications.

However, many of these exceptions and benefits only apply to **“unaccompanied alien children.”**

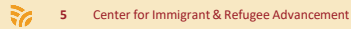
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Unaccompanied Child, Defined

[T]he term “unaccompanied alien child” means a child who—

- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

6 U.S.C. §279(g)(2).



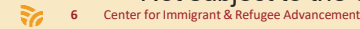
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TVRA Exceptions & Benefits

Under the TVRA, unaccompanied children are:

- **Not subject to DHS custody for more than 72 hours** (usually in the context of border encounters).
- Not subject to expedited removal, AKA deportation without a hearing;
- **SUPPOSED TO BE** Entitled to have their asylum applications heard initially by a single asylum officer in an interview (INA 208(b)(3)(C)), rather than an immigration judge in a deportation trial where DHS has the right to cross examine;
- Not subject to the one-year filing deadline for asylum; and



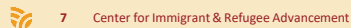
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TVRA Special Transfer Procedures

If DHS encounters an unaccompanied child:

1. DHS must transfer custody of the child to the Office of Refugee Resettlement (ORR) no more than 72 hours after the encounter.
2. The child is usually taken an ORR shelter, often for 30-60 days.
3. ORR locates a suitable sponsor to whom ORR can release the child. Usually, this is a parent, an older sibling, or an extended relative.
4. **The ORR sponsor signs an ORR Sponsor Care Agreement.**



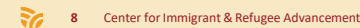
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ORR Sponsor Care Agreement

The ORR sponsor agrees to:

- Provide for the child's wellbeing.
- Make his best effort to timely secure a legal guardianship.
- Timely report the child's address changes to DHS and the immigration court.
- Ensure the child attends all hearings and appointments.
- Notify law enforcement of abuse, abandonment, neglect, maltreatment, or disappearance.



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KYR against Immigration Enforcement

How does DHS treat children vs adults in enforcement?



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Normal DHS Encounters

Adult noncitizens who are subject to immigration enforcement are processed consistent with the Immigration & Nationality Act, INA 235 *et seq.*

Generally, DHS/CBP/ICE may choose one of three options:

- Detain the noncitizen under DHS custody;
- Release the noncitizen under minimum \$1,500 bond; or
- Release the noncitizen on his own recognizance (conditional parole).

INA 236(a).



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Who does ICE target?

- Prior to Trump II:
 - Public safety threats – i.e. individuals with serious criminal charges/convictions (homicide, sexual assault, drug trafficking, weapons offenses, sex offenses, theft, shoplifting); national security threats. Certain enumerated offenses made a person subject to “mandatory detention.” INA 236(c). Lesser offense subjected people to ICE’s discretion for detention.
 - If a person was detained and not subject to mandatory detention, they could request bond from an immigration judge and argue they were not a danger to the community nor a flight risk. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
- Now:
 - The Board of Immigration Appeals affirmed a novel theory of law asserting ANY immigration violator SHALL be detained. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).
 - This includes people no criminal history and pending applications like asylum, SUS, U/T/VAWA, family petitions



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Wellness Checks

Wellness Checks – Prior to 2025, ORR personnel and case workers frequently contacted sponsors:

- By phone
- Via pre-arranged in-person site inspections

Objective: Ensure compliance with the ORR Sponsor Care Agreement.

However, what is new is that compliance is now policed with federal law enforcement, not just ORR case workers.



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Wellness Checks Today

New wellness check policies have a law enforcement tone and purpose.

Relevant law enforcement bodies:

- Immigration & Customs Enforcement (ICE)
 - Enforcement & Removal Operations (ERO)
 - Homeland Security Investigations (HSI)
- Federal Bureau of Investigation (FBI)
- Drug Enforcement Agency (DEA)
- Bureau of Alcohol, Tobacco, and Firearms (ATF)
- U.S. Marshals Service

What Can Happen?

Pre-Operation:

- Local HSI will verify whether UAC are registered in school.
- Local HSI will coordinate with U.S. Attorney's Office to obtain warrants.
- Local HSI will coordinate with U.S. Marshal's Service regarding existing warrants.

Operation:

- HSI/ERO will be alert to signs of criminality.
- HSI/ERO will pursue any possible criminal charges.

Criminal Liability

Potential Federal Criminal Violations for HSI Consideration:

- **18 U.S.C. § 1001 — False Statements** —if the sponsor provided false or misleading information to gain UAC sponsorship e.g. to prove a familial relationship to the UAC that does not exist
- **8 U.S.C. § 1324 - Alien Smuggling/Harboring** —facilitated movement or concealment of the UAC's whereabouts
- **18 U.S.C. § 1343 —Wire Fraud** —if electronic communication was used to defraud the U.S. Government in order to gain UAC sponsorship
- **18 U.S.C. § 1589 —Forced Labor** —if labor is compelled by force/restraint, threats of serious harm, abuse of legal process, or by a scheme plan or pattern
- **18 U.S.C. § 1591 —Sex Trafficking** —if a minor is in commercial sex OR if commercial sex is compelled by force, fraud or coercion
- **18 U.S.C. § 2421 — Mann Act** —if the UAC has been taken across state lines for prostitution
- **18 U.S.C. § 371 —Conspiracy** —if the sponsor acted with others to harm or exploit

Warrants – Generally

As most KYRs correctly explain, **absent exigent circumstances**, law enforcement generally need either consent or a valid judicial warrant to enter into a home.

We are unsure if valid judicial warrants are being obtained and utilized in these new HSI wellness checks.

Under DHS Secretary Noem, HSI contended a judicial warrant was not required to enter the homes of noncitizens. DHS has walked back this practice since Interim DHS Sec. Mullin was appointed.

ICE Check-ins

- Many people are required to report to ICE with varying frequency.
- They usually have pending applications prior removal orders
- Beware of intimidation tactics. You have the right to remain silent, but they often have authority to detain in retaliation.



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Risks to Families & Fear

Families fear exposing household members to law enforcement.

- **No large-scale reports of undocumented sponsors being arrested.**
- Reports of visits during school hours and even demanding the child come home.
- Reports of HSI knocking on neighbors' homes with questions.
- Reports of aggressive or accusatory approach.
- Several reports of HSI wellness checks happening in the late night or early morning hours (between midnight and 7:00 A.M.).



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Confusion for Children & Sponsors

Many children and their sponsors believe they may have been doing things correctly by pursuing legal avenues, including:

- State court custody proceedings (including guardianships)
- Special immigrant-juvenile status
- Asylum
- Cuban adjustment
- Motions to terminate removal proceedings

As a result, law enforcement presence may contradict their assumptions about the effects of compliance.



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What to do when immigration officials show up

In the heat of the moment, it is best to:

- Shut up
- Remain calm/don't run;
- Document the encounter, if possible; and
- When in doubt, assert other constitutional rights:
 - If in a home – ask to see a warrant signed by a judge (NOT an immigration officer). If in a car or you have a bag, decline to submit to a search.
 - Say you are choosing to remain silent until you are free to leave or speak to a lawyer. You do not have to discuss your nationality, immigration, or citizenship status with police, immigration agents, or other officials.
 - Ask if you under arrest. If yes, ask why.
 - You are required to show immigration papers if law enforcement asks for them
- Shut up.



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Legal Pathways for kids



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History of SIJS

- 1990: Congress creates Special Immigrant Juvenile Classification providing humanitarian protection to immigrant children creating path to legal permanent residence
- 2008: TVPRA § 235(d)(5) amends for last time to include all children placed under authority of individual by a state court codified in INA § 101(a)(27)(J)
- **2018: Neb. Rev. Stat. § 42-1238 amended to grant specific authority to state court judges**
- 2020: Nebraska Supreme Court reaffirms the role of state courts in SIJS proceedings, caution against “insurmountable evidentiary burdens” *Sabino v. Ozuna*, 305 Neb. 176, 939 N.W.2d 757 (2020)



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History of SIJS (cont).

- 2022: USCIS publishes final rule on SIJS, effective April 7, 2022. 8 CFR §§ 204.11, 205.1(a)(3)(iv), 245.1(e)(3)
- 2025: USCIS removes automatic issuance of work permits and protection from deportation for SIJS beneficiaries. Litigation ongoing. See *A.C.R. et al. v. Noem et al.*, No.1:25-cv-3962.



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SIJS Process

- Step 1: State Court Predicate order
 - Obtain predicate state order finding: **(1)** child has been abused, neglected, or abandoned (with state law citation) by at least one parent (with names of parents and specification of which ground applies to which parent), **(2)** reunification with the parent(s) is not in the best interests of the child, and **(3)** returning to home country/last habitual residence is not in the best interests of the child. Order must include factual bases for finding.
 - Finding must be made in “juvenile court”
 - County: Guardianship (relative/non-parent); adoption; criminal proceedings
 - Supreme Court of Nebraska upheld county court’s authority to make special findings under Neb. Rev. Stat. 43-1238(b). *Luis J.*
 - District: Custody; paternity.
 - Juvenile: child welfare; termination of parental rights; adoption; delinquency
 - Cases where state is already involved, and the juvenile court already has jurisdiction.



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SIJS PROCESS

- **Step 1 (cont).**: Nebraska state law on SIJS: Neb. Rev. Stat. 43-1238(b)
- Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state. In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, **or a similar basis under state law**, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence...



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SIJS Process

Step 1 (cont.): A "Similar Basis"

- **Abandonment**: the child lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian
- **Neglect**: the parent, guardian, custodian, neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile
- **Neglect and abandonment**: The child is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian.



Neb. Rev. Stat. § 43-247(3)(a)

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SIJS Process

- **Step 2: Federal Application for SIJS**
 - Requirements:
 - Child must be under 21 years old
 - Unmarried
 - Present in the United States
 - Subject of a state court order with special findings
 - Process:
 - File I-360 Petition for Amerasian, Widow(er) or Special Immigrant
 - SIJS Approval
 - Wait for visa availability based on home country and date of filing application
 - Submit I-485 application to Adjust Status to Legal Permanent Resident (green card holder)

IMPORTANT NOTE: Neither parent of a SIJS approved child can gain an immigration benefit through that child.



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SIJS Simplified

WHO?: Can request special findings: any party to the case or the court on its own motion. "[i]f there is sufficient evidence to support such factual findings when requested by one of the parties or upon the court's own motion." Neb. Rev. Stat. § 43-1238(b).

WHERE?: In any "juvenile court" as defined by federal regulation (e.g. custody, paternity, guardianship, juvenile case, etc.) Federal regulations define "juvenile court" as "a court located in the U.S. having jurisdiction under state law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a).

WHEN?: In a juvenile case (3a or 3b) you can ask for these findings during a review hearing. In any other case, you have to ask for those findings on the initial complaint/petition.

HOW?: via a case party's motion or initial complaint/petition or court's own order, depending on the case type



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How can CASAs help with SIJS?

- Advocate for evidence supporting special findings to be included in the record, even if the ultimate finding is no fault.
 - Think about the facts in the GAL filings, DHHS investigative reports
- Push for BOTH parents to be parties to the case
 - E.g. if one parent is in the U.S., push for the judge to order them/their attorney get second parent's contact info/whereabouts
 - Guatemalan and Mexican consulate can be helpful in attempting to locate parents.
- If welfare case exists → Facts exist to support SIJS
- If you suspect abuse, abandonment, neglect, or something similar in the case of a noncitizen child, connect them to GAL or immigration attorney.



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Asylum

- Must show a reasonable likelihood of persecution based on (1) race, (2) religion, (3) nationality, (4) political opinion (5) membership in a particular social group.
- Affirmative vs. Defensive Asylum
- Special protections for UCs:
 - USCIS takes initial jurisdiction under JOP settlement BUT some IJs have held the settlement only applies to DHS, and IJs are under DOJ, so they aren't barred from taking jurisdiction
 - Immigration court = more adversarial with a prosecutor.
- What should CASAs do?: If child expresses fear of return to home country (or doesn't like talking about home country), connect to immigration attorney.



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Other avenues for relief

- Family Petitions (immediate family)
- U Visa – for victims of qualifying crimes in the U.S.
- VAWA – for victims of domestic violence
- T Visa – for victims of trafficking



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Reminders for Youth Clients

- **DO NOT WORK WITHOUT AUTHORIZATION**
 - Consequences of working without authorization are more severe when (1) a noncitizen lies to an immigration official about working without authorization (or anything) or (2) the noncitizen uses the SSN or name of a USC
- **DO NOT GIVE THEM A REASON**
 - Avoid interaction with all law enforcement (including school resource officers)
- **CONSULT AN IMMIGRATION ATTORNEY**
 - If an undocumented client interacts with the courts, police, or immigration officials, it is in their best interest to speak to an attorney



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ADVICE FOR MINORS

MARRIAGE
DO NOT get married without consulting your legal counsel. Marriage can affect your eligibility for immigration benefits, and you must discuss marriage with your attorney to ensure you can continue to access your benefits.

ALCOHOL AND DRUGS
Do not drink alcohol. If you are a minor, the legal age to drink is 21. If you are 17 years old, do not drink and drive. Open containers are not allowed in a car or on state property. Do not do anything at all. Although marijuana may be allowed in other states, it is not legal to possess marijuana in federal and it is not legal under federal law. Marijuana is a drug, and you can get arrested for possessing it or any instruments related to using it.

SEXUAL RELATIONS
Having sexual relations with a minor is statutory rape. If you are 18 or older, having sex with someone under the age of 18 is illegal, regardless of whether that person consented or not. It is illegal to have sex with someone without consent. Consent must be freely and knowingly given and can be withdrawn at any time. Also, having unprotected sex can cause venereal disease or pregnancy. For more information on sexual health visit www.getontrack.org.

DRIVING
Please do not drive if you do not have a valid driver's license. You could get pulled over and given a ticket for not having a valid driver's license. Driving without a driver's license is an immediate offense.

PARENTS/GUARDIANSHIP
Your parent or legal guardian can make legal decisions in your best interest until you reach the age of 18 in Arkansas. You must respect the decisions they make. However, if your parents or guardians are you be do something illegal, dangerous, or anything that makes you feel uncomfortable, contact your attorney.

SCHOOL
It is important to stay in school. Not going to school can get you or your parent/guardian in trouble. You may be asked to wear a shirt, tie, or pants, or placed in legal proceeding for truancy, which is, the action of staying away from school without good reason.

WORKING
You can only work in the United States if you are legally authorized to work. If you are between the ages of 14-15 and authorized to work, there are special rules that limit the work schedule, types of jobs, and number of hours you may work. Do not work if you are not authorized to work. If you have an Employment Authorization Document (EAD) it is ok to work but it must be valid and unexpired while you are working. Remember to contact an attorney 3 months before it expires to renew it.

TAXES
If you are employed and earn a certain amount of money, you need to file taxes. Consult a tax specialist. Call the Free Tax Assistance Program (FTAP) at (800) 342-7474 to make an appointment.

SELECTION SERVICE
At least between the ages of 18 and 25 must register for selective service. You can enroll electronically, via the post office, or at one of the high schools.

Please consult with your attorney if you have questions about these topics. Call the police (911) if you ever feel threatened or you are harmed but be sure to contact your attorney about any contact with the police, ICE, or school resource officers.

CIRA Center for Immigrant & Refugee Advancement

4000 Center Street Omaha, NE 68105 402-688-1045 CIRAconnect.org

Nebraska Immigration Legal Assistance Hotline (NILAH)

- NILAH gathers information to screen for eligibility for immigration legal assistance from collaborating nonprofit immigration legal service providers
- If individuals are eligible for services, NILAH connects them for further assessment and possible legal representation from a particular nonprofit immigration legal service provider.

NILAH Providers

- Catholic Charities (CC)
- Centro Hispano Comunitario de Nebraska (CHCN)
- CIRA
- Lutheran Family Services (LFS)
- Center for Legal Immigration Assistance (CLIA)



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What CASAs can do before NILAH call

- Understand when a kid needs immigration relief
 - Ask: (1) are you a U.S. citizen? (2) do you have a birth certificate from the U.S.? (3) Do you have a green card?
 - If the answer is no or I don't know, consider calling NILAH with them and/or the adult they live with.
- Have on hand:
 - Any immigration forms they've received (from CBP, ICE, ORR, EOIR, USCIS)
 - The name and address of who they live with
 - Any card documenting status or work authorization (Employment Authorization Document (EAD) Legal Permanent Resident card/Green Card).
 - Dates you entered and left the U.S.
 - Information on criminal charges, arrests, and convictions, including dates, penalties received (fees/jail time).



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Conclusion

If you have any questions, please contact the Center for Immigrant & Refugee Advancement (CIRA) at (402) 898-1349.



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