

*Bishop Francis Center for Legal Immigration Services
Immigration Assistance Program*

Impact of Immigration Policies in Schools

Presented By:
Kiera LoBreglio, *Managing Attorney*
Nicole R. Gutierrez, *Staff Attorney*

Undocumented Immigrants

- Undocumented immigrants are those individuals who do not enjoy legal status in the United States because they arrived in the U.S. without legal inspection. These individuals are also referred to as “illegal aliens” or “illegal immigrants.”
- Technically, being “undocumented” means that one does not have immigrant status in the United States.
- Some entered the U.S. with legal documentation and inspection, but overstayed visas, others were brought to the U.S. by their parents at a very young age. Some have lived in the U.S. most of their lives, while others might have recently made the dangerous journey across the border undetected.

Public Education for Immigrant Students

- In June 1982, in a 5-4 decision, the United State Supreme Court issued *Plyler v. Doe*, a landmark decision holding that states cannot constitutionally deny students a free public education based on their immigration status.
- The dissent largely argued that the decision should be left up to school districts, adding that "the long-range costs of excluding any children from the public schools may well outweigh the costs of educating them."

Why should schools be prevented from collecting and reporting information on students' immigration status?

- It may dissuade immigrant families from enrolling their children in the first place
- May cause higher rates of absenteeism
- Measures require untrained school administrators to make complicated determinations about immigration status which erodes immigrant students' trust of teachers, counselors, and other school employees;
- Creates greater potential for racial and ethnic profiling;
- Can breed conflict amongst students themselves, such as the bullying of students who are (or are perceived to be) foreign-born.

Rights as Parent/Guardian

- Under federal law, parents/guardians have certain civil rights regarding their children's education. Here are basic rights parents have:
 - The Family Education Rights and Privacy Act gives parents the right to review their children's school records.
 - Unless a parent/guardian gives written permission or a court requires it, schools may not share a child's records with anyone.
 - The right to receive communication from their child's school in their primary language.

When are federal immigration agents allowed to approach or question students, staff or parents on school campuses?

- Not often, but it's permitted when circumstances call for such action.
- ICE officers are **not permitted** to enter schools, **except** when absolutely required by law (they must have a judicial warrant in all but rare emergency circumstances).
- If an ICE officer goes to a school for immigration enforcement purposes, he/she must wait outside of the building while the principal consults with Department of Education (DOE) lawyers.

DEPORTATION and DUE PROCESS

- In a fair system of justice, anyone who goes before a judge deserves the opportunity to present a defense and get a full hearing, regardless of immigration status
- Unlike the criminal justice system, the immigration systems treats immigrants differently
- **For Example -- The right to counsel:** Unlike defendants in the criminal justice system, immigrants without resources who hire a lawyer have no guaranteed right to legal representation; as a result, more than half of individuals in immigration court proceedings are currently unrepresented

Outcomes for Juvenile Cases in the Immigration Courts

| Fiscal Year | No Attorney | | | With Attorney | | |
|------------------|---------------|---------------|--------------|---------------|---------------|--------------|
| | Cases Decided | Removal Order | Stay In U.S. | Cases Decided | Removal Order | Stay In U.S. |
| 2005 | 4,967 | 82% | 8% | 3,859 | 38% | 31% |
| 2006 | 3,792 | 82% | 6% | 4,022 | 40% | 28% |
| 2007 | 3,173 | 81% | 4% | 3,759 | 41% | 34% |
| 2008 | 2,719 | 83% | 5% | 3,321 | 40% | 38% |
| 2009 | 2,123 | 69% | 7% | 3,166 | 23% | 45% |
| 2010 | 2,558 | 70% | 8% | 3,568 | 17% | 54% |
| 2011 | 2,071 | 71% | 9% | 2,892 | 18% | 59% |
| 2012 | 3,238 | 79% | 10% | 3,402 | 14% | 65% |
| 2013 | 3,797 | 70% | 25% | 2,742 | 9% | 78% |
| 2014* | 735 | 55% | 42% | 305 | 12% | 66% |
| 2005-2014 | 29,173 | 77% | 10% | 31,036 | 28% | 47% |

Editor's note: 'Removal Order' and 'Stay in U.S.' do not add up to 100%.
The remainder is the percent of juveniles who chose a third option, 'Voluntary Departure.'

* Through June 2014

Forms of Relief

- **Deferred Action for Childhood Arrivals (DACA)**
- **Special Immigrant Juvenile Status (SIJ)**
- **Asylum**
- **Citizenship Through Parents**
- **Children Petitioning for Parents**
- **Cancellation of Removal**
 - **(For parents, need to document hardship to children)**

DACA

- DACA is an executive action issued by President Obama in June of 2012, instituting a policy of deferred action for “certain undocumented young people who came to the U.S. as children.¹” DACA does not provide eligible young people immigration status, but it is a form of immigration relief that provides the following benefits:
 - Lawful work permit valid for two years with the option for renewal
 - Not accruing unlawful presence in the U.S. while DACA is in effect
 - The ability to travel outside of the US with prior approval
 - A social security number
 - Eligibility to register in universities who accept DACA students
 - Eligibility for scholarships for DACA students

Recent Developments - DACA

- The DACA program was rescinded in September 2017, and was to expire in March 2018
- Two federal district courts enjoined the rescission. USCIS must continue to accept DACA renewal applications, but is not required to accept new DACA applications

Special Immigrant Juvenile Status

- Special Immigrant Juvenile Status (SIJS) is an immigration classification available to certain undocumented immigrants under the age of 21 who have been abused, neglected, or abandoned by one or both parents.
- SIJS is a way for immigrants under twenty-one to apply for and obtain legal permanent residence in the United States.

- There are very specific requirements for a child to qualify for SIJS, and the criteria are:
 - Applicant must be under 21 years old;
 - He/she must be unmarried;
 - He/she must be declared dependent in a juvenile court. This means that the Family Court must take jurisdiction over a petition addressing the needs of the applicant;
 - Reunification with one or both of the child's parents must no longer be a viable option due to abuse, neglect, abandonment or a similar basis under state law; AND
 - It is not in the best interests of the minor to return to his/her country of nationality or last habitual residence.
- If a family court judge finds that a child qualifies and grants an order, then the child must apply to USCIS for approval. The process is NOT over until USCIS grants SIJS.

Asylum

- A person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted “on account of **race, religion, nationality, membership in a particular social group, or political opinion.**”
- Asylum is granted inside the United States, by USCIS or an Immigration Judge.
 - Refugees are processed by the Department of State outside of the United States

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- With or without counsel, an asylum-seeker has the burden of proving that he or she meets the definition of a refugee.
 - Asylum-seekers often provide substantial evidence throughout the affirmative and defensive processes demonstrating either past persecution or that they have a “well-founded fear” of future persecution in their home country.
 - Pictures (drawn and taken)
 - Letters from Family Members/Friends
 - Medical Reports
 - Police Reports
 - Reports from mental health professionals
 - Reports from social workers
 - Country conditions
 - However, the individual’s own testimony is usually the most influential in their asylum determination.

Citizenship Through Parents

- There are two general ways to obtain citizenship through U.S. citizen parents:
 - At birth
 - After birth but before the age of 18
- The term “parents” includes: the genetic father, the genetic mother, and the non-genetic gestational mother, if she is the legal parent at the time of birth under the law of the relevant jurisdiction

Cancellation of Removal

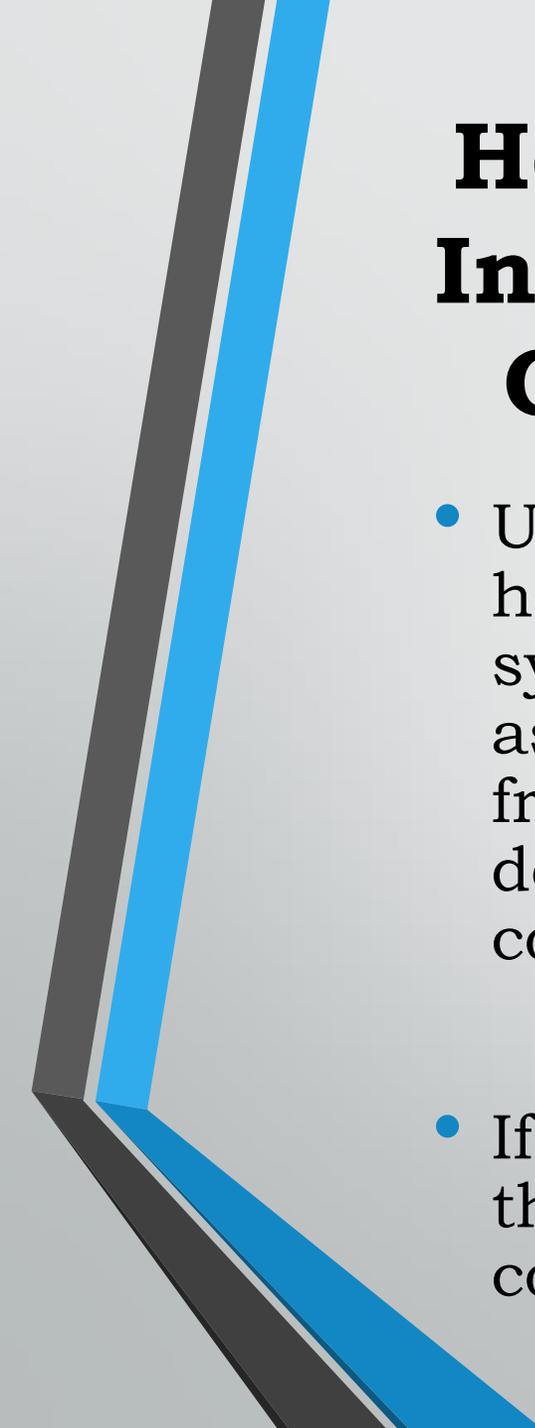
- Cancellation of Removal – relief from removal, available to both LPRs and undocumented immigrants
- LPRs must show that they have been in the US for 7 years, and that they have good moral character
- **Undocumented immigrants must show that they have been in the US for 10 years, have good moral character, and that removal from the United States would result in extremely unusual and exceptional hardship to a spouse, parent or child who is a lawful permanent residence (LPR) or citizen of the United States (USC)**

Recent Changes

- DACA was rescinded in 2017, but enjoined in 2018: USCIS must continue to accept renewals but no new applications
- Enforcement priorities / Sensitive locations
- Travel ban
 - Extreme vetting has decreased the number of entering refugees

Enforcement Priorities

- The Trump administration laid out its enforcement priorities in the executive order, “Enhancing Public Safety in the Interior of the United States,” signed on January 25, 2017. The order defines as a priority any non-U.S. citizen who:
 - has been convicted of any criminal offense;
 - has been charged with any criminal offense, where the charge has not been resolved;
 - has committed acts that constitute a chargeable criminal offense;
 - has engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency;
 - has abused any program related to the receipt of public benefits;
 - is subject to a final order of removal, but has not departed; or
 - otherwise poses, in the judgment of an immigration officer, a risk to public safety or national security.



How Immigration Status can Impact Interactions with Social Workers and Other Mental Health Professionals

- Undocumented status can have serious impacts on mental health, trust in authorities, and identity formation, due to systemic issues undocumented immigrants routinely face, such as racial profiling, ongoing discrimination, forcible separation from family members, immigration raids, placement in detention camps or child welfare facilities, deportation, and constant anxiety and fear.
- If a client chooses to disclose his/her undocumented status, this information should be treated with the utmost confidentiality and care.

The Role of School Social Workers in the Immigration System

- **Document the File**

- Licensed clinical social workers can write detailed evaluations on the psychological state of victims of domestic violence or crime, which can be key pieces of evidence.

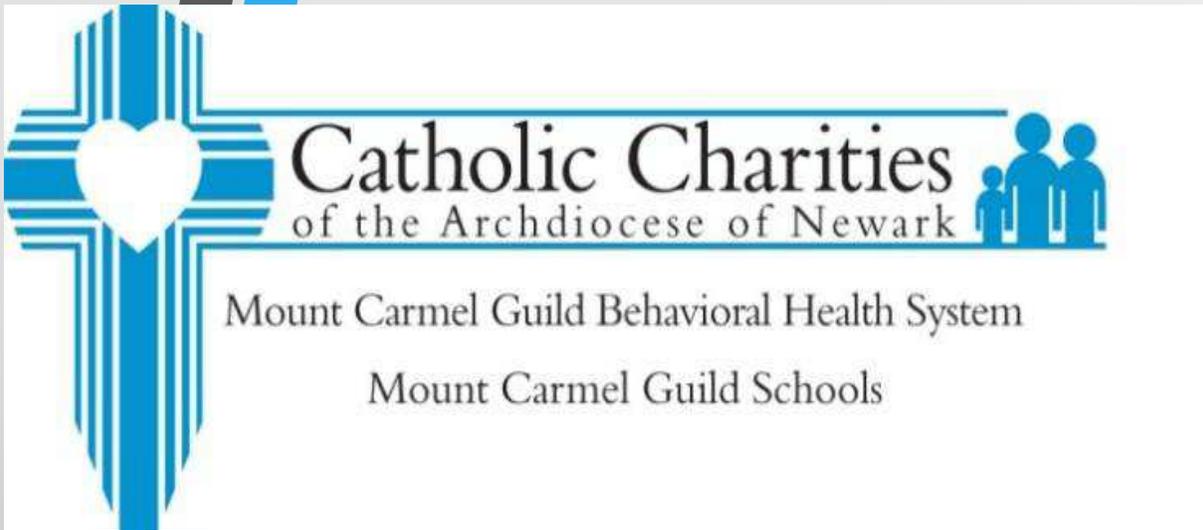
- **Partner with Lawyers**

- Social workers should have an immigration attorney on their list of important contacts. These contacts can come from local nonprofits or private attorneys. There may be a private attorney who takes certain cases on a pro bono or reduced fee basis.
- Social workers are well positioned to identify issues, refer questions when help is needed, and assist in gathering crucial evidence.

- **Be Aware of Resources Available to Immigrant Children/Parents**

Special Immigrant Juvenile Status

- Lola, a 16-year-old from El Salvador, is in foster care. She came to the United States illegally with her parents when she was 5. Her parents disappeared when she was 11, and she is now in the state foster care system. What could a social worker do to help get her immigration status so she can remain in the United States legally?
- Lola may be able to apply for a green card as a special immigrant juvenile status, but she must prove the following:
 - A juvenile court declared her to be dependent and eligible for long-term foster care or committed her to the custody of a state agency due to abuse, neglect, or abandonment.
 - A judge determined that it would not be in Lola's best interest to return to El Salvador.
- For Lola to be deemed eligible for long-term foster care, she must be under the age of 18, and a juvenile court must determine that family reunification is no longer viable. **The social worker in these cases can serve as a liaison between the family court and the immigration attorney. Family court issues must be handled before the immigration case can proceed, and the social worker can play a big part in getting them resolved.**



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Thank you for allowing us to present today and for the important work you do.