

Scholarly Commons @ UNLV Boyd Law

Scholarly Works

Faculty Scholarship

2018

Families across Borders: When Immigration and Family Law Collide-Minors Crossing Borders

Stewart Chang

University of Nevada, Las Vegas – William S. Boyd School of Law

Follow this and additional works at: <https://scholars.law.unlv.edu/facpub>



Part of the [Family Law Commons](#), and the [Immigration Law Commons](#)

Recommended Citation

Chang, Stewart, "Families across Borders: When Immigration and Family Law Collide-Minors Crossing Borders" (2018). *Scholarly Works*. 1273.

<https://scholars.law.unlv.edu/facpub/1273>

This Article is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

**FAMILIES ACROSS BORDERS: WHEN IMMIGRATION
LAW AND FAMILY LAW COLLIDE —MINORS
CROSSING BORDERS**

Prof. Stewart Chang: Good morning, everyone. Thank you for being with us, and thank you for the Center for Children and Families for organizing such a wonderful symposium today. We have a great panel lined up for you, so let me just introduce them in the order in which they will be speaking.

Amy Woo Lee has been a public interest attorney for more than 10 years, and she is currently with Kids in Need of Defense, (“KIND”). Prior to joining KIND, she was a senior staff attorney at Asian Americans Advancing Justice Los Angeles, where she represented survivors of domestic violence in both their family law and immigration law cases. In fact, she was my officemate for many years at the firm, so it is good to see her. She was also a staff attorney and fellow at the Los Angeles Center for Law and Justice.

She has degrees in psychology and Spanish from University of California Los Angeles, and her law degree is from Loyola Law School. At KIND, she works with pro bono attorneys representing unaccompanied minors from Central America in asylum and special immigrant juvenile status matters before both state and immigration courts.

To her right, we have Professor Cynthia Holton, who teaches practice classes here at Whittier Law School in the children’s advocacy clinic. She also serves as the law school’s director of externships. Guardianships comprise a significant number of the clinic’s probate court cases, and the clinic works on special immigrant juvenile status cases whenever they occur as facets of the guardianship cases. Before coming to Whittier Law School, Professor Holton worked as the lead family law attorney at the Public Law Center, (“PLC”) for seven years. At PLC, she completed many SIJS cases, and she has taught classes for the Orange County Bar Association on subjects of guardianships, child custody, and dissolution.

To her right, you are already familiar with the Honorable Craig E. Arthur, who is a judge with the Superior Court of California for the County of Orange. He sits on the Juvenile Dependency Assignment and is a leader for juvenile justice issues, both at the state and the local levels. He is currently a member of the Judicial Council Advisory Committee on Providing Access and Fairness, and also sits on the statewide Family and Juvenile Law Advisory Committee, and has served on a committee preparing a family resource guide, as well as a statewide protective orders working group.

Judge Arthur sits on Orange County's Blue Ribbon Commission, Orange County's Children's Partnership, and is the juvenile courts liaison for training and information regarding special immigrant juvenile status. He is leading efforts in developing and training court officers with respect to educational rights, obligations, and duties regarding foster youth. Prior to joining the bench, Judge Arthur worked as an attorney, primarily practicing in the area of juvenile dependency laws.

So if you could please help me welcome our panelists this morning. And again, if you could reserve your questions for after the panel—each panelist will talk for approximately 20 minutes, and afterwards we will have a Question and Answer session. Thank you.

Amy Woo Lee: Thank you, Stewart, and thank you for having me here. As he mentioned, my name is Amy Lee. I work with Kids in Need of Defense. I will be starting the panel today by discussing a little bit about who these children are that are arriving on their own here in the US without their parents or without their adult caregivers.

What defines an unaccompanied child? This is a child with no legal status, who is under 18 years of age, has no parent or legal guardian in the United States available to provide care and custody. That is determined at the time of the entry, so when they enter without a parent or guardian, that is when they are determined to be an unaccompanied minor. If they are detained—which most of them are—they are mostly caught at the border and then turned over to the Office of Refugee Resettlement to be

placed in a youth shelter, where they will be for the pendency of finding an appropriate placement for them here in the United States.

Just one note about that—it is referred to as an unaccompanied child (“UAC”). The status is determined, again, at the time that they enter the United States. Usually that determination remains with them, even if they turn 18, or they are reunited with a parent. However, with the recent administration change, we are seeing that that is changing, and I’ll talk a little bit more about that later.

Where are most of these children coming from? Here in Los Angeles, most of the children are coming from Central America—the northern triangle Central American countries of Guatemala, Honduras, and El Salvador. We are seeing a few other children arriving from Mexico, but most of the time, they do not make it into the system, because if they are identified as Mexican at the border checkpoint, usually they just turn them around and send them back. If they are from Central America, just geographically they cannot do that, and so, they are placed in shelter care.

The kids range in age from 2 to 18, actually even younger than two. Sometimes, girls are pregnant when they arrive. They give birth on the journey, so they will arrive with little babies. We have seen babies as small as a couple of months old in a car seat coming into our office. However, for the most part, most kids are around the age of 14 to 18 that we see coming to our office. I’ll explain a little bit more why in the following slides.

It used to be that they were mostly boys that were arriving; however, now it is kind of a 50/50 split of girls and boys that are arriving here. This has not been an ongoing phenomenon that there have been large waves of children arriving without their parents. It has been actually more of a recent phenomenon. In 2014, there was a sudden spike where there were a lot of children arriving from these particular countries unaccompanied, and that has a lot to do with the gang violence that runs rampant in those countries.

So why do they come here? This list is fairly comprehensive. The bold bullet points are the main reasons why they come here. I am just going to talk about the boldfaced ones because those are by

far the main reasons why children come here on their own: domestic violence, whether that is abuse by a caregiver or a partner; sexual exploitation, so being sold off into marriage. This happens mostly for girls. They are sold off into marriage for financial gain of the caregiver.

Threats by gangs and gang violence—that is the No. 1 reason why children are coming here. There is rarely a child that we see coming into our office that has not been threatened by gang members. That includes both, girls and boys. It is usually recruitment efforts. For boys, it is, “Join our gang or die.” For girls, it is, “Be a gang girlfriend, or die.”

That leads me into gender based threats, abuse, and violence. For a lot of these girls, once they hit that age of puberty, which explains why a lot of kids are arriving around the age of 14, they start getting targeted by gangs to be a girlfriend, so there is a lot of these forced girlfriend situations. On top of that, of course, there is always the poverty that all of these children are living in.

The children that we see are incredibly brave. They go through really harrowing journeys to arrive here. That sometimes can take months because they get turned back in Mexico or in another country, and they have to start all over again. I believe it was 2015, when the Obama administration sent funding down to the Mexican government to increase border security along the Mexican border with the Central American countries so that a lot of the times, children get caught there and sent then sent back and have to start all over again. There was a decrease in 2015 of migrants arriving actually in the US, but that is not because they weren't trying to come. They were. They were just getting stopped and turned back.

We see children arrive in all different manners. Sometimes they will just set out on their own. They will pick up odd jobs and just kind of pay their way through with them and maybe like a younger sibling sometimes that they will take care of. They will work until they have enough money to pay for their next bus ticket. Most of the time though, these kids are able to have family members or friends provide them with funds to hire a smuggler or a guide that will bring them into the US. In either situation, it is extremely

dangerous.

There are other unknown people in this group. They are kept in—oftentimes, we hear stories of kids that are kept in the back of a big rig. There is not even room to sit down. There is no restroom. They are in there for days on end. They cannot sleep. They cannot eat. There is no water. It is just a really horrible thing that they have to endure in their journey here to the United States. Of course, on this journey, there are also pretty terrible stories that we hear about crimes that happen along the way, especially for young girls that are arriving without an adult to help them. There are instances of rape that we often hear about along this journey.

On top of that, when they are traveling through Mexico, oftentimes they are traveling through the territories of different Mexican cartels, so these different smugglers have deals with the different cartels, and they are paying them off along the way, or they are held by these cartels until they are able to pay the ransom to be able to continue on their journey. It is quite harrowing.

Once they arrive here, it is quite confusing because there are a lot of people involved in the immigration process that they have to go through. There is the Department of Homeland Security, that includes customs and border protections, Immigration and Customs Enforcement, and Citizenship and Immigration Services. CIS is the kind of bureaucratic agency that deals with applications or affirmative petitions asking for relief, for some kinds of immigration status. United States Immigration and Customs Enforcement (“ICE”) and United States Customs and Border Protection (“CBP”) are often the people that they deal with first at the border that serve them with their Notice to Appear in immigration court because immediately upon arriving, usually—shortly after being placed in a shelter—they are all served with a notice to appear in immigration court because the government has initiated deportation proceedings against them.

That leads me to the Department of Justice. The Department of Justice is where those deportation proceedings take place. It is called the Executive Office for Immigration Review. That is the equivalent of the trial court level. That is where they will assert whatever type of relief it is that they are going to be pursuing. It is

actually not decided in that court, but that court kind of monitors what's going on to make sure that these children are pursuing some kind of relief, not just remaining here in the United States, undocumented, while not trying to pursue some kind of process. Should they not succeed at the trial court level, then there is the Board of Immigration Appeals.

As I had mentioned earlier, when children arrive in the United States, they are placed under the care of the Office of Refugee Resettlement, which falls under the Department of Health and Human Services, which is the box in the lower left corner. Finally, as I had mentioned, the children are pursuing some form of relief to try to get immigration status. That is where the state court sometimes plays in. For certain forms of relief, there is a component in which they must pursue orders through the state court.

When children are apprehended, usually they are moved pretty quickly to a juvenile shelter, an Office of Refugee Resettlement shelter. However, they do spend some time in what they call the freezer—because it is very, very cold—and this is where adults spend their time, and they are left there for a fairly extended period of time. Children, they try to move quickly. The officers question them about where they are from—if they are fearful—to assess whether there is potential for asylum. Usually, at that stage, they are just so uncomfortable and disoriented; they usually just tell the officers whatever they want to hear.

Finally, they are moved into a juvenile shelter, where most children report that they are treated well, and that they actually enjoy their time at the juvenile shelter because they have three regular meals a day, a roof over their head, no one is generally trying to harm them. They are able to attend school, and they feel like it is safe. Usually that is actually a good experience.

The reunification release process—so children can remain in the shelter for any period of time. It can be six, eight, months, up to a year, or just a few weeks. It just depends on how long it takes for ORR to find a suitable placement for them, find either family or a family friend or someone, a place for them to live. They do pretty thorough vetting of the placement where the children are going to

live. They do background checks and fingerprinting of every single person who lives in the same residence that this child potentially will be living at. Most of the time, these children are reunited with family members or family friends; those are the children that our office works with.

It is occasional that the children are released to an unrelated adult. It is usually kind of a distant relative. It is not that common, but it does happen on occasion.

KIND has 10 offices nationwide, with now one office in London. In the United States, we have offices where there are most Unaccompanied Alien Children (“UAC”) arriving that need our assistance.

Even for these very young children, there is no right to an attorney, so there is no public defender available to represent them at no cost. There are very small children who must appear on their own in court, if places like KIND or other nonprofits are not available to help them either, find a pro bono attorney or have a lawyer through this public interest organization.

Without an attorney, they have to face all of these things alone. These are adversarial proceedings. There is a government attorney sitting at the other table that is actively trying to have them removed from the United States. They have to plead to the factual allegations in their notice to appear, which is the charging document that I mentioned that is served upon them when they are in the juvenile shelter. They have to plead to the charges that are placed against them that state why they are removable from the United States. They have to be able to articulate what kind of relief they will be requesting, what kind of immigration status they believe they are eligible for to be able to stay here in the United States.

On top of that, they also have to testify under oath about really terrible incidents that have happened to them—abuse, and rape, and witnessing various crimes. A lot of times, children have seen a lot of violence happen against their parents.

The main forms of relief that the children, that we see, are eligible for special immigrant juvenile status—that Professor Holton is

going to talk about—and asylum. It is probably about 50/50 that the children qualify for one or the other. T visa, U visa, prosecutorial discretion, which basically doesn't exist anymore, and voluntary departure—those are much more rare. U visa is for crime victims, but only for crime victims that been helpful in the investigation or prosecution of a crime that happened here in the United States. As you can imagine, these children have just arrived. That is very unlikely to have happened. We have had a few cases, but it is unlikely. And a few trafficking cases.

I will be talking a little bit about asylum. It is a bit complicated, so just the general overview of what that looks like. The code section that governs asylum is the Immigration and Nationality Act 101A42A.(a) That reads, “Any person who is outside any country of such person's nationality and who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

There are three basic elements of asylum that you are a looking at. It is past persecution or a well-founded fear of persecution on account of one of five protected grounds: race, religion, nationality, political opinion, particular social group. So past persecution, what you are looking at is physical harm mostly is generally what the officers are most persuaded by. Or, a well-founded fear of future persecution; that would be threats of harm. “I am going to kill you if you do not kill the gang.” So far, we are seeing that well-founded fear claims are not very successful. If nothing has actually happened to the child, the officers are unlikely to grant asylum if something hasn't happened already.

What has happened to them has to be on account of—this is also key, and it is referred to as a nexus—on account of one of the five protected grounds. For the children that we work with, most of the time, they will fall in this last particular social group protected ground. The most common claims are based on family membership or sometimes very general groups, such as young, unprotected, El Salvadoran females.

Each of these elements needs to be proven to the asylum officer,

and it has to come out of the child's mouth at the time of the asylum interview. These asylum interviews can take—they do take many, many hours. They can take up to four or five hours that this child is sitting there with the asylum officer. It is better than sitting in court with a judge and a government attorney, but they will sit in there and be interviewed by this asylum officer to make sure that they can identify credibly from the child that all of these elements are met.

The standard of persecution that I mentioned earlier, it is not—for children, there is consideration for the fact that it is a child—so it is not the same standard that exists for an adult. For example, United States Citizenship and Immigration Services has previously found that being threatened at gunpoint is not considered persecution for an adult, but it can be for a child. They use a different standard, recognizing that children, considering their age, they have a lower threshold for being traumatized.

Of course, with children that are very young, seven or eight years old, they can look to testimony from parents or other adults who are familiar with the facts of what happened; however, there is less weight given to that because it is not coming from the child. It is also challenging to get that testimony because all of these acts in this persecution happened in home country, where it may be hard to get in touch or be able to get an affidavit from that person that is in home country.

These are the most common children's claims that we see. As I had mentioned before, these are the reasons why children come to the United States. The main claims that we see are generally the top line: gang recruitment, domestic violence, and family relationships.

For example, family relationships could include: your father is a police officer. "You need to join the gang." The gangs are targeting this particular child for recruitment because, "You can tell us more about how the police is investigating gang activity." Things like that would count as family relationships. Also, a very common situation we see is that, for example, siblings where a sister is being targeted for being a gang girlfriend. They will harm other siblings because of their family relationship to try to coerce

this one sister to be a girlfriend. The nexus . . . I am told I need to stop.

The nexus is the next element. This is also very key to be able to show that that persecution that the child suffered was on account of one of those protected grounds. The officer really needs to see some kind of very clear evidence of that, whether it is words saying that, "You need to join the gang or die because, for example, your father is a police officer." That is kind of the easiest way to draw this nexus for the asylum officer.

Other times, it can be a little bit more circumstantial—a pattern of behavior. For example, four women in a family were all targeted to be gang girlfriends. There was never any specific statement made saying that, "You need to join the gang because we have all of the female members of your family join this gang," but by the pattern of behavior, you can draw that inference.

The code says that it has to be one central reason for the persecution. What that means is that you do not have to be targeted for just that one reason, on account of your family. You could have been targeted for a lot of different reasons, but one of the main reasons must be because they targeted you because of your family. So you could be targeted, for instance, because you were a devout Protestant Christian, as well, but as long as one of the main reasons the gangsters were targeting you was due to your family relationship, then that is fine. There could be mixed motives, but your claim has to be based on one of the main reasons.

In asylum cases, one of the things that really helps the asylum officer understand this nexus is country conditions, which can be very lengthy. That would report from the country—it can be newspaper articles, experts—that help to establish what's going on in that country, and that this is something that is commonly happening, which lends credibility to the child's testimony. Because, often, there are not things like police reports or medical reports or other things like that to substantiate the persecution.

Obviously the children are terrified, and there has not been a child that I've seen who has said, "Yes, I really trust the police. They

help us so much.” No. Almost every child says, “No, the police are as bad as the gangsters,” or, “What can the police do? The gangsters kill the police too.” They just do not feel like there is any protection in that respect. Usually there is not really much of any kind of evidence or paper trail that we can obtain. Country conditions provide a lot of support in that sense.

Jurisdiction for asylum applications; this is something that is unique for UACs. Normally if you are a person in removal proceedings, your asylum application is decided by the judge in court. There is testimony. There are witnesses. There is a government attorney there doing cross-examination. It is a very intimidating process. But considering these are children, UACs are given special treatment in the sense that they are able to file their initial application for asylum with the asylum office in a less adversarial setting in that long interview that I mentioned earlier.

If that asylum officer is not able to approve the application, then it is referred back to the immigration court, where it is essentially a second bite at the apple. You have your trial—well, it is called a merits hearing—in front of the immigration judge. It is obviously much more adversarial, but it is a second chance. Of course, if it is denied at that point, then it can also be appealed to the Board of Immigration Appeals. This is another special consideration that UAC children are afforded. Normally, when you apply for asylum, you must apply within one year of arriving in the US. However, if you are a UAC, that one-year filing deadline is waived.

However, my second bullet point references something I had mentioned earlier. As of February 20, 2017, the Department of Homeland Security came out with a border enforcement memo that directs the Department of Homeland Security to revisit UAC status. This is not something that they did before. It is a result of the executive orders that were issued in January. They want to reexamine whether children can continue to have this UAC status, which, if it is taken away from them, then they no longer are afforded this waiver of the one-year filing deadline.

Mostly the children that we are seeing—there hasn't been really a pattern to it, but they are starting to take away this UAC status from kids who have either turned 18 or been reunited with a

parent. For now, for kids who have not had this status taken away, we still recommend that the asylum application be filed before their eighteenth birthday, and try to file within one year of arrival. Because this exemption was not statutory, that is why the Department of Homeland Security can now take it away at their discretion. And that is the end.

Prof. Cynthia Holton: I am going to speak about special immigrant juvenile status in probate and family law courts, which are the courts that I have worked in most commonly. I will start with just a little bit of a historical background.

Special immigrant Juvenile Status (“SIJS”) is not particularly new. It was created in 1990 by Congress, and it was a response to the need to give children a special immigrant juvenile status because they had been aging out of foster care, or they were being adopted out of the system without any kind of legal status. SIJS was unused for about twenty years or used very rarely. This occurred in part because the federal government failed to implement a systemic outreach to the juvenile courts, and child welfare agencies lacked identifying and assisting children who were eligible for SIJS.

Juvenile court attorneys and immigration attorneys sometimes feared crossing into one another’s area of practice. Los Angeles led the nation in using SIJS. In particular, Kristen Jackson, a Los Angeles attorney, was someone to whom I reach out when I began working on my first SIJS cases. My first case was either in 2006 or in 2007 and it was one of the earlier cases in Orange County. I brought these cases in guardianship court, that is, probate court. At that time, the probate court was not all that familiar with SIJS cases but the Orange County judges seemed very open to SIJS cases.

SIJS involves an interaction between federal law and state law. The findings of fact are made under state law, but the framework for SISJ cases is provided by federal law. It is in state court that you establish the child’s eligibility for SIJS. A juvenile court is defined as a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and the care of juveniles. Without the findings of fact from the

state court, the minor cannot eventually apply to immigration and cannot obtain Special Immigrant Juvenile Status from an immigration court.

Juvenile courts may include courts hearing dependency cases, such as the cases Judge Arthur decides. Juvenile court may also refer to delinquency, probate, or family court. As I said, I am particularly familiar with probate guardianship cases. I know of SIJS cases being heard in the Los Angeles family court.

The requirements for SIJS in order to obtain a predicate order from the court dictate the findings of fact. SIJS is element driven and certain elements must be satisfied to obtain the proper findings of fact. First, the minor has to be under the jurisdiction of the court because the minor is either a party in probate, dependency, delinquency, or family court proceedings. Jurisdiction is, thus, established.

Once jurisdiction exists, it has to be established that one or both of the parents has abused, neglected, or abandoned the minor. In the past, it had to be proven that both parents abused, neglected, or abandoned the minor. In 2009, the law changed to allow that if only one parent abused, neglected, or abandoned a minor, that minor could be eligible for SIJS. This change made it possible for SIJS to be used in family court as well as probate court.

When you have two parents, these cases are most likely to arise in a guardianship proceeding where a family member is going to get guardianship of the children because the parents fail to care for their children or abandon their children. SIJS findings are made as special orders in the guardianship case. The SIJS orders must be documented separately even though they are part of the guardianship findings and order. If SIJS orders are made as part of a family law case, then you have the parent (who was not the abuser) going to court to obtain a SIJS order for the child based on the neglectful or abusive behavior of the other parent. SIJS might arise in a parentage case or a dissolution case.

The next element that must be proven is that it is not in the minor's best interest to be returned to his or her country of birth. During the period when I did the most SIJS cases, I appeared

before a number of judges. One particular judge paid particular attention to ensure this element was met and always closely questioned me and my clients. I had one case in which the facts supporting SIJS were particularly compelling. The minor had been brought to the United States when he was eight months old and had never returned to Mexico. He had been abused, neglected, and abandoned by both parents. The rest of his family had become citizens of the United States and the only family member left in Mexico was an old grandmother who was sick and blind. Nevertheless, the judge questioned my client closely about why he could not be returned to Mexico.

There are additional elements that were never at issue in my cases. The child must be in the United States at the time of application for SIJS. The child must be unmarried and remain so until she becomes a lawful permanent resident. The SIJS applicant must be under the age of 21 before the date of filing and must be subject to juvenile court jurisdiction. Since under state law guardianships customarily apply until minors become eighteen, legislation was passed in the form of AB900 which allows the court to appoint guardians for minors between the ages of 18 and 20. This brought state law and federal SIJS law into alignment. Parenthetically, AB900 also allows minors who have arrived in the United States late in their teenage years to acclimate to the new culture. Special Immigrant Juvenile Status in the probate court may involve unaccompanied minors. Whether a minor is unaccompanied is determined when the child enters the United States. Guardianships are more likely to involve unaccompanied minors than are family law cases since in family court, one parent brings the SIJS action.

Thus in probate court, you usually have a family member or a family friend who is willing to apply for guardianship for the minor. Two of my early cases involved unaccompanied minors from El Salvador and from Guatemala. Both minors had ridden the train, "the beast," that departs from southern Mexico and travels to the border with the United States. People ride on the top of the train. One minor was thirteen years old and the other was fourteen. One young man became the ward of his aunt and the

other became the ward of a family friend.

In family law court, as I said, the non-abusive parent obtains the SIJS order in a dissolution or a parentage case. A parentage case is a case in which the parents are not married and the filing parent files a petition to establish a parental relationship. The court would have to make SIJS findings or the findings of fact to obtain a SIJS order.

When the court makes the findings of fact in favor of a Special Immigrant Juvenile Status order, the immigration officer may not re-question the minor about those findings. SIJS cases occur in two parts, the first being the hearing in front of probate court, juvenile court, or family law court; the second part being the immigration hearing. Once the findings of fact are made, the immigration officer is precluded from asking about those findings. I have not followed many cases through both stages, but in the couple I have done, I was advised not to let the immigration officers question my clients about the findings made in probate court. Indeed, one of my clients, a very clean cut young man who had been brought into the United States as a baby and who planned to become a firefighter, could only be questioned about any possible ties to terrorist organizations or about involvement about smuggling guns.

To summarize the stages of a SIJS case, the probate court, juvenile court, or family court arrives at the factual findings and grants a SIJS order. Then there is an adjustment of status to obtain the benefits of Special Immigrant Juvenile Status. The minor obtains lawful permanent residency through the adjustment of status and subsequently the United States Citizenship and Immigration Services consents to the petition. A whole new set of paperwork is submitted to start this adjustment of status. In the adjustment of status phase, the immigration service will look at an applicant's criminal record, any physical or mental conditions that might be problematic, the applicant's method of entry, and the likelihood the applicant will need welfare benefits. With Special Immigrant Juvenile Status applicants, however, the minors face fewer obstacles and often obstacles are waived for humanitarian purposes or for family unity.

If SIJS is not obtained, the minor may be placed in immigration court proceedings to be removed. If SIJS is obtained, the minor becomes a lawful permanent resident and eventually a citizen. Thank you.

Hon. Craig Arthur: Hello again, first of all, in terms of just the courts involved in immigration issues, we have the immigration court. Amy talked about the immigration court, the immigration judges. In the state court, we have the juvenile court that I sit in. By the way, the juvenile court that I sit in has two sides in to it: dependency and delinquency. We have the probate court and we have the family court.

In family court, we have just strictly child support cases that are cases where they are trying to enforce child support. Then we have strictly domestic violence cases. We also have parentage cases and we have dissolution cases. I am recapping all this because, like I said, your heads should be spinning a little because it is like, “okay, how does that get to the court? Where do you go? Who does this? Who files these paper works? Where do you get the forms?”

When I tell friends and family—I do not talk about my cases, but I may come home and say, “Oh, geez, I had a horrendous sexual abuse case today,” and their immediate reaction is, “Did you lock the guy up? Did you put him in jail?” And I tell them, “No, that is not what I do.” I deal with the family and whether the kid should be with the parents or not.

It is interesting to always remember as you go through—and this is totally off topic and not immigration related—but as you go through your career as a lawyer or an advocate or whatever you choose, a factual pattern can be in several different courts in the court system at any given time. I always use O.J. Simpson’s case as the perfect example. That fact pattern took him to criminal court, probate court regarding the guardianship of his two children, and the civil lawsuit regarding the tort claim that was filed by the families of the deceased. You kind of have to keep that in mind as we talk about immigration cases and making sure that we get into the right court.

The law, I believe it is the federal law, talks about the juvenile court, as Professor Holton talked about. Juvenile court takes into consideration family, probate, and juvenile. Her emphasis was a lot on probate and family, and juvenile is where I sit. The SIJS applications—Amy I am going to get back to you in a minute because yours was fascinating and I have all kinds of questions for you.

The real way that I come into play on a SIJS case is I make these findings. I make the findings, and then the social worker—there is a special social worker designated to handling immigration cases—will take those findings and make the application to the federal court. I really never see if it is granted, or denied. It never comes back to me unless it is put in like a report that there is a holdup or a stall or whatever.

The judicial council of the state of California has developed forms that we can use to make these findings. Yes, I know it is a form and it is a template, but the sections of that form are to be bolstered up because I think the better the facts, the better the finding that I make, the better the chances that the child will get the SIJS application granted. It is those abuse and neglect and cannot be returned to one parent, and then also cannot return to their country of origin.

Typically, I will just sign that order, and away it goes. There is really never any hearing before me because, think about it. In my cases, I have got so many facts because of all those hearings that we talked about. Every hearing, I am getting a report anywhere from 25 pages to 125 pages of factual information about the abuse and neglect because that is what my court is all about and about reunifying. So I have already got a lot of those facts. I have already made those findings because I have to make those findings at the statutory hearings. The child cannot be returned to this parent or both parents. It would be a risk to be returned, things like that.

I typically will have the facts, but if you go into a probate court or a family court, they are gathering the facts as you go because it is part of the case. Keep in mind that, as Professor Holton indicated, a case has to be filed, so you have got both the case and then the

SIJS requested findings for the special immigrant juvenile status.

I have not seen it—and this is just one of my many questions—I have not seen it in Orange County where an unaccompanied minor will come to our court clerk and say, “I want the court to make these findings.” See what I am saying? So there is an underlying case, whether it is a juvenile case, a family case, or a probate case, where the judge has facts because the judge is making determinations in a guardianship as to whether or not these people are suitable to be guardians of the child, and what is the factual basis? Why cannot the child be with the parents and things like that? Same thing in a family law case. As part of family law, again, we have our domestic violence court, where I would assume that some of the cases come out of there.

In delinquency cases, it is important if you are representing a delinquent in a juvenile court in the state court, the admissions made in a delinquency case could impact their eligibility for SIJS status. I run a boys’ court. I have very hardcore, at-risk boys who are in this program. It is run on a model of a drug court or a DUI court, so we meet with them frequently. I have crossover youth, which means they are dependents and delinquents. I just had a case where a kid picked up some crimes. He is now 18. That is the immediate red flag that goes off in all of our heads is, “Oh, no, his immigration status is going to be compromised.”

It is important to remember that an admission in a juvenile court could be grounds for deportation, and certainly a conviction of a juvenile as an adult who is tried as an adult would have immigration consequences. When I used to sit in criminal court, I used to have to give an immigration advisement to everybody who pled guilty or admitted the charges before me, and I do now in juvenile court as well, that if they are not a United States citizen, their admission or their plea could result in deportation or their ability to become naturalized citizens.

There are cases that come out of our court of appeal that if litigants are not advised of the immigration consequences, their admission can be reversed because they had no idea, “Oh, I am going to get deported.”

I do not want to duplicate a lot of this about the SIJS, but keep in mind that it could come before the juvenile court on both sides, dependency and delinquency, because in the delinquent cases, a child may be removed from the parents and put in placement just as in the dependency side. So if they come to the court, they have committed a crime, and if the court finds that the child cannot be returned to the home of a parent, then you could have SIJS findings come out of that court as well.

So this is an important fact. SIJS, at least as you indicated, the education has been overwhelming in the last several years, and we even had people from the federal government come into our court to educate our juvenile court judges and our family court judges. I have been to a statewide conference down in San Diego and I noticed that there was a lot of pushback from state court judges about making these findings because, in their mind, they were making a determination that these children were now going to be naturalized citizens of the United States. Although, that is not the case. That is a myth. We make the predicate findings. I do not determine whether or not they should stay here or go—well, I do make a determination that it is not in their best interest to go back to their country of origin. But in terms of naturalization or any immigration issues that would allow them to stay here, it is up to the federal immigration court, and that is out of the state court's hands.

There is a perception that federal law allows all state courts to hear and make findings that can be used later in a SIJS proceeding. Juvenile courts with jurisdiction under the state are the only courts that are allowed to make that determination. In the very rules, as you have already seen, juvenile court is defined as juvenile, family, or probate. When we are making decisions about abuse or neglect, those decisions are made in all three of those courts. We are the only ones that can hear the requests for the findings for SIJS.

Sometimes my mind goes that way, and my mouth goes that way, so I have to kind of pause for a moment. Some of you may be thinking, "Wait a minute. You just talked about the juvenile criminal cases, and you said that they could make SIJS predicate

findings.” The delinquency cases for minors under the age of 18 who are alleged to have committed crime come before the juvenile court. It is just a portion of the juvenile court. It is not our adult criminal court.

There is a perception that due process does not apply when a court is presented with a petition for special immigrant juvenile status. Quite the contrary; individuals who are in this country unlawfully are persons who are guaranteed due process of law. As already mentioned, children are not appointed attorneys in the federal immigration proceedings, but in our courts, we have the statutory authority to appoint attorneys to represent the children.

Family court judges and the probate court judges have the authority to do that in terms of appointing an attorney to represent the children, and that attorney can help gather the facts and get the facts to the court that the court needs. Also on a probate guardianship case, there is going to be an independent investigation by a probate investigator, who is going to present facts to the court.

Hon. Craig Arthur: My question to Amy is, because she talked about the unaccompanied children coming, getting caught at the border, and then placed in ORR shelters. So the kids that I am getting, are those the ones that are getting past the border and not getting caught at the border? Or are those the ones primarily coming from Mexico? How is there a difference between – because those children I will typically never see in juvenile court, correct?

Amy Woo Lee: They might because if they are placed in foster care or in a group home, then they would fall under the dependency system because they could not find a family member or friend to place them with. They would not come to us then because they would have representation elsewhere. We do not see kids that are in that system, but they could still go through that same process.

Hon. Craig Arthur: So I guess my point is the kids you see, I do not see, and the kids I see, you do not see.

Amy Woo Lee: Yes, but they could have both gone through the

same initial process of getting caught and put in a shelter.

Hon. Craig Arthur: Okay. So does that all make sense? For a case to get to me, I do not get to go into the streets of Orange County and pick and choose which kids needs to be removed from their parents. As Mark indicated probably at about 9:20, a petition is filed by the social services agency for a case to come before me. A case that is going to go to the probate court, if they are placed with a relative or a friend, then that relative or friend can file for a guardianship, and those are primarily the cases you see. I am just trying to give you an idea of the avenues of how the case will get to the state courts.

Prof. Stewart Chang: Now, let us all first thank the panelists, and then we will take a few questions.

Audience Member: My first question is to Judge Arthur. So I wanted to ask, the last panel you had said that the juvenile chief justice wrote to the United States attorney general to ask for guidance on whether or not there would be ICE officials in Lamoreaux. Did you hear back? Was there a response?

Hon. Craig Arthur: Actually, it was not the juvenile court chief justice. It was the chief justice of the State of California, who wrote a letter to the United States attorney general. I do not know if she heard back. Probably not, but I know that there are probably local and state efforts going on because everybody is concerned about that chilling effect of ICE authorities being in and around the courthouses. I sit on our court's executive committee, and we just discussed the issue on Tuesday at our monthly meeting about ICE officials coming into the actual courtrooms. We cannot prevent them from doing that. We certainly cannot get in the way of federal law enforcement. It is a very delicate, delicate issue.

Audience Member: But since juvenile court proceedings are closed—

Hon. Craig Arthur: Confidential.

Hon. Craig Arthur: But the building is not closed. The building and the inner parts—the common areas of the building, they could be walking around in there. But the actual courtrooms are closed and confidential proceedings. I do not know what would happen if

they wanted to come in because they are law enforcement, I believe. I may be wrong. It has yet to completely play out, and you will hear more on this issue as time progresses.

Prof. Stewart Chang: I am going to follow up on the question that Judge Arthur posed to Amy and ask just how generally—so it seems like there has to be some sort of adversarial action that has to initiate because you mentioned that it is a dissolution or a petition to establish a parental relationship in family law court for a juvenile dependency or a delinquency action. Is there a situation—say that we have two parents who are married who do not really want to split up? Is there the ability to get them into court to get—I mean perhaps that would not be a situation where you would have a SIJS claim, but is there a potential for a non-adversarial action being able to give rise to a judicial finding? Does that not make sense?

Amy Woo Lee: I guess—I mean, a parentage case usually is resolved as a default. It usually ends up because the other parent has abused, neglected, or abandoned the child, and that is why that child cannot be reunited with that parent. It usually proceeds by default.

Prof. Stewart Chang: So it would just not be a situation where—because I am thinking of parents who do not want to get divorced who would then, let us say—because you always have these perhaps failure to protect types of actions through DCFS and such—so but let us say we have parents and the abused parent is not willing to split up? For instance, if there are immigration consequences. For instance, that the abused parent is on a H4, dependent on H1B by the abusive parent.

Okay, so let us say the abused parent's immigration status itself is dependent on the abuser, and a dissolution of marriage would actually terminate their immigration status. Absent something like a dissolution action—or perhaps a legal separation action, which could be responded to as a divorce too that would also jeopardize their status—is there a way for the abused parent to be able to get—well, okay.

Amy Woo Lee: So the way our office handles most of our family

law cases, we represent the child. We represent the child in the immigration court proceedings in front of USCIS, and so accordingly, in the family court, we also represent the child. So to avoid any ethical greyness, we file most of our family law actions as child versus parent. Even if the parents are married, the child, under the Uniform Parentage Act section of the family code, is entitled to bring this action against the mother or the father to establish parentage, whether it is maternity or paternity. The other parent can sometimes be added as “other parent” or “other party.” There is currently a case with the California Supreme Court that is deciding whether or not that is a necessity for these types of cases. As you can imagine, if the child is in the custody of that parent asking for the parentage of that parent to be established, and for findings to be made against the other parent that is the non-custodial parent, that does not really look like your typical adversarial family law case, if that answers your question.

Prof. Cynthia Holton: No.

Hon. Craig Arthur: Well, and there are some cases that are not adversarial in the sense that—like the guardianship cases, I would assume. Sometimes the parents are both still in the foreign country, but they want the child to be here. They want the child in the guardianship, and they are not contesting. I have had cases where parents have sent their kids up on the bus all the way to Orange County, and we have started dependency cases, but they want the children back. They want them to have a better life, a better education, things like that. So those would be non-adversarial where findings are not that difficult.

Prof. Cynthia Holton: Those are interesting cases because there may be questions as to whether there is abuse and abandonment when parents send their children.

Hon. Craig Arthur: And that issue arose in our case as well.

Prof. Cynthia Holton: Yes.

Hon. Craig Arthur: In fact, some of the kids were sent back too.

Prof. Cynthia Holton: Yes. And there is one other thing you said, too, Stewart, and I want to clarify the person who becomes the guardian may be undocumented. The unaccompanied thirteen-

year-old minor I mentioned earlier who travelled on the top of the train through Mexico obtained SIJS when his aunt became his guardian but his aunt was undocumented.

Hon. Craig Arthur: And in all of these cases, notice is a big issue because the parents have to be noticed in all types of these cases. Finding them, locating them, noticing them can become an issue. It can stall out a case, in terms of timeline.

Amy Woo Lee: And a lot of times when the children have been reunited—or their parents were together in home country, like Professor Holton was mentioning - and then they come here and there are not any facts for abuse, abandonment, or neglect, it does not necessarily mean that there is no possibility for trying to pursue special immigrant juvenile status. It just means that you have to get a little bit more creative. There is case law that supports educational neglect. A lot of the times these kids, by the time they are age 10, they are told, “You cannot go to school anymore. Here is a machete. Go collect corn in the fields.” Ten-year-olds regularly we see are using machetes.

They are more challenging, but that does not mean they cannot be successful. If they are reunited with their parents here in the US though, that is challenging oftentimes if both parents are together, and the children are reunited with them and they are here in the US all together, oftentimes the only option available is asylum.

One other thing I wanted to note about SIJS is just that an important factor for kids, when deciding whether or not they want to pursue SIJS or asylum or both, is that for SIJS, if you are granted your legal permanent residence based off of SIJS, you can never petition your parents, either one of them. Even if only one of them was abusive or abandoned or neglected you, you can never petition either one of them for their legal status if they do not have their legal papers.

Then with asylum, of course, you are claiming that you are persecuted in your home country, so you cannot go back. You can go to a neighboring country, but you cannot go back to your home country and see your family or anything like that.

Prof. Stewart Chang: Until you become a citizen, then they let

you.

Amy Woo Lee: Probably not. But that is a long time.

Prof. Stewart Chang: That is five years, at least.

Amy Woo Lee: If their circumstances are unfortunate enough that they could qualify for both, then those are the kind of facts that they might want to consider.

Audience Member: How long do you have to be a SIJS holder before you can apply for your residency?

Amy Woo Lee: Previously, you could actually file your petitions together—your application for special immigrant juvenile status and your application for residency, you could submit them together. However, being eligible for legal permanent residency under SIJS is still subject to the visa preference system. Right now, children from the three countries of Guatemala, Honduras, and El Salvador are backlogged. Right now, they are looking at a wait of around, I would say, a year and half before a visa number is available to them to even be able to apply for legal permanent residency.

It is really up to the whim of the State Department that is putting out this visa bulletin every month saying what visas are available. The numbers can go forward, they can also go back, or they can stay where they are, so it is really hard to predict exactly how long the wait is at any given time.

Prof. Stewart Chang: It looks like our time is up. Let us again thank the panelists.