Preserving a Strong SIJ Record

December 14, 2018

ABA Children's Immigration Law Academy (CILA)

A project of the American Bar Association funded by the Vera Institute of Justice.

- Fact Gathering for SIJ
- A Quick Word on SIJ
- Preparing Your State Court Pleadings
- Service of Process
- Preparing Your Evidence
- Preparing for the Final Hearing
- The State Court Hearing (Mock Hearing)
- Preparing Your Application with USCIS

Fact Gathering

ALL of the Facts…

Child

- Detailed timeline
- School history
- Medical history
- List of addresses/caregivers

Parents

- Marriages/relationships
- Other children
- Criminal history
- Immigration history

Other family/caregivers

- Corroboration for child/parent story
- Verification of timeline
- Good source for other important information

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A Quick Word about SIJ

Before You Start a Case

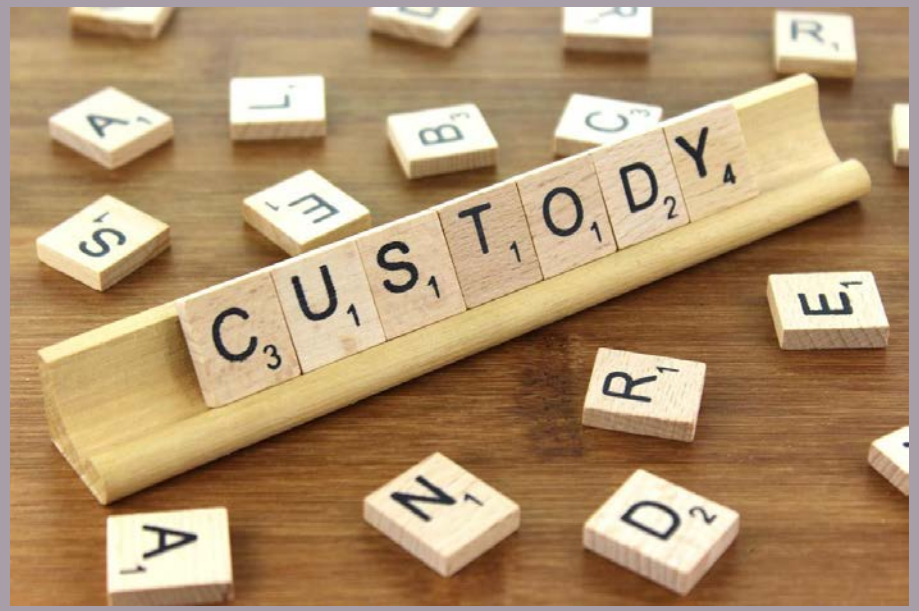
Go to USCIS website

Find Policy Manual on SIJ

Print & Read

Dependency OR Custody

- Declaration of dependency OR legal commitment/placement under the custody of a state agency, department, entity, or individual.
- Requires a state law basis, i.e. reference to a specific statute.
- Cannot be temporary.



Parental Reunification

Abuse, neglect and/or abandonment

By a parent

Making reunification not possible

Best Interest

WITH REGARD TO PLACEMENT!

The judge should consider placement options in the child's home country, and must determine that those alternatives would not be in the child's best interest.

DHS Consent- Factual Basis

The order should state:	With whom the child is placed + factual basis
	Which ground applies to which parent + factual basis
	Factual basis for best interest determination

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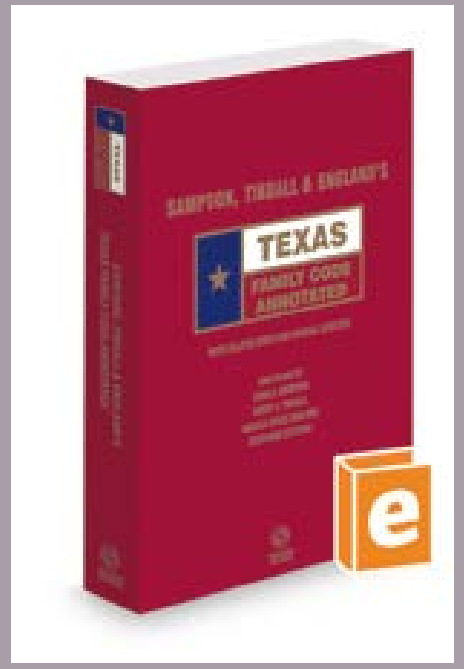
Texas Law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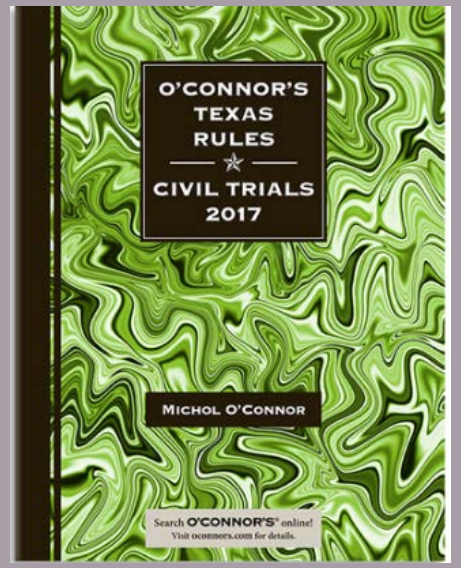
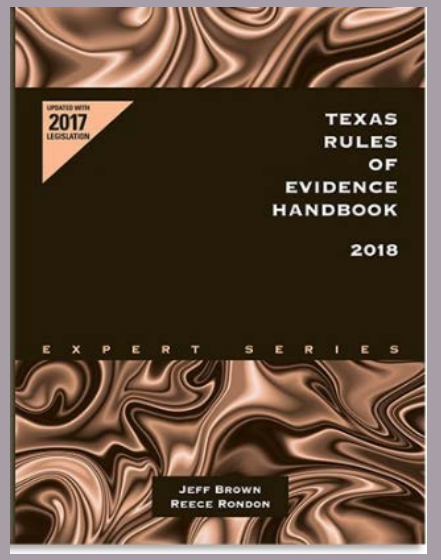

O'CONNOR'S
TEXAS
RULES
CIVIL TRIALS
2017
MICHOL O'CONNOR
Search O'CONNOR'S online!


2017
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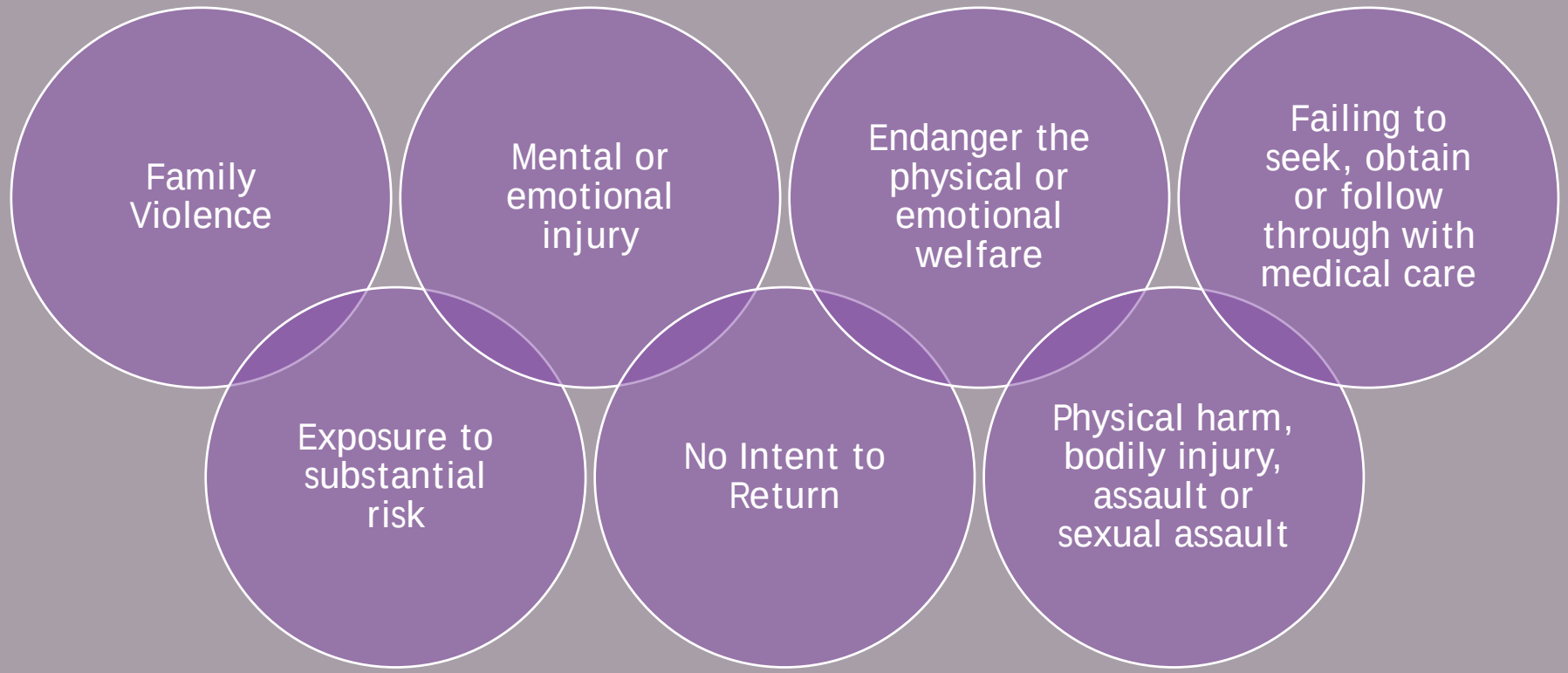
RULES
OF
EVIDENCE
HANDBOOK
2018
EXPERT SERIES
JEFF BROWN
REECE RONDON

Texas Law- Abuse, Neglect, Abandonment



Texas Law- Parentage

Mother = Mel B. aka Scary Spice

Presumed Father of Phoenix = Jimmy Gulzar

Alleged Father of Angel = Eddie Murphy

Eddie denies paternity

Adjudicated (with DNA)

What if still living together?

What if he acknowledged?

Presumed Father of Madison = Stephen Belafonte

What if he denied?

Texas Law- Parentage

Full faith and credit to an acknowledgment of paternity effective in another state n compliance with the law of the other state.

Recognition of foreign AOP using rules of comity

Texas Law- Parentage

Texas Law: Custody

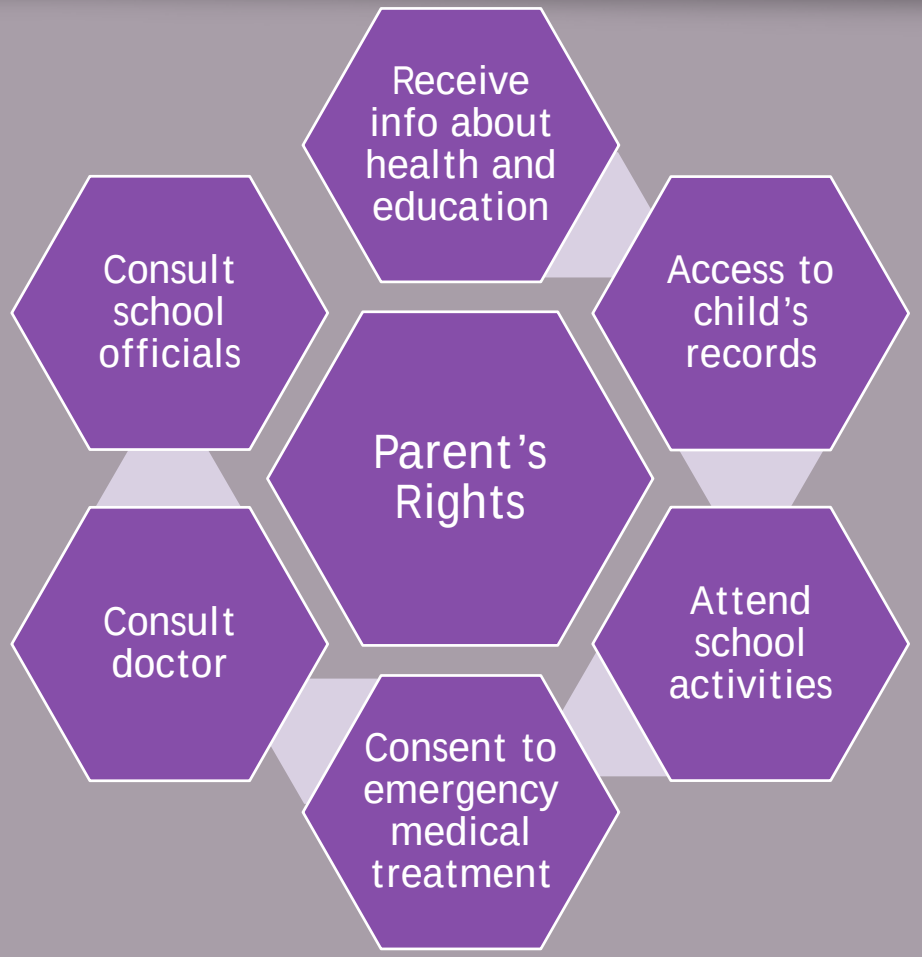
Managing Conservator

Right to decide the primary residence of the child

Right to consent to medical, dental, surgical treatment involving invasive procedures

Right to consent to psychiatric and psychological treatment

Texas Law- Possessory Conservatorship



Texas Law- Possession and Access

Rebut the Presumptions!

Rebut JMC Presumption

- **a history or pattern of past or present child neglect, or physical or sexual abuse** by one parent directed against the other parent, a spouse, or a child.

Rebut PC Presumption

- **not in the best interest of the child** and that parental possession and access (P&A) would **endanger the physical or emotional welfare of the child.**

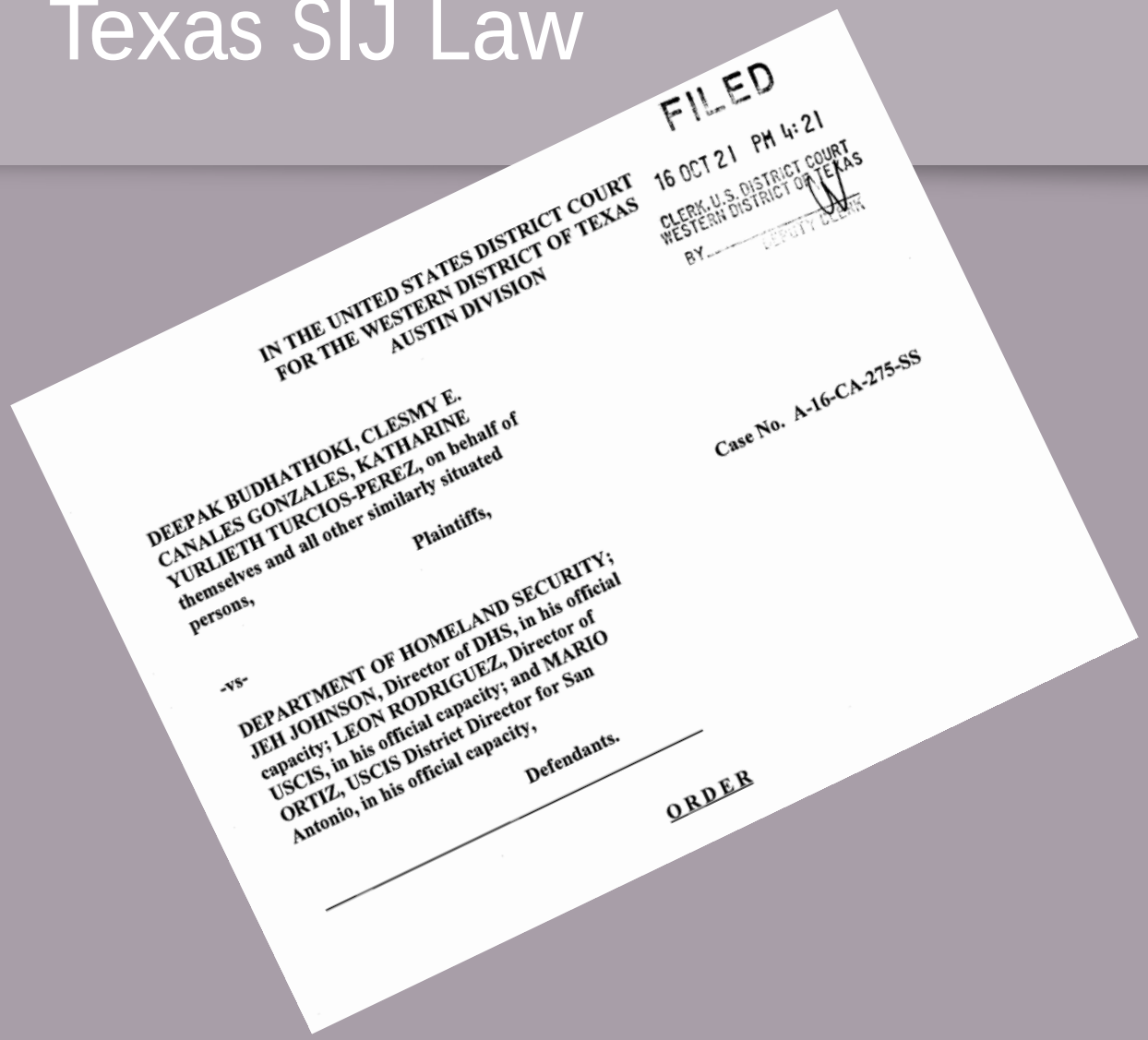
Rebut SPO Presumption

- **endanger the physical or emotional welfare of the child**.

Texas Law- Dependency

Tex. Gov't Code § 24.601(b)(4)	No current definition
Tex. Fam. Code § 152.102(4)	
Common meaning: lacking in parental care	*Budhathoki v. Nielson*
Equity	

Texas SIJ Law



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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEEPAK BUDHATHOKI, CLESMY E. CANALES GONZALES, KATHARINE YURLIETH TURCIOS-PEREZ, on behalf of themselves and all other similarly situated persons,

Plaintiffs,

-vs-

DEPARTMENT OF HOMELAND SECURITY; JEH JOHNSON, Director of DHS, in his official capacity; LEON RODRIGUEZ, Director of USCIS, in his official capacity; and MARIO ORTIZ, USCIS District Director for San Antonio, in his official capacity,

Defendants.

Case No. A-16-CA-275-SS

ORDER

- "Dependency" for SIJ purposes requires a state court to do more than impose a financial obligation on parents and must "in some way address custody or at least supervision."

- The presence of "dependency" language in the order (i.e. "magic language") is not required on the face of the state court order to meet the regulatory requirements so long as proper authority for a dependency finding is presented and fully and fairly considered by the court.

Texas SIJ Law (Over age 18)

- ***In re J.L.E.O.*, No. 14-10-00628-CV, 2011 WL 6664642, (Tex. App.—Houston [14th Dist.] 2011, no pet.) (mem. op., not designated for publication).**
  - The trial court, which sat as a juvenile court, no longer had jurisdiction over J.L.E.O. to make the requested findings, and as an adult, J.L.E.O. was no longer dependent on the court.

- ***In the Interest of B.A.L.*, No. 01-16--00136-CV, 2017 WL 3027660 (Tex. App.—Houston [1st Dist.] Jul. 18, 2017, no pet.) (mem. op., not designated for publication).**
  - B.A.L. was already 18 when the order was signed. The appellate court concluded that B.A.L. was no longer a child as defined by the Texas Family Code, and the court no longer had juvenile jurisdiction over him, as applicable to the SIJ statute.

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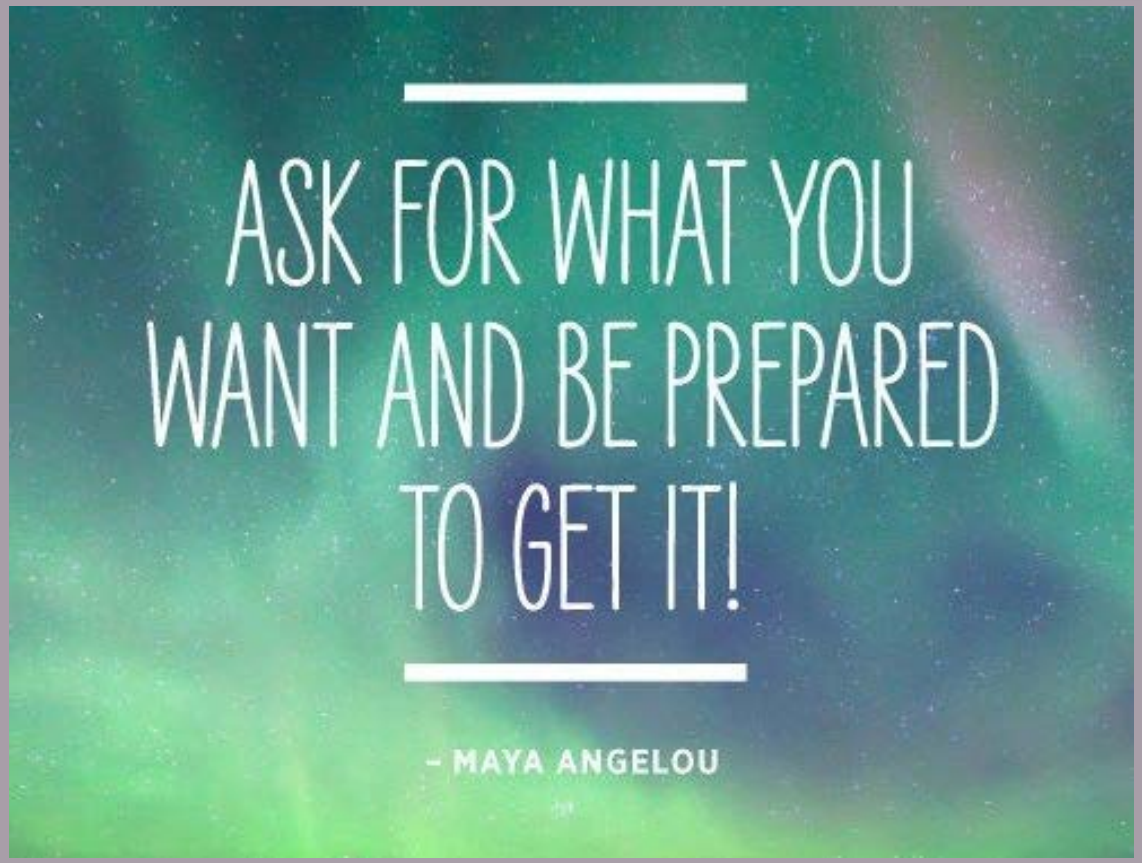
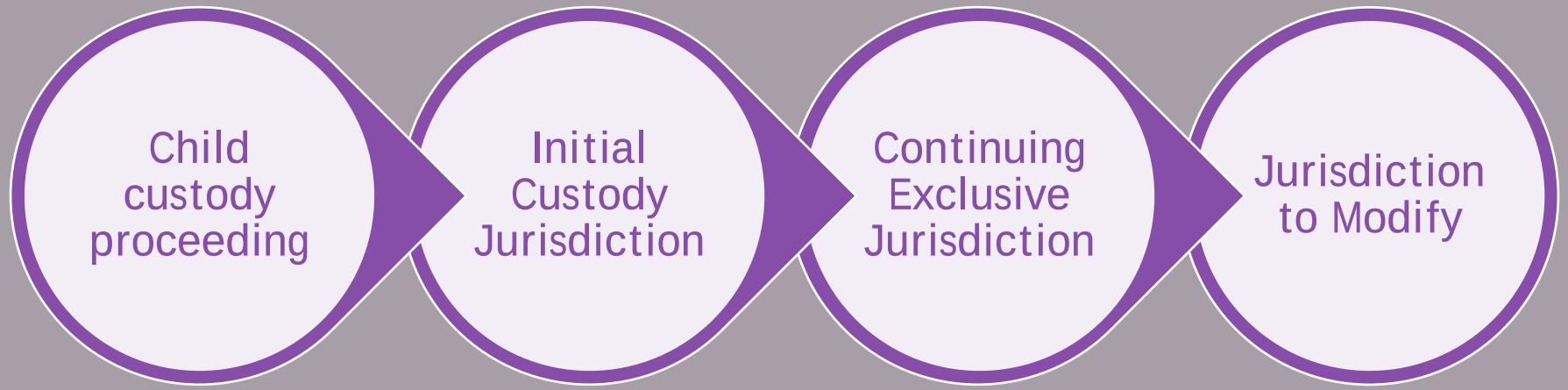
Pleadings



Standing

Subject Matter Jurisdiction (UCCJEA)

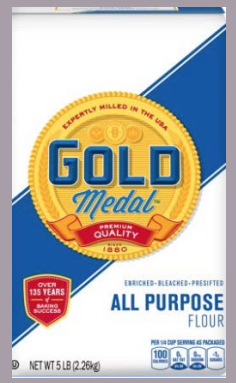


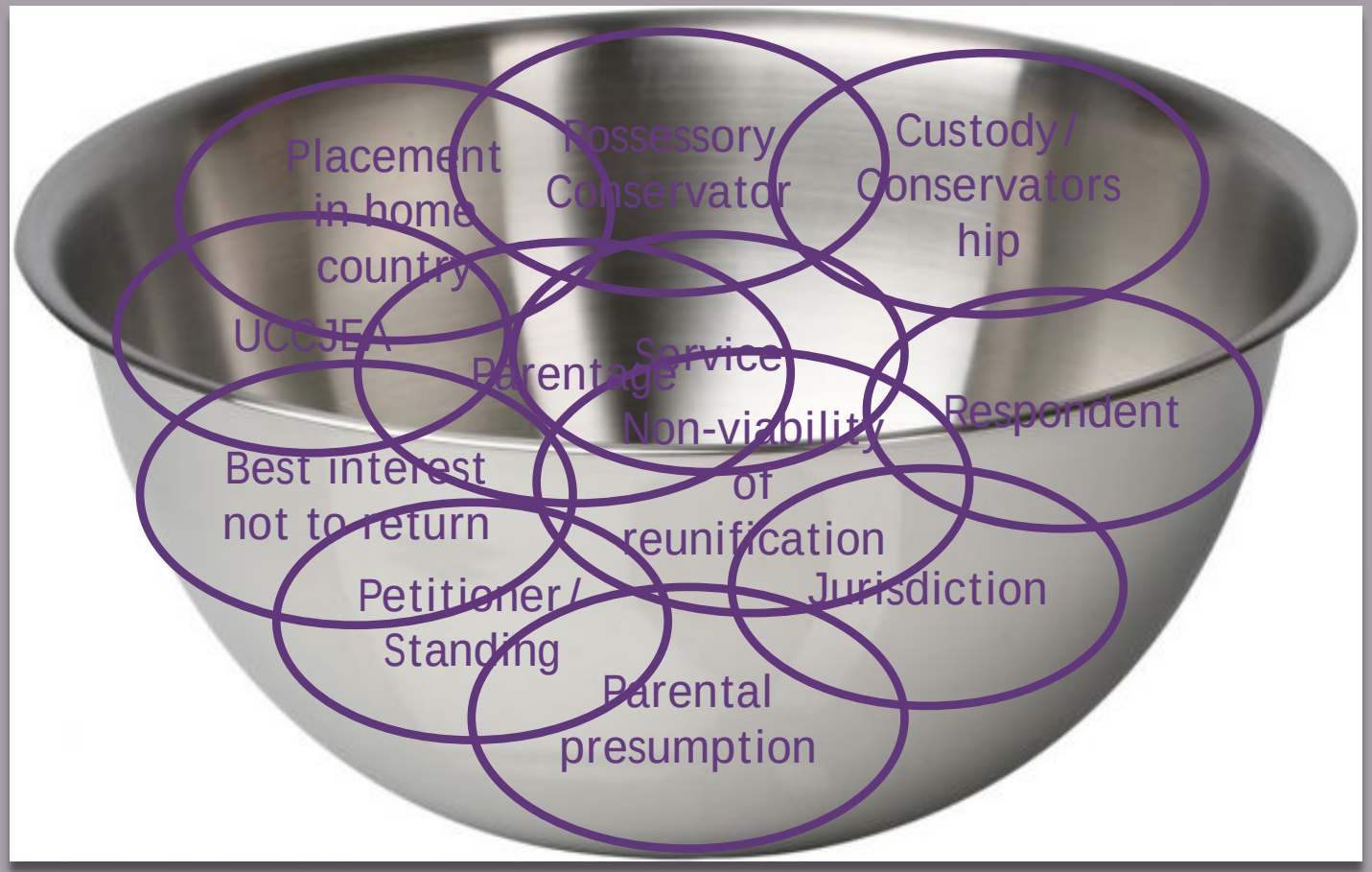
Personal Jurisdiction

- ✓ Personal service in Texas
- ✓ Submits to jurisdiction by consent, entering appearance or files responsive document waiving jurisdiction
- ✓ Resided with the child in Texas
- ✓ Resided in Texas and provided prenatal expenses
- ✓ the child resides in this state as a result of the acts or directives of the individual;
- ✓ Child conceived in Texas
- ✓ Filed with paternity registry

Recipe for SIJ Success

Recipe for SIJ Success





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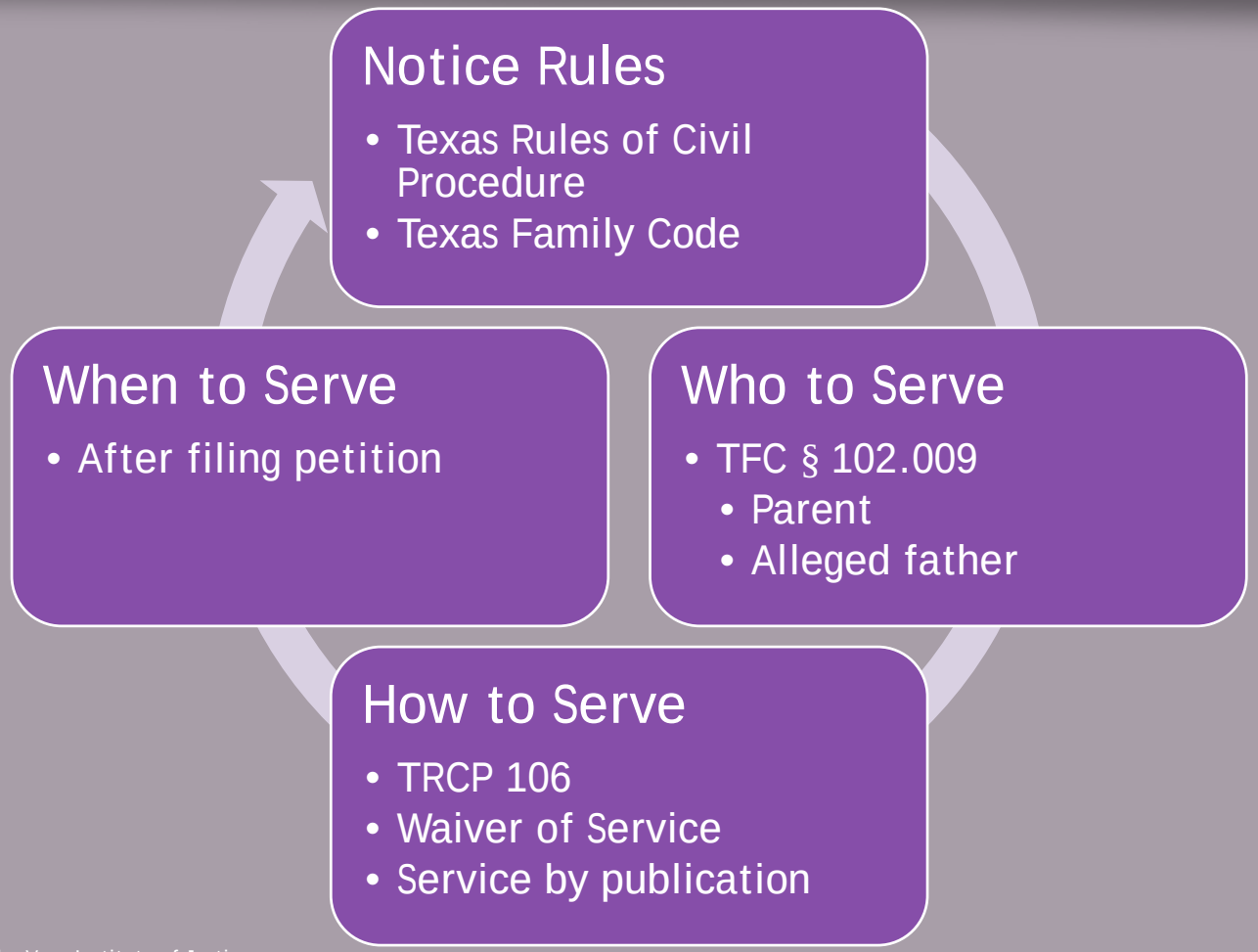
Service of Process



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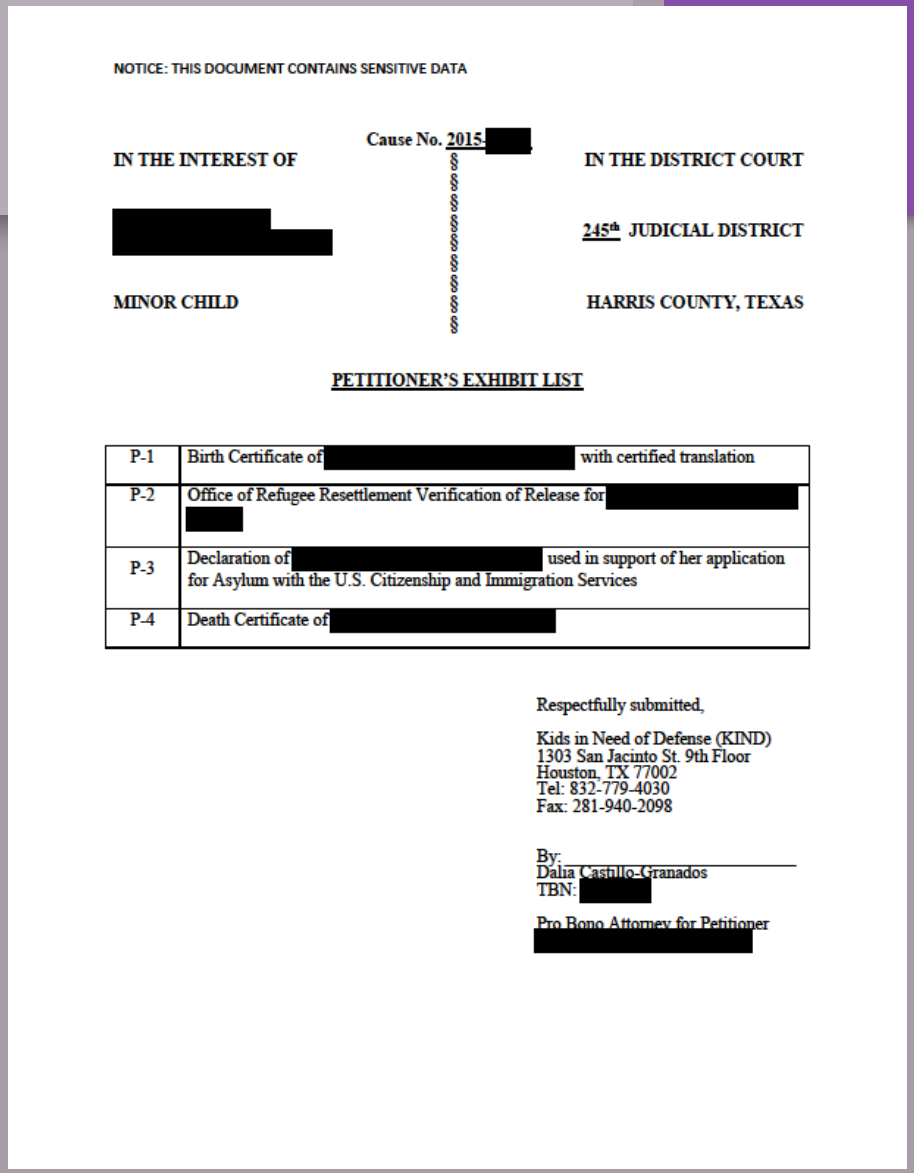
Evidence

- Texas Rules of Evidence
  - Judicial notice (TRE 201-204)
    - Allows court to accept certain facts as true without formal proof.
  - Authentication or Identification
    - Laying the foundation- (TRE 901)
    - Self-authenticating - foreign documents (birth certificate) (TRE 902)
  - Translations (TRE 1009)
    - Translator does not need to be certified or licensed. *Castrejon v. State*, 428 S.W.3d 179, 186 (Tex. App. – Houston [1st Dist.] 2014, no pet.).
    - May be translated at trial through qualified translator.



NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

IN THE INTEREST OF [redacted]

MINOR CHILD

Cause No. 2015-[redacted]

IN THE DISTRICT COURT

245th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PETITIONER'S EXHIBIT LIST

P-1	Birth Certificate of [redacted] with certified translation
P-2	Office of Refugee Resettlement Verification of Release for [redacted]
P-3	Declaration of [redacted] used in support of her application for Asylum with the U.S. Citizenship and Immigration Services
P-4	Death Certificate of [redacted]

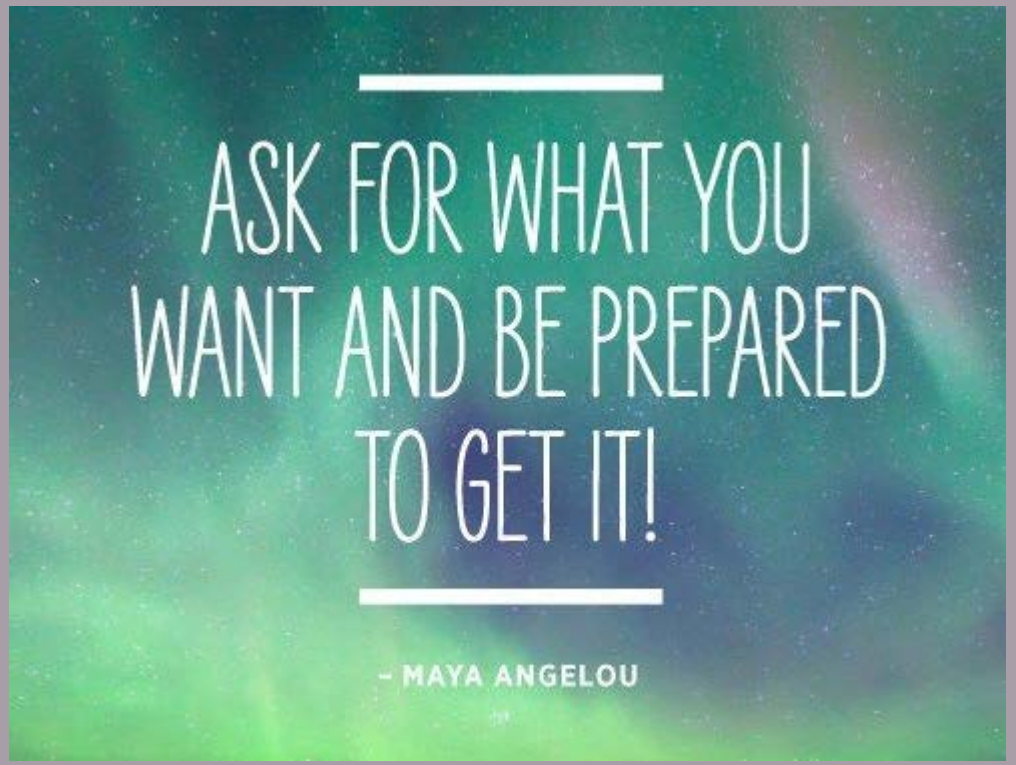
Respectfully submitted,

Kids in Need of Defense (KIND)
1303 San Jacinto St. 9th Floor
Houston, TX 77002
Tel: 832-779-4030
Fax: 281-940-2098

By: _____
Dalia Castillo-Granados
TBN: [redacted]

Pro Bono Attorney for Petitioner
[redacted]

Summary of Requested Relief



Summary of Request Relief

- ✓Roadmap for the judge (and USCIS)
- ✓Summary of legal burdens and request from the court
- ✓More streamlined than pleadings, less specific than order

Preparing for Trial

File documents

- File proposed order and exhibits

Review the file

- Tab important docs
- Bring a copy for the judge

Prepare the client

- Manage expectations
- Mock hearing

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Mock hearing

Preparing Your Application with USCIS

- Who is the Petitioner?
- Form G-28 & I-360
- Detailed Cover Letter – Use the Summary of Requested Relief as a Guide
- Certified Copy of State Court Order
- Birth Certificate with Certified Translation
- State Court Pleadings, Evidence & Documents? – *It DEPENDS*
- New USCIS policies:
  - NO NOID/RFE
  - NTA

Presenter Info:

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