

EXHIBIT A



U.S. Immigration
and Customs
Enforcement

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Age-Outs

8 U.S.C. § 1232(c)(2)(B)(VAWA 2013)

Garcia-Ramirez v. ICE

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Presenter(s)



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- Name
 - Title
 - Unit
 - Email Address

Session Objectives



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Provide an overview of the requirements of the Violence Against Women Act (VAWA 2013) with respect to Age-Out placement determinations



Provide a brief overview of the *Garcia-Ramirez v. ICE* decision



Describe how to make an Age-Out custody determination under VAWA 2013



Describe the importance of timely and accurately reporting Age-Out custody determinations under VAWA 2013

I. OVERVIEW OF VAWA 2013



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- When unaccompanied alien children (UAC) are still in the custody of ORR when they turn 18, federal law provides that custody is transferred to ICE, which must make a custody determination as to where they will be placed.
- Such UAC are referred to as “Age Outs,” and ICE’s decision as to where they will be placed is referred to as a “custody” or “placement” determination.
- A 2013 provision in the Violence Against Women Act (sometimes referred to as “VAWA 2013” or 8 U.S.C. § 1232(c)(2)(B), the section of the U.S. Code in which this statute is codified) governs how this decision must be made.

Overview (Cont.)



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- It imposes two requirements and obligations on ICE:
 - First, ICE “shall consider placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight.”
 - Second, such alien “shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien’s need for supervision, which may include placement of the alien with an individual or organizational sponsor, or in a supervised group home.”

Overview (Cont.)



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- In order to satisfy the first requirement, ICE must take affirmative steps to identify the placements available to the Age-Out.
 - A Field Office Juvenile Coordinator (FOJC) cannot determine which placement is the “least restrictive setting available” unless he or she first identifies those alternatives that are available.
- Such alternatives shall include “a continuum of alternatives,” including release on the Age-Out’s own recognizance (OREC) or an order of supervision (OSUP), release to a family member, friend or other individual sponsor, release to a shelter, group home or other organizational sponsor, and/or release pursuant to ICE’s Alternative to Detention (ATD) program or on an ICE bond.
 - Many, if not most, of these alternatives will usually be available to the Age-Out.
 - If an alternative is available, it must be considered.

Overview (Cont.)



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- The FOJC must then determine which of the alternatives available is the least restrictive after taking into account the Age-Out's danger to self, danger to the community, and risk of flight, and consider placement in that least restrictive alternative.
- For example, if the Age-Out is not a danger to themselves or the community or a flight risk, OREC or OSUP will likely be the least restrictive placement available.
- In most cases, concern that an Age-Out is a flight risk can be addressed by release to an individual or organizational sponsor. In those cases where release to a sponsor alone will not address the risk of flight, release pursuant to ICE's ATD program or an ICE bond may be the least restrictive setting available.

Overview (Cont.)



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- If there is evidence that the Age-Out is a danger to themselves or the community, the least restrictive setting available will depend on the nature and/or degree of that danger.
- For example, if the Age-Out attempted to harm himself a year ago, but has been receiving counseling and/or medication and been stable since that time, release to a sponsor that will continue to provide the Age-Out counseling and/or medication, may be the least restrictive setting

Overview (Cont.)



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- If the Age-Out is a danger to the community (for example, has a criminal history involving crimes against persons or exhibited serious behavioral issues in ORR custody), or is a flight risk that cannot be addressed by release on ATD or bond (for example, has made repeated escape attempts or has multiple removals and re-entries), detention may be the least restrictive alternative available.

II. *Garcia-Ramirez v. ICE* Decision



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The Court found, among other things, that:

- “ICE officers must be able to identify what available setting would be least restrictive. This requires making an inquiry into available placements for age-outs that ICE officers throughout the country frequently do not undertake.”
- ICE HQ did not “train officers on proper decision making” and was giving guidance that was contrary to the statute.
- ICE was lacking practices that could facilitate compliance with the statute, and instead left it to the field officers’ discretion.

Top 10 Dos and Don'ts



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Pursuant to the Court's decision, ICE has identified a number of things FOJCs should and should not do in making Age-Out placement determinations:

1. FOJCs should not make custody decisions for Age-Outs in the same way that custody decisions are made for adults. This means that FOJCs should not apply the "totality of the circumstances" standard when making custody decisions for Age-Outs. Instead, FOJCs should make Age-Out placement determinations based on 8 U.S.C. § 1232(c)(2)(B), which requires that the FOJC identify available sponsors and other alternatives to detention, and determine—and consider placement in—the alternative that is least restrictive after taking into account the Age-Out's danger to the community, danger to self, and flight risk.

Top 10 Dos and Don'ts (Cont.)



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2. FOJCs should not first determine whether an Age-Out should be detained and only then identify and consider the alternatives to detention that may be available. Rather, FOJCs must identify and consider the alternatives to detention that are available to the Age-Out before deciding where to place the Age-Out, including whether to release or to detain the Age-Out.

3. FOJCs shall not run the Risk Classification Assessment ("RCA") tool as part of age-out custody determinations. The RCA tool was modified in August 2017 so it never recommends release. Therefore, the RCA can only be utilized and considered for the limited purpose of determining the level of detention (e.g. low, medium, high) when a custody decision has already been made and approved, and that determination is to detain the Age-Out.

Top 10 Dos and Don'ts (Cont.)



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4. FOJCs should not assume that an Age-Out is a flight risk solely because the Age-Out does not have a permanent address in the United States or does not have ties to the community. These are factors that are present for nearly all Age-Outs as recent arrivals to the United States, and they are not sufficient reasons (either alone or in combination with one another) for detaining an Age-Out.

5. FOJCs may not justify a decision to detain an Age-Out based solely on a finding that the Age-Out has no "viable" sponsor. Under the statute, the issue is whether an individual or organizational sponsor is available, and where a sponsor is not available, officers must still consider releasing the Age-Out on his or her own recognizance, pursuant to ICE's Alternatives to Detention program, and/or on an ICE bond.

Top 10 Dos and Don'ts (Cont.)



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6. FOJCs may not conclude that an Age-Out has no available sponsor simply because ORR has not provided the name and/or contact information of an individual or organizational sponsor that is willing to accept the Age-Out. Instead, FOJCs must take affirmative steps to identify and consider available individual and organizational sponsors and shelters for the Age-Out.

7. FOJCs may not disqualify a sponsor simply because ORR did not approve them. ORR's release requirements are different than ICE's, and ORR may not always have time to complete the approval process before a UAC turns eighteen. Rather, FOJCs must independently assess the availability and suitability of all potential individual and organizational sponsors.

Top 10 Dos and Don'ts (Cont.)



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8. VAWA 2013 does not prohibit the release of an Age-Out to an undocumented sponsor. FOJCs must consider any potential sponsor identified, including those without lawful status.

9. FOJCs should not conclude that an Age-Out is a danger to themselves because they may not be able to support themselves or become homeless. Rather, danger to self refers to the risk the Age-Out will harm themselves and is evidenced by, for example, mental health issues, suicide attempts or ideation, or a history of self-harm. Further, such evidence does not require detention, and alternatives to detention must still be considered.

Top 10 Dos and Don'ts (Cont.)



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10. An FOJC's responsibilities with regard to Age-Outs are not limited to the day of the Age-Out's eighteenth birthday. FOJCs should begin working on an Age-Out's case at least two weeks in advance where possible, and if for some reason the VAWA 2013 placement identifications, considerations, and custody determination have not been completed, FOJCs must continue working on the case after the Age-Out turns eighteen.

III. How to Make a Custody Determination under VAWA 2013



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Under VAWA 2013 and the Court's decision, officers must take the following steps in making Age-Out determinations:

1. Identify, collect, and evaluate any available evidence of the statutory risk factors (danger to self, danger to the community, or risk of flight);
2. Identify available alternatives to detention, including release to individual or organizational sponsors or pursuant to ICE's ATD program or on an ICE bond; and
3. Consider the least restrictive alternative available after taking into account the three statutory risk factors.

How to Make a Custody Determination (Cont.)



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Step 1: Analyze Statutory Risk Factors.

Is the Age-Out a:

- Danger to self?
- Danger to the community?
- Flight risk?

How to Make a Custody Determination (Cont.)



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Information relating to an Age-Out's danger to self, danger to community, and flight risk is commonly found in the following places:

- ORR's Post-18 Plan and Significant Incident Reports (SIR)
- A-file (especially I-213 narrative)
- Electronic Databases (e.g., EARM, PCQS, NCIC)
- Correspondence from attorney, advocate or representative
- Information provided by Age-Out

How to Make a Custody Determination (Cont.)



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Danger to Self

Will the Age-Out harm himself/herself if released?

- Concern that an Age-Out may not be able to support themselves or might become homeless does not constitute danger to self.
- Rather, danger to self refers to the risk that the Age-Out will harm themselves, and is evidenced by, for example:
 - Mental health issues;
 - Suicide attempts or ideation;
 - A history of self-harm.
- Has the Age-Out been receiving treatment or is there a plan to address such issues if the Age-Out is released?

This list is not meant to be exhaustive.

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NOTE: Danger to self may be addressed by release to a sponsor or group home that has the capability to provide an adequate and appropriate treatment plan that could include counseling and/or medication; however, FOJCs are not trained to determine proper medical treatment and must rely on licensed professionals to determine the best course of treatment.

How to Make a Custody Determination (Cont.)



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Danger to Community

Will the individual harm the community (persons or property) if released?

- Past criminal/delinquent history?
 - Is the charge still pending or was there a conviction?
 - Recency?
 - Did the crime involve the use/possession of a weapon?
 - Involve harm to person vs. property?
 - Isolated incident vs. pattern or practice of criminal activity?
 - Evidence of rehabilitation?

How to Make a Custody Determination (Cont.)



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- Aggressive behavior toward others while in custody (ORR, state/local, or DHS custody)?
- Gang membership or documented ties to terrorist groups/organizations?
- Evidence of danger to the community may come from, for example, electronic databases (TECS, NCIC), SIRs, and detention in an ORR secure facility.
 - Note that SIRs are issued for many reasons, some of which have nothing to do with danger to the community. Officers should determine the reason for the SIR to assess whether it evidences danger to the community.

This list is not meant to be exhaustive.

How to Make a Custody Determination (Cont.)



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Flight Risk

Is there evidence the individual will not appear for future immigration hearings or, if necessary, for removal?

- Escape history?
- Multiple immigration encounters?
- *In absentia* order or failure to appear (immigration or criminal)?
If so, is there a motion to reopen the *in absentia* order?
- Order of removal?
- An Age-Out's lack of community ties or a fixed address, or length of time in ORR custody, either alone or in combination with one another, are not justifications to find the Age-Out poses a flight risk and cannot be released on OREC.

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Note: While a pending motion to reopen does not invalidate a removal order unless and until the motion to reopen is granted, it may provide additional information (such as lack of notice) that is relevant to whether the failure to appear is evidence of flight risk. Please note that some motions to reopen are accompanied by automatic stays of removal while the motion is pending. If there are questions about motions to reopen in general or the specific reasons why an Age-Out is moving to reopen his or her case, please consult your local OPLA office.

How to Make a Custody Determination (Cont.)



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- Does the Age-Out have incentive(s) to appear?
 - Community ties/support system in the U.S.?
 - Attending school in the U.S. or concrete plans to?
 - Pending petitions or applications for relief? Will the Age-Out be residing with others who have or are complying with their own immigration process?

This list is not meant to be exhaustive.

Remember, in most cases, flight risk can be mitigated by release to an individual or organizational sponsor. In some cases where release to a sponsor alone will not mitigate flight risk, flight risk may be mitigated by release pursuant to ICE's ATD program or issuance of an ICE bond.

How to Make a Custody Determination (Cont.)



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Step 2: What Placement Alternatives Are Available?

- ICE cannot determine the least restrictive setting available without first identifying the full range of alternative placements available. This includes taking affirmative steps to identify available settings.
- Potential placements that must be identified and considered include:
 - Individual and organizational sponsors, including shelters or group homes.
 - Other alternatives to detention, such as release pursuant to ICE's ATD program or on an ICE bond.

How to Make a Custody Determination (Cont.)



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- Identifying potential sponsors requires inquiry and research.
 - If a potential sponsor has already been identified, promptly evaluate the sponsor's availability.
 - ORR's decision to disqualify a sponsor does not transfer to ICE so officers should not rely on ORR's sponsorship evaluations and decisions.
 - ORR has separate and distinct statutory obligations and sponsorship criteria and standards.
 - Therefore, ORR's inability to vet a sponsor or place an Age-Out with a sponsor does not mean that the sponsor is unavailable or unsuitable.

How to Make a Custody Determination (Cont.)



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If ORR does not provide a release recommendation or the name of a potential sponsor—or a sponsor identified by ORR is determined to not be available—the FOJC must make additional efforts to identify other available sponsors through the following efforts:

- Review material in the Age-Out's file and on the Form I-213;
- Inquire with the Age-Out's attorney, advocate, or other representative;
- Ask the Age-Out if she/he knows of any potential sponsor (if possible before the Age-Out's 18th birthday or during an in-person interview on the 18th birthday) and encourage the Age-Out to call potential sponsors themselves; and

How to Make a Custody Determination (Cont.)



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- Contact shelters, group homes, and organizational sponsors, including those listed on the National Age-Out Shelter List.

These efforts do not need to occur in any particular order; however, before an FOJC determines that no sponsor is available, the FOJC must exhaust all of these options and explain the efforts made in the AORW.

How to Make a Custody Determination (Cont.)



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- VAWA 2013 does not require that an Age-Out be released to a sponsor. The Age-Out may be released on his/her own recognizance.
- Release of an Age-Out without a sponsor is permissible when the Age-Out is determined not to be a danger to self or danger to the community, and the flight risk concerns are limited to minimal ties to the community, which the Court noted is present in almost every case and not justification for denying release on the Age-Out's own recognizance.
- Release of the Age-Out without a sponsor still requires a valid address where the Age-Out may receive correspondence from EOIR and ICE.
 - Utilize the U.S. Postal Service databases or other database to confirm that the address is valid.

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How to Make a Custody Determination (Cont.)



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- What about cases that present some indicia of danger to self, danger to community, and/or additional flight risk concerns?
 - Consider whether release to a sponsor – individual or organizational – would mitigate those concerns.
- Sponsors must:
 1. Be an adult; and
 2. Have a fixed address where the Age-Out can reside and receive correspondence from ICE and EOIR.

How to Make a Custody Determination (Cont.)



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- Minimum Steps FOJCs should take when evaluating an individual sponsor:
 1. Confirm the sponsor's date of birth to ensure he/she is over 18.
 2. Verify the address provided using the U.S. Postal Service database: **[INSERT URL]**
 3. Run sponsor's name and date of birth through NCIC and CIS.

NOTE: The immigration status and criminal history of a proposed sponsor does not, *per se*, prevent release of an Age-Out to the sponsor. But they could warrant more restrictive conditions of release, such as ATD or bond, since such a sponsor, standing alone, may not sufficiently mitigate the Age-Out's danger to self, danger to community, or flight risk.

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Running sponsors through these two databases is simple and provides near instantaneous results and allows you to more fully evaluate whether releasing the Age-Out to this person is appropriate or would sufficiently mitigate flight risk or danger concerns. Does the proposed sponsor have immigration and/or criminal history that involves violence, flight from law enforcement, or fraud? While positive answers to these questions do not automatically disqualify the sponsor, it is pertinent information to consider.

If there is sufficient justification to reject release to a proposed sponsor, document the steps you took to evaluate the sponsor and the reasons for rejection, and begin looking at other sources of information for alternative release options (A-file, attorney/advocate, ORR, Age-Out).

How to Make a Custody Determination (Cont.)



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Organizational Sponsors

- Where an individual sponsor is not available, FOJCs should consider placement with an organizational sponsor, including shelters and group homes.
- Field Offices should develop relationships with shelters, group homes, and organizational sponsors in its AOR that will accept Age-Outs.
- FOJCs should also consider organizational sponsors on the National Age-Out Shelter list, which lists those shelters/group homes ICE has released Age-Outs to in the past.
 - [INSERT URL HERE](#)

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You don't need to contact 5 shelters if the first one you contact can accept this age out.

How to Make a Custody Determination (Cont.)



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- Promptly contact a minimum of five (5) shelters* from the National Age-Out Shelter List or that the FOJC otherwise identifies to determine if they will accept the Age-Out. FOJCs are not constrained to contacting or releasing to the organizations on this list. FOJCs are encouraged to work collaboratively with other FOJCs within and across AORs and with JFRMU to share information about available organizational sponsors. FOJC must document all efforts made to identify available sponsors.
- Organizational sponsors outside a field office's AOR are perfectly acceptable and should be considered available if closer release options are not. However, the shelter and the Age-Out are responsible for coordinating transportation from the ORR facility to the sponsor.

*If an available sponsor is identified before contacting 5 shelters, the FOJC does not need to continue contacting additional shelters.

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How to Make a Custody Determination (Cont.)



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General Requirements for Identifying and Releasing to Sponsors

- Per VAWA 2013, ICE must exercise reasonable due diligence to identify potential sponsors and such efforts should be detailed in the AORW.
- FOJCs should make every effort to complete these efforts, to the extent possible, before the UAC's 18th birthday.
- If the Age-Out is being released, release must occur as expeditiously as possible. The Age-Out should not be detained any longer than is necessary to complete the release paperwork.

How to Make a Custody Determination (Cont.)



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- Other Alternatives to Detention
- Other alternatives to detention include:
 - Release with ATD – Release + GPS monitoring or phone monitoring pursuant to ICE’s Alternatives to Detention program (ISAP)
 - ICE Bond – requires an obligor to post a set dollar amount as collateral for the Age-Out’s release (other conditions of release may be imposed)
- These alternatives to detention **MUST BE CONSIDERED** in every Age-Out custody determination where release to a sponsor alone does not mitigate an Age-Out’s flight risk and/or danger to self or the community.

How to Make a Custody Determination (Cont.)



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Step 3: Determine and Consider the Least Restrictive Setting Available.

- Once you have gathered available evidence relating to whether the Age-Out is a danger to self, danger to community, or flight risk, and identified alternative placements available, you must determine--and consider--the alternative that is the least restrictive setting.
- You must identify and consider the alternatives to detention that are available *as part of* your placement determination, including whether to release or detain the Age-Out.
 - An officer cannot determine which placement is "the least restrictive available" without first identifying those alternatives that are available.
 - If an alternative is identified and available, it must be considered.

How to Make a Custody Determination (Cont.)



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- If an Age-Out is not a danger to self, danger to the community, or a flight risk, OREC, OSUP or parole will likely be the least restrictive setting available.
- In most cases, concern that an Age-Out is a flight risk can be mitigated by release to an individual or organizational sponsor.
- In those cases where release to a sponsor alone will not mitigate flight risk (*e.g.*, prior escape attempts), release pursuant to the ATD program or an ICE bond may be the least restrictive setting available.

ICE's Alternatives to Detention (ATD) - Primer



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- ICE's Alternatives to Detention (ATD) Program is a flight-mitigation tool that uses technology and case management to ensure compliance.
 - To be eligible, an immigrant must be 18 years of age or older, removable, and at some stage of immigration proceedings.
- The ATD Program utilizes three (3) different forms of technology that help monitor participants while enrolled in the program.
 - Telephonic reporting, GPS monitoring, and SmartLink.

ICE's Alternatives to Detention (ATD) – Primer (Cont.)



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- ATD is currently available in over 94 locations nationwide for eligible participants residing within all 24 AORs.
- AGE-OUTS ARE ELIGIBLE FOR RELEASE ON ICE'S ATD PROGRAM

ICE Bonds - Primer



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- Immigration bonds are primarily issued where an alien who has been placed in removal proceedings is released from ICE custody.
 - The bond requires the alien to appear in response to a properly issued notice to surrender on a particular date at a particular place and time (a "demand notice").
 - The person or company that posted the bond (the obligor) forfeits the face value of the bond if the obligor or the alien fails to comply with the terms and conditions of the bond.
- By regulation, immigration bonds may be secured by cash or cash equivalent or by a surety company authorized by the Department of the Treasury to post bonds on behalf of the Federal government.

ICE Bonds – Primer (Cont.)



U.S. Immigration and Customs Enforcement

- The following persons can post a bond on behalf of an Age-Out (or any alien): U.S. Citizens; Lawful Permanent Residents; law firms; non-profit organizations.
- INA § 236(a)(2)(A): minimum bond is \$1,500
 - If a bond higher than \$1,500 is placed on an Age-out, the FOJC must justify, with detail, the basis for the increased amount.

ALL AGE-OUTS CAN BE CONSIDERED FOR ISSUANCE OF BOND

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The issuance of a bond is intended to mitigate flight risk only. See *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009)(“Immigration Judge should only set a bond if he first determines that the alien does not present a danger to the community.”)

Factors to consider when deciding whether to set a bond and the bond amount include, but are not limited to:

“(1) whether the immigrant has a fixed address in the United States; (2) the immigrant’s length of residence in the United States; (3) the immigrant’s family ties in the United States, (4) the immigrant’s employment history, (5) the immigrant’s record of appearance in court, (6) the immigrant’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses, (7) the immigrant’s history of immigration violations; (8) any attempts by the immigrant to flee prosecution or otherwise escape from authorities; and (9) the immigrant’s manner of entry to the United States.” See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

Consult with your local OPLA office to find out if jurisdiction-specific case law or settlement agreements require or prohibit you from considering additional factors.

Risk Classification Assessment (RCA) Tool



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- ICE officers shall not run the RCA tool as part of an Age-Out custody determination. This is because the RCA tool was modified in August 2017 so that it never recommends release.
- Therefore, the RCA may only be utilized and considered for the limited purpose of determining the level of detention (*e.g.*, low, medium, high) in those cases where a custody determination has already been made and approved and that determination is to detain the Age-Out.
- Again, the RCA tool shall not be used in connection with decisions concerning whether to detain or release an Age-Out under 8 U.S.C. § 1232(c)(2)(B).

Timing: When to Start and When to Stop



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- Where possible, an officer should begin identifying any evidence of the risk factors and identifying potential sponsors at least two weeks before the UAC's 18th birthday.
- This includes calling the UAC's case manager to request a Post-18 Plan and discuss the status of ORR's efforts to reunify the UAC, any special health or other needs or problems, and identify potential sponsors.
- FOJCs should comply with the statute, including identifying and considering the least restrictive placement available, on or before the day the Age-Out turns 18.

Timing: When to Start and When to Stop (Cont.)



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- However, if for some reason compliance does not occur by that date, ICE officers are not relieved of their obligation to follow VAWA 2013 at the end of the day on the Age-Out's eighteenth birthday. Rather, officers must continue working as long as it takes to fulfill their obligations under the statute.
- However, the statute does not require "periodic re-assessment" of a decision once it has been made.

JFRMU Concurrence



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If the FOJC/SDDO determine that ATD, ICE bond, or detention is appropriate, the FOJC/SDDO must seek JFRMU concurrence prior to finalizing the custody determination.

- Promptly contact JFRMU (by email or phone). Be prepared to electronically share all the materials and information that you collected and considered to arrive at the particular custody determination, and to discuss how you weighed the statutory factors, what steps you took to identify/evaluate alternatives to detention, and why you reached the determination.

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[add email link/number]

IV. Documenting Your Decision – When, Where, and How



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- Timely, accurate and detailed records are critical to completing the Age-Out custody determination process.
 - Record all of your considerations and efforts required under VAWA 2013 contemporaneously with your recommendation/custody decision.
 - Such considerations and efforts should be recorded on the newly amended Age-Out Review Worksheet (AORW), ICE Form 70-070.
 - Detail is key!
 - If it is not included in the AORW, it will be difficult to demonstrate that you considered it.

Documenting Your Decision (Cont.)



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- Add the case and accompanying documents to SharePoint.
 - If the determination is release of the Age-Out on ATD or an ICE bond or to detain, you must upload all documents that you considered in making your placement determination.
- Enter detailed comments in EARM, to include the date of age-out, VAWA custody determination, and date that AORW and SharePoint materials were uploaded.
- Complete an addendum to I-213 summarizing the VAWA 2013 evaluations and determination.

Documenting Your Decision (Cont.)



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Amended Age-Out Review Worksheet: What's New?

- The AORW has been revised to comply with the Court's decision and the process set forth in this training.
- As revised, the AORW is intended to guide the FOJC through the Age-Out custody determination process and to provide evidence of the FOJC's compliance with his or her obligations pursuant to 8 U.S.C. § 1232(c)(2)(B).
- The AORW now includes a section for JFRMU concurrence if recommendation is detention, issuance on bond or release on ICE's ATD program.

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Trainer will need to walk through the new form line by line.

Slide 48

A172 "to provide evidence of" language added, per Plaintiffs, which is fine.
Author, 11/10/2020

Documenting Your Decision (Cont.)



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- The revised AORW requires that you detail the information you collected and relied upon during the custody determination process. This includes the sponsors and other placement alternatives you identified and considered.
- Just providing conclusory answers (e.g., "Age-Out is a flight risk," "no sponsor available" or "no viable sponsor") are not acceptable. Instead, you are to explain your efforts, thought process, and analysis in the provided narrative boxes!
- AORWs should only be completed by the FOJC and supervisor involved in the Age-Out's custody determination. Do not complete an AORW on behalf of another officer.

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JFRMU: Comment to trainer to emphasize: "The process and efforts need to be well documented in order to prove that it was done."

Documenting Your Decision (Cont.)



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SharePoint

For Age-Outs who are placed on ATD, issued an ICE Bond, or detained, FOJCs must upload and attach to the SharePoint record all documents they considered in reaching the placement determination. This includes:

1. The Age-Out Review Worksheet (ICE Form 70-070);
2. Any Post-18 Plan or other communication with ORR;
3. Any communication with the Age-Out's attorney or other representative;
4. Form I-213;
5. Any communications with or concerning potential sponsors;
6. Print-outs of the EARM Case Comments;
7. Electronic/scanned copy of documents in the A-file related to the custody determination; and
8. Any other document (not in the A-File) and any other email traffic related to that particular Age-Out.

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Don't have access? Contact JFRMU immediately for assistance.

Documenting Your Decision (Cont.)



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For Age-Outs who are released from ICE custody with no additional conditions (ATD/Bond), FOJCs must upload and attach the following documents to the SharePoint record:

1. The Age-Out Review Worksheet (ICE Form 70-070); and
2. Post-18 Plan, if submitted by ORR.

Add the case to the SharePoint site and upload the accompanying documents within 24 hours of making the final custody determination.

V. Putting it All Together: Process Overview



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- Keep track of and monitor UACs who are close to aging out.
- Reach out to ORR two (2) weeks in advance of the UAC's 18th birthday (where possible) to request a Post-18 Plan.
- If ORR does not provide a Post-18 Plan, check to see if the UAC is represented by counsel/representative and contact that individual to find out if there is anyone willing and able to accept the Age-Out.
- Look for point of contact information in the Form I-213 and A-File.
- Request to interview (in-person or by phone) the UAC to identify potential sponsors (if needed).

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Process Overview (Cont.)



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- Still no sponsor available or to whom the Age-Out can be released? Contact a minimum of five (5) shelters, including those on JFRMU intranet site to see if they have housing available to accept the Age-Out.
- If no individual or organizational sponsor is available, or there are flight risk concerns that are not addressed by release to a sponsor, consider release pursuant to the ATD program or on an ICE bond.
- Consider all available alternatives in determining the least restrictive setting available after taking into account the Age-Out's danger to self or community or flight risk.

Process Overview (Cont.)



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Promptly consider alternatives to detention identified through efforts described on the prior slides.

- Is release without a sponsor appropriate after taking into account the alien's danger to self, danger to the community, and risk of flight?
- Is release to a sponsor appropriate after taking into account the alien's danger to self, danger to the community, and risk of flight?
- Is release with ATD appropriate after taking into account the alien's danger to self, danger to the community, and risk of flight?
- Is issuance of a bond appropriate after taking into account the alien's danger to self, danger to the community, and risk of flight?
- Is detention appropriate after taking into account the alien's danger to self, danger to the community, and risk of flight?

Process Overview (Cont.)



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- To the maximum extent possible and in coordination with ORR, arrange for Age-Out releases to occur directly from the ORR facility.
- FOJC completes AORW and submits to supervisor for review.
 - For more complicated cases or those in which the recommendation is to detain the Age-Out, begin discussing the case with your supervisor as soon as possible.
- Recommendations to detain or issue a bond or place on ICE ATD must be approved by JFRMU in advance of finalizing the custody determination.

Process Overview (Cont.)



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- Once supervisor makes a custody determination, promptly:
 - Create case in SharePoint.
 - Upload AORW + supporting documentation.
 - Update EARM using the correct book-out code and add case comments.
 - Summarize VAWA 2013 determination in I-213 addendum.

Example 1

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The Age-Out is living in an ORR shelter. She came into custody following a collateral arrest where ICE officers discovered she had an *in absentia* order of removal from two years ago when the Age-Out was apprehended with her uncle and released with NTAs. Early on in her time in ORR, she ran away from the shelter but was located and returned to ORR within a matter of hours. Also during her time in ORR custody, she successfully filed a motion to reopen and rescind the *in absentia* order and, according to your local OPLA office, has retained counsel and has represented to the IJ that a UAC application for asylum will be submitted to USCIS within the coming days. The ORR case manager indicates there were some behavioral issues early on in her stay (around the time she ran away), but that she has been receiving counseling and ORR staff note a positive turnaround in her behavior.

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There is evidence of flight risk as she did run away from the shelter and has a prior failure to appear before the IJ. However, there are no other escape attempts and ORR indicates her behavioral issues have been addressed such that they have had no other SIRs/concerns of note. Also, the IJ granted the motion to reopen (officer may want to consider the reason why the IJ granted the MTR if that is available, as the reason might be because of lack of notice, in which case the Age-Out did not willfully fail to appear, but rather had an excuse). No danger to self or danger to community indicia identified. Age-Out also retained counsel and has represented to the court that an application for relief will be submitted soon, which is additional evidence suggesting that the Age-Out is making efforts to legalize her status and has a reason to appear for future proceedings/appointments.

The least restrictive setting available is release; however, release on the Age-Out's own recognizance does not appear appropriate given the history of FTA/runaway, demonstrating that additional oversight is needed to ensure she appears as required in the future.

Release to the proposed sponsor is a possibility that should be evaluated next. Remember, the fact that the sister's sponsorship did not pan out with ORR does not matter. You must consider this sponsor under VAWA 2013, as she has been identified as available. There are some concerns with the proposed sponsor, however, as she is an EWI herself, with an ongoing case and a removal order, but that removal order is not yet final and there is no indication that she has failed to

comply with any of her own conditions of release in the past.

Therefore, turning to a slightly more restrictive condition of release is release on ATD (GPS monitoring). Recommend release on ATD as appropriate since Age-Out failed to appear previously and tried running away, so having additional visibility into her whereabouts and whether she is where she says she will be is needed to mitigate risk of flight. Additionally, GPS monitoring may be deescalated upon proof of compliance. Contact ATD POC in the office to find out whether she can be enrolled based on the proposed release address. Bond is not an option because the proposed sponsor is an EWI and would not be able to post bond.

Contact JFRMU immediately to discuss the case and recommendation.

JFRMU would concur with the recommendation to release on ATD.

Example 1 (Cont.)

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ORR has provided a Post-18 Plan that indicates the Age-Out's older sister has sought to sponsor her, but the sponsorship process has not been completed due to the older sister's difficulties submitting fingerprints and returning documentation to ORR. After running the older sister's name and DOB through NCIC and CIS, you discover she, too, has an order of removal, although it is not final (EWI charge on NTA, denied asylum application, pending appeal before the BIA).

How would you go about making a custody determination under VAWA 2013 in this case?

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There is evidence of flight risk as she did run away from the shelter and has a prior failure to appear before the IJ. However, there are no other escape attempts and ORR indicates her behavioral issues have been addressed such that they have had no other SIRs/concerns of note. Also, the IJ granted the motion to reopen (officer may want to consider the reason why the IJ granted the MTR if that is available, as the reason might be because of lack of notice, in which case the Age-Out did not willfully fail to appear, but rather had an excuse). No danger to self or danger to community indicia identified. Age-Out also retained counsel and has represented to the court that an application for relief will be submitted soon, which is additional evidence suggesting that the Age-Out is making efforts to legalize her status and has a reason to appear for future proceedings/appointments.

The least restrictive setting available is release; however, release on the Age-Out's own recognizance does not appear appropriate given the history of FTA/runaway, demonstrating that additional oversight is needed to ensure she appears as required in the future.

Release to the proposed sponsor is a possibility that should be evaluated next. Remember, the fact that the sister's sponsorship did not pan out with ORR does not matter. You must consider this sponsor under VAWA 2013, as she has been identified as available. There are some concerns with the proposed sponsor, however, as she is an EWI herself, with an ongoing case and a removal order, but that removal order is not yet final and there is no indication that she has failed to

comply with any of her own conditions of release in the past.

Therefore, turning to a slightly more restrictive condition of release is release on ATD (GPS monitoring). Recommend release on ATD as appropriate since Age-Out failed to appear previously and tried running away, so having additional visibility into her whereabouts and whether she is where she says she will be is needed to mitigate risk of flight. Additionally, GPS monitoring may be deescalated upon proof of compliance. Contact ATD POC in the office to find out whether she can be enrolled based on the proposed release address. Bond is not an option because the proposed sponsor is an EWI and would not be able to post bond.

Contact JFRMU immediately to discuss the case and recommendation.

JFRMU would concur with the recommendation to release on ATD.

Example 2



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The Age-Out has been living in an ORR shelter for 72 hours. He was apprehended by BP a couple of miles from the border and charged as being present without inspection and admission (212a6A) and expresses a fear of returning to his home country. The ORR case manager states that no Post-18 Plan will be provided because there simply isn't time. There also hasn't been time to appoint a child advocate or pro bono counsel.

How would you go about making a custody determination under VAWA 2013 in this case?

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Promptly review I-213 A-file to see if there are any family or friends listed as living in the US.

Say the I-213 lists the name and phone number of the father (but no address) as the POC in the encounter details from BP. You call the number two days before the minor's 18th birthday but no one answers and the voicemailbox is not set up. What steps would you take next?

Request to interview the minor (over the phone or in person, depending on what the ORR facility/time permits).

Say ORR grants your request to interview the minor. Tell the UAC that you're trying to determine if he has any place to go once he turns 18 and ages out of ORR custody. Does he know of anyone with whom he can live? Tell him you tried calling his father (since the UAC previously told immigration officials that is who he intends to reunite with), but that no one answered. Is his father's phone number correct? Does the Age-Out know his father's address? Is there another number where his father can be reached? Or any one else he can live with?

Say the UAC confirms that he was planning on living with his father but also has

cousins in the US and provides the name and phone number for one of his cousins. What action(s) do you take?

Suggest the UAC try calling his father himself, as well as the cousins he identified, to obtain address information. In the mean time, you try to establish contact with the cousin but the cousin says he doesn't want to give his information to ICE and hangs up. What do you do next?

Place additional calls to the father to see if he answers. Begin calling organizational shelters to see if they have housing availability for the Age-Out.

Say the afternoon before the individual turns 18, the father finally calls you back (since the minor established contact with him on his own) and says he can take the UAC and provides an address. The address provided shows up as valid on the USPS website. Does the FOJC need to do anything else?

No. Recommend releasing the Age-Out on his own recognizance to the address provided by the father. There are no danger to self or danger to community concerns. Flight risk concerns (recent arrival) are insufficient to justify not releasing on OREC. Plus, the Age-Out expressed a fear of return, so he has potential avenues for relief from removal he may apply for, and he has an immediate relative and some extended family here in the US and the address checks out.

Example 3

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The Age-Out has been living in an ORR secure facility. He was encountered by ICE through CAP following his arrest for sexual abuse of a minor under 14 and was transferred into the custody of ORR following the completion of his sentence. He also has prior arrests for possession of marijuana and driving while intoxicated. There are incident reports from both his time in criminal custody and ORR custody that indicate he has engaged in numerous fights with other detainees and staff, including one incident where the victim required hospitalization for a broken bone. The ORR case manager states that no Post-18 Plan will be provided and doesn't give a reason. The Age-Out has counsel who has submitted a request to release the Age-Out to his aunt and uncle, with whom he was living prior to his criminal arrest. There are no known issues with either the aunt (LPR) or uncle (seeking adjustment based on

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Note that the Age-Out is coming from an ORR secure facility, which is the most restrictive level of ORR custody. Flight risk? No clear evidence of flight risk, although it looks like he sometimes bounces between living with aunt/uncle and sometimes with friends. He does have a pending U-visa petition, but his sexual assault conviction may call into doubt his eligibility/require a waiver. He also filed an asylum application that was considered by USCIS but referred to EOIR for de novo review. Danger to self? No evidence of danger to self. There are danger to community concerns however: he has a sexual assault conviction that involved a victim under the age of 14, as well as a DUI arrest, both of which demonstrate the harmful behaviors he has engaged in while out of custody. While in criminal and ORR custody, there are multiple reports of the UAC engaging in assaultive behavior, including injuring another detainee such that the detainee needed to be hospitalized. No evidence of any rehabilitation or improvement while in custody.

ORR did not submit a Post-18 Plan, but that does not end the inquiry. The Age-Out's counsel submitted a request for release to his aunt/uncle upon turning 18. Because this placement option has been identified as available, it must be considered. Aunt has status and uncle is in the process of trying to obtain status.

The least restrictive setting would be release. However, that does not appear to be appropriate in this case given his criminal history that involves violence to others (children, detention staff, and other detainees) and a lack of regard for others safety for drinking and driving and putting others on the road at risk of harm. Release to

the identified sponsors also does not appear sufficient to mitigate these danger concerns because he was living, at least part time, with these same adults when he was engaging in dangerous and harmful behavior. Release on bond does not appear to be appropriate for the same reasons; bond is a means of mitigating flight risk, not danger, which are the main concerns with this Age-Out. Additionally, release on any form of ICE's ATD Program will not sufficiently mitigate the danger to the community this Age-Out poses. Even while in custody, he demonstrated his unwillingness to comply with rules as evidenced by his participation in multiple fights with staff and other detainees. He appears unlikely to comply with conditions of release on ATD. Therefore, recommend detention due to evidence of subject being an ongoing danger to others.

Immediately discuss with supervisor the recommendation and promptly reach out to JFRMU for concurrence.

Example 3 (Cont.)

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marriage to wife). The I-213 encounter from CAP notes that he also has some friends he was living with from time to time (when he wasn't with his aunt and uncle). His removal proceedings are ongoing and he has a pending U-visa petition (filed approximately 6 months earlier). A merits hearing is set on his application for asylum (it was a UAC asylum application that has been referred by USCIS to the IJ for *de novo* review).

How would you go about making a custody determination under VAWA 2013 in this case?

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Note that the Age-Out is coming from an ORR secure facility, which is the most restrictive level of ORR custody. Flight risk? No clear evidence of flight risk, although it looks like he sometimes bounces between living with aunt/uncle and sometimes with friends. He does have a pending U-visa petition, but his sexual assault conviction may call into doubt his eligibility/require a waiver. He also filed an asylum application that was considered by USCIS but referred to EOIR for *de novo* review. Danger to self? No evidence of danger to self. There are danger to community concerns however: he has a sexual assault conviction that involved a victim under the age of 14, as well as a DUI arrest, both of which demonstrate the harmful behaviors he has engaged in while out of custody. While in criminal and ORR custody, there are multiple reports of the UAC engaging in assaultive behavior, including injuring another detainee such that the detainee needed to be hospitalized. No evidence of any rehabilitation or improvement while in custody.

ORR did not submit a Post-18 Plan, but that does not end the inquiry. The Age-Out's counsel submitted a request for release to his aunt/uncle upon turning 18. Because this placement option has been identified as available, it must be considered. Aunt has status and uncle is in the process of trying to obtain status.

The least restrictive setting would be release. However, that does not appear to be appropriate in this case given his criminal history that involves violence to others (children, detention staff, and other detainees) and a lack of regard for others safety for drinking and driving and putting others on the road at risk of harm. Release to

the identified sponsors also does not appear sufficient to mitigate these danger concerns because he was living, at least part time, with these same adults when he was engaging in dangerous and harmful behavior. Release on bond does not appear to be appropriate for the same reasons; bond is a means of mitigating flight risk, not danger, which are the main concerns with this Age-Out. Additionally, release on any form of ICE's ATD Program will not sufficiently mitigate the danger to the community this Age-Out poses. Even while in custody, he demonstrated his unwillingness to comply with rules as evidenced by his participation in multiple fights with staff and other detainees. He appears unlikely to comply with conditions of release on ATD. Therefore, recommend detention due to evidence of subject being an ongoing danger to others.

Immediately discuss with supervisor the recommendation and promptly reach out to JFRMU for concurrence.

Example 4

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The Age-Out has been living in an ORR shelter for 9 days. He was apprehended by BP a couple miles from the border and charged as being present without inspection and admission (212a6A) but did not express a fear of return. The ORR case manager states that no Post-18 Plan will be provided because there isn't time. You consult the A-file/I-213 and note that there is no POC information listed. The UAC doesn't have counsel or a representative as far as you are aware. You are able to interview the UAC a couple days before his 18th birthday and he states he has some friends in the U.S. but he is unable to provide contact information for any of them. He also states he came to the U.S. to live and work and promises he will show up to court if he is released. All records checks come back clean. The NTA was only just filed with EOIR and no hearing has been scheduled.

How would you go about making a custody determination under VAWA 2013 in this case?

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Remember: ICE cannot rely solely on sponsorship decisions by ORR or the absence of sponsor information from ORR as a reason to short-circuit the VAWA 2013 inquiry and detain.

In this scenario, FOJC already looked to the A-file/I-213 for potential sponsor information and there does not appear to be an attorney/advocate/representative involved in this case. The FOJC already interviewed the UAC to see if he has any family or friends to whom he can be released, but the UAC didn't provide any leads. During such interviews, the FOJC should encourage the UAC to expeditiously contact anyone he knows that may be willing to let him be released to them.

Turning to the three VAWA 2013 factors, there does not appear to be indicia of danger to self or danger to community. Some flight risk concerns given that he only just entered the US and does not appear to have any community ties and hasn't filed for relief from removal. However, those are flight risk concerns present in most Age-Out cases and can often be mitigated by releasing the Age-Out to a sponsor (individual or organizational).

If no individual sponsor can be found, promptly contact at least five shelters on the National Age-Out Shelter List or that the FOJC is otherwise aware of and see if they have any availability for housing. (Are you confined to shelters/group homes within your AOR? No!) If a shelter confirms that they have housing availability on the UAC's 18th birthday, recommend release to that shelter on the 18th birthday. Pass

along shelter's contact information/POC to ORR (and the UAC) for the shelter to coordinate travel upon release from ORR.

Example 5



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The Age-Out and her one-year-old child have been living in an ORR facility. You learn that the Age-Out has several SIRs, but ORR will not provide them. During the reunification process, ORR discovered that the potential sponsor for the minor and her infant (a male who is not a family member) was responsible for smuggling them into the United States. ORR was not able to complete the reunification process prior to the UAC's eighteenth birthday, given that the suspected smuggler was the only identified sponsor for the Age-Out and her child. ORR has not provided a Post-18 Plan.

How would you go about making a custody determination under VAWA 2013 in this case?

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Remember: ICE cannot rely solely on sponsorship decisions by ORR or the absence of sponsor information from ORR as a reason to short-circuit the VAWA 2013 inquiry and detain.

In this scenario, there is sufficient negative information to reject the proposed sponsor. The FOJC should therefore look elsewhere for options that will allow the Age-Out and her infant to stay together. The FOJC should check the A-file/I-213 for additional potential sponsor information and should also confirm if the Age-Out has an attorney/advocate/representative. The FOJC should also interview the Age-Out to identify potential sponsors.

Turning to the three VAWA 2013 factors, there does not appear to be indicia of danger to self or danger to community. While there are SIRs, there is no indication that they contain negative information. Remember that SIRs are completed for a variety of reasons (e.g., health issues); do not assume that their existence supports a detention decision. Any flight risk concerns should be addressed by release to a sponsor.

If no sponsor can be found, promptly identify shelters, group homes, or other organizational sponsors that accept women with young children. (Are you confined to shelters/group homes within your AOR? No!) If a shelter confirms that they have housing availability on the UAC's 18th birthday, recommend release to that shelter. Pass along shelter's contact information/POC to ORR (and the UAC) for the shelter

to coordinate travel upon release from ORR.

Example 6

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The Age-Out is in ORR custody. ORR has provided a Post-18 Plan recommending release to an emergency shelter.

The Age-Out has no family or community ties in the U.S. The Age-Out has been diagnosed with post-traumatic stress disorder (PTSD) and has expressed suicidal ideation, according to the ORR Post-18 Plan.

How would you go about making a custody determination under VAWA 2013 in this case?

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Turning to the three VAWA 2013 factors, there does not appear to be indicia of danger to the community. While the Age-Out needs mental health care, **that doesn't necessarily mean detention is appropriate**. Consider how long along ago the Age-Out expressed suicidal ideations and/or whether there is evidence of improvement such that those concerns have been or are being addressed or no longer exist. Does the Post-18 Plan mention anything about the emergency shelter's plan to address the Age-Out's mental health issues? If the proposed emergency shelter confirms that they have housing availability and can handle/address the Age-Out's danger to self concerns on the UAC's 18th birthday, recommend release to that shelter. Pass along shelter's contact information/POC to ORR (and the UAC) for the shelter to coordinate travel upon release from ORR.

Finally, placement in a shelter should address any flight risk concerns but whether the shelter could address danger to self concerns (to the extent they still exist) will dictate whether release is appropriate to the proposed placement.

Best Practices



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- Get to know your ORR counterparts and ORR facilities in your AOR.
- Keep track of upcoming possible Age-Outs. The UAC Portal should be used for docket reconciliation and EARM should be used for docket management. FOJCs should keep a list from the EARM juvenile docket with the potential Age Outs and review it on a weekly basis and set call-ups.
- To the extent possible, FOJCs should contact the UAC's case manager at least two (2) weeks before the UAC's eighteenth birthday, (a) to request a Post-18 plan, and (b) to discuss the status of ORR's efforts to reunify the UAC with family members or friends in the U.S., any special health or

Best Practices (Cont.)



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other needs or problems the UAC may have, and the identity, address, and contact information for any potential individual or organizational sponsors.

- Record your efforts to evaluate placement options in detail and do so in a timely manner.



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Questions?