

What Does the Upsurge in the Numbers of Unaccompanied Immigrant Children Entering the United States Mean for the State Courts

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Introductions

- **David Slayton**
- **John Martin**
- **Steven Weller**

Learning Objectives

- **Raise awareness**
- **Educate about intersections of the work of the State Courts and the Federal Immigration System in cases involving unaccompanied children**
- **Provide examples and guidelines about what state courts can do**
- **Identify with the assistance of NACM members additional challenges that should be addressed**

Session Roadmap

- **Examine why this is an important topic for the state courts**
- **Review key operations of federal immigration system in cases involving unaccompanied immigrant children**
- **Examine role of state courts in Special Immigrant Juvenile Status**
- **Review state level and trial court practices**

Why State Courts Should Care About This Issue

- **US Congress assigned a key role for the state courts in protecting unaccompanied immigrant children when it established Special Immigrant Juvenile Status (SIJS)**
- **SIJS has operational and policy implications on the state courts**
- **Numerous vulnerable immigrant children from difficult backgrounds likely will be appearing in state courts over the next decade**
- **Additional legislation in many states has implications on the state courts in unaccompanied minor involved cases**

Unaccompanied Alien Children

- **Child who has no lawful immigration status in the US**
- **Under 18**
- **No parent or legal guardian:**
 - in the US; or
 - in the US available to provide physical care and physical custody.

6 U.S.C. § 279(g)(2)

Misalignment: State Court and Federal Immigration System Purpose and Roles

- **Inherent tension between state court purpose and role and immigration system purpose and role in society**
- **Purposes and Roles of State Courts include: punishment; separating the dangerous from rest of society; rehabilitation; restoration/making victims whole; protecting the vulnerable; adjudicating disputes between individuals; doing individual justice in individual cases; assuring justice and the appearance of justice; and maintaining official records.**
- **Federal Immigration Purposes and Roles include determining who should be in the US for how long and under what conditions; who should not be in the US and why; and who should become a US Citizen.**

Misalignment Between Federal Immigration System and Work of the State Courts

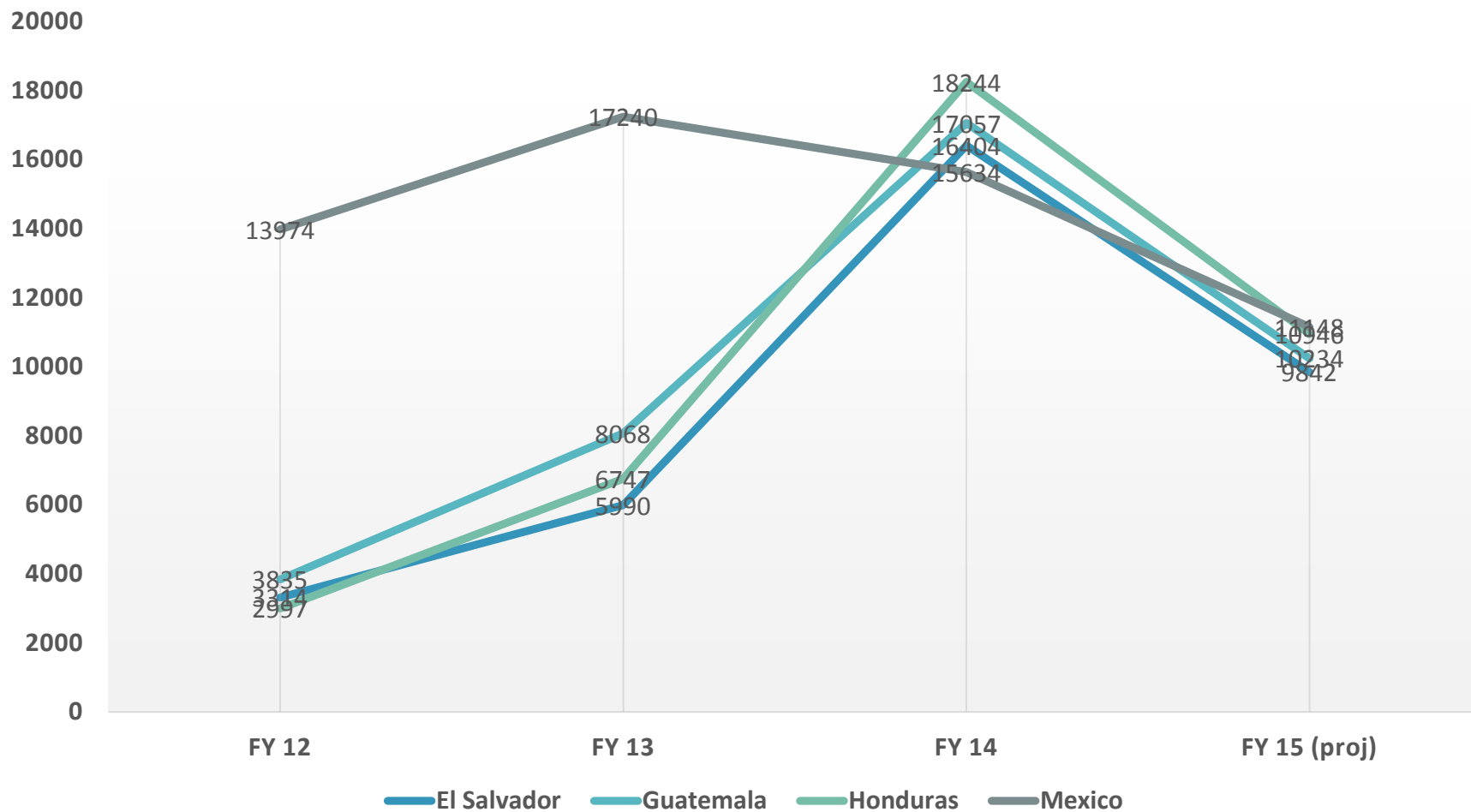
- **Historically state court needs have not been considered in federal immigration law, policy, and practice**
- **Interdependencies between state courts and immigration system often expose inconsistencies, lack of clarity, and other weaknesses of federal immigration law, policy, and practice**
- **Federal immigration rights can be dependent on the outcomes of a state court state court criminal, family, juvenile, or civil case**
- **Federal immigration law assumes bright-line distinctions in state law regarding court processes, case outcomes, criminal convictions, and criteria for sentencing, where in fact there are shades of gray and judges have room to exercise discretion**
- **The operation of Federal immigration law may affect a state court case by limiting the options and possible outcomes available to the state court judge**

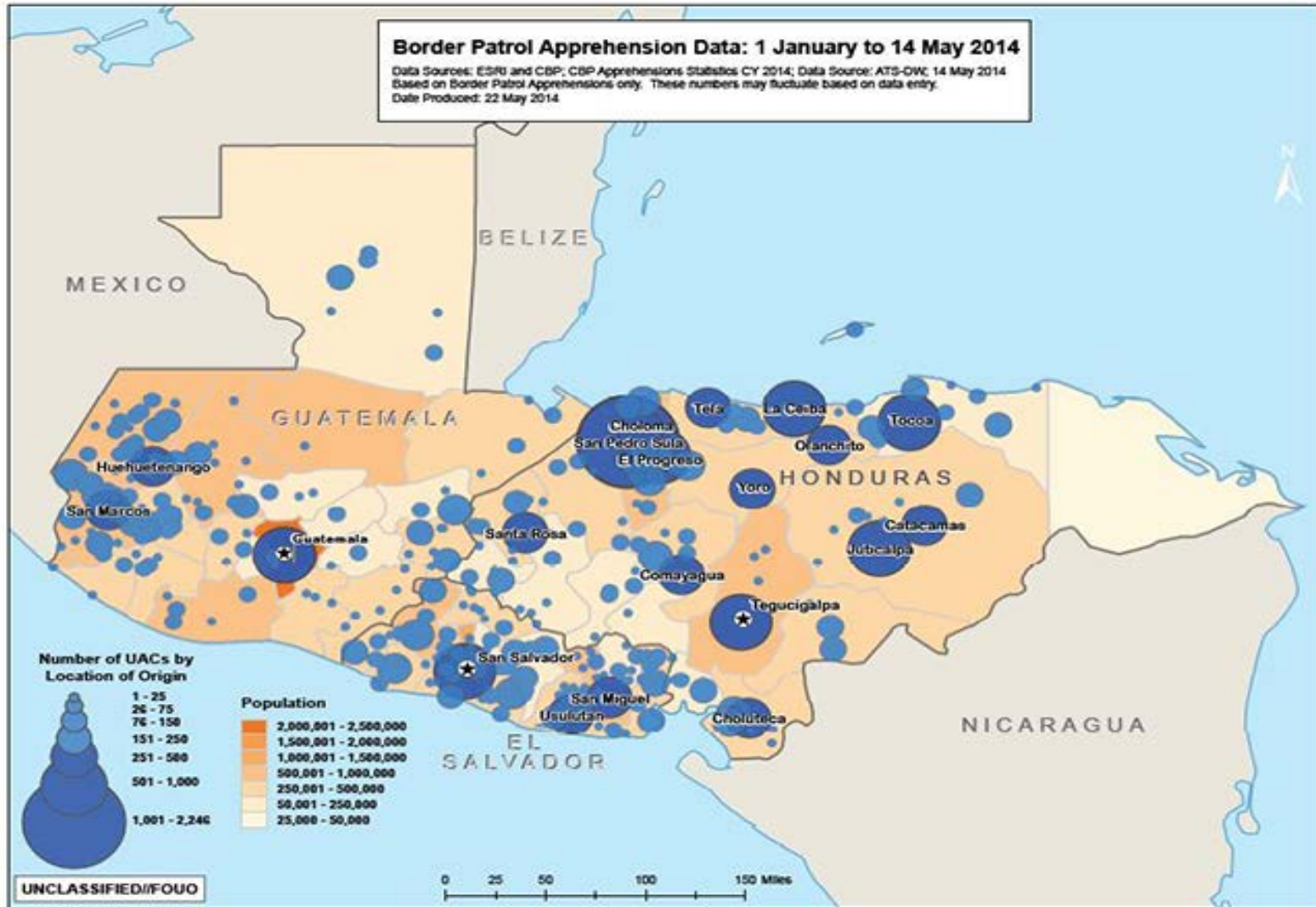
Key Points of Misalignment in Cases Involving Unaccompanied Minors

- **Best interests of child concept in state courts v. federal immigration law concepts of children and families**
- **Children might not be represented by counsel in immigration proceedings**
- **Access to parties**
- **Federal immigration consequences of state juvenile delinquency and other dispositions involving children**

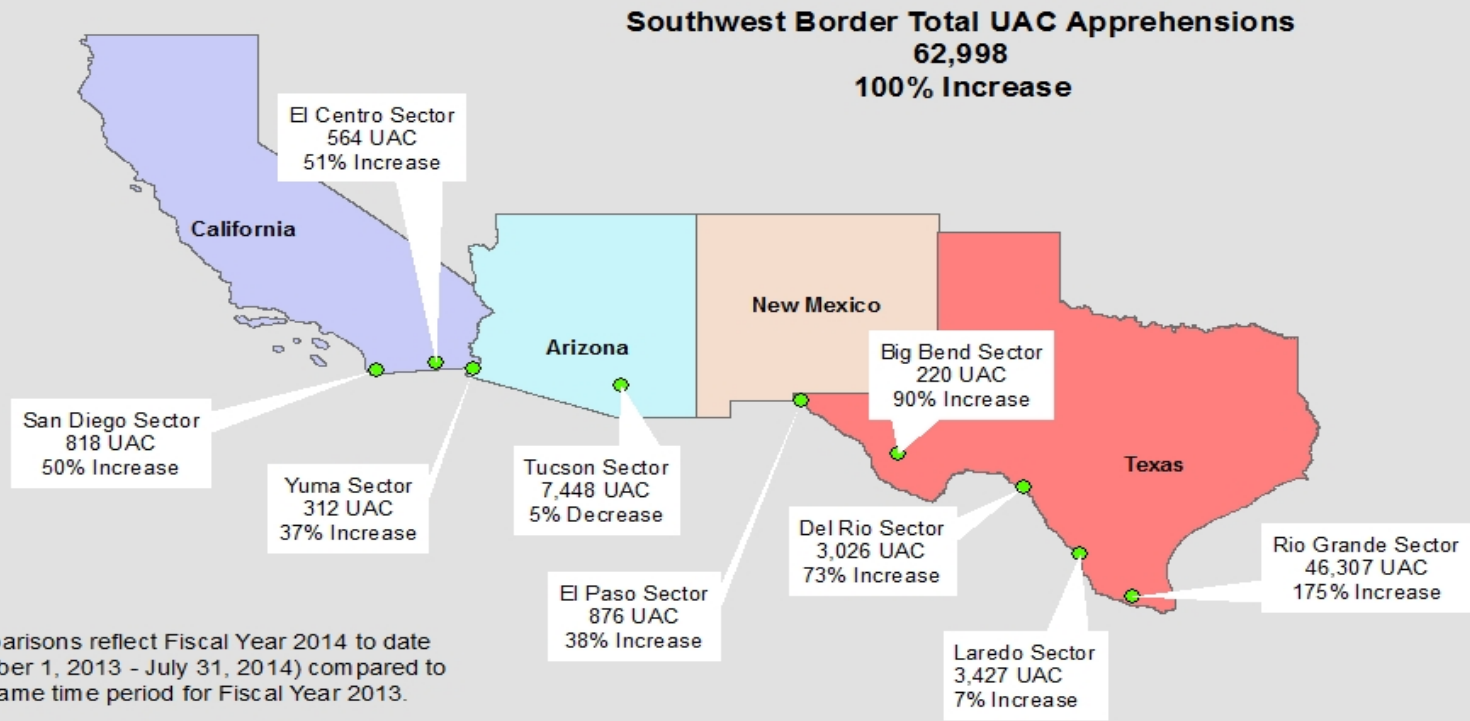
Misaligned But Need to Work Together

- **SIJS and other protections are dependent on the work of the State Courts even though the State Courts do not make the immigration status decisions**





Southwest Border Unaccompanied Alien Children (UAC) Apprehensions

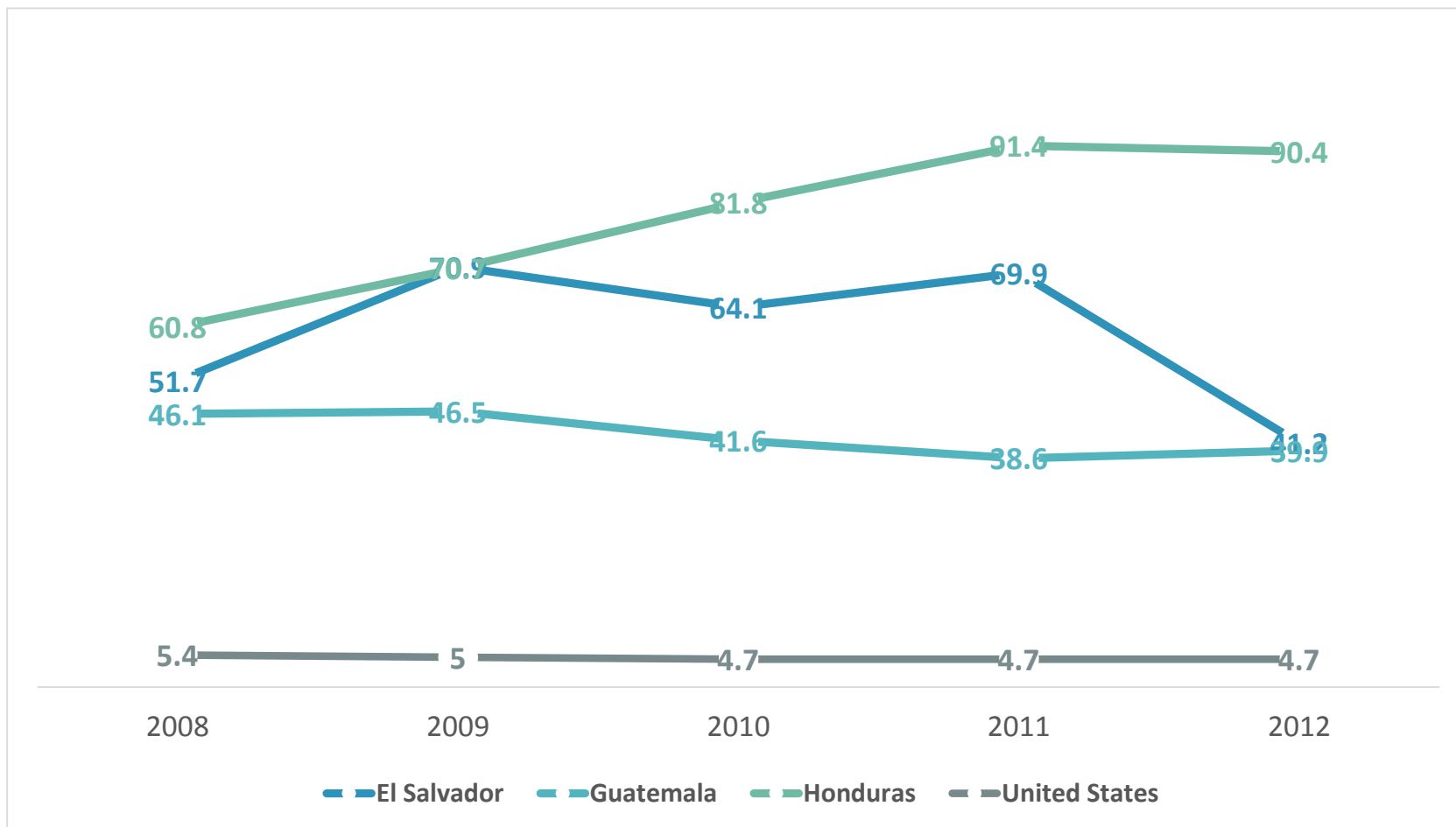


Data source: <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

Factors that are Causing Unaccompanied Children to Leave their Countries

- **Violence**
- **Poverty**
- **Crime**
- **Gangs**
- **Abuse**

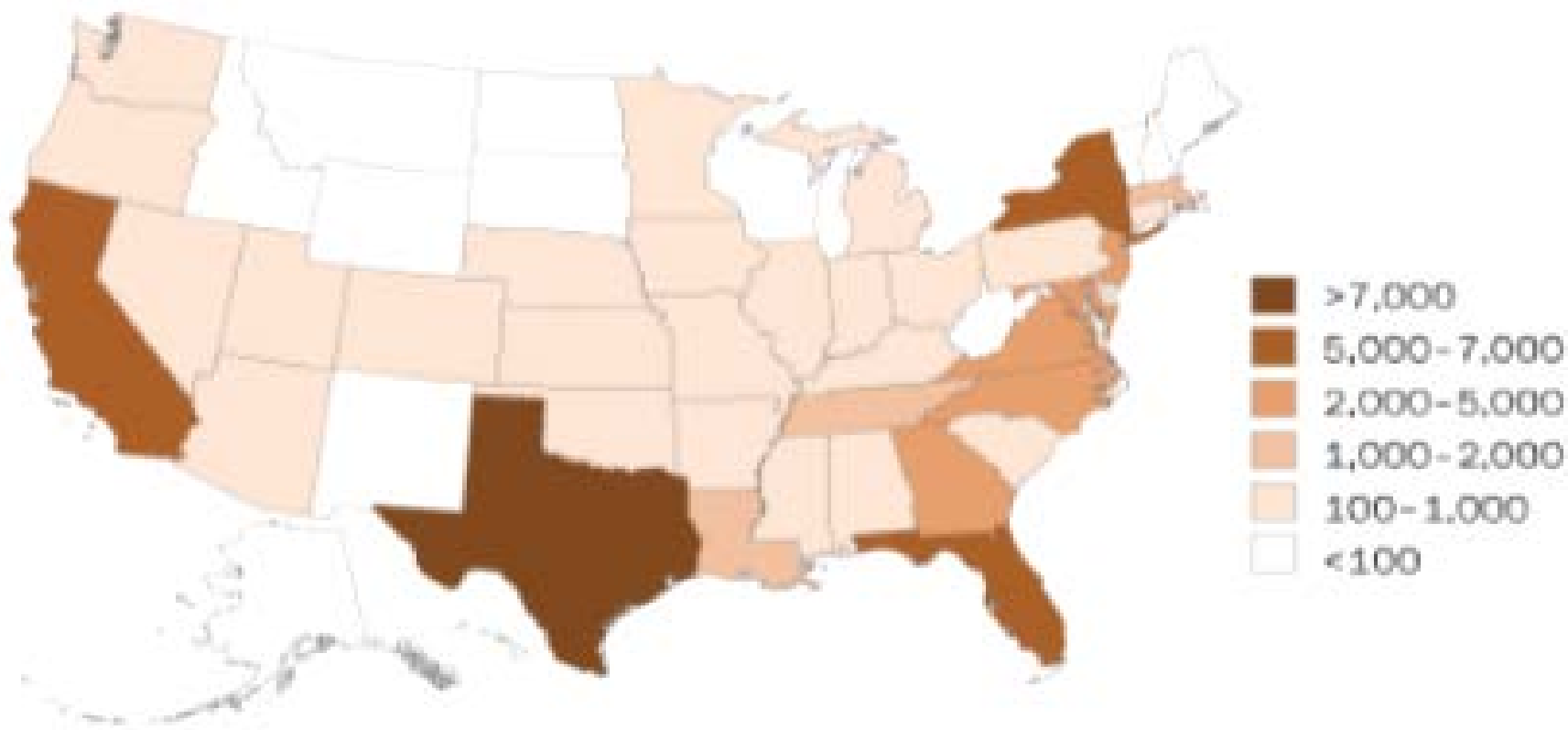
Homicide Rates Per 100,000 People



Persons Living In Poverty

- **Honduras**
 - **2010: 67.4%**
- **El Salvador**
 - **2012: 45.3%**
- **Guatemala**
 - **2006: 54.8%**

Total number of unaccompanied children released to sponsors in FY 2014



A Typical Arrival in the U.S.

- **Detained by U.S. Customs and Border Protection (CBP), identified as UAC**
- **Transferred to custody of U.S. DHHS Office of Refugee Resettlement (ORR) within 72 hours**
- **Placed in temporary shelter (avg. 4 mos.)**
- **Released to sponsor or placed in federal foster care**

Unaccompanied Children and Human Trafficking

- **Very susceptible to becoming trafficking victims**
- **No family support available**
- **Isolation from positive aspects of society and sources of help because of numerous factors including undocumented status, language and cultural differences, homelessness, lack of food, inability to be self-supporting in a legal manner**
- **Likelihood of contact with traffickers**

Implications For State Courts

- **Requests for findings to be used in Special Immigrant Juvenile Status applications**
- **Many children placed in foster care, group homes, shelters, and other care and protective settings**
- **Presence of children potentially vulnerable to human trafficking and other forms of abuse and exploitation**
- **Likely long-term implications for state court caseloads**

Special Immigrant Juvenile Status (SIJS)

- A form of federal humanitarian relief for immigrant children who have been abused, neglected, or abandoned
- Created by Congress in 1990; amended in 2008.
- Three-step approval process
 - Success at each step required

Overview of SIJS Process

1: Request predicate findings from state court

2: Petition US Citizenship & Immigration Services (USCIS) for classification as SIJ

3: Remain in U.S. and apply to USCIS for lawful permanent resident (LPR) status

What USCIS Will Do With A SIJS Application

- **Will review based in part on state court findings but other concerns will also be considered under federal law. Other Factors include:**
 - **The juvenile must be declared dependent while present in the United States and under the jurisdiction of the court.**
 - **The juvenile must file for SIJS (USCIS Form I-360) before reaching the age of 21.**
 - **The juvenile must be unmarried at filing and remain so until SIJS is granted.**
 - **The child must remain under juvenile court jurisdiction until SIJS has been granted by USCIS, subject to exceptions for age-related cases and certain other circumstances.**
 - **The dependency case must have been filed primarily to obtain relief from abuse, neglect, or abandonment and not primarily to obtain an immigration benefit.**

Subsequent Application For Lawful Permanent Resident Status

- **SIJS is a form of TEMPORARY relief with some important benefits like right to work but is not a grant of permanent residency.**

Subsequent Application For Lawful Permanent Resident Status (Continued)

- **The grant of SIJS makes the juvenile eligible to apply for adjustment to LPR status, either concurrently or later. The grant of adjustment to LPR status is discretionary with USCIS and is not guaranteed even if the juvenile has been granted SIJS.**
- **To be eligible for adjustment to LPR status, an applicant must meet the grounds of admissibility to the United States under federal immigration law. With regard to juveniles, USCIS can waive many of those grounds. Still, some of the grounds for inadmissibility under federal immigration law will apply to a juvenile applying for LPR status on the basis of an approved grant of SIJS.**

Subsequent Application For Lawful Permanent Resident Status (Continued)

An alien juvenile who engages in any of the following areas of conduct, some of which may appear in the context of a delinquency hearing, may be ineligible for adjustment of status to LPR even if the juvenile has been granted SIJS:

- **known or reasonably believed to have engaged in drug trafficking;**
- **being a drug addict;**
- **having engaged in prostitution;**
- **violation of protection order;**
- **use of false documents; or**
- **having a mental condition that is a threat to others.**

Subsequent Application For Lawful Permanent Resident Status (Continued)

- **While engaging in prostitution can make a juvenile ineligible for adjustment of status, the USCIS may waive this when the offense was committed by a juvenile as a result of being a victim of human trafficking.**
- **Violent offenses, sex offenses, and gang activity can be particularly problematical for the juvenile, as these offenses can lead to denial of any immigration benefits.**

How an Immigration Court Might Use the Information From the State Court: Removal Hearing

- **If the juvenile is in removal proceedings, only the immigration judge (not USCIS) can grant the adjustment of status to LPR.**

“Juvenile court”?

- **For SIJS purposes, a “juvenile court” is “a court in the United States having jurisdiction under State law to make judicial determinations about the care and custody” of children.**
 - **8 C.F.R. § 204.11(a)**

“Juvenile Court” Example From Recent California Legislation

- SB 873 clarifies that
 - The superior court is a court of general jurisdiction
 - The family, probate, and juvenile court divisions make determinations about the care and custody of children
 - Therefore, these divisions, at least, may make the SIJ findings in response to a proper request

SIJ Predicate Findings

- 1. The child has been**
 - a. Declared a dependent of the court OR**
 - b. Legally committed to or placed under the custody of**
 - i. A state agency or department OR**
 - ii. An individual or entity appointed by the court**

SIJ Predicate Findings

- 2. Reunification of the child**
 - a. With one or both parents**
 - b. Is not viable because of**
 - i. Abuse**
 - ii. Neglect**
 - iii. Abandonment**
 - iv. A similar basis under state law**

SIJ Predicate Findings

3. It has been determined in administrative or judicial proceedings that it would not be not in the child's best interest to be returned to the child's, or his or her parent's, previous country of nationality or country of last habitual residence

SIJS Issues

- **Subject matter jurisdiction (Underlying state law actions)**
- **Personal jurisdiction (notice, service of process, Hague Convention on Service Abroad, Inter-American Convention on Letters Rogatory)**
- **Hearings and quantum of evidence**
- **Confidentiality**

Other Potential Protections For Unaccompanied Minors

- **T Visa for victims of human trafficking**
- **U Visa for crime victims**
- **VAWA self-petitions for victims of family violence by a citizen or LPR on an undocumented child**

Lessons Learned: Trial Court Examples

- **Impact on Child Welfare budgets and staffing**
- **Increase in need for interpreter services**
- **Increase in need for low cost or pro bono legal services**
- **Training judges and staff on immigration basics**
- **Need to get to correct case forum (one that includes access to investigators)**
- **Need for consistent court forms and model orders**

Implications for State Courts

- **State Courts should prepare to see an influx of dependency proceedings and juvenile court orders to specify the findings necessary for application for SIJS.**
- **While a person under the age of 21 may file for SIJS under federal immigration law, some states do not permit a finding of dependency for a person who has reached the age of 18.**

Example: In Texas dependency jurisdiction terminates when the juvenile reaches age 18. A juvenile who has not been declared dependent before reaching the age of 18 cannot be declared dependent and thus will not be eligible to apply for SIJS.

Future Impact of Influx

- **It's been estimated that as many as 150,000 – 200,000 UAC could attempt to cross the border in 2015.**
- **Children 12 and under are the fastest growing group.**
- **Have up until they are 18 (21 in some instances) to enter State Courts in first step of Applying for SIJS.**
- **True Impact could last for years.**

How State Courts Can Prepare

- **Education**
- **Data Collection**
- **Resources**

Education

- **Follow current trends**
- **Research and know applicable laws**
- **Attend or sponsor continuing legal education (CLE) classes**
- **Work with local and state bar associations**

Data Collection

- **Ask Courts to keep data when cases enter the system.**
 - How many cases
 - How long do they take to resolve
 - Age of parties
 - Outcome

Consider Court Resources

- **Interpreters**
- **Adequate judicial officers**
- **Attorneys**
- **Training**

Need For Executive Leadership

- **Establish vision and long-term strategic direction for the court, justice system, federal immigration organizations, and the community.**
- **Establish and monitor inter-agency, and system infrastructure for supporting services. Develop long-term system and community capacity to provide services.**
- **Develop long-term multi-system and community capacity to provide services.**
- **Assure that effective inter-agency work processes are established and maintained.**
- **Monitor system performance.**
- **Work cooperatively and collectively to establish a strong fiscal foundation for on-going service delivery.**

Next Steps: California Example

- 1. Advisory committees coordinate to draft and circulate proposed rules and forms, for recommendation to the Judicial Council, to facilitate request, judicial inquiry, and determination**
- 2. CJER staff include SIJS as topic in Primary Assignment Orientations and Institutes for Probate, Family, and Juvenile Law**
- 3. CFCC staff develop SIJS-focused educational programs, webinars, and materials**
- 4. Monitor workload impact on trial courts; seek additional resources if needed**

Next Steps: Example Process For State Courts Generally

- 1. Build a Multi-Disciplinary Action Team**
- 2. Identify the Characteristics of Your UAAC Population and Their Needs**
- 3. Inform Judges and Court Personnel About the Intersections Between the State Courts and the Federal Immigration System**
- 4. Implement Work Processes and Supporting Infrastructure For Processing Cases Involving UACs**
- 5. Monitor Improvements**

State Justice Institute Sponsored Efforts

Center For Public Policy Studies/National Center For State Courts current unaccompanied minors project includes:

- **Preparing and distributing an information card**
- **Preparing and distributing an Action Guide**
- **Developing and presenting programs including webinars**

Opportunities for TA and curriculum adaptation and education grants

On-going CPPS Immigration and the State Courts Initiative includes numerous resources

www.centerforpublicpolicy.org

Steven Weller
sweller@indra.com (303) 494-4268

John A. Martin
jamartin@indra.com; (303) 449-0125

Immigration and the State Courts Initiative
Center for Public Policy Studies
<http://www.centerforpublicpolicy.org>

Human Trafficking and the State Courts Collaborative
<http://www.htcourts.org>

