

# **Special Immigrant Juvenile Status: The Intersection of State Child Welfare Law & Immigration Law**

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# **Identifying the Current Immigration Status of a Child**

# Identifying the Current Immigration Status

- Child was not born in the US & lacks Residency, Citizenship, or Visa.
- **WARNING:** Do not try to determine this alone if you are not an immigration lawyer, but here are some considerations:

Children who have been in the United States for many years:	Children who have recently arrived in the US:
<ul style="list-style-type: none"><li>• Some may have Deferred Action for Childhood Arrivals (DACA) (expiring)</li><li>• May have been undetected by officials at entry into the US</li><li>• May have overstayed Visa/Had permission to enter the US</li><li>• May have ongoing immigration court proceedings or an order of deportation</li><li>• May have an immigration application pending</li></ul>	<ul style="list-style-type: none"><li>• Accompanied minors – usually classified under parent’s case as Adults with Children or AWC’s for immigration</li><li>• Undetected by officials at entry into the US and since arrival</li><li>• Overstayed Visa/Had permission to enter the US</li><li>• <b><u>Unaccompanied Children*</u></b></li></ul>

# Why does this matter?

- The child you are working with may have additional immigration needs that could overlap or may be affected by the child's proceedings in the DFCS proceedings/state/county courts.
- To apply a holistic approach to work with the child and to meet the ethical obligations of our professions.
- To protect the child's rights.

# Who Are Unaccompanied Children?

The U.S. government defines an Unaccompanied Alien Child (UAC) as:

- A child who **at the time of apprehension has no lawful immigration status**, is **under 18 years of age**, and has **no parent or legal guardian in the U.S. or no parent is available to provide care and physical custody.**
- *Homeland Security Act of 2002, 107th U.S.C. §462.2 (2002)*



# Snapshot of our Child Clients

- **Age:**
  - Range: 2-17.5
  - Average: 14.5
- **Gender:**
  - 2/3 boys, 1/3 girls
- **National Origin:**
  - El Salvador, Guatemala, Honduras
- **Language:**
  - Spanish, sometimes indigenous languages



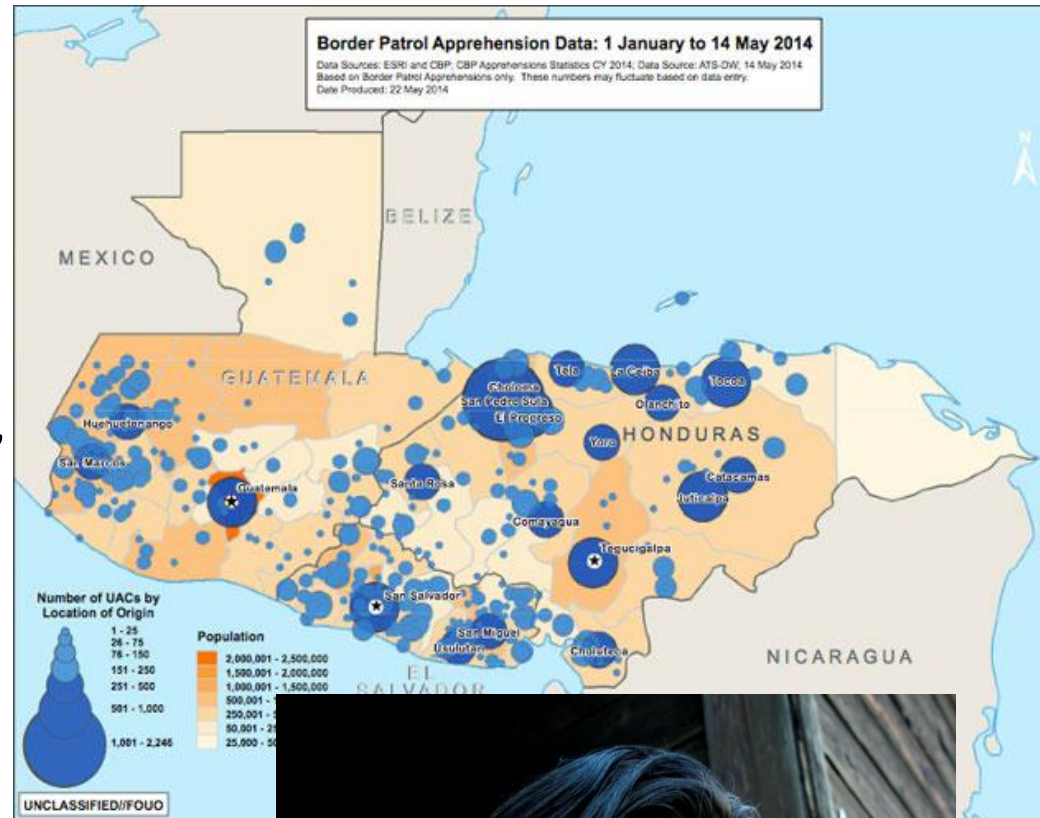
# Unaccompanied Children Fleeing

- Why?
- Where?
- How?



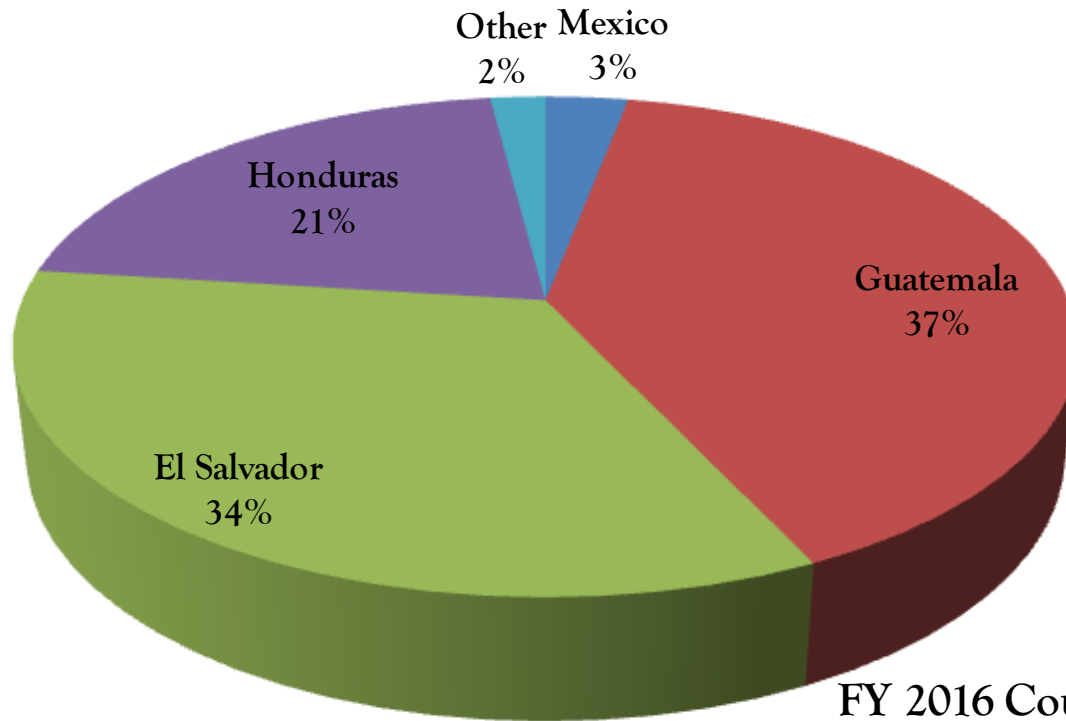
# Why are they coming?

- Flee community violence
- Escape poverty and hunger
- Escape situations of family breakdown, abuse, abandonment, and/or neglect
- Some are seeking reunification with family;
- Others access to an education, or physical, financial, or psychological stability.





# Where are they coming from?



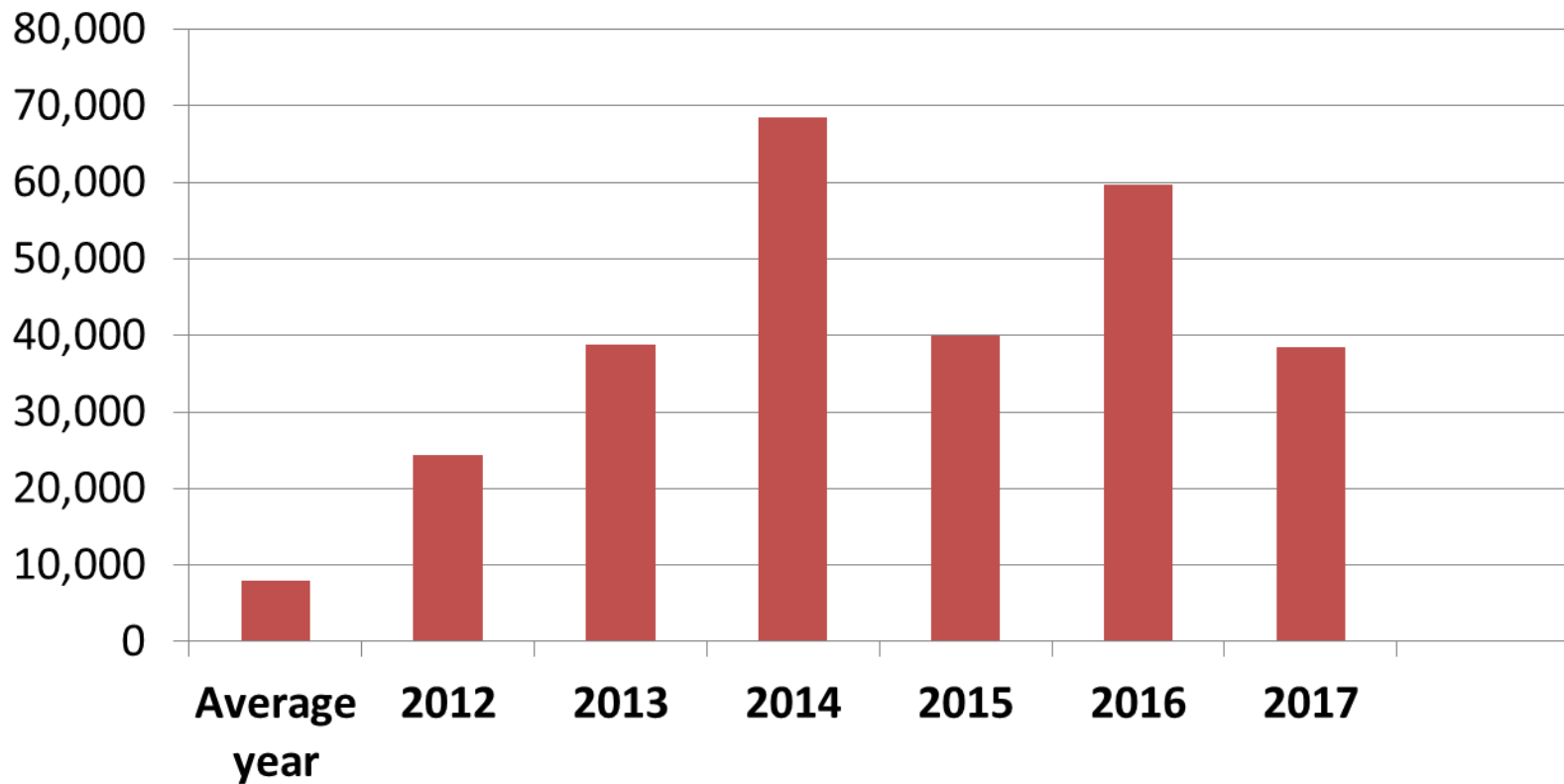
FY 2016 Countries of Origin  
Source ORR/DCS

# How do they get here?



# The Numbers: October 2011 - present

**Total UAC's Apprehended at the Border**



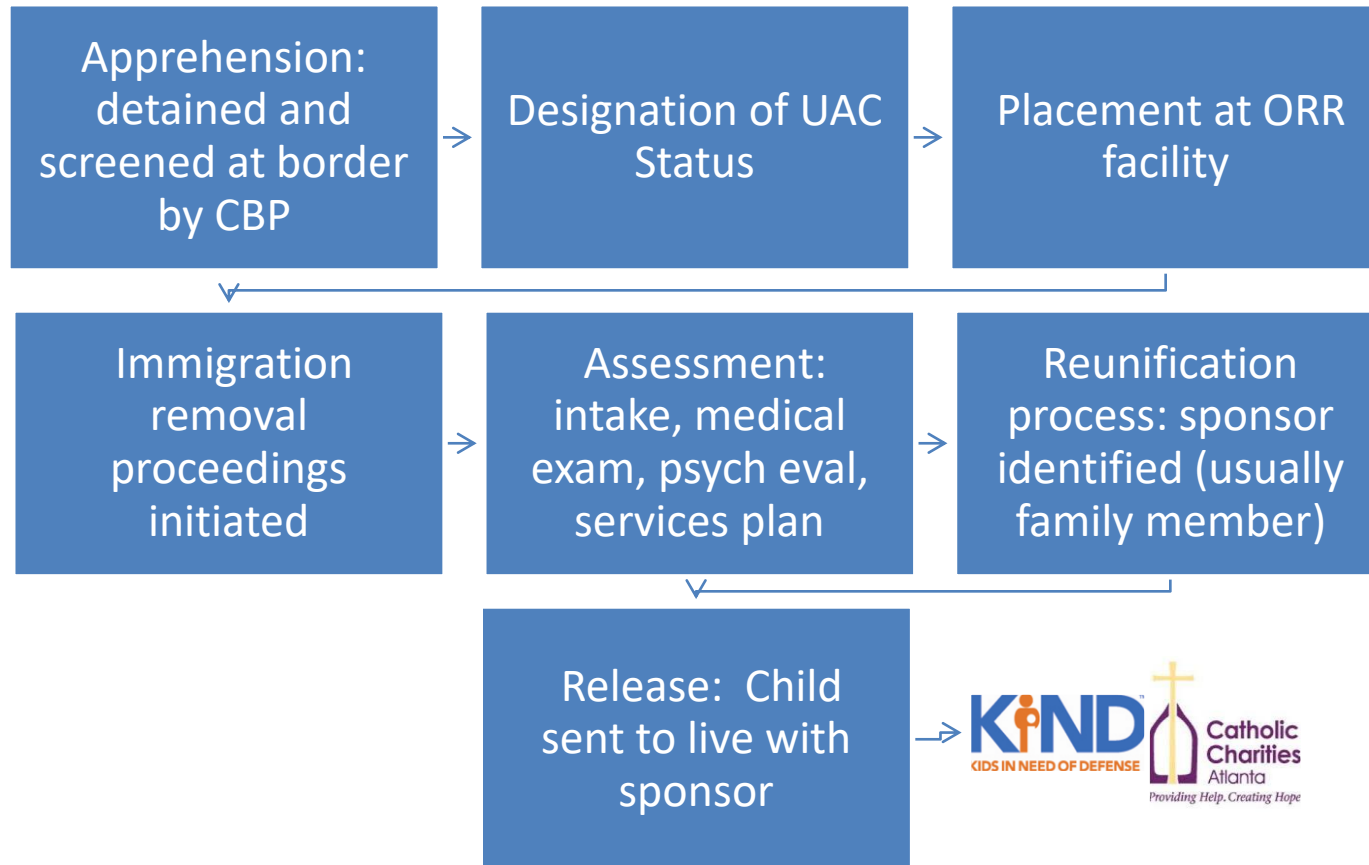
*Source: HHS, available at <https://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors>*

# Children Needing Representation Regionally

UACs Released by State	FY 2014	FY 2015	FY 2016	FY 2017 (Oct-Sept)
<b>Georgia</b>	2,047	1,028	1,735	1,345
<b>Alabama</b>	786	808	870	608

*Source: HHS, available at <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>*

# What happens when a child is apprehended?



# **Focus on Special Immigrant Juvenile Status (SIJS)**

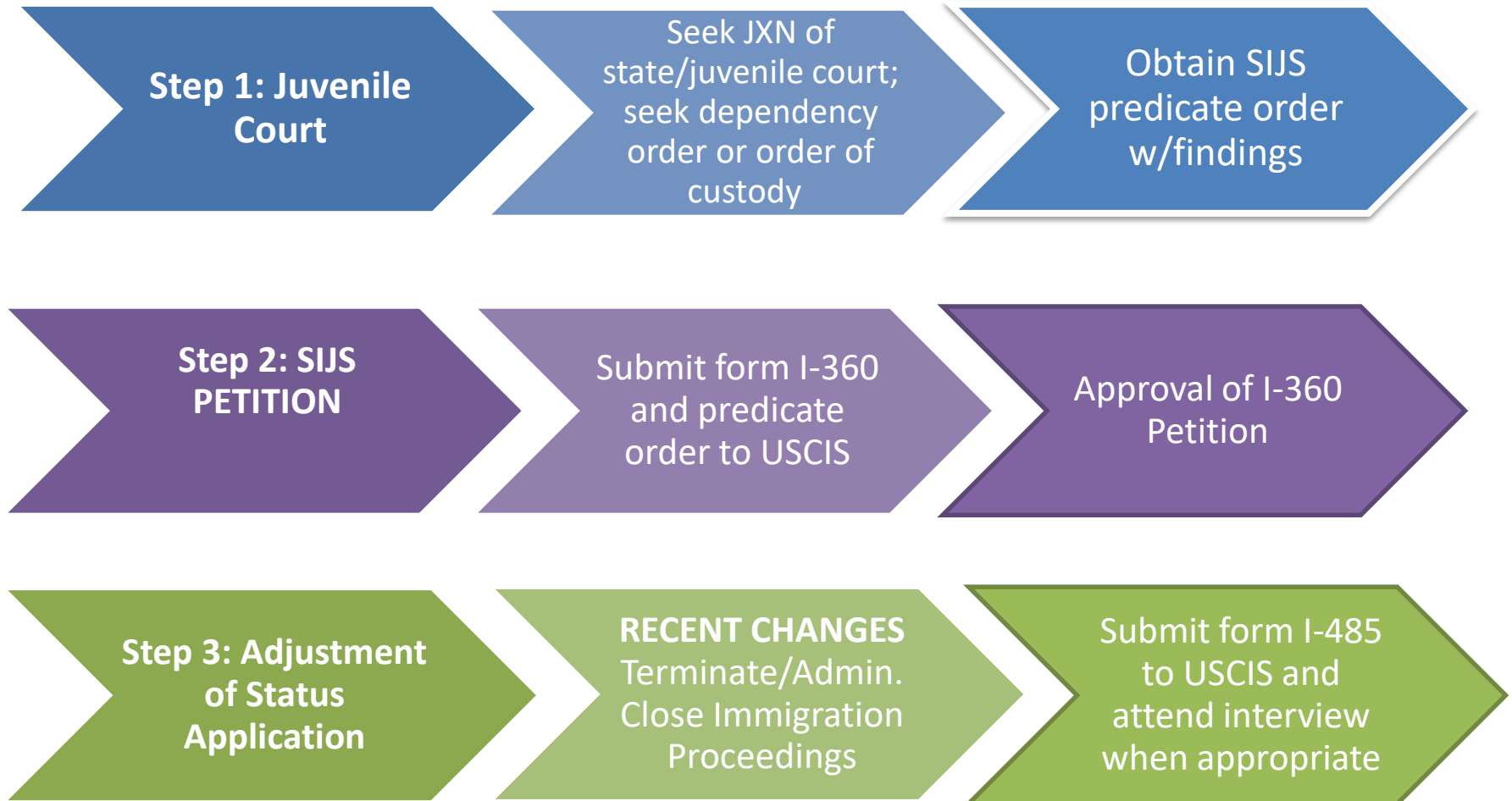
8 U.S.C. § 1101(a)(27)(J), 8 CFR 204.11

# SIJS: Eligibility Criteria

- Unmarried;
- Under age 21 (but state law age limitations)
- Dependent on juvenile court or placed in custody, in accordance with state law
- Not viable to reunify with one or both parent(s) because of **abuse, abandonment, neglect, or similar maltreatment as defined in state law**
- Not in best interest to return to country of origin

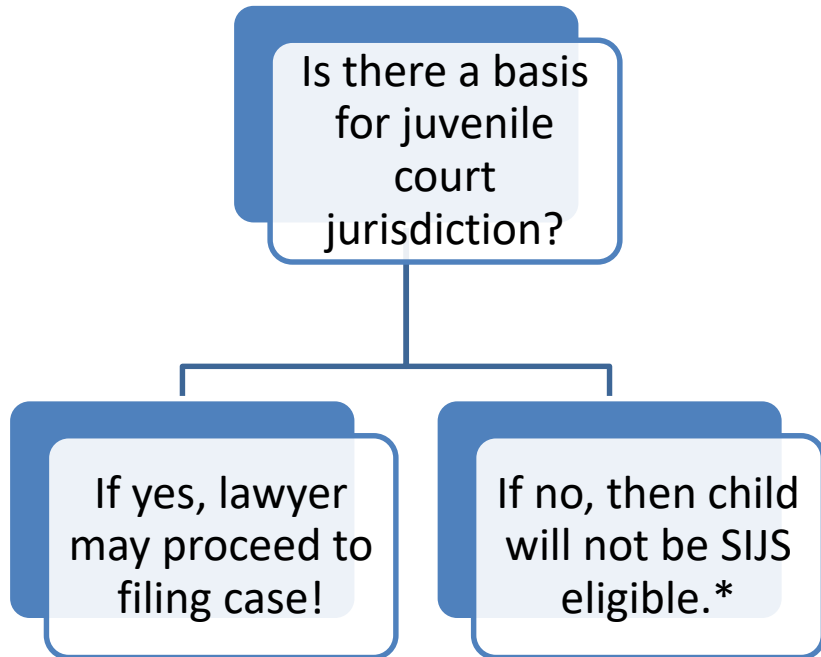
(See INA 101(a)(27)(J) and TVPRA 235(d)(1))

# ***The Road to Obtaining Permanent Residence Through SIJS***





# Step One: Juvenile Court



## Types of Cases

- **Dependency – Most Common in GA**
- Guardianship\*
- Custody\*
- Modification of Prior Order\*
- Children in Need of Services (CHINS)\*
- Registration of Foreign Custody Order\*
- Delinquency\*
- Adoption\*

\*\*\*There are a growing number of practitioners in Georgia who have successfully gone before other courts such as the **Superior** Court, **Probate** Court which are courts that have jurisdiction over juvenile and/or custody issues, to attain a *predicate order*.

# What law is important?

- **Immigration and Nationality Act § 101(a)(27)(J)**, as amended by the Trafficking Victims Protection and Reauthorization Act (TVPRA)
- **State code** sections governing dependency, custody, or guardianship
  - State code sections defining abuse, abandonment and/or neglect
  - State code sections outlining the best interests of the child (in your relevant proceeding)
- **State procedural rules** governing notice and service

# *Focus: Georgia Dependency –* Primary Vehicle for SIJS Findings

OCGA § 15 -11-2(22) – Definition of a

## **DEPENDENT CHILD:**

- A child who
  - has been abused or neglected and is in need of the protection of the court;
  - has been placed for care or adoption in violation of law; or
  - is without his or her parent, guardian, or legal custodian.

# Abuse

**(A)** Any non-accidental physical injury or physical injury which is inconsistent with the explanation given for it suffered by a child as the result of the acts or omissions of a person responsible for the care of a child;

**(B)** Emotional abuse;

**(C)** Sexual abuse or sexual exploitation;

**(D)** Prenatal abuse; or

**(E)** The commission of an act of family violence as defined in Code Section 19-13-1 in the presence of a child. An act includes a single act, multiple acts, or a continuing course of conduct. As used in this subparagraph, the term "presence" means physically present or able to see or hear.

– OCGA § 15 -11-2 (2)

# Abandonment

**(1)** "any conduct on the part of a parent, guardian, or legal custodian showing an intent to forgo parental duties or relinquish parental claims. Evidenced by:

**(A)** Failure, for a period of at least six months, to **communicate** meaningfully with a child;

**(B)** Failure, for a period of at least six months, to maintain regular **visitation** with a child;

**(C)** **Leaving a child with another person without provision** for his or her support for a period of at least six months;

**(D)** **Failure... to participate in any court ordered plan or program** designed to reunite ... with his or her child;

...

– OCGA § 15 -11-2 (1)

# Abandonment (cont.)

**(E) Leaving a child without affording means of identifying** such child or his or her parent, guardian, or legal custodian and:

- **(i)** The identity of such child's parent, guardian, or legal custodian cannot be ascertained despite diligent searching; and
- **(ii)** A parent, guardian, or legal custodian has not come forward to claim such child within three months following the finding of such child;

**(F) Being absent from the home** of his or her child for a period of time that creates a substantial risk of serious harm to a child left in the home;

**(G) Failure to respond**, for a period of at least six months, to notice of child protective proceedings; or

**(H) Any other conduct** indicating an intent to forgo parental duties or relinquish parental claims.

OCGA § 15 -11-2 (1)

# Neglect

**(A)** The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals;

**(B)** The failure to provide a child with adequate supervision necessary for such child's well-being; or

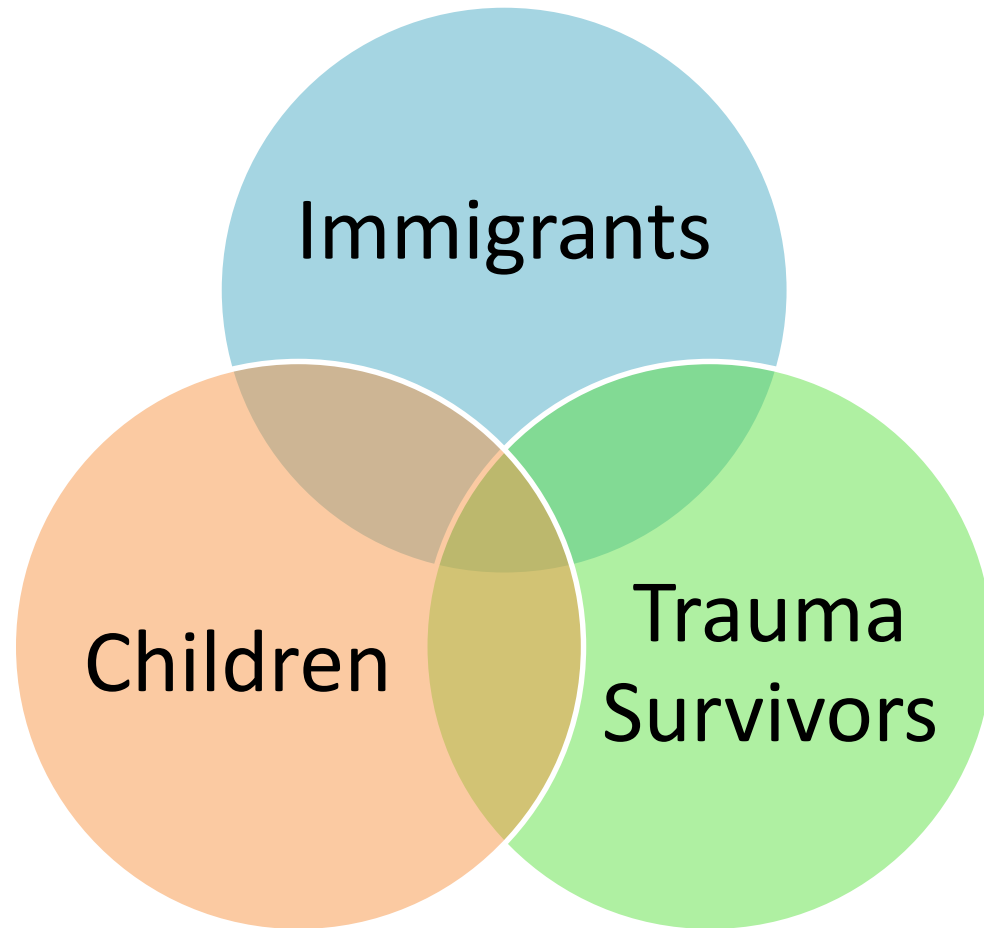
**(C)** The abandonment of a child by his or her parent, guardian, or legal custodian.

– OCGA § 15 -11-2 (48)

# **Special Considerations when Working with Unaccompanied Minors**



# Working with Unaccompanied Minors



# Special Considerations

## **Trauma:**

- Abuse by past caretakers
- Witnessing violence in the community
- Witnessing violence during the journey to the US

## **Uncertainty of placement:**

- Children may need to return to their country of origin due to immigration proceedings
- Sponsor may be detained or deported

# Special Considerations

## Impact of Family Separation:

- Feelings of abandonment
- Accepting parental authority
- Externalize the emotional trauma
- Reconciling child's current developmental stage with the stage the child was in when parent left



# Examples of Service Needs

- Assistance with school enrollment
- Assistance navigating community resources
- Low-cost medical care
- Mental health services
- Post-18 Planning
- Independent Living Skills
- Filing Change of Address/Change of Venue
- Understanding the Immigration Court
- Pro-bono immigration legal services
- Legal Guardianship

# Barriers to Accessing Social Services

- Undocumented children do not qualify for state or federal benefits in Georgia
- Limited availability of pro-bono services
- Interrupted education
- Language barriers
- Sponsor limitations
  - Rigid work schedule/Financial responsibilities in U.S. and in country of origin
  - Multiple children in home
  - Lack of transportation/ability to drive
  - Language and education barriers

# Resources

- Mixed status families may qualify for benefits for U.S. born children
- Search pro-bono or low-bono service providers in your area
  - Legal
  - Health and Mental Health
- Families CPS may qualify for some counseling services as a result of an open CPS case
- Discuss creative transportation options
- Look into support and resources for children at school

