Human Trafficking and Immigration

Options Available to Undocumented Juvenile Victims

Adriana Dinis, Esq.
Camille Frazer, Esq.
Objectives of Training

- Understanding of the forms of HT
- Recognize the signs of HT
- Knowledge of options available to undocumented juveniles
- Changed approach to advocacy for HT victims: services rather than punitive
Agencies

• DCF Refugee Services Program Office

• Department of Health and Human Services: Office of Refugee Resettlement (ORR)/Unaccompanied Refugees Minor Program

• Office on Trafficking in Persons

• Polaris Project/National Human Trafficking Resource Center
Human Trafficking: Federal Definition

Federal law:

- **Sex trafficking**: the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act is not yet 18 (22 USC § 7102 (9)).

- **Labor trafficking** is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery, (22 USC § 7102(9)).
Human Trafficking: Florida Definition

Florida law: (broader definition) the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.” F.S. §787.06(2)(d).

=> All human trafficking offenses can be prosecuted as RICO offenses in Florida as organized crime. Section 895.02, F.S.
Legislation

- 2012: HB 99 - Safe Harbor Act (SHA): allows for minors to be deemed as dependent instead of delinquent, and gives law enforcement discretion to either arrest or deliver the minor to a short term safe house.

- 2014: HB7141 (extension of SHA)
  a. Requires DCF to have a screening instrument for the identification of sexually exploited children, and placement.
  b. Requires specialized training for CPIs and DCMs prior to working with sexually exploited minors.
  c. Provides the minimums standards to certify a foster home or group home desiring to care for sexually exploited children.

- 2016: HB 545 (effective 10/1/16): revises the definition of "sexual abuse/exploitation of a child" to delete reference to a child being arrested or prosecuted for prostitution.
Pertinent Florida Statutes

§787.06: Human Trafficking- amendment effective 10/1/16:
- Increased penalties for causing great bodily harm or permanent disfigurement to HT victim (2nd to 1st degree felony, 1st degree to life felony).
- §§409.1678; 409.1754: placement (safe foster home, safe house), and DCF screening for HT.
- §39.01 (70) (g): sexual abuse/exploitation.
Penalties

• F.S. § 787.06 (3) Any person who engages or attempts to engage in human trafficking, or benefits financially by receiving **anything** of value from participation in a HT venture:
  
  • (a)1. For **labor** or services of any child **under** the age of 18 commits a felony of the **first** degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
  
  • (c)1. For **labor** or services of any child **under** the age of 18 who is **undocumented** commits a felony of the **first** degree.
  
  • (e)1. For **labor** or services who does so by the transfer or transport of any child under the age of 18 from **outside** this state to within the state commits a felony of the **first** degree.
  
  • (f)1. For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 from **outside** this state to within the state commits a felony of the **first** degree, punishable by imprisonment for a term of years not exceeding life.
  
  • (g) For commercial or noncommercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective or mentally incapacitated is involved commits a **life** felony.
  
  • (4)(a): A parent or guardian who transfers a minor for the purpose of HT commits a **life** felony.
  
  • (4)(b): A person who brands another commits a **second** degree felony.
Children Subject to Human Trafficking

All children

Varying Categories

• U.S citizens and LPR/community children
• U.S. citizens and LPR/child welfare
• Undocumented children/child welfare
• Unaccompanied alien children
Intersection of Dependency and Unaccompanied Minors

- Child enters unaccompanied by parent.
- Detained by DHS and referred to HHS/ORR.
- ORR shelters child, then places with parent or sponsor (4,264 placed with FL sponsors in 2016 YTD).
- ORR releases responsibility of child to parent, relative or other sponsor.
- Parent, relative or sponsor initiates dependency action to achieve SIJ status for child.

Unaccompanied Children Released to Sponsors By State
Statistics

**Polaris Project:**
- Approximately 20.9 million HT victims globally.
- 26% are children; 55% are women and girls.
- 2014: 69,000 unaccompanied minors (U.S. Senate Permanent Subcommittee on Investigations Report).
- About $32 billion in revenue: more than McDonald’s. (Zoe).
- Human Trafficking occurred in all 50 states in 2015.
- **Highest reports in California, Texas and Florida.**
- In 2015, the National Human Trafficking Resource Center received 21,947 calls, 1,535 web forms, and 1,275 e-mails.
- The top venue for sex trafficking was commercial front brothels.
- The top industry for labor trafficking was domestic work.
- Number of undocumented youth: over 1 million
- In 2014, of the missing children reported to NCMEC who are also likely child sex trafficking victims, 68% were in the care of child welfare when they went missing. **NCMEC**
Visas and Trafficking

Persons who legally enter the U.S., may still fall prey to traffickers.

For example, holders of work visas working with labor recruiters had their visas confiscated after arrival and were forced to work in conditions and places not part of their contract or the program in which they thought they would be participating.

- For example, Eastern European women travel to the U.S. on a J-1 (cultural exchange visa) to learn English and work at local restaurants. But, it was a rouse for traffickers who later make them work as exotic dancers. Polaris Project.

Smuggling v. Trafficking

Smuggling can turn into trafficking. May 2008 — In Miami, a 14-year-old Simone Celestine, testified she worked fifteen hours a day, did not attend school, and frequently was threatened and beaten. Based on her testimony, a federal jury convicted Maude Paulin and her ex-husband, Saintfort Paulin, of human trafficking and smuggling charges. In 1999, they arranged for Celestine to be brought illegally from Haiti, and until 2005, she was forced to work as a domestic servant in their home. (CNN, May 20, 2008).

May 2008 — In Los Angeles, 12 victims were freed from a sex trafficking ring, 5 of whom were minors. The victims were approached in Guatemala and promised high-paying U.S. jobs. After being smuggled in, the women were told they had to work as prostitutes to pay off their smuggling debts. When the women protested, they were told they had no choice. One perpetrator pled guilty to conspiracy to commit sex trafficking and transporting illegal aliens. (Department of Justice, May 08, 2008)
Commercial Sexual Exploitation of a Child (CSEC)

Types of CSEC

- **Survival sex**: no 3\(^{rd}\) party or pimp.
- **Pimp Trafficking**: a 3\(^{rd}\) party who brokers the exchange of sex for something tangible.
- **Gang Trafficking**: Trafficking as a source of income for the gang.
- **Familial**: Parent or caregiver exchanges a minor for the promise of money, goods or services.
- In 2015, **264** verified CSEC children in Florida. **Office of Program Policy Analysis and Governmental Accountability.**
Examples of Sexual and Labor Exploitation

• A mother offering her daughter to perform a sexual act to the landlord for payment of rent.

• A minor having sex with an adult to obtain food and shelter.

• The kidnapping of minors for the purpose of prostitution.

• Forcing a minor to work as a servant.
The Connection Between Foster Care and CSEC

Connection #1

Foster Care
  ↓
Runaway / Throwaway
  ↓
Homeless
  ↓
CSEC

Connection #2

Foster Care
  ↓
Aging Out Youth
  ↓
Homeless
  ↓
CSEC

Connection #3

Foster Care
  ↓
Lured Away
  ↓
CSEC

(The OLP Foundation and HumanTraffickingSearch.Net)
Signs of Human Trafficking

• Frequently runs away
• Evidence of exertion of power and control
• Frequently has to “check in”
• No, or limited freedom of movement
• Expensive clothes, accessories or technology
• Bruises or other signs of beating
• Heightened sense of fear and distrust of authority
• Lacks documentation
• Threats of serious harm to the victim’s family or another person
• Deprivation of food, water, sleep or medical care
• Permission needed to eat, sleep or to use the bathroom
DCF Hotline and Maltreatment Codes

• CFOP 170-14 (Response to HT)- Hotline intakes
• Human Trafficking/CSEC: applies to the exchange (or promise of exchange) of a sexual act for anything tangible. Does not require force or coercion.
• Human Trafficking/Labor: applies in cases where there are issues associated with labor trafficking, slavery or servitude. Sara Goldfarb (DCF).
• Report types for each code: Other (perpetrator unknown or not a parent), In-home and Institutional (parent or caregiver is associated with a foster or group home).
• Referral to Law Enforcement (local or federal).
• If the child victim is not a US citizen, USDHS and the respective Consular’s office must be notified. Also, Office of Refugee Resettlement should be contacted to see if child will be placed in Unaccompanied Refugees Minor Program.
Child Protective Investigators

CFOP 170-14

• Human Trafficking Screen Tool- list of questions used by CPIs to identify possible HT victims.
• Requires MDT staffing (DCF, CBC, GAL, DJJ, etc.,) within 2 weeks of intake for confirmed or suspected case of HT, to discuss placement, services, etc.
• Requires a Child Placement Agreement for confirmed case of sex trafficking.
• Confirm identity of parent to child victim and whether confirmed parent is a perpetrator of HT.
Dependency Case Managers

- Can place **community** children in Safe House if sexual exploitation is confirmed.

- Use HT screening tool on all children in foster care to determine possible involvement in sexual exploitation. If suspected or confirmed, DCM must contact the Hotline.
Best Practices

• Use a qualified, non-biased interpreter if the victim does not speak fluent English.
• Gentle interview of the child in an unbiased and non-judgmental manner. Ensure the suspected trafficker is not present.
  • Be knowledgeable of child’s culture to lessen alienation.
  • Interviewer and interpreter should be same gender and preferably dressed in civilian clothes.
  • Case coordination between the victim’s advocate and other agencies to ensure victims are not repeatedly interviewed.
• Don’t ask about immigration status at the beginning of the interview; this can be intimidating.
• Be patient: It may take several interviews to establish trust and before the child is forthcoming with information.
Placements for HT victims

ORR placements/procedures

- Parents, relatives or sponsors.
- Unaccompanied Refugee Minor Program: Federal funded foster or therapeutic care placement options (must be found eligible per ORR and reclassified as UARM prior to admission to program). Child can remain in program until finished with high school, or turns 21.

Safe Harbor placements: §409.1678 including group homes and residential treatment centers in Osceola and Brevard.
Safe foster homes: §409.1678.
Tips for Keeping the Child Safe

• Contact DCF Hotline if HT is suspected.
• Confirm parent/caregiver is not a trafficker or allied with the trafficker.
• Don’t reveal placement of child at shelter hearing or otherwise.
• Only advocate for relative placement if confirmed they are suitable and safe. Determine paternity: may be crucial in criminal investigation related to pregnant minor
• Ensure school/daycare officials are on alert in case of attempts to take the child. Provide photo of traffickers.
• Close the courtroom to the public or ask for child to testify in-camera.
• Let the professionals (LE, child psychologist) do the interviewing.
• Monitor or withhold electronic devices that can be used to communicate with perpetrator or external parties.
• Supervise off-site activities.
• Explore placement options for youth with history of recruiting other minors for HT.
“Being in foster care was the perfect training for sexual exploitation.

I was used to being moved without warning, without any say, not knowing where I was going or whether I was allowed to pack my clothes.

After years in foster care, I didn’t think anyone would want to take care of me unless they were paid.

So, when my pimp expected me to make money to support ‘the family,’ it made sense to me.”

-- (Recovered Youth)
Reporting Human Trafficking

• Of a **child** in Florida: **Florida Abuse Hotline:**
  1-800-96-ABUSE
  1-800-962-2873

• Of an **adult** anywhere in the United States or a **child outside** of Florida: **National Human Trafficking Resource Center:**
  • 1-888-3737-888

U.S. Department of Justice:
  • 1-888-428-7581

Florida Agency for Workforce Innovation, Migrant and Seasonal Farmworker Exploitation:
  • 1-800-633-3572
Sources

- Trafficking Victim Protection Reauthorization Act
- Polaris Project
- NCMEC
- Sara Goldfarb (DCF).
IMMIGRATION RELIEF AVAILABLE TO CHILDREN
(A FOCUS ON SIJS AND T VISAS)

Adriana M. Dinis
Immigration Law Group of Florida
721 1st Avenue North
St. Petersburg, FL 33701
(727) 471-0677
adriana@immlawfl.com
www.facebook.com/immlawfl
WWW.IMMLAWFL.COM
Let’s talk about the world of US Immigration law.....
Acronyms

- **USCIS** United States Citizenship and Immigration Services
- **ICE** Immigration and Customs Enforcement
- **CBP** Customs and Border Protection
- **EOIR** Executive Office for Immigration Review
Immigration Law

- Immigration law is ADMINISTRATIVE LAW
  - It is not civil and NOT criminal law

- VERY DISCRETIONARY

- Immigration officers are often not attorneys

- Immigration judges are appointed by the DOJ and have no limit – they are forever

- No right to an attorney regardless of age
What does it mean to be “undocumented”?

A person who is present in the U.S. without lawful immigration status or without proof of lawful status.

**Examples:**
- A person who came to U.S. on a visa that has expired.
- A person who entered the U.S. without inspection.
- A person who obtained lawful immigration status and subsequently lost his/her status.
- A person who obtained lawful immigration status but does not have proof of status.
Who is a “Unaccompanied Alien Child” (a UAC)?

- A child who:
  - Has no lawful immigration status in the United States
  - Has not attained 18 years of age
  - Has no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody.

Number of UACs released to sponsors in Florida:

- 10/2013 - 09/2014  5,445
- 10/2014 - 09/2015  2,908
- 10/2015 - 06/2016  3,851
**Unaccompanied Children at the Southwest Border**

At the direction of the President, a Unified Coordination Group is leveraging Federal resources to address the humanitarian situation associated with the influx of unaccompanied children entering the U.S. across the southwest border. This chart depicts the general process to enhance capacity resulting from federal coordination.

<table>
<thead>
<tr>
<th>Step</th>
<th>Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>After arrival in U.S., child is identified, undergoes initial health screening and immigration processing to initiate removal proceedings.</td>
</tr>
<tr>
<td>2</td>
<td>Child may be transferred to short term multi-agency center where HHS provides medical check, immunizations and shelter assignment.</td>
</tr>
<tr>
<td>3</td>
<td>Child travels to HHS shelter assignment. Transportation is provided by DHS.</td>
</tr>
<tr>
<td>4</td>
<td>Child remains in HHS shelter until a sponsor is identified on a case-by-case basis.</td>
</tr>
<tr>
<td>5</td>
<td>Child is placed with a relative or other sponsor in the U.S. pending outcome of the immigration process.</td>
</tr>
</tbody>
</table>

*Note: This chart only shows interagency process to address the humanitarian situation.*

**DoD is providing temporary shelter to assist HHS including JB Lackland, NB Ventura County and Ft. Sill.**
Any undocumented child can be placed into deportation proceedings even if...

- The juvenile court has ordered the child to live in a licensed foster home or relative placement

- The child does not have any relatives in his/her home country who can care for him/her.

- The child has lived in the U.S. for most of his/her life and has no ties with their home country.
Common myths

- Individuals who have a social security number have immigration status
- Individuals who have been in the U.S. for most of their life will not be deported
- All children who are adopted by US citizens become automatic US citizens
- Once you have immigration status you cannot be deported
Common Myths Continued….  

- Everyone in the US can apply for a work permit  
- People are undocumented by choice ("get in line" argument)  
- Anyone can assist someone in filing out their immigration forms (issues with notaries)  
- Just because you have a US citizen child you automatically get immigration status ("anchor baby" argument)
Why is it important for an undocumented person to obtain lawful immigration status?

- Work lawfully in the U.S. (obtain a SS#)
- Obtain a state-issued ID or Driver's License
- Receive certain public benefits, such as Medicaid
- Be able to attend college/university
- Receive financial assistance for college education
(1) All calls received by the statewide Department of Children and Family Services Abuse hotline ("Hotline") will be screened without regard to the immigration status of the alleged victim or the family or household of the victim, pursuant to the procedures established in Chapter 65C-10, F.A.C. A child’s immigration status will be determined through SAVE only, concurrent with the ongoing investigation into allegations of abuse, abandonment or neglect, and only in an effort to promote the child’s best interests which includes ascertaining, in good faith, a child’s eligibility for public benefits or need for a special immigrant juvenile visa. No such status check or other contact shall be made for the purpose of seeking the child’s or the family’s detention by INS or the initiation or resumption of deportation or exclusion proceedings against the child or the child’s family, irrespective of the outcome of the dependency proceeding. No Department of Children and Family Services staff member may attempt to place any alien child in INS custody. The immigration status of a child shall have no bearing on either the care or service rendered by Department of Children and Family Services to a child or on judicial proceedings undertaken by Department of Children and Family Services on behalf of the child. In the event an abuse report is determined to be unfounded, Department of Children and Family Services shall not thereafter communicate with the INS concerning the child or the child’s family.
T Visa for Victims of Trafficking

- Non-immigrant visa designed specifically for those who have been subjected to sex trafficking or forced labor (a four year visa that can lead to lawful permanent residence status)

- Florida is named as one of the top three states as a destination for trafficked persons, along with New York and Texas.

- If you suspect someone is a victim of trafficking do not ask sensitive questions in front of a potential trafficked person’s ‘friends’, ‘family’ or ‘employer’. These individuals may be the traffickers themselves.

National Human Trafficking Resource Center (NHTRC)
1 888 373 7888
T Visa Requirements

- Be a victim of a severe form of human trafficking

- Applicant must be physically present in the U.S. on account of the trafficking.

- The applicant would suffer extreme hardship involving unusual and severe harm if he/she is removed from the U.S.

- The applicant has not committed a severe form of trafficking in persons.

- If the applicant is 18 years of age or older, he/she has complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking
What is trafficking?

“Severe Form of Trafficking in Persons” (22 U.S.C. § 7102(8)):

- **Sex trafficking** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

- The recruitment, harboring, transportation, provision, or obtaining of a person or labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
### What is trafficking Continued…

#### TRAFFICKING
- Crime against a person
- Victims either do not consent to their situations, or if they initially consent, that consent is rendered meaningless by the actions of the traffickers.
- Exploitation of victims to generate illicit gains for the traffickers.
- Trafficking need not entail the physical movement of a person (but must entail the exploitation of the person for labor/ commercial sex)

#### SMUGGLING
- Crime against a country
- The transaction is mutual and usually ends upon arrival at desired destination.
- Business arrangement between smuggler and person wanting to facilitate the illicit crossing of a nation’s border.
- Smuggling is always transnational.
The Trafficking Process

- Women/girls lured to different country based on false promise of legitimate employment/education

- Often they “pay” for their visa and “working papers” or must repay their trip to US in highly exploitive conditions

- They arrive, and are forced into the sex industry
RED FLAGS AND SIGNS OF HUMAN TRAFFICKING

- Children who are not attending school and working as maids, baby sitters etc
- No control over personal schedule, money, identification or travel documents
- Always accompanied by someone who will not let the person talk on their own behalf
- Always transported to and from work and has no idea of their location or address
RED FLAGS AND SIGNS OF HUMAN TRAFFICKING

- Debt owed for travel, visa, food, housing, clothing
- Extremely fearful of contacting police
- Told by boss that they will call ICE if they report not being paid
- Does the victim have freedom of movement? Can they freely contact family and friends? Can they socialize or attend religious services?
Trafficking Eligibility Letter

- Issued by ORR (Office of Refugee Resettlement) which is under the U.S. Department of Health and Human Services to a foreign child who is determined by ORR to be a victim of a severe form of human trafficking (do not expire)

- Cooperation with law enforcement is not a requirement for foreign children to be issued an Eligibility Letter

- Receipt of Continued Presence, a bona-fide T visa determination or T nonimmigrant status is not required for a foreign child to be issued an Eligibility Letter
Benefit Options for Minors with Eligibility Letters

- URM Program (federal foster care)

- Access to benefits and services to the same extent as a refugee, to include, but not limited to:
  - Medicaid or Children’s Health Insurance Program (CHIP)
  - Temporary Assistance for Needy Families (TANF)
  - Free Application for Federal Student Aid (FAFSA)
  - Food Stamps (SNAP)
Special Immigrant Juvenile Status (SIJS)

- What is it?
  - An avenue for certain abused, abandoned or neglected undocumented children under juvenile/State court jurisdiction to become LPRs.

- Where do you find it?
  - Regulations are at 8 C.F.R. § 204.11 and are outdated
  - Proposed Regulations: 76 Fed. Reg 54978 (Sept. 6, 2011)
SIJS Requirements

- Child has been declared dependent on a Juvenile Court located in the U.S. or whom a Juvenile Court has legally committed to or placed under the custody of, an agency or department of a state, or an individual or entity appointed by a state or Juvenile Court located in the U.S.

- Reunification with one or both parents is not a viable option due to abuse, abandonment or neglect or other similar basis under state law

- It is not in the juvenile’s best interests to return to his or her country of residence, or his or her parent’s country of residence
“Juvenile court” is a court in the U.S. having jurisdiction under State law to make judicial determinations about the custody and care of juveniles. 8 C.F.R. § 204.11(a)

In Florida this can be dependency, delinquency, family (adoption, divorce, paternity, temporary custody of a minor) and probate court
Requirement Two

- Abuse, abandonment or neglect can have occurred inside/outside the U.S.

- The TVPRA deleted the phrase “eligible for long-term foster care” and replaced it with “reunification with 1 or both of the [child]’s parents is not viable.”
Requirement Three

- Factors to consider for “best interest” determination:
  - Child fears retaliation by abusive family members.
  - Child has no responsible family members to provide her with care and protection.
  - Child will have no access to medical, educational or social services.
  - Child is acculturated to life in the U.S.
  - All of child’s personal ties, perhaps siblings, are here.
  - Child has been educated in the U.S.
  - Country conditions of child’s home country
SIJS Continued…

- Child must remain under juvenile court jurisdiction while the immigration application is pending
  - Fla. Stat. 39.013(2) allows the Court to retain jurisdiction over the dependency case solely for SIJS purposes until the child’s 22nd birthday

- Child must be under 21 and unmarried
  - However, under Florida law you MUST get the predicate order before the child’s 18th birthday
  - A child’s having her own children is not a bar to SIJS.

- Cannot assist parents with immigration status
Examples of Other Immigration Remedies Available:

- U Non-immigrant Status
- Deferred Action for Early Childhood Arrivals (“DACA”)
- Self petition under Violence Against Women Act (“VAWA”)
- Asylum
- Family-Based Petitions & Visas
- Temporary Protected Status
  (ie. Haiti, Honduras, El Salvador)
For help in the Tampa Bay Area

Gulfcoast Legal Services
501 1st Avenue North, Suite 420
Saint Petersburg, FL 33701
(727) 821-0726, ext. 229
# Immigration Options for Victims of Crimes

<table>
<thead>
<tr>
<th>Element</th>
<th>I-360 VAWA Self Petition</th>
<th>I-751 Domestic Violence Waiver for Conditional Residents</th>
<th>I-589 Asylum</th>
<th>I-914 T Visa</th>
<th>I-918 U visa</th>
<th>I-360 SIJS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who is it for?</td>
<td>1. An abused spouse or child (including stepchild) of a USC or LPR; or 2. A parent of a child who is abused by the parent’s USC or LPR spouse; or 3. An abused parent of a USC son or daughter.</td>
<td>Admitted as a Conditional Resident (issued a &quot;green card&quot; that is/was valid for only two years).</td>
<td>Any individual who has suffered, or has a well-founded fear of, persecution in home country on account of his/her race, religion, national origin, membership in a particular social group or political opinion.</td>
<td>Victim of a severe form of trafficking in persons (including sex and/or labor trafficking).</td>
<td>Victim of qualifying crime in INA 101(a)(15)(U)(iii), including but not limited to: rape, sexual assault, prostitution, incest, domestic violence, FGM, involuntary servitude, trafficking, kidnapping, sexual exploitation, false imprisonment, murder, manslaughter, blackmail, extortion, witness tampering, perjury, stalking, fraud in foreign labor contracting and has cooperated with law enforcement during the investigation or prosecution of the crime.</td>
<td>Child under the jurisdiction of state court authorized to make placement decisions with regard to the child, and court has ordered that child cannot be reunified with one or both parents due to abuse, abandonment, neglect or something similar under state law and it is not in the child’s best interest to be returned to his/her country of origin.</td>
</tr>
</tbody>
</table>

*This is not intended to be legal advice but educational information. Please contact an attorney to review what is appropriate for a specific case.*
<table>
<thead>
<tr>
<th>Element</th>
<th>I-360 Self Petition</th>
<th>I-751 Waiver</th>
<th>I-589 Asylum</th>
<th>I-914 T Visa</th>
<th>I-918 U visa</th>
<th>I-360 SIJS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements</td>
<td>1. Spouse or parent is or was (within 2 years of filing) a USC or LPR; or whose son or daughter is a USC; 2. Good faith marriage (spouse only) and resided together in the US; 3. Battery or extreme cruelty; 4. Good moral character.</td>
<td>1. Conditional Resident; 2. Good Faith Marriage; 3. Battery or Extreme Cruelty.</td>
<td>1. Past persecution or well-founded fear of future persecution; 2. Persecutor is government or private actor that the government is unwilling/unable to control; 3. On account of race, religion, national origin, membership in a particular social group or political opinion.</td>
<td>1. Victim of a severe form of trafficking; 2. Physically present in the US, American Samoa, Puerto Rico, US Virgin Islands, Guam or Northern Mariana Islands on account of the trafficking; 3. Complied with any reasonable request for assistance in the investigation or prosecution of trafficking (exceptions for trauma or if under 18 years of age; cooperation can be demonstrated through primary and secondary evidence and does not require a law enforcement certification on I-914 Supplement B); 4. Would suffer extreme hardship if returned to home country.</td>
<td>1. Victim of qualifying crime; 2. Suffered substantial physical or mental abuse from the crime; 3. Law enforcement certification that applicant (or parent/guardian/next friend of child victim) has information and has been/is being/likely to be helpful to authority investigating or prosecuting the crime (law enforcement certification, on I-918 Supplement B is a requirement).</td>
<td>1. Unmarried, under 21, and present in the U.S.; 2. State court declares that (a) the child is a dependent of the court or legally placed with a state or private agency or individual, (b) not in child’s best interests to return to home country, (c) the child cannot be reunified with one or both parents because of abuse, abandonment, neglect, or a similar reason.</td>
</tr>
</tbody>
</table>

Last updated June 26, 2016

*This is not intended to be legal advice but educational information. Please contact an attorney to review what is appropriate for a specific case.*
<table>
<thead>
<tr>
<th>Element</th>
<th>I-360 Self Petition</th>
<th>I-751 Waiver</th>
<th>I-589 Asylum</th>
<th>I-914 T Visa</th>
<th>I-918 U visa</th>
<th>I-360 SIJS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Derivatives</td>
<td>Minor child(ren) of person filing as a spouse/child of an abusive LPR/USC are automatically included as derivatives; if the petition is filed or approved before they turn 21 but don’t get LPR status before 21, they shall be considered a VAWA self-petitioner with the same priority date as the parent. If applying as Abused Parent of USC, there are no eligible derivatives.</td>
<td>No derivatives per se; though conditional resident children can be included in parent's I-751 application.</td>
<td>Spouse (non-abusive) and child(ren) (under 21 and unmarried).</td>
<td>Adult victim- spouse, child(ren) (under 21 and unmarried); Child victim- spouse, child(ren), sibling(s) (under 18 and unmarried), parent(s). Family members whose eligibility is based on present danger of retaliation (regardless of the age of the principal): parent, siblings (under 18 and unmarried), and adult or minor child of a derivative beneficiary of the principal (T-6).</td>
<td>Adult victim- spouse (non-abusive), child(ren) (under 21 and unmarried); Child victim- spouse, child(ren), sibling(s), parent(s)</td>
<td>None with approved I-360 alone. Current explicit prohibition on petitioning for parent. Once LPR status is obtained, may be able to petition for siblings or children.</td>
</tr>
<tr>
<td>Element</td>
<td>I-360 Self Petition</td>
<td>I-751 Waiver</td>
<td>I-589 Asylum</td>
<td>I-914 T Visa</td>
<td>I-918 U visa</td>
<td>I-360 SIJS</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Divorce, Remarriage, Death</td>
<td>Divorce within past 2 years “connected to” domestic violence OK; Remarriage while petition is pending NOT OK, AFTER approval OK. If abusive USC parent or spouse dies, may file within 2 years after death. NOT applicable to cases where LPR abuser dies.</td>
<td>Divorce and death are additional bases for filing a waiver which may be filed concurrently with DV waiver if applicable. Remarriage before approval of the waiver might raise CIS fraud suspicions.</td>
<td>Applicant’s divorce or remarriage not relevant, derivative spouse may lose eligibility if divorced from asylum seeker.</td>
<td>Applicant’s divorce or remarriage not relevant to primary victim’s eligibility, derivative family member may lose eligibility if the family relationship is terminated before the application is approved.</td>
<td>If client is on the waitlist for visa availability, then applicant’s divorce will cut off eligibility for spouse derivative. If client has full 4 years of continuous presence, applicant’s divorce or remarriage not relevant, derivative spouse/child may lose eligibility on CIS discretion.</td>
<td>Depends-states may consider applicant’s prior marriage before filing I-360 and/or adjustment differently as divorce may not re-qualify someone as a child; but may if forced or false marriage.</td>
</tr>
<tr>
<td>Element</td>
<td>I-360 Self Petition</td>
<td>I-751 Waiver</td>
<td>I-589 Asylum</td>
<td>I-914 T Visa</td>
<td>I-918 U visa</td>
<td>I-360 SIJS</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td><strong>Public Benefits</strong></td>
<td>Prima facie eligibility confers eligibility as “qualified alien” under welfare law for benefits if need is “connected to” the abuse.</td>
<td>No special access to public benefits, except generally as LPR “qualified alien.”</td>
<td>Approval confers eligibility for federally-funded public benefits and specialized services = all benefits refugees receive.</td>
<td>Minors who &quot;may have been&quot; trafficked can apply for Interim HHS Eligibility Letters, and trafficked minors can apply for HHS Eligibility Letters. Continued Presence or T Visa approval leads to HHS Certification, which grants eligibility for federally funded public benefits and specialized services. Some states confer benefits pre- and post-filing of T visa and granting of T visa.</td>
<td>No special eligibility conferred by U Visa except where states have conferred.</td>
<td>I-360 approval may not confer any access to benefits; however, if a child is in ORR custody, they may be eligible for the federal foster care program. But the answer may be more nuanced depending on the state.</td>
</tr>
<tr>
<td><strong>Deadline</strong></td>
<td>Within two years of a divorce “connected to” domestic violence. Within 2 years of USC or LPR abuser’s loss of status, if related to domestic violence.</td>
<td>Anytime before the expiration of the card, or after if applying for a waiver.</td>
<td>Adults- within one year of entry to US or qualifying event, with some exceptions. Unaccompanied child- no filing deadline. Must file I-730 for derivatives within 2 years of grant.</td>
<td>Person trafficked before October 28, 2000 must have applied for a visa within one year of January 31, 2002, or show exceptional circumstances. If trafficked after that date, no filing deadlines.</td>
<td>None, but must file I-918 for derivative minor child before the derivative child turns 21.</td>
<td>I-360 must be submitted before applicant turns 21; must also obtain state court order as defined by state law (i.e., 18 in some states, 21 in other states).</td>
</tr>
</tbody>
</table>

Last updated June 26, 2016

*This is not intended to be legal advice but educational information. Please contact an attorney to review what is appropriate for a specific case.*
<table>
<thead>
<tr>
<th>Element</th>
<th>I-360 Self Petition</th>
<th>I-751 Waiver</th>
<th>I-589 Asylum</th>
<th>I-914 T Visa</th>
<th>I-918 U visa</th>
<th>I-360 SIJS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment Authorization</td>
<td>Can be granted upon approval of I-360. If eligible to apply for residency concurrently with VAWA self-petition (called VAWA one step), may file work permit also based on immediate eligibility to adjust and the EAD can come before the 360 is approved.</td>
<td>Inherent in Conditional Resident status (because = LPR).</td>
<td>Eligible upon asylum approval (no EAD required) or after asylum application has been pending for more than 180 days (with no delays attributed to the applicant as those stop the counting of the 180-day period). If the asylum clock is stopped the amount of time can vary greatly.</td>
<td>Can be granted along with T Visa or with Continued Presence.</td>
<td>Can be granted along with U Visa or based on deferred action status if on the U Visa waitlist (2-year EAD).</td>
<td>Can be submitted upon filing of the I-485 application.</td>
</tr>
<tr>
<td>Element</td>
<td>I-360 Self Petition</td>
<td>I-751 Waiver</td>
<td>I-589 Asylum</td>
<td>I-914 T Visa</td>
<td>I-918 U visa</td>
<td>I-360 SIJS</td>
</tr>
<tr>
<td>---------</td>
<td>---------------------</td>
<td>--------------</td>
<td>--------------</td>
<td>-------------</td>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td>Lawful Permanent Resident (&quot;Green Card&quot;) Eligibility</td>
<td>Eligible to apply as soon as Priority Date is current (can transfer from prior I-130) (immediate for USC spouse/child, may be several years for LPR spouse/child based upon times indicated in visa bulletins).</td>
<td>Approval affirms unconditional Legal Permanent Resident status.</td>
<td>Eligible to apply without fee one year after asylum grant.</td>
<td>Eligible to apply after 3 years of continuous physical presence or eligible to apply to adjust early if receive confirmation from the federal Attorney General (e.g., Department of Justice) that the investigation and case is complete and that the victim has complied with requests for cooperation.</td>
<td>Eligible to apply after 3 years of continuous physical presence and applicant has not unreasonably refused to provide assistance in the criminal investigation or prosecution; is not inadmissible under INA section 212(a)(3)(E), and applicant's presence in the US is justified on humanitarian grounds, to ensure family unity or is in the public interest.</td>
<td>Immediately available as long as there are sufficient visas available; as of May 2016, there will be delays for applicants from El Salvador, Guatemala, and Honduras. Check the U.S. Department of State's monthly visa bulletins for the most up to date information.</td>
</tr>
</tbody>
</table>

| INA provisions | 204, 245(a) & (c) | 216(c)(4)(C) | 208, 209 | 101(a)(15)(T); 214(o); 245(l) | 101(a)(15)(U); 214(p); 245(m) | 101(a)(27)(j); 245(h) |
Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children

By Angie Junck

ABSTRACT

Special Immigrant Juvenile Status is a form of immigration relief available to undocumented children who are under the jurisdiction of a state juvenile court (defined broadly), who cannot be reunified with one or both parents due to abuse, neglect, or abandonment, or similar basis under state law, and in whose best interest it is to remain in the United States. Although immigration is a federal issue, Congress has directed that state juvenile courts make the factual findings that establish basic SIJS eligibility. Without these findings, children may never be able to legalize their status in the U.S. and become productive, contributing members of society.

INTRODUCTION

Special Immigrant Juvenile Status (SIJS) is a form of immigration relief that allows undocumented children to remain in the United States to obtain lawful permanent residency when (1) they are under the jurisdiction of a state juvenile court (defined broadly as a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles);1 (2) they cannot be reunified with one or both parents due to abuse, neglect, or abandonment, or similar basis under state law; and (3) their best interests require that they remain in the United States. Lawful permanent residency confers the right to live and work in the United States, as well as many of the benefits that U.S. citizens hold. The application process requires that state juvenile courts enter specific findings before children can petition for SIJS with immigration authorities. If these prerequisites are not fulfilled, these children may be precluded from ever gaining legal status in the United States, and thus may live under the constant shadow of deportation. This article discusses the purpose and requirements of Special Immigrant Juvenile Status and the juvenile courts' role in ensuring that undocumented youth apply for such relief.2

1 8 C.F.R. § 204.11(a).
2 To read more about Special Immigrant Juvenile Status, consult Angie Junck, Sally Kinoshita, & Katherine Brady, Immigration Benchbook for Juvenile and Family Court Judges (Immigrant Legal
I. BACKGROUND ON UNDOCUMENTED YOUTH IN THE UNITED STATES

The intersection of children and immigration in the United States is a growing phenomenon. Of the total undocumented population in the U.S., approximately 16%, or 1.8 million, are children. In 2008, one in four children in the U.S. lived in immigrant families, and 5.5 million children had at least one undocumented parent. Yet the legal, social, and emotional challenges facing children who are undocumented or whose parents are undocumented often lack social visibility.

Immigrant children come to the United States in a variety of ways. Some come with their parents as infants or young children; these children have grown up almost entirely in the U.S. and consider this country their only home. Other immigrant children may travel to the U.S. with an adult relative or a family friend to be reunited with their families already in the U.S. Unfortunately, some children cannot establish contact with their families once they have entered the U.S. and therefore remain without any support. Others begin their journeys with their parents but lose them along the way, as Elian Gonzalez did when he arrived in the U.S. alone after his mother perished in the journey from Cuba.

Children may also travel to the U.S. unaccompanied because they are fleeing their home countries to escape poverty, violence, and persecution, or because their parents have abandoned, abused, or neglected them. Additionally, some children are forced into the U.S. against their will as victims of sex and labor trafficking, or are forced into such situations after arrival. Unaccompanied and undocumented, these children are especially vulnerable to harm and exploitation.

Regardless of the way children arrive in the U.S., they face severe challenges if they are undocumented. As a whole, undocumented youth are more likely to live in poverty, less likely...
to have health insurance, and more likely to encounter barriers to accessing public benefits and social services than U.S. citizen youth.\(^8\)

Undocumented children are extremely vulnerable when they have been abused, neglected, or abandoned. In addition to living with fear of deportation that drives them and their families into the shadows, they deal with the trauma and burdens of abuse, neglect, or abandonment often inflicted upon them by those who they rely upon for care and support. The need to remain invisible marginalizes these children and their families and undermines their ability to access basic necessities and protection from law enforcement.

To address this untenable position, in 1990 Congress created a form of immigration relief called Special Immigrant Juvenile Status (SIJS) to meet the needs of undocumented children who have been abused, neglected, or abandoned. It is important that undocumented youth apply for SIJS if they are eligible because approval means that they will be able to remain legally in the United States. SIJS eliminates barriers to pursuing higher education, enables the child to lawfully get a job and access specified public benefits, and removes the constant fear of deportation to a country where they may have little or no experience or connections. Legalizing these children also benefits society at large by permitting them to integrate into the U.S. openly and become productive members of society.

II. BACKGROUND ON SPECIAL IMMIGRANT JUVENILE STATUS

Special Immigrant Juvenile Status originated in 1990 as amendments to the Immigration and Nationality Act, in response to the inability of unaccompanied children to petition for immigration legal status without their parents under the family-sponsored immigration framework. By passing SIJS, Congress intended to permit children, due to their unique status, to obtain such an immigration benefit. Since then, the statute has been substantively amended twice, in 1997 and in 2008.

In 1997, due to perceived end runs to improperly legalize certain undocumented youth, statutory language was added to clarify that SIJS applies specifically to abused, neglected, or abandoned children.\(^9\) Due in part to the problematic and limiting language of the 1997 amendments, revisions to the SIJS statute were made in 2008 by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA).\(^10\) The TVPRA, in providing critical protections for the tens of thousands of unaccompanied minors who come to the U.S. each year, clarified and expanded the definition of Special Immigrant Juvenile Status and superseded the previous SIJS statutory definition. Many more children are now eligible for SIJS under the TVPRA.

\(^8\) “According to the official poverty measure, 21% of those with immigrant parents live in poverty, compared with 14% of those with U.S.-born parents. If families with incomes up to twice the poverty level are included, the differences are even more dramatic: 49% of those with immigrant parents live in poverty, compared with 34% of those with U.S.-born parents.” Margie K. Shields & Richard E. Behrman, Children of immigrant Families: Analysis and Recommendations, 14 Future Child., 2, 2004 at 4, 7. See also David B. Thronson, You Can’t Get Here from Here, 14 Virg. J. Soc. Pol’y L., 58, 77-78 (2006).


<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>New Arrivals</th>
<th>Adjustments</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010(^{11})</td>
<td>12</td>
<td>1,480</td>
<td>1,492</td>
</tr>
<tr>
<td>2009(^{12})</td>
<td>13</td>
<td>1,144</td>
<td>1,157</td>
</tr>
<tr>
<td>2008(^{13})</td>
<td>29</td>
<td>989</td>
<td>1,018</td>
</tr>
<tr>
<td>2007(^{14})</td>
<td>24</td>
<td>772</td>
<td>796</td>
</tr>
<tr>
<td>2006(^{15})</td>
<td>18</td>
<td>894</td>
<td>912</td>
</tr>
<tr>
<td>2005(^{16})</td>
<td>19</td>
<td>660</td>
<td>679</td>
</tr>
<tr>
<td>2004(^{17})</td>
<td>10</td>
<td>624</td>
<td>634</td>
</tr>
<tr>
<td>2003(^{18})</td>
<td>25</td>
<td>445</td>
<td>470</td>
</tr>
<tr>
<td>2002(^{19})</td>
<td>11</td>
<td>510</td>
<td>521</td>
</tr>
<tr>
<td>2001(^{20})</td>
<td>15</td>
<td>541</td>
<td>556</td>
</tr>
<tr>
<td>2000(^{21})</td>
<td>1</td>
<td>658</td>
<td>659</td>
</tr>
<tr>
<td>1999(^{22})</td>
<td>3</td>
<td>345</td>
<td>348</td>
</tr>
<tr>
<td>1998(^{23})</td>
<td>4</td>
<td>283</td>
<td>287</td>
</tr>
<tr>
<td>1997(^{24})</td>
<td>0</td>
<td>430</td>
<td>430</td>
</tr>
</tbody>
</table>

11 2010 Yearbook, supra note 11.
SIJS was created over 20 years ago, but it is still an underused form of immigration relief. In 2010, a total of 1,492 immigrant youths obtained lawful permanent residency through SIJS (see Table 1). This was a 29% increase from 2009, but the number is small compared to the total of 265,808 immigrants under 21 who obtained lawful permanent residency in 2010.

There are several reasons why only a relatively few juveniles obtain lawful permanent residency through SIJS, but two key reasons are the lack of knowledge of its existence among persons who work with such children, and a lack of resources to help these persons navigate the SIJS process.

First and foremost, persons who serve youth (such as child welfare attorneys, teachers, social workers, and health workers) frequently do not know that SIJS exists. Some juvenile court judges and others who work with children are familiar with SIJS, but the vast majority of individuals who come into regular contact with these children may have never heard of SIJS. There are tragic stories of undocumented immigrant youth who grew up in the U.S. foster care and related systems, and may have been eligible for SIJS and other immigration relief, but did not legalize their status before discharge. Most of these youth will forever be undocumented and therefore cannot pursue higher education or legally work, and live with the constant fear of deportation.

Second, even if persons working with these children know about SIJS, they may not have the available resources to help the children obtain SIJS, including the technical knowledge or the assistance of local pro bono immigration counsel to file the case with the relevant federal immigration agency. Even if an SIJS-related case is presented to local juvenile courts, advocates report that it is often hard to obtain SIJS-related findings due to confusion about the juvenile court’s role in the SIJS process.

### III. REQUIREMENTS FOR SPECIAL IMMIGRANT JUVENILE STATUS

Juvenile courts play a crucial role in SIJS applications because they make the factual findings that allow children to apply. Immigration is generally a federal matter; federal immigration authorities must ultimately decide whether a minor will be granted SIJS, but a minor may not even petition the U.S. government for SIJS until specified findings have been made in state administrative or judicial proceedings.


27 Persons who applied for SIJS on or after May 13, 2005 and whose petitions were denied or revoked on account of one of the following three bases may be eligible to file a motion to reopen the denied SIJ petition or application for adjustment of status. (1) Petition was denied or revoked due to age if under 21 at the time of filing, (2) dependency status, if at the time of filing he or she was the subject of a valid dependency order that was subsequently terminated based on age, or (3) due to specific consent. See Settlement Agreement in Perez-Olano, et al. v. Holder, et al., 2:05-cv-03604-DDP (C.D. Cal.).

28 8 U.S.C.A. § 1101(a)(27)(J)(ii). See also In re Antoina McD., 50 A.D.3d 507, 856 N.Y.S.2d (1st Dept. 2008) (reversing trial court that “refused to make the factual findings that would enable appellant to apply for Special Immigrant Juvenile Status.”)
The required SIJS factual findings are enumerated in federal statute (8 U.S.C.A. § 1101(a)(27)(J)) and its implementing regulations (Code of Federal Regulations at 8 C.F.R. § 204.11).\(^{29}\) The court:

- must declare the child a dependent of the court, place the child under the custody of a state agency or department, or grant custody of the child to an individual or entity because the child cannot be reunified with one or both parents;
- must find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and
- must determine that return to the child’s or parent’s country of nationality or country of last habitual residence is not in the child’s best interest.

These enumerated findings must be set out specifically in an order signed by the juvenile court judge or other presiding judge.\(^{30}\) The signed order will be submitted to a federal immigration agency called the Office of Citizenship and Immigration Services (USCIS) with the petition for Special Immigrant Juvenile Status and an application for lawful permanent residency. Importantly, the factual findings concerning the child that are required at this step of the process are findings that “may only be made by the juvenile court.”\(^{31}\) The juvenile court, however, does not make an immigration decision such as whether the child is eligible for SIJS or may stay in the U.S., as such decisions rest with the federal government.\(^{32}\)

In addition to these findings for an SIJS order, federal regulations pre-dating the TVPRA provide additional requirements for SIJS applicants that juvenile courts should understand, including the following:\(^{33}\):

1) The applicant must be under 21 when he or she files the SIJS petition;
2) Juvenile courts should continue to maintain jurisdiction until lawful permanent residency is granted unless termination of jurisdiction is due to age. If jurisdiction is

\(^{29}\) It is important to note that although the statutory definition of a Special Immigrant Juvenile was amended by the TVPRA in 2008, final regulations implementing the new SIJS statutory language have not yet been issued. The federal government issued proposed regulations on Sept. 6, 2011 and received public comments by November 2011. See 76 Fed. Reg. 54978 (Sept. 6, 2011) (proposed rule). Until such regulations are finalized, requirements under the old regulations that do not conflict with and are not addressed by the revised SIJS statute remain in place. Those juvenile court judges who have signed SIJS orders in the past should be aware that post-2008 SIJS cases will require compliance with these new statutory provisions.

\(^{30}\) 8 C.F.R. § 204.11(d)(2).

\(^{31}\) Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court, Final Rule, Department of Justice, Immigration and Naturalization Service, Supplementary Information, 58 Fed. Reg. 42, 847 (Aug. 12, 1995). See also In re Juvenile 2002-098, 148 N.H. 743, 813 A2d 1197 (2002) (upholding trial court’s exercise of jurisdiction to issue special immigrant juvenile findings in case where abuse occurred in Romania); SH v. Dep’t of Children and Families, 880 So.2d 1279, 1281 n. 2 (Fl. Dist. Ct. of Appeal 2004) (noting that “the court did have subject matter jurisdiction over 16-year-old child’s request for special immigrant juvenile findings based on abandonment in Guatemala”).


\(^{33}\) These requirements are set forth under federal regulations pre-dating passage of the TVPRA. The federal government has introduced proposed regulations based on the new SIJS statutory language in the TVPRA, but they have not been finalized. See 76 Fed. Reg. 54978 (Sept. 6, 2011) (proposed rule).
terminated due to age, juvenile courts should specify in the court order that termination is due to age.34

3) The applicant must remain unmarried pending the completion of the process; and

4) If a youth is in federal immigration custody, “specific consent” for a juvenile court determination changing the custody/placement status of that child is required from the federal Office of Refugee Resettlement (ORR), Division of Unaccompanied Children’s Services (DUCS).

To become a lawful permanent resident under SIJS (an application that may be submitted at the same time as SIJS), the child is subject to specified “grounds of inadmissibility,” which are bars under immigration law. However, even if a ground of inadmissibility applies, a waiver may nonetheless be available under a generous standard for Special Immigrant Juveniles.35

The following discussion describes in greater detail many of these SIJS statutory and regulatory requirements.

A. Under the Jurisdiction of a Juvenile Court: Dependency, Guardianship, Delinquency, and Adoption

To be eligible for SIJS, a child must be dependent on a juvenile court, defined broadly as a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.36 Whether a court is a “juvenile court” under the federal definition is not determined by the label that the state gives to the court, but rather by the court’s function. In many states, qualifying courts include various courts that handle different matters involving juveniles including dependency, guardianship, delinquency, or adoption. Judges handling all of these types of cases, not just judges traditionally labeled or who consider themselves to be “juvenile court” judges, must understand that SIJS is an option for undocumented youth subject to their proceedings, and thus, these courts can enter SIJS findings.

When a juvenile court accepts jurisdiction to decide about the care and custody of a child, the child is dependent on the court for immigration purposes. The federal act recites that a juvenile is dependent upon the court if she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.”37 Establishing dependency on a juvenile court does not require state intervention or a decision to place the child in any particular form of care.

34 “In accordance with the Settlement Agreement, USCIS will not, based on age or dependency status, deny or revoke any SIJ petition if, at the time the class member files or filed the petition, the class member was under 21 years of age and was the subject of a valid dependency order that was later terminated based on age. Similarly, USCIS may not, based on age or dependency status, deny an SIJ-based application for adjustment of status if the class member files or filed the application when he or she was under 21 and was the subject of a valid dependency order.” U.S. Dep’t of Homeland Sec., Policy Memorandum on the Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement 2 (April 4, 2011), available at http://www.uscis.gov/USCIS/Laws/Memoranda/2011/April/perez-olano-settlement.pdf.


36 8 C.F.R. § 204.11(a).

37 8 C.F.R. § 204.11(c)(6).
Children for whom a court has appointed a guardian are also eligible for SIJS. Specifically, the TVPRA specifies SIJS eligibility for children placed under the custody of “an individual . . . appointed by a state or juvenile court.” A USCIS memorandum as well as proposed federal SIJS regulations confirm this interpretation. A child for whom a guardianship is established may qualify for SIJS even if the state never formally removed her from a parent or placed her in foster care.

Because SIJS is often mistakenly seen as relief available only for children in dependency proceedings and, increasingly, in guardianship proceedings, relatively few children in delinquency proceedings apply for SIJS. The plain language of the federal statute, however, allows for the grant of SIJS to children in juvenile delinquency proceedings: “[T]he court must have legally committed the child to or placed the child under the custody of, an agency or department of a state. . . .” State juvenile courts often place delinquent children under the custody of probation departments, which constitute state agencies or departments.

In addition, statutory language providing that the child cannot be reunified with one or both parents “due to abuse, neglect, or abandonment, or similar basis found under state law” provides the basis for a delinquency court to enter SIJS findings. Some courts in delinquency cases have hesitated to enter the requisite SIJS findings because the former statutory language required courts to make findings exclusively regarding abuse, neglect, or abandonment. Some courts concluded that these findings were in the sole jurisdiction of dependency courts and thus did not have the authority to make them in delinquency proceedings. The TVPRA, however, through the phrase “a similar basis found under state law,” gives delinquency courts broader leeway to enter similar findings within their jurisdiction. USCIS has approved such SIJS petitions granted in delinquency proceedings.

Finally, just as children in guardianship proceedings can qualify for SIJS, so can children in adoption proceedings. These children have been placed under the custody of “an individual . . . appointed by a state or juvenile court.” Many times before a juvenile court finalizes an adoption for a child, the juvenile court judge will place the child formally in the legal and physical custody of the prospective adoptive parents. If this happens, the child may be eligible for SIJS presuming all other requirements are met. The court handling the adoption is clearly


39 Neufeld Memorandum, id., at 2; and 76 Fed. Reg. 54978 (Sept. 6, 2011) (proposed rule).


42 Id.

43 As one former INS official remarked, “We took sociology. We know that a lot of kids end up in delinquency for the same reason they could have ended up in dependency: because of abuse in the home.” Junck et al., SIJS AND OTHER OPTIONS, 4-7, supra note 2. See also Katherine Brady & David Thronson, Immigration Issues Representing Children Who Are Not United States Citizens, in CHILD WELFARE LAW AND PRACTICE MANUAL: REPRESENTING CHILDREN, PARENTS AND STATE AGENCIES IN ABUSE, NEGLECT AND DEPENDENCY CASES, Ch. 7 (National Association of Counsel for Children, 2d. ed., 2010).

a “juvenile court” for SIJS purposes, and the custody order clearly places a child in the custody of an individual (or individuals) appointed by the juvenile court.

USCIS has long taken the position that children who are going to be, or have been, adopted can qualify for SIJS, and many children who were ultimately adopted have been granted SIJS. Granting SIJS to children in adoption proceedings confers an important benefit. It significantly eases the legal process for parents adopting a child born outside the U.S. If they are unable to obtain SIJS for an adopted child, they face serious international and immigration legal hoops that can discourage adoption altogether.

B. The Juvenile Court Must Find that Reunification with One or Both Parents Is Not Viable

To secure SIJS status for a child, the court must find that the child’s reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law.45

A finding that reunification is not viable does not require formal termination of parental rights or a determination that reunification will never be possible.46 In other words, the possibility of reunification in the future need not deter a finding that reunification presently is not viable for purposes of SIJS.47

The “one or both parents” language also signifies that the child need not be separated from both parents to be eligible for SIJS. The plain language of the statute provides SIJS eligibility based on the non-viability of reunification with one parent due to abuse, neglect, or abandonment, even while the child remains in the care of the other parent or while the court is actively trying to reunite the child with the other parent. USCIS has approved such applications. The parent with whom the child remains or with whom he/she eventually reunifies, however, will not be eligible for legal status through the child in the future, even after he or she becomes a U.S. citizen.48

The original SIJS statute required an applicant to have been “deemed eligible for long-term foster care” by the court, which in turn was interpreted to mean that family reunification was no longer a viable option. The TVPRA eliminated this requirement, which confused both juvenile courts and USCIS. In essence, the TVPRA clarified the statute and made clear that to be SIJS-eligible, the child need not be in actual state foster care or dependency proceedings.49 Children involved in other state court proceedings can also be eligible for SIJS.

46 Brady & Thronson, supra note 43, at 418.
47 Id.
48 8 U.S.C.A. § 1255(h). Alternately, some children who are eligible for SIJS are also eligible for a U visa, which does not bar a parent from obtaining derivative status. The U visa is codified in 8 U.S.C.A. § 1101(a)(15)(U).
49 Neufeld Memorandum, at 2, supra note 38 (“Accordingly, petitions that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian now may be eligible.”)
C. The Court’s Findings and Orders Must Be Based on Abuse, Neglect, or Abandonment or Similar Basis in Law

The juvenile court’s order must specify that reunification with one or both parents is not viable *due to abuse, neglect, or abandonment of the child or a similar basis under state law.*\(^50\) Immigration authorities will not accept orders in cases where the court’s jurisdiction was sought primarily to obtain lawful immigration status.

Because abuse, neglect, and abandonment or a similar condition are not defined in the SIJS statute or regulations, state law governs their meaning for SIJS purposes.\(^51\) The relevant question for SIJS eligibility is whether a court, under the applicable state law, has found abuse, neglect, or abandonment or some other similar condition. The proposed federal SIJS regulations provide specific examples of varying state definitions of abuse, neglect, abandonment, or similar condition that will qualify children for SIJS.\(^52\) Importantly, the abuse, neglect, abandonment, or similar condition language does not require that formal charges of abuse, neglect, or abandonment be levied against parents. For example, a child for whom the court appoints a guardian can qualify without a separate proceeding against the parents alleging abuse, neglect, or abandonment. The child may also be eligible for SIJS status even if the abuse, neglect, or abandonment took place outside the U.S.

Under TVPRA changes, the SIJS statute now allows for SIJS eligibility based on findings under state law “similar” to abuse, neglect, or abandonment. For example, some states use terms other than abuse and neglect to describe the basis for refusing to reunify a child with his or her parents. Proposed federal SIJS regulations provide an example of a similar condition under Connecticut law. In Connecticut, a child may be found to be “uncared for” if the child is “homeless” or if his or her “home cannot provide the specialized care that the physical, emotional or mental condition of the child requires.”\(^53\) Proposed regulations state that “‘uncared for’ may be similar to abuse, abandonment, or neglect because children found ‘uncared for’ are equally entitled to juvenile court intervention and protection.”\(^54\) Other courts, such as delinquency, may not normally enter abuse and neglect findings, but other findings for which they have jurisdiction. Additionally, children with deceased parents may not technically meet the definition of “abandonment,” since such parents had no intent to abandon, but nonetheless these children have been effectively abandoned since they lack parents to care for them. The TVPRA broadened the eligibility requirements so that these state law findings using a different vocabulary and providing a legitimate basis under state law for making care and custody determinations form the basis for SIJS eligibility. However, the applicant must still establish that such a basis is in fact similar to a finding of abuse, neglect, or abandonment.\(^55\) To avoid this extra step, if the child

51 See 76 Fed. Reg. 54978 (Sept. 6, 2011) (proposed rule) at 13 (“Specific legal definitions of the terms “abuse, neglect, or abandonment” for the purposes of juvenile dependency proceedings derive from State law and therefore vary from state to state”).
52 Id.
55 Neufeld Memorandum at 2, supra note 38.
was declared a dependent under some other legal term, the court would be wise to include in the SIJS order (discussed below) one of the designated statutory terms “abuse, neglect, or abandonment.” The order should contain the term whose plain meaning reflects what actually happened to the child. According to USCIS, the judge’s order, or other documents submitted, also must provide a very basic statement of the facts that supported the order.56 In states that have their own state SIJS forms, a statement of facts is often not provided and nonetheless accepted by immigration authorities.

D. The Court Must Determine that It Is Not in the Child’s Best Interest To Be Returned to His or Her Home Country

The juvenile court’s SIJS order should recite that it is not in the child’s best interest to be returned to his or her country of nationality or last habitual residence. Judges can enter best interest findings based on a variety of factors, such as family and friend support systems, emotional well-being, and medical and educational resources in the United States. For example, for some children who have spent a significant portion of their lives in the U.S., it may be in their best interest to stay here because they may not be familiar with the conditions and language of their country of origin. The best interests findings may be based upon a range of evidence from a foreign social service agency’s home study determining that a grandparent’s home is not appropriate, to simply interviewing the child to learn that no known appropriate family members live in the home country. Unless the juvenile court includes this language in its SIJS order, submitting evidence in another administrative or judicial proceeding that this finding has been made will pose significant legal and time barriers to the applicant.

E. Other Requirements for SIJS

In addition to the requirements listed above, an immigrant applying for SIJS must be under 21 when the application is filed57 and unmarried until the process is completed.58 The age requirement is seemingly straightforward but complicates matters when combined with other factors. For example, as far as immigration authorities are concerned, a 19-year-old could become a juvenile court dependent for the first time at age 19 and could file an SIJS petition and have it approved, as long as he or she meets the other SIJS requirements. State laws, however, generally require that a child be under 18 at the time he or she first is declared a juvenile court dependent. Because courts often do not accept jurisdiction of children 18 or older, some children may not be eligible to apply for SIJS even though they are under 21.

An SIJS applicant must remain under juvenile court jurisdiction throughout the entire immigration process—that is, until USCIS approves the SIJS petition and the application for adjustment to lawful permanent residency—unless the loss of jurisdiction is due to age.59 If the

56 Id.
57 TVPRA § 234(e)(3)(A); (“(A) the date on which the child reaches the age designated in section 412(d)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B))”); 8 C.F.R. § 204.11(c)(1).
58 8 C.F.R. § 204.11(c)(2).
59 8 C.F.R. § 204.11(c)(5); U.S. Dep’t of Homeland Sec., Policy Memorandum, supra note 34.
court closes the case due to age, it should ensure that the juvenile court order terminating jurisdiction of the case contains specific language that states the case is being closed for that reason. If the court considers terminating jurisdiction for reasons other than age, judges should consider keeping the child under juvenile court jurisdiction until the entire immigration process is complete. Otherwise, the child is at risk of being denied SIJS and deported.

IV. THE ROLE OF THE JUVENILE COURT REGARDING SPECIAL IMMIGRANT JUVENILE STATUS

A. The SIJS Juvenile Court Order

As discussed in Section III, one of the most important roles of juvenile courts is to enter the requisite SIJS findings in a court order so that an undocumented child may file for SIJS and lawful permanent residency to legalize his status. Without these findings, no petition can be filed and the child may remain undocumented.

The required SIJS findings discussed in Section III are best set out in a simple order prepared especially for the SIJS application and signed by a state court judge. SIJS findings can also be incorporated in a general order establishing dependency for a child. The person who prepares the order for the court’s signature will vary by jurisdiction, but often it may be the child’s attorney or social worker. The findings can be simple: “The court finds that the child cannot be reunified with one or both parents due to [abuse, neglect, or abandonment or similar basis under state law], the child is dependent on the juvenile court [or placed the child in the custody of a state agency], and it is not in the best interest of the child to be returned to the home country.”

Some states, including California, New York, and North Carolina, have created official juvenile court forms to be used for SIJS findings. The California State Judicial Council, for example, has issued the JV-224 Order Regarding Eligibility for Special Immigrant Juvenile Status for use in the juvenile courts. Because some of these forms pre-date changes in the SIJS statutory language, they should be either interlineated or contain an attachment reflecting the new SIJS language. Updating the forms with new SIJS language is important as USCIS will not accept orders with the old SIJS language and will require that advocates go back into the court to obtain a new order reflecting the current SIJS statutory language. Judges in states without statewide SIJS forms can work with their judicial councils to create them.

Once these findings are made and the signed order is submitted with the SIJS petition, USCIS makes the final decision whether to grant SIJS. Juvenile state court SIJS findings should not be reviewed by USCIS as they are not a matter of federal law. The USCIS Ombudsman of the Department of Homeland Security in April 2011 released a memorandum of best practices that recommended that the USCIS “[c]ease requesting the evidence underlying state court determinations of foreign child dependency.”60 While USCIS cannot deny SIJS solely based on

a disagreement with the court’s findings, the agency must still ensure that the child meets all other requirements for SIJS. Without the findings of the juvenile court, a juvenile will be barred from applying for SIJS.

In addition to signing such orders, judges can take other actions that can significantly impact an SIJS application. Judges may need to sign orders establishing the fact of birth for children without formal birth certificates since proof of age and identification is required in an SIJS application. Judges may have to authorize transportation of a child for immigration purposes. Finally, judges may have to release confidential juvenile court documents to assist in the SIJS process, although USCIS has acknowledged that it should have limited access to confidential material. Juvenile courts should prevent submission of such material by advocates.

Judges should also ensure that no improper immigration enforcement arises out of juvenile proceedings—that is, information from the proceedings (confidential or not) is not to be used to “punish” a child by turning them over to immigration authorities. If information from juvenile court proceedings was submitted to Immigration & Customs Enforcement (the interior immigration enforcement arm of the Department of Homeland Security), eligible children would be deterred from pursuing SIJS and legalizing their status in the U.S.

B. Building Awareness and Allocating Resources

Beyond entering the requisite SIJS court findings, the court must also take certain steps to ensure that youth, their representatives, and others who are working with them are made aware of SIJS (as well as other forms of immigration relief) and are provided resources to assist them in the process. In particular, judges can facilitate SIJS for children whose cases are before them. For example, some judges have directed children’s attorneys or state agencies to investigate whether a child is SIJS-eligible and, if so, to submit the application. Correctly determining eligibility is crucial because a non-eligible child who is denied SIJS could be referred for deportation. Some courts appoint immigration counsel to handle the case. The court must also designate such persons to submit the application on the child’s behalf because children are not entitled to government-appointed counsel in immigration proceedings. Some courts have also allocated funds for training and technical assistance to children’s attorneys and child welfare agencies so that they can competently file SIJS applications. Finally, courts can help to organize trainings on immigration issues for other judges and other professionals who work with children generally.

SIJS-related resources that can assist courts and other professionals who work with children include:

- *Immigration Benchbook for Family and Juvenile Court Judges*[^61]
- *Special Immigrant Juvenile Status and Other Immigration Option for Children and Youth*[^62]

• Immigration Options for Undocumented Immigrant Children\textsuperscript{63}
• Chapter 7, Immigration Issues Representing Children Who Are Not United States Citizens, in Child Welfare Law and Practice Manual: Representing Children, Parents and State Agencies in Abuse, Neglect and Dependency Cases\textsuperscript{64}

For a fee, judges, attorneys, and social workers can obtain technical assistance about SIJS cases from the Immigrant Legal Resource Center’s Attorney of the Day service (http://www.ilrc.org/legal-assistance).

C. Ensuring Effective Assistance of Counsel to Noncitizen Children in Delinquency Proceedings

In the delinquency context, juvenile courts should ensure that defense counsel investigates and advises a child regarding the immigration consequences of delinquency and screens for immigration relief. Under the Sixth Amendment, defense counsel has the duty to provide affirmative, competent advice of the immigration consequences of a guilty plea.\textsuperscript{65} The U.S. Supreme Court in Padilla v. Kentucky held that a failure to advise the client about the immigration consequences of a plea constitutes ineffective assistance of counsel.\textsuperscript{66} The Court noted that deportation has long been recognized as a severe penalty, and that with the recent changes to immigration laws, deportation as a consequence is inextricably linked to the criminal process.\textsuperscript{67} For these reasons, the Court concluded that the collateral and direct consequences distinction did not apply in the context of Sixth Amendment ineffective assistance of counsel claims relating to the failure to advise of immigration consequences.

Defense counsel’s duty extends not only to investigating and advising of the immigration consequences, but to defending against such consequences, including preserving discretionary relief from deportation.\textsuperscript{68} This means that defense counsel should be protecting children against ineligibility for immigration forms of relief including SIJS. Although delinquency adjudications do not always have the same immigration consequences as criminal convictions, some juvenile adjudications still can significantly impact a child for immigration purposes.

V. CONCLUSION

Although Special Immigrant Juvenile Status serves as a valuable form of immigration relief for undocumented children in the United States who have been abused, neglected, abandoned, or similarly mistreated, it seems that many children who qualify for SIJS are not petitioning for it. Applicants must overcome many hurdles to petition for SIJS and obtain

\textsuperscript{64} Brady & Thronson, supra note 43.
\textsuperscript{65} Padilla v. Kentucky 130 S.Ct. 1473, 1483 (2010).
\textsuperscript{66} Id.
\textsuperscript{67} Id. at 1480-81.
\textsuperscript{68} Id. at 1482-83.
lawful permanent residency. Significant hurdles include mere awareness of the availability of SIJS and obtaining an order from a juvenile court with the requisite findings. Juvenile courts can eliminate these hurdles by requiring that child representatives identify children eligible for SIJS and provide them with resources to assist such children through the SIJS process, and then consider and approve SIJS orders when presented to them. By facilitating the SIJS process, juvenile judges can help these vulnerable children pursue legal permanent residency, work, and higher education, ultimately enabling them to become productive members of society.
The below statistics include information from the calls, emails, and webforms received by the National Human Trafficking Resource Center hotline (available at traffickingresourcecenter.org/statistics); from texts received by Polaris’s BeFree Textline; and from communications referencing overseas cases. Through these communications, Polaris has learned of, responded to, and analyzed thousands of cases of human trafficking. The data are not intended to represent the full scope of human trafficking, but to help identify trends. Statistics on this page are from Jan. 1, 2015 to Dec. 31, 2015.

**National Human Trafficking Resource Center**

**Calls** 21,947  
**Webforms** 1,535  
**Emails** 1,275

**Type of Trafficking**

<table>
<thead>
<tr>
<th>Trafficking Type</th>
<th>Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex Trafficking</td>
<td>4,136</td>
<td>(75%)</td>
</tr>
<tr>
<td>Labor Trafficking</td>
<td>721</td>
<td>(13%)</td>
</tr>
<tr>
<td>Sex and Labor Trafficking</td>
<td>178</td>
<td>(3%)</td>
</tr>
<tr>
<td>Not-Specified Trafficking</td>
<td>509</td>
<td>(9%)</td>
</tr>
</tbody>
</table>

**Location of Potential Human Trafficking Cases in the U.S.**

This map only reflects cases where the location of the potential trafficking was known. Some cases may involve more than one location.

**BeFree Textline**

<table>
<thead>
<tr>
<th>Trafficking Type</th>
<th>Texts</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex Trafficking</td>
<td>146</td>
<td>11</td>
</tr>
<tr>
<td>Labor Trafficking</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>Sex and Labor Trafficking</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

**Cases Occurring Overseas**

<table>
<thead>
<tr>
<th>Trafficking Type</th>
<th>Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex Trafficking</td>
<td>142</td>
<td>(56%)</td>
</tr>
<tr>
<td>Labor Trafficking</td>
<td>69</td>
<td>(27%)</td>
</tr>
<tr>
<td>Sex and Labor Trafficking</td>
<td>28</td>
<td>(11%)</td>
</tr>
<tr>
<td>Not-Specified Trafficking</td>
<td>13</td>
<td>(5%)</td>
</tr>
</tbody>
</table>

**FINDING HELP AROUND THE WORLD**

Nadine,* a young woman from Southern Africa, traveled to the Middle East for a promising new housekeeping job. But when Nadine arrived, she quickly realized that it wasn’t what she had hoped for. Her employers forced her to work extremely long hours with no pay. After seeing a TV program advertising the NHTRC, she decided to reach out for help. The NHTRC and Polaris’ Global team were ready to respond. Through the help of international organizations and key contacts from the Global Modern Slavery Directory, we were able to intervene and help Nadine get home, and connect her with support services in her home country. Nadine has reached out to say that she is extremely grateful for our work—and hopeful about the future.

*To protect the identities of those we serve, Polaris has changed the name of the survivor in this story.

The National Human Trafficking Resource Center hotline is funded in part by the U.S. Department of Health and Human Services and operated by Polaris.

The below statistics include information from the calls, emails, and webforms received by the National Human Trafficking Resource Center hotline (available at traffickingresourcecenter.org/statistics); from texts received by Polaris’s BeFree Textline; and from communications referencing overseas cases. Through these communications, Polaris has learned of, responded to, and analyzed thousands of cases of human trafficking. The data are not intended to represent the full scope of human trafficking, but to help identify trends. Statistics on this page are from Dec. 7, 2007 to Dec. 31, 2015.

**TOP 3 Sex Trafficking Venues**
1. Commercial Front Brothel
2. Hotel/Motel-Based
3. Residential Brothel

**TOP 3 Labor Trafficking Industries**
1. Domestic Work
2. Traveling Sales Crews
3. Restaurant/Food Service

**TOP 5 Trafficking Locations Referenced in Overseas Cases**
1. Mexico
2. Canada
3. Philippines
4. Thailand
5. United Kingdom

24% more survivors reached out to the NHTRC and BeFree Textline for help in 2015 over 2014.

More than 1,600 survivors called, emailed, or texted in 2015 compared to just over 1,300 in 2014.
Child Trafficking and the Child Welfare System

Every year, children are compelled into labor and sex trafficking in the United States. Children may be trafficked by caregivers, intimate partners, or others who use violence, threats, debt bondage and other manipulative tactics to victimize children. Without proper intervention, the trauma of human trafficking can have a profound impact on children and their long-term developmental success. It is imperative that child welfare professionals learn best practices to effectively serve trafficked children involved with the child welfare system.

The below statistics are from January to December 2014. The data is based on information received by the National Human Trafficking Resource Center hotline and Polaris’s BeFree Textline that specifically reference child trafficking in the United States. The data is not intended to represent the full scope of human trafficking, but to help identify trends.

**TYPE OF TRAFFicking**
- **Sex Trafficking**: 84%
- **Labor Trafficking**: 9%
- **Sex and Labor Trafficking**: 3%

**TOP 5 NATIONALITIES OF MINOR VICTIMS**
1. U.S.A.
2. Mexico
3. China
4. Guatemala
5. Russia

**DEMOGRAPHICS (CASES)**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Citizenship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female (1,393)</td>
<td>US Citizen (626)</td>
</tr>
<tr>
<td>Male (231)</td>
<td>Foreign National (247)</td>
</tr>
<tr>
<td>Transgender (&lt;10)</td>
<td></td>
</tr>
</tbody>
</table>

* These statistics are non-cumulative. Callers do not always provide demographic information, nationality, or the location of potential trafficking.

Polaris provides consultation and tailored services to child welfare institutions seeking to improve responses to child trafficking, including protocol review, workforce training, and resource development. For more information, visit [www.polarisproject.org/childwelfare](http://www.polarisproject.org/childwelfare) or contact us ([advisoryservices@polarisproject.org](mailto:advisoryservices@polarisproject.org)).
KEY FACTS

1 in 6 runaways in 2014 were likely sex trafficking victims. 68% of these likely victims were in the care of social services or foster care when they ran. (National Center for Missing and Exploited Children)

978 allegations of human trafficking in Florida's child welfare system were made in 2014, involving 775 victims. This figure is up from 480 allegations in 2011. (Florida Department of Children and Families)

130 victims of sex trafficking were identified in Connecticut in 2014. 98% of these victims were involved with the child welfare system in some manner. (Connecticut Department of Children and Families)

74% of Child Advocacy Centers in the Midwest region have served Commercial Sexual Exploitation of Children (CSEC) victims. However, only 13% had policies and procedures in place specific to CSEC needs and 91% of respondents reported having no funding for CSEC victims. (Midwest Regional Child Advocacy Center)

RECOMMENDATIONS

Note: All recommendations should be inclusive of sex and labor trafficking.

1. Implement mandatory training for all child welfare personnel on human trafficking.

2. Establish a mandatory human trafficking screening process through the integration of trafficking into existing screenings or the development of unique screening tools.

3. Designate human trafficking specialists within each service unit to consult on case management, policies, and procedures.

4. Partner with anti-trafficking professionals and evaluate contract service providers based on their ability to provide culturally-sensitive services to child trafficking survivors.

5. Identify appropriate, specialized housing placements for trafficked youth in kinship care, foster care, or congregate settings with trained, trauma-informed caregivers.

TRAFFICKING INDICATORS

SEX TRAFFICKING
- Is under the age of 18 and engaged in commercial sex, regardless of force, fraud, or coercion
- Feels they must provide commercial sex in exchange for money, housing or other necessities
- Frequently stays at or is seen at hotels/motels
- Has tattoos or markings indicating the ownership or control by another individual
- Photos of the youth have been placed online for advertising purposes

LABOR TRAFFICKING
- References employment scams or physical/sexual/psychological abuse by employers
- Works unusually long hours or works instead of attending school
- Was required to pay a recruitment fee for his/her job
- Is not paid or paid very little

SEX AND LABOR TRAFFICKING
- Demonstrates mental health concerns such as self-destructive behavior, exhaustion, depression, or PTSD
- Suffers from untreated medical issues such as STIs, occupational injuries, or exposure
- Physical or sexual abuse, neglect, malnourishment, or poor hygiene
- Has frequent absences/truancy or is not allowed to enroll in school
- Has a history of running from care; record of arrests related to commercial sex, gang activity, or other status offenses
- Lives with “parents” that are not biological or legal guardians
- Pays family for rent/basic needs or is relegated to isolated, inadequate living quarters
- Has received threats of harm to self/friends/family, deportation, or reports to law enforcement
- Provides scripted responses or is hesitant to speak on own behalf
- Has a debt they cannot pay off

For more information, visit us online at polarisproject.org/childwelfare
Overview

Special Immigrant Juvenile (SIJ) status is an immigration classification for certain foreign children present in the United States who have been abused, neglected or abandoned by a parent. Children may be eligible if they are the subject of a juvenile court order that makes certain findings regarding:

- Their court-ordered custody, placement or dependency;
- The non-viability of parental reunification; and
- The best interests of the child.

SIJ classification allows these individuals to apply for lawful permanent resident (LPR) status (also known as getting a Green Card). Children eligible for SIJ classification may include those who are:

- In a state’s child welfare system;
- Currently (or were previously) in federal custody due to their undocumented status; or
- Living with a foster family, an appointed guardian or the non-abusive custodial parent.

Questions to USCIS

State juvenile courts and child welfare agencies can submit general questions or outreach requests to USCIS-IGAOutreach@uscis.dhs.gov.

General SIJ Information

Visit the “Humanitarian” section of the USCIS Website www.uscis.gov/humanitarian.

Reporting Crimes

Contact DHS Homeland Security Investigations at (866) DHS-2-ICE for concerns regarding human trafficking.

General Information on Adjustment of Status


Questions Regarding a Case

You may ask USCIS about a case by calling (800) 375-5283, or making an INFOPASS appointment at https://infopass.uscis.gov.

Check Case Status

Check the status of a case by visiting the “Check your Case Status” section of www.uscis.gov.

Additional Tips

1. **BE FAMILIAR WITH THE CURRENT ELIGIBILITY REQUIREMENTS.**
   Section 101(a)(27)(J) of the Immigration and Nationality Act establishes the definition of Special Immigrant Juvenile.

2. **PROVIDE THE FACTUAL BASIS FOR THE JUVENILE COURT ORDER FINDINGS.**
   Template court orders are generally insufficient. Court orders that include a reasonable factual basis for the findings on dependency or custody, parental reunification and best interests are usually sufficient for USCIS to grant consent. If the court order does not include a reasonable factual basis for the court’s findings, petitioners may submit alternative evidence such as: separate orders containing findings of fact, records from the judicial proceedings or affidavits summarizing the evidence presented to the court.

3. **BE TIMELY.**

   - The child must obtain the juvenile court order before he or she ages out of the court’s jurisdiction. State laws on jurisdiction vary, but jurisdiction may end at 18 years of age.

     NOTE: If a child (who is otherwise eligible) ages out of the juvenile’s court’s jurisdiction prior to filing the SIJ petition with USCIS, he or she remains eligible to petition for SIJ classification.

   - The child must submit the SIJ petition to USCIS before turning 21, even in states where court jurisdiction extends beyond age 21.

     NOTE: If a child (who is otherwise eligible) turns 21 years of age after filing the SIJ petition with USCIS, he or she remains eligible for SIJ classification.
Eligibility Requirements

To qualify, a child must meet the following four requirements:

1. Be under 21 years of age at time of filing the SIJ petition;
2. Be unmarried;
3. Be physically present in the United States; and
4. Have an order from a juvenile court that makes the following three findings:
   - DEPENDENCY/CUSTODY: Declares the child dependent on the court, or legally places
     the child under the custody of an agency or department of a state, or an individual or entity
     appointed by a state or juvenile court.
   - TEMPORARY ORDERS: Generally not sufficient.
   - PARENTAL REUNIFICATION: Reunification with one or both of the child’s parents is not viable
     because of abuse, neglect, abandonment or a similar basis under state law.
   - “Not viable” generally means the child cannot be reunified with his or her parent(s)
     before the age of majority.
   - The abuse, neglect, abandonment or similar basis under state law may have occurred in
     the child’s home country or in the United States.
   - BEST INTEREST: It would not be in the child’s best interest to be returned to his or her country
     of origin.

Role of Child Welfare Professionals

Child welfare professionals are uniquely positioned to identify and assist victims of child abuse, neglect
or abandonment who may be eligible for SIJ classification. Child welfare professionals may assist by:

- Referring the child’s case to an immigration attorney or accredited representative;
- Providing assessments and reports to assist the juvenile court in making findings that may
  establish SIJ eligibility; and
- Collecting important documents, such as proof of the child’s age and identity.

Role of Juvenile Courts

For SIJ purposes, a juvenile court is a court that has jurisdiction under state law to make judicial
determinations about the care and custody of juveniles. Examples of courts that are considered
juvenile courts are: dependency, delinquency, probate and family courts. Juvenile courts make
findings based on state law about the abuse, neglect or abandonment, family reunification, and
best interests of the child. Juvenile court judges apply state law on issues such as jurisdiction, evidentiary standards, and
parental notice, parental rights and due process.

Although USCIS relies on the juvenile court’s findings on child welfare issues to determine
whether a child is eligible for SIJ classification, only USCIS can adjudicate the SIJ petition.

Role of USCIS

USCIS determines if the child meets the statutory requirements for SIJ classification under
immigration law by reviewing the SIJ petition (Form I-360) and supporting evidence, including
the juvenile court order. USCIS reviews the juvenile court order to ensure that all of the requisite findings
were made. USCIS also determines whether or not to consent to the granting of SIJ classification. In
order to consent, USCIS must determine that the request for SIJ classification is bona fide, which
means the court order was sought for relief from abuse, neglect, abandonment or a similar basis
under state law, rather than primarily to obtain an immigration benefit. To make this determination,
USCIS requires the factual basis for the court’s findings, as described under the Additional
Tips section.

Filing with USCIS

Petition for SIJ Classification

The child must have a juvenile court order that contains the required findings before filing the
following forms and supporting documentation with USCIS: Petition for SIJ Classification.

SIJ-Based Lawful Permanent Resident (LPR) Application

Any documents submitted in a foreign language must be accompanied by a full English translation.
Translators must certify that they are competent to translate and that the translation is accurate.
Special Immigrant Juvenile Status:  
Frequently Asked Questions for State Court Judges

What is SIJS?
Special Immigrant Juvenile Status (SIJS) is a visa status available for certain immigrant children who are unable to reunify with one or both of their parents for reasons of abuse, neglect, abandonment or some similar basis under state law. Congress enacted SIJS in 1990, made amendments in 1993, and made significant amendments again through the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008. SIJS is available to all children who meet the eligibility requirements, regardless of whether or not a child is in removal proceedings, in federal custody or even known to immigration authorities prior to submitting the SIJS petition.

What does the SIJS process look like?
SIJS is technically a two-step process, but is almost always pursued along with a third step, a separate application to United States Citizenship and Immigration Services (USCIS) for Lawful Permanent Resident (LPR) status based on the SIJS approval.

- **Step One → State level**: a predicate or special findings order (hereinafter “predicate order”) making certain factual findings about the child must be obtained in a state “juvenile court.” Federal regulations define a “juvenile court” as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 CFR §204.11(a). The types of actions which may be involved include, but are not limited to: custody actions, guardianship/conservatorship actions, abuse/neglect actions, juvenile delinquency actions, divorce/child support actions, etc. A child who is in federal custody can be the subject of state court proceedings for the purposes of requesting a predicate order, but if the state court is also being asked to make a custody determination for that child, the child must seek “specific consent” from ORR prior to initiating the state court action. If the child does not obtain a predicate order in step one, the child will not be able to advance to step two.

- **Step Two → Federal level**: once the predicate order has been issued, the child must submit to USCIS a SIJS petition, along with copies of the juvenile court orders and other documents establishing eligibility for SIJS. An adjudications officer at USCIS reviews the child’s petition, and may conduct an interview of the child to determine whether to grant or deny the child SIJS.

- **Step Three** (generally pursued after step two, if a child is in removal proceedings, but simultaneously with step two, if a child is not in removal proceedings) → **Federal level**: the

---

1See 8 USC 1101(J)(iii)(I). See also Perez-Olano, et al. v. Eric Holder et al., Case No. CV 05-3604 (C.D. Cal., Dec. 14, 2010) (Perez-Olano Settlement Agreement) and section below, “What, if any, federal custody issues are involved?”
child must submit an **application for LPR status**, along with a number of documents establishing eligibility, admissibility and positive discretionary factors.

- If the child is not in removal proceedings, an adjudications officer at USCIS reviews the child’s application and conducts an interview of the child in order to determine if the child will be granted LPR status.
- If the child is in removal proceedings, an immigration judge conducts a hearing to determine if the child will be granted LPR status.

**What are the eligibility requirements for SIJS?**

- The child must be present in the United States and show that:
  1. The child is **under 21** years of age;
  2. The child is **unmarried**;\(^2\)
  3. The child has been **declared dependent** on a juvenile court located in the United States or has been **legally committed to**, or **placed under the custody of, an agency or department of a State, or an individual or entity** appointed by a State or juvenile court located in the United States;
  4. **Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law**;
  5. A determination has been made in administrative or judicial proceedings that it **would not be in the child’s best interest to be returned to the child’s or parent’s previous country of nationality** or country of last habitual residence.

- Section 235 of the TVPRA of 2008 made significant changes to 8 USC § 1101(a)(27)(J), which sets forth the statutory eligibility requirements for SIJS. For purposes of comparing the old and existing statutes,\(^3\) a redline version is included here:

  “(27) The term “special immigrant” means: [. . . ]

  (J) an immigrant who is present in the United States—

  (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

  (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

  (iii) in whose case the Attorney General expressly, Secretary of Homeland Security consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that—

---

\(^2\) The federal law requires that the child be unmarried at the time of the issuance of the predicate order, and through the adjudication of the SIJS petition, but does not preclude a child who was previously married. See 8 USC §1101(a)(39).

\(^3\) Note that the regulations related to SIJS can be found at 8 CFR § 204.11, but as of October 2011 had not yet been amended to reflect the statutory changes. For example, the regulations still include reference to a child’s eligibility for “long term foster care,” a phrase defined federally as requiring that reunification with **both** of the child’s parents not be viable. To the extent that the regulations reflect the old statute or contradict the statutory amendments, such regulations are no longer valid.
(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General Secretary of HHS unless the Secretary of HHS Attorney General specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;


Why is the state court involved with federal immigration issues?

- The state court is not being asked to make any immigration decisions in a SIJS case. Congress simply requires that findings of fact related to child protective issues such as “abuse,” “neglect,” “abandonment,” and “best interests,” be made by the adjudicators who are the most qualified to do so. State juvenile court judges are best suited to make these findings as they have the relevant experience and expertise.
- The predicate order is simply a finding of fact. It does not confer any immigrant status or immigration benefit to a child, nor is it a court opinion on whether a child should be granted immigration status. Only USCIS, upon specific application by the child, can determine whether or not a child qualifies for an immigration benefit such as SIJS.

In what types of state court proceedings can a predicate order be sought?

A predicate order is a factual order that can be requested and issued in any type of proceeding that takes place in a court that qualifies as a juvenile court (having jurisdiction to make judicial determinations about the care and custody of juveniles). The types of actions available in a particular court vary by state and may include, but are not limited to: custody actions, guardianship/conservatorship actions, abuse/neglect actions, juvenile delinquency actions, divorce/child support actions, etc.

What, if any, federal custody issues are involved?

- Any child who is apprehended and detained by the federal government’s immigration authorities without his or her parent or legal guardian will be transferred to the custody of the Division of Children’s Services (DCS) within the Office of Refugee Resettlement (ORR) in the U.S. Department of Health and Human Services.
- Some children in federal custody are thereafter released to family members or friends (“sponsors”) who agree to be responsible to care for the child while the child’s removal proceedings are pending. Once a child has been released to a sponsor, that child is no longer in federal custody.
- The release of a child to a sponsor does NOT establish a legal relationship between the two. It is often in the child’s best interests that an adult, whether it be the sponsor or another adult appropriately providing care for the child, initiate a proceeding in state court to establish a legal relationship with the child not only so that an adult has legal authority over the child, but also so that there is an adult with the legal responsibility for providing care and stability for the child.
- A child who is in federal custody can still be the subject of state court proceedings for the purposes of requesting a predicate order. However, if in addition to a predicate order, the state court is being asked to make a custody determination for a child in federal custody, the child
must first seek “specific consent” from ORR to request such custody determination by the state court.⁴

- Other than this special requirement for obtaining specific consent from ORR for children who are in federal custody, where or with whom a child is residing does not affect an otherwise eligible child’s SIJS claim under the federal law. Some children may be living with a sponsor, or with another family member or friend, including the non-abusive/neglectful parent. Some children may be in state foster care or another type of state custody due to juvenile delinquency or other matters. Some older children may be living on their own supported by a trusted friend or family member.

When a child is released by ORR to a sponsor and referred for follow up services, what, if any, relationship is maintained between ORR and the child?

None. Once a child is released from ORR custody, there is no longer any custodial or oversight responsibility maintained by ORR. Compliance with any and all follow up services that are provided, even those that were deemed mandatory for the child’s release, is completely voluntary and not enforceable by ORR after the child’s release.

Does it matter where the abuse, neglect or abandonment occurred?

- Under the federal statute, the abuse, neglect, or abandonment that forms the basis of SIJS-eligibility is not required to have occurred within the United States. It requires only a finding that the child is unable to reunify with one or both of the child’s parents due to the abuse, neglect, or abandonment, wherever it occurred. In many cases, the abuse, neglect or abandonment will have occurred in the child’s home country, and is often the reason for the child having fled the country.

- Often in cases where the abuse occurred in the child’s home country, the abusive parent continues to reside in the home country. Service of process on parents residing abroad is challenging. Many state statutes do not address service of process outside of the United States, and in some cases, international treaties or agreements may be implicated. Personal service is not possible in many situations. Courts may consider alternate methods of service such as by private process servers, by international courier, by publication or by mail with proof of delivery confirmation as sufficient. Some state laws may allow courts to dispense with service on certain parties under special circumstances.

- For a variety of reasons, particularly if a child has fled his or her home country, a child may not have police records, court records, or medical records to document the abuse, neglect or abandonment. Courts may consider credible testimony (oral or written) from the child or other individuals that have knowledge of the abuse, neglect or abandonment.

- Children from foreign countries often struggle with obtaining evidence of age or identity. Many countries do not record births, and even if they do, children cannot always obtain birth certificates or passports. When birth certificates or passports are unavailable, courts may consider looking to other ways of evidencing age or identity, including baptismal or religious records, school records, medical records, affidavits, and consular records.

Who is representing these children?

- Children in immigration court removal proceedings are NOT entitled to representation at government expense. Therefore, many children go unrepresented. Depending on a child’s location, there may be local legal services organizations that provide representation to some of these children as resources allow. There are also a number of organizations throughout the United States that match immigrant children in removal proceedings with pro bono counsel, though this process is often made more difficult by the fact that a SIJS-eligible child needs counsel who is willing to represent the child in both immigration and state juvenile court on a pro bono basis. Sometimes this requires finding two separate attorneys.

- Due to the difficulties in locating counsel for children in removal proceedings, and the nature of SIJS as a two-step state and federal process, many children will be represented in juvenile court by non-traditional juvenile court actors, such as pro bono counsel whose main practice area does not include state juvenile care or custody matters. These pro bono attorneys often work closely with local or national legal services organizations that have experience working on immigration and/or state juvenile court matters.

- Unfortunately, again due to the difficulties of locating pro bono counsel, some SIJS-eligible children may find themselves unrepresented in state juvenile court proceedings unless the state court appoints an attorney to represent the child’s interests. In these cases, the child or an adult caring for the child (usually the petitioner) will often request the predicate order pro se if permissible under state law.

Who can request a predicate order in state juvenile court?

A predicate order is a factual order that can be requested by any party in a proceeding unless otherwise limited under state law. Depending on the jurisdiction, the type of proceeding, and any past involvement with state juvenile court, requests for predicate orders on behalf of SIJS-eligible children may come from a variety of persons, including, but not limited to: an attorney appointed to the child by the state court for a pending or prior matter; a guardian ad litem appointed to the child by the state court for a pending or prior matter; an attorney representing the local child protective or social services agency; an attorney representing the state; an attorney for the custodian/guardian of the child; the custodian/guardian of the child; a pro bono attorney for the child; the child him- or herself.

What should the predicate order look like?

- The predicate order can be a separate order, or can be included within another order issued in the pending juvenile court proceedings.

- A predicate order should state the following:
  1. The child is under 21 years of age.
  2. The child is unmarried.
  3. The child is EITHER:
     a. Dependent on the state juvenile court, OR
     b. Placed by the state juvenile court in the custody of an agency, department, individual or entity.
  4. Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment or a similar basis found under state law.

\(^5\) See 8 U.S.C. §1362
5. It is not in the child’s best interest to return to his or her home country.

- Note that the federal law specifically defers to state law definitions and analysis of the terms “abuse,” “neglect,” “abandonment,” “similar basis,” and “best interest.”
- Due to the statutory requirements, it is imperative that the predicate order be worded very specifically and carefully. If the order does not contain the necessary language, the child will be unable to apply for SIJS unless a modified order can be obtained.

What happens after a child is granted a predicate order in state juvenile court?
The predicate order itself does not entitle the child to anything other than the chance to submit an application for SIJS. There are no state benefits connected to predicate orders. If the predicate order is issued in conjunction with a custody determination, any potential state benefits associated with that decision would be determined by state law.

If SIJS is available until age 21, what is the relevance of the child’s 18th birthday?

- Under the federal law, children are eligible to apply for SIJS until their 21st birthday, but only if they first obtain the predicate order from state court. Depending on state law, a juvenile court in that state may only have jurisdiction over a child in certain proceedings until the age of 18. In a state where a juvenile court’s jurisdiction cannot extend past the 18th birthday, a child will be unable to apply for SIJS if the predicate order is not obtained prior to the 18th birthday. In those cases, it becomes necessary for attorneys to request an expedited or emergency hearing.
- Some children who are granted SIJS do not have any appropriate person or entity in the United States to care for them. Once SIJS has been granted by USCIS, an eligible child6 who is less than 18 years of age may apply for placement in the Unaccompanied Refugee Minors Program (URM), which is located in the Department of Health and Human Services within the Office of Refugee Resettlement’s Division of Children’s Services, and which operates in 15 states and 20 locations in the United States. This federally funded program provides access to foster care or other appropriate placements and services in keeping with the Title IV-B and IV-E plans of the state identified for placement. Note that due to space limitations, when a child is approved for URM placement, the child may be transferred to any state where a URM placement is available at that time. An identified agency7 must then file a petition in state court to establish legal authority and responsibility for the child before the child’s 18th birthday, in order for the child to be eligible for services in that state. Challenges or delays based on jurisdictional issues sometimes arise as a result of these transfers. Therefore, although children can apply for SIJS until their 21st birthday, a child can only be accepted into this federally funded foster care program if both the SIJS petition and the URM placement application are approved prior to the child turning 18, and there is sufficient time for legal responsibility to be established once the child is placed. In order to best assure that a child will be accepted into the URM program, ORR requests that all efforts be made to file a URM placement application as early as possible and at least 90 days before the child’s 18th birthday. Both a predicate order from the state court and an approved SIJS petition are required for a complete URM application.

---

6 Eligible children include those who have been approved for SIJS by USCIS and who were, at the time a dependency order was granted, in the custody of DHHS/ORR/DCS or receiving services as Cuban or Haitian entrants.
7 States determine how legal responsibility is established for children in their URM programs. Depending on the location, a state, county, or private agency files a petition for custody, conservatorship or guardianship with the appropriate local court.
Why are many of these cases started so closely to the child’s age of majority?
Children may seek state court orders when they are close to the age of majority for a variety of reasons, but most commonly because they did not know SIJS was an option for them until they were much older. For children who have been in the United States for a long time, many do not even realize that they are undocumented until they are preparing to apply to college. For children who are apprehended by immigration authorities, many are already close to the age of majority when they are encountered and screened for legal relief by legal services providers. Even once SIJS has been identified as a possibility, locating pro bono counsel for the child can be a very lengthy process, and children are understandably overwhelmed and deterred by the thought of trying to navigate the state court system on their own.

Can a parent derive immigration benefits from a child who was granted SIJS?
No. Federal law mandates that the parents of a child who has been granted SIJS cannot obtain immigration benefits through that child. This is true of both parents, even when only one parent has been found to have abused, neglected or abandoned the child.