

Special Immigrant Juvenile (SIJ) Status & Human Trafficking

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Agenda

- The Child Refugee Crisis
- Overview of the SIJ process
 - Identifying Eligibility
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- Overview of Human Trafficking and T Visas
 - Identifying Eligibility
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The Child Refugee Crisis



"La Bestia, el tren de la muerte."

The Child Refugee Crisis

- Over the last year-and-a-half, over 140,000 **children** have left Central America and traveled to the United States without their parents.
- Over 7,000 of these children have arrived in Virginia, making it the **6th-highest** receiving state.
- December 2015 highest number of Unaccompanied Children ever recorded at the border.

Why are these children coming?

Gang Violence and Murders

- There are about **70,000 gang members** operating in Central America. (World Bank 2011).
- **In Honduras: world's highest murder rate:** 90 people killed per 100,000 inhabitants (UN 2012).
- **El Salvador:** "On pace to become hemisphere's **most deadly nation**" (*Washington Post*, 17 May 2015).
- **Guatemala:** Violent crime rate considered "Critical" by the State Department. **101 murders per week**, most with total impunity. (U.S. State Dep't. 2014)

Poverty

- An astounding number of Central American families live in economic **misery**.

What happens when an unaccompanied child is apprehended at the border?

- First, the child is placed in a holding cell ("*hielera*"), and the government opens a deportation case against the child.
- Then, the child is placed in a shelter (*casa hogar*), funded by the Office of Refugee Resettlement.
- Finally, a family member or friend sponsors the child for release from the shelter, and the child lives with that person while awaiting their immigration court date.

What happens when an unaccompanied child is apprehended at the border?

1. **DHS** detains child (Customs and Border Protection).
2. **DHS** opens a deportation case (Immigration and Customs Enforcement, Office of Chief Counsel);
3. **HHS** (Office of Refugee Resettlement) places child in a shelter until they can be released to a sponsor;
4. **DOJ** adjudicates child's case. (Executive Office of Immigration Review)
5. **DHS** is the prosecutor. (ICE–OCC).

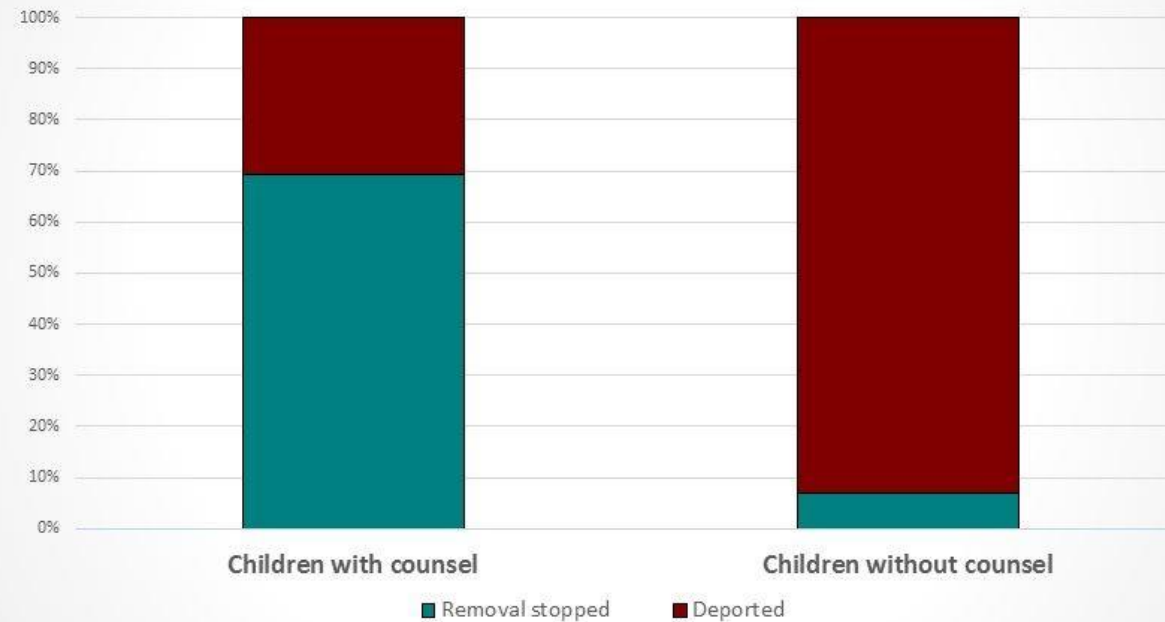
“Pink Puppy Folder”

A nine-year-old client showed up to her Immigration Court hearing with this adorable folder filled with all of her immigration documents.



“Children who appear in immigration court by themselves have about a 7 percent chance of a successful outcome. If they’re represented by counsel, they have about a 70 percent chance. So it’s really a 10-fold difference that you can make in a child’s life.”

Child immigrants without lawyers face dramatically higher rates of deportation



Source: US Justice Department data released to POLITICO, April 2015

Overview of the SIJS Process

What is Special Immigrant Juvenile Status (SIJS)?

- A *federal* immigration law that helps undocumented children in part by using the *state* juvenile court system.
- A path to a green card (and eventual U.S. citizenship) for children who have been *abused, abandoned, or neglected* by one or both parents.
- Limitation: children who get citizenship through SIJS can *never* ask for a green card for *either* parent.

SIJS Statutory Framework

- **Created** by the Immigration Act of 1990.
 - 8 U.S.C. § 1101(a)(27)(J)
- **Amended** via the TVPRA of 2008.
 - Allows “one-parent” SIJ cases
 - But *both* parents still barred from getting any immigration benefits through that child.
 - Child no longer needs to be eligible for foster care
 - Current regulations *do not reflect* these changes!!

SIJS Elements/ Eligibility

1. The child must be **unmarried** and under 21;
1. The Court must have **jurisdiction** under state law to make determinations about the care & custody of children;
2. The child must be **dependent** on the Juvenile Court or legally committed to/placed under the custody of a State agency or department or an individual or entity appointed by a State or Juvenile Court;
3. Reunification with **1 or both parents** is not viable because of abuse, abandonment, neglect, or similar basis under state law;
5. It must not be in the child's **best interests** to return to his/her country.

SIJS Process

1. Obtain a predicate order from a State Court, with necessary factual findings;
2. Terminate removal proceedings in Immigration Court (where applicable);
3. Apply for SIJS (Form I-360) and permanent residence (Form I-485) with USCIS.

The Role of the State Juvenile Court

Obtaining a predicate order from a State juvenile court with the necessary factual findings.

The “Factual Findings”
needed in the
predicate
order are the
elements of
SIJS eligibility.

1. The child must be **unmarried** and **under 21**;
 - For practical purposes, **in Virginia**, a child must be **under 18** for the Juvenile Court to have jurisdiction.
 - Must be unmarried and *remain* unmarried until the child receives legal permanent residency.
2. The Court must have **jurisdiction** under state law to make determinations about the care & custody of children;
 - **Virginia J&DR Courts** have jurisdiction to determine the custody of abused, neglected, and abandoned children. VA Code § 16.1-241(A)(1)–(2).
 - **Circuit Courts** have jurisdiction to hear appeals of final judgments of J&DR Courts. VA Code § 16.1-296.

The “Factual Findings”
needed in the
predicate
order are the
elements of
SIJS eligibility.

3. The child must be **dependent** on the Juvenile Court or legally committed to/placed under the custody of a State agency or department or an individual or entity appointed by a State or Juvenile Court
 - Child must have an independent basis to be in J&DR Court (would be properly before the Court even if there were no SIJS petition involved).
 - Custody petition
 - Delinquency matter
 - CHINS petitions
 - Visitation

The “Factual Findings”
needed in the
predicate
order are the
elements of
SIJS eligibility.

4. Reunification with **1 or both parents** is not viable because of **abuse, abandonment, neglect**, or similar basis under state
 - Refer to state statutory, case law, or agency definitions of abuse, abandonment, or neglect.
 - Virginia Code for definition of abuse, abandonment, and neglect.
 - ❖ “Virginia Code defines an abused or neglected child as one whose parent(s) “***create*** or inflict, ***threaten*** to create or inflict, or ***allow*** to be created or inflicted upon the child, **a physical or mental injury.**” VA Code § 16.1-228(1).
 - ❖ Virginia Code defines an abused or neglected child as one whose parents abandoned him or her. VA Code § 16.1-228(3)

The “Factual Findings”
needed in the
predicate
order are the
elements of
SIJS eligibility.

5. It must not be in the child’s **best interests** to return to his/her country.
 - Under Virginia Code §20-124.3, in assessing the best interests of a child, the court must consider several factors, including:
 - ❖ Age of child
 - ❖ Physical and mental condition of child
 - ❖ Needs of the child
 - ❖ Child’s relationship with custodian/other family members in the U.S.
 - ❖ Reasonable preference of the child

SIJS Process

- 1.** *Now child has obtained a predicate order from a State Court, with necessary factual findings;*

Now the child must:

- 2.** **Terminate removal proceedings in Immigration Court (*where applicable*);**
- 3.** **Apply for SIJS (Form I-360) and permanent residence (Form I-485) with USCIS.**

T Nonimmigrant Status (T Visa) and Other Legal Remedies for Trafficking Survivors

Human Trafficking Defined

- 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 for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 8 C.F.R. §214.11(a).
- **Each year 15,000 to 18,000 people are trafficked into the United States**

T Visa Overview

- Provides immigration protection to victims of human trafficking.
- Created by congress through the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000.
- Common Misconceptions:
 - Does not require transportation;
 - Can involve children, adults, U.S. citizens and non-citizens;
 - Does not require physical force – can involve coercion or fraud
 - Differs from human smuggling;

Trafficking vs. Smuggling:

	<i>Smuggling</i>	<i>Trafficking</i>
<i>Purpose</i>	Obtain illegal entry into the U.S.	Recruiting, transporting, harboring, providing, or obtaining persons by force, fraud or coercion for the purposes of exploitation.
<i>Consent</i>	Consent to be smuggled.	May or may not have consented, or initial consent rendered meaningless by coercive or abusive actions of the traffickers.
<i>Result</i>	Ends with arrival in the U.S.	Involves ongoing exploitation.

Examples of Human Trafficking

- Drug cartels forcing children or adults to be “mules” or “foot guides”
- Anyone working for little or no pay
- Prostitution
- Domestic workers or indentured servants
- Child brides



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Flags and Indicators

- Owes large debt & unable to pay it off
- Not free to move or live with who they want
- Unpaid, paid little, or has debt deducted from wages
- Unable to quit job
- Made to live where they work
- Not allowed breaks or suffers unusual restrictions at work
- Works long or unusual hours
- Is fearful, anxious, depressed, submissive, tense, or nervous/paranoid.
- Is not in control over their own money or identification documents
- Not allowed to speak for themselves

Identifying Eligibility

1. Victim of a severe form of trafficking in persons;
2. Physically present in the U.S. on account of the trafficking;
3. Complied with any reasonable request for assistance in law enforcement investigation or prosecution (unless under 18 or severe trauma); and
4. Suffer extreme hardship involving unusual and severe harm upon removal

What are the benefits?

- Provides lawful, non-immigrant status for four years.
- Eligibility to adjust status to lawful permanent resident after three years.
- Eligible to work in the U.S.
- Derivative visas for qualifying family members.
- May be eligible for federal refugee benefits.

Civil Remedies for trafficking victims

- Victims of human trafficking have right to seek damages in U.S. federal court
 - Under the Trafficking Victims Protection Act of 2000 (amended in 2003)

Other Legal Remedies: Continued Presence & U Nonimmigrant Status (U Visa)

Continued Presence Overview

- Can only be sought by federal law enforcement agency on survivor's behalf
- Permits survivor to remain in the US while the investigation is pending
- One year work authorization
 - Potential to renew during pendency of investigation
- Constitutes primary evidence that survivor is victim of a severe form of human trafficking

U Visa Overview

- Provides immigration protection to victims of certain crimes.
- Congress wanted to aid law enforcement in investigating & prosecuting crime by providing way for immigrant victims to remain in US to assist in investigation and prosecution.

Identifying Eligibility

1. Be a victim of a qualifying criminal activity;
2. Suffered substantial physical or mental abuse as a result of the crime;
3. Possess credible & reliable information concerning criminal activity
4. Have a law enforcement certification;

What are the qualifying crimes?

- Rape
- Torture
- Trafficking
- Incest
- Domestic Violence
- Sexual assault
- Abusive sexual conduct
- Prostitution
- Sexual exploitation
- Female genital mutilation
- Being held hostage
- Peonage
- Abduction

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- Involuntary servitude
- Slave trade
- Kidnapping
- Unlawful criminal restraint
- False imprisonment
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- And more...

What does helpful mean?

- Helpfulness to law enforcement can include:
 - Making phone calls to police
 - Assisting during police questioning
 - Testifying in court
- Does not require prosecution or conviction to result from investigation
- Ongoing duty to cooperate

Questions?

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