



Center for
Children's
Advocacy

Special Immigrant Juvenile Status and Other Potential Immigration Relief Options for Children

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Center for Children's Advocacy

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Undocumented Refugee or UAC?

Undocumented	Refugee	Unaccompanied Alien Child
A foreign-born person who lacks a right to be in the United States, having either entered without inspection (and not subsequently obtained any right to remain) or stayed beyond the expiration date of a visa or other status.	A person outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group.	A UAC is one who has no lawful immigration status in the United States; has not attained 18 years of age, and with respect to whom: 1) there is no parent or legal guardian in US; or 2) no parent or legal guardian in the US is available to provide care and physical custody.



Customs and Border Protection facility in South Texas in 2015.

It shows unidentified immigrants who have been detained after crossing the U.S.-Mexico border illegally

Photo courtesy U.S. Rep Henry Cuellar, D-Laredo. Available at:

<http://www.theindianpanorama.news/world/unitedstates/border-patrol-gets-new-guidelines-for-immigrant-detentions-48182/>

Preliminary Immigration Procedures

Rights in Immigration Proceedings

- Representation at no expense to the Government.
INA 240(a)(4)(A).
- List of available legal services. 8 CFR 1003.61
- Translation. 8 CFR1240.5
- Right to examine & call witnesses, present evidence.
INA 240(a)(4)(B).

Preliminary Immigration Procedures

Bond Hearing

Judge considers:

- Flight risk
- Danger to society

Minimum \$1,500 ... no maximum.

Immigration Options for Children

Eligibility for SIJS - All of these must be true:

- Under age twenty-one
- Unmarried
- Dependent upon court or in custody of state agency or department
- Returning to live with **one** or both parents is not viable due to abuse, neglect, abandonment or a similar state basis (uncared for).
- Not in best interest to be returned to country of origin

Immigration Options for Children

SIJS Process

Step 1: Filing Petition in State Court (Juvenile, Probate or Family)

Step 2: Special Findings Order

Step 3: Filing for Special Immigrant Juvenile Classification and Adjustment of Status

Three forms must be submitted

- I-360 – Application for Special Immigrant Juvenile Status (No fee)
- I-485 – Application for Adjustment of Status (fee may be waived)
Note: Many inadmissibility grounds are waived (e.g. public charge)
- I-765 – Application for Employment Authorization

Immigration Options for Children

- **Jurisdiction**
 - **Not in Removal Proceedings**
USCIS adjudicates complete package.
Applicant is called for an interview on adjustment application.
 - **In Removal Proceedings**
Court has jurisdiction to adjudicate adjustment application.
However, attorney may request termination of proceedings, in which case USCIS will adjudicate, and applicant is called for an interview on adjustment application.
- **Benefits of SIJS**
 - Allows recipient to remain in the country and quickly become a permanent resident.
 - Recipient is given work authorization before interview, which serves as gov't issued identification.

Immigration Options for Children

Deferred Action for Childhood Arrivals (DACA)

A discretionary grant of relief for certain undocumented young people who came to the U.S. as children and have pursued education or military service here.

Immigration Options for Children

DACA Eligibility Criteria...Young Person Must:

- have come to the US before reaching the age of 16
- have been under the age of 31 on June 15, 2012
- have continuous residence from June 15, 2007 – present
- have EWI before June 15, 2012 **or** have lawful status that expired prior to June 15, 2012
- have been present in the US on June 15, 2012 and at the time of application
- be in school, high school grad, GED recipient, or have been honorably discharged from the Coast Guard or Armed Forces of the US
- not have felony conviction, a significant misdemeanor conviction, or more than three misdemeanors, and must not pose a threat to public or national security

Immigration Options for Children

DACA Process

Each applicant must submit the following to USCIS
(even if in removal)

- Form I-821D – Consideration of Deferred Action for Childhood Arrivals
- Form I-765 – Application for Employment Authorization
- Form I-765 Worksheet – EAD Economic Need Supplement Form (determines economic need for employment)
- Documentary evidence showing applicant meets all eligibility criteria (age, continuous presence, school enrollment or diploma, etc.)
- \$465. filing fee

Immigration Options for Children

DACA Benefits

- Prevents recipient from being removed to home country
- Granted employment authorization document (also SSN)
- Does not forgive prior periods of unlawful presence, but recipient is no longer accruing unlawful status
- DACA can be renewed after 2 years

DACA Risks

- DACA is completely discretionary and can be revoked at anytime (particularly under new Executive Action)
- An unsuccessful DACA application could lead to an NTA (initiation of removal proceedings)
- Denial of a DACA application cannot be appealed, though one can file again, which means paying the filing fee again.

Immigration Options for Children

Asylum

A form of protection granted to eligible individuals, which confers legal status and the ability to apply for work authorization, permanent residence and citizenship.

Eligibility Criteria

Must be a refugee:

- No longer in his/her country of origin
- Suffered past persecution, **or**
- Have a well-founded fear of future persecution **on account of** his/her
 - Race
 - Religion
 - Nationality
 - Political Opinion
 - Membership in a Particular Social Group (Gender, Sexuality, Forced Marriage, FGM, etc.)
- Government is unable or unwilling to protect him/her from persecutor(s)

Immigration Options for Children

Must not have any bars to asylum eligibility

- One-year deadline –
Must apply for asylum within **one year of last entry**.
Exceptions: Extraordinary or Changed Circumstances
or was a minor at time of entry.
- Firm Resettlement – Must not have offer of residence or citizenship from another country.
- Particularly Serious Crime – Must not have a felony or other particularly serious criminal conviction

Immigration Options for Children

Asylum Benefits

- Eligible to receive transitional refugee assistance for a period of 8 months
- Can apply for work authorization and a social security card
- Eligible to sponsor immediate family members outside of US; immediate family inside US and included on application also receive asylee status
- Eligible to apply for permanent residence one year after asylum is granted
- Eligible to naturalize five years after becoming a permanent resident

Immigration Options for Children

Withholding of Removal

- Must demonstrate that it is “more likely than not” that one would be subject to persecution on the basis of one of the five statutory grounds if removed from this country
- Mandatory Protection
- Several bars to asylum do not apply (one-year bar, firm resettlement, prior asylum denied)

Immigration Options for Children

Relief under the Convention Against Torture (CAT)

- Must demonstrate that one would “more likely than not” be tortured if forced to return to his country.
- Torture DOES NOT need to be on account of one of the five statutory grounds.
- Mandatory Protection
- No bars to eligibility apply

Immigration Options for Children

T Visa

Immigration status granted to noncitizen victims of a severe form of trafficking.

Eligibility Criteria

Must be a victim of a severe form of trafficking

- **Sex Trafficking** – Commercial sex act is induced by force, fraud or coercion, or the individual is under the age of 18
- **Labor Trafficking** – Recruitment, harboring, transportation, provision, or obtaining of a person for labor services, though the use of force, fraud, or coercion or the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Immigration Options for Children

T Visa Eligibility Criteria

- Must be physically present in the US on account of such trafficking
 - Does *not* have to establish that this is why one came to US, rather must show that this is why one is still in the US
- Must be:
 - Cooperating with authorities investigating or prosecuting the trafficking
 - Must comply with reasonable requests for assistance
 - Unable to cooperate due to physical or psychological trauma, **or**
 - 17 or younger
- Must show extreme hardship involving unusual and severe harm upon removal
 - Cannot be based on current or future economic detriment or lack of social or economic opportunities

Immigration Options for Children

T Visa Benefits

- T Visa is immigration status generally granted for 4 years
- T Visa holders have access to same public benefits as refugees
- T Visa holders are given employment authorization documents
- Close family members of T Visa holders may be granted T status as derivatives
- T Visa holders may apply for lawful permanent resident status after 3 years

Immigration Options for Children

U Visa

Immigration status granted to noncitizen victims of certain criminal activities.

Eligibility Criteria

Must be a victim of qualifying criminal activity

Rape	Domestic Violence	Sexual Exploitation	Involuntary Servitude
Torture	Sexual Assault	Female Genital Mutilation (FGM)	Slave Trade
Trafficking	Abusive Sexual Contact	Being held hostage	Kidnapping
Incest	Prostitution	Peonage	Abduction
Unlawful criminal restraint	False Imprisonment	Blackmail	Extortion
Manslaughter	Murder	Felonious Assault	Witness Tampering
Obstruction of Justice	Perjury		

Immigration Options for Children

U Visa Eligibility Criteria continued...

- Must suffer substantial physical or mental harm as a result of the criminal activity
- Must have information about the criminal activity
- Must cooperate with the investigation **or** prosecution of the criminal activity

Immigration Options for Children

U Visa Benefits

- Immigration status generally granted for four years
- Employment authorization documents
- If 20 years or younger when petitioning, then may petition for parents, spouse, unmarried siblings under 17 years old, and children
- If 21 years or older when petitioning, then may petition for spouse and children
- U Visa holders can apply for lawful permanent residence after three years

Immigration Options for Children

Violence Against Women Act (VAWA) Self Petitions

Allows individuals with close family relationships to abusive US citizens and lawful permanent residents to petition for immigration status without support of abusive family member.

Eligibility Criteria

Qualifying Relationship

- Must be spouse, child or parent of an abusive USC or LPR
- Must have suffered battery or extreme cruelty at hands of abuser
- Must have jointly resided with the abuser
- Must have good moral character

Immigration Options for Children

VAWA Benefits

- Allows abused spouse, child, or parent to petition for their own permanent residence
- **Can include children of abused spouses** and children of abused children as derivatives on VAWA self-petitions
- Petitioner and derivatives are eligible for employment authorization documents
- Petitioner and derivatives may apply for adjustment of status, even if they entered without inspection

Immigration Options for Children

Voluntary Departure **(not a form of relief)**

- 8 CFR § 1240.26(b)
- Must request at a master hearing
- Must request no other relief, or withdraw previously made requests for relief
- Must concede removability
- Must waive appeal

TVPRA: Special Immigrant Juvenile Status

- Purpose of the federal language is to protect children who have been abandoned, abused or neglected by allowing them to regularize their immigration status.
- SIJS cannot be obtained solely for purposes of avoiding removal from the United States.
- SIJS is a 2 part process:
 - State court process
(Probate, Juvenile, Family, Delinquency)
 - Federal immigration process

TVPRA: Special Immigrant Juvenile Status

A child or youth is eligible to apply for SIJS if the Court finds that:

- 1) The child is under *twenty-one years of age*;
- 2) The child is unmarried;
- 3) The child is declared dependent upon a “juvenile court” *or* placed under the custody of an agency or department of a State; *or* placed under the custody of an individual or entity.
- 4) Returning to live with *one* or both parents is not viable due to abuse, neglect or abandonment or a similar basis under state law (includes uncared for); and
- 5) It is not in the child’s best interests to return to his or her country of origin. See INA §101(a)(27)(J), 8 USC 1101, 8 USC 1101.

TVPRA:

Special Immigrant Juvenile Status

- Note that the SIJ requirements were amended by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to clarify that applicants would be eligible for SIJ status if so long as “reunification with *one or both* of the immigrant’s parents is not viable due to abuse, neglect or abandonment, or a similar basis found under State law.” See Public Law No. 110-457, 122 Stat. 5044 (2008), section 235(d).
- This language also removed the requirement that a youth be declared eligible for “long term foster care.”

Probate Authority to Make SIJS Findings

See 8 C.F.R. § 204.11(a) (defining a juvenile court as any “court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.”)

See Conn. Gen. Stat. sections 45A-608n-608o

In re Pedro J.C.

154 Conn.App. 517 (2014)

The Appellate Court held that:

1. having adjudicated juvenile to be neglected, court could not then revisit, at dispositional phase of proceeding, undisputed allegations which formed factual basis for adjudication;
2. once trial court determined that it was in juvenile's best interests to have custody and guardianship of him transferred from mother to cousin residing in United States, option of reuniting juvenile and mother was no longer viable; and
3. court's dual findings at dispositional phase of proceeding were legally inconsistent, warranting remand for best interest finding.

Basic Steps to Getting SIJ Order

Juvenile Court

Court Appointed
Counsel in Juvenile
Matters

File Neglect
Petition in Juvenile
Matters

Motion for Special Findings of Fact
Conn. Gen. Stat. § 46b-121 and Conn.
Practice Book § 34a-1

&

Memorandum of Law in Support of
Motion

Plea and
Disposition
Hearing

Probate Court

Court Appointed
Counsel in
Probate

File Removal &
Appointment of
Guardian Petition

Preliminary Motions: (i.e. Motion
to waive requirement for DCF
study).

Motion for Special Finding of Fact
&
Memorandum of Law in Support of Motion

Or
File Form PC-609

Evidentiary Hearing

Preliminary Immigration Procedures for SIJ Cases

- Affirmative vs. Defensive SIJ Application
- Change of Venue: Venue is properly with the Court having jurisdiction over the place of detention or with the Court having administrative control over the case. 8 C.F.R. 1003.19(c).
- Notice to Appear (charging document)

Preliminary Immigration Procedures for SIJ Cases

Master Calendar Hearing(s)

- Continuances
- Plead to charges on notice to appear
- Request relief from removal
- Schedule deadlines for filing documents and final hearing

Preliminary Immigration Procedures for SIJ Cases

Individual Hearing(s)

- Status conferences
- Merits hearings

Jane



- 1) Jane is a 16 year old girl from Honduras.
- 2) She is not married.
- 3) When she was only a year old her parents left Honduras and moved to the United States.
- 4) Jane stayed in the care of her grandmother.
- 5) When Jane was 12 years old she was kidnapped by a man in her native country and experienced significant trauma.
- 5) The authorities in Honduras were unable to protect Jane from her former captor.
- 6) At the age of 15 she became pregnant by her 18 year old boyfriend.



Jane

7) In order to escape the threats of abuse by her former captor Jane attempted to cross the U.S. border with her boyfriend. She was 8 months pregnant at the time.

8) Jane was detained by the U.S. Immigration and Customs Enforcement Agency as she tried to gain entry into the U.S.

9) Immediately after being detained, Jane was placed in foster care with the Arizona Department of Family and Protective Services and gave birth to her son John. Jane is currently facing removal proceedings at the United States Immigration Court.



Jane

10) Jane was released by the Office of Refugee Resettlement (ORR) Department of Unaccompanied Children (DUCS) to the care of her mother in Norwalk, Connecticut.

11) On 5/01/2014 a report was received by the Department of Children and Families (DCF). The report alleged that immediately after being placed with her mother and father, Jane began to experience physical abuse at the hands of her mother and father. Jane left the home and stayed with a family friend. Subsequently a restraining order was issued against her parents by the Family Court.

12) Eventually the family resource stated she could no longer care for Jane and her son John. As they result they were removed under a 96 hour hold and an OTC was issued the next day.

Jane's Needs

Education

Health

Mental Health
(trauma)

Legal



Jane



- Jane has an upcoming court date with Immigration Court where she faces the likelihood of removal.
- Jane's parent's have agreed to sustain the OTC and a CSC has been scheduled to discuss the potential settlement of this case.
- Jane wants to remain in foster care with her son and does not want to return to Honduras.
- Jane's parents are willing to enter nolo pleas with regards to neglect/uncared for.
- Reunification & visitation services with her parents are difficult due to the existing no contact order or R/O from Family Court.

Relief for your Client



- Does DCF need to secure an Immigration Lawyer for Jane?
 - DCF Policy 31-8-13: “...Given the complexity of immigration law, the Social Worker shall consult the Office of Legal Affairs; however, the actual legal work will likely be performed by outside immigration specialists with whom the Department contracts.
- What steps should you take to ensure Jane gets the SIJS protection from the court?
 - You have an agreement! Secure a plea and disposition date as soon as possible.
 - If not, schedule the case for trial immediately.

Relief for your Client



- File a Motion for Special Findings of Fact pursuant to Conn. Gen. Stat. § 46b-121 and Conn. Practice Book § 34a-1;
 - You may need to file a memorandum of law in support of your motion.
- 1) Jane is under *twenty-one years of age*;
 - 2) Jane is unmarried;
 - 3) Jane is dependent upon the Court *and has been* placed under the custody of DCF;
 - 4) Reunification with *one* or both parents is not viable due to abuse, neglect or abandonment or a similar state law basis; and
 - 5) it is not Jane's best interest to return to her country of origin Honduras.
See INA §101(a)(27)(J), 8 USC 1101, 8 USC 1101.

Sample Order

Tools 13 ab 7 View Options Close

Screen 1-2 of 2

F01-*****

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:
IN RE JANE : SUPERIOR COURT
:
:
(d.o.b. 06/30/1997) : JUVENILE MATTERS AT *****
:
:

:
:
JUNE 12, 2014

ORDER

Upon the foregoing Motion, and upon all the pleadings and prior proceedings herein, on this 12th day of June, 2014.

THE COURT FINDS that the child, Jane, is a citizen of Honduras and has not yet attained her 21st birthday.

THE COURT FURTHER FINDS that the child, Jane, is unmarried.

THE COURT FURTHER FINDS that it has jurisdiction under Connecticut law to make judicial determinations about the custody and care of juveniles within the meaning of § 101(a)(27)(J)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101 (a)(27)(J)(i), and 8 C.F.R. § 204.11(a), (c).

THE COURT FURTHER FINDS that Jane has been declared dependent upon this Court pursuant to § 101(a)(27)(J)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101 (a)(27)(J)(i), and 8 C.F.R. § 204.11(c)(3), and that reunification of Jane with one or both of her parents is not viable due to neglect. Jane was neglected and uncared for by her mother and father; therefore, reunification with her mother and father is not a viable option.

THE COURT FURTHER FINDS that it is not in the best interests of the child, Jane, to be returned to her country of origin, Honduras. Jane cannot return to Honduras because she would not have appropriate care for her ongoing physical, educational, emotional, financial, and moral needs.

Superior Court Judge

Date

Resources for Counsel

Kids in Need of Defense: Advice and Preparation for Clients in Case of Possible ICE Enforcement Activities

<https://supportkind.org/wp-content/uploads/2017/06/KIND-Memo-to-Pro-Bono-Attorneys-Advice-and-Preparation-in-Case-of-ICE-Enforcement-Activities-4.4.17.pdf>

Immigration Raids

Know Your Rights Posters

“Know Your Rights with ICE” (2-page flyer)

- [English](#)
- [Spanish](#)
- [Traditional Mandarin](#)
- [Simplified Mandarin](#)
- [French](#)
- [Haitian Creole](#)
- [Punjabi](#)



The poster features the IDP logo at the top left. The main title is "KNOW YOUR RIGHTS with ICE". Below this, it asks "Am I at risk of being arrested by ICE?" and lists common targets. It then provides a table of risk factors and a list of ICE agents' tactics. At the bottom, it offers advice on what to do if arrested and a section for those with deportable loved ones, including contact information for the IDP's legal helpline.

IDP Immigrant Defense Project has been monitoring Immigration and Customs Enforcement (ICE) arrests in the community.
KNOW YOUR RIGHTS with ICE

Am I at risk of being arrested by ICE?
ICE targets certain immigrants for deportation. Common targets include:

Target Populations (TPs) with other concerns Be aware: You may be a target even if: • Your conviction is from years ago. • You didn't come to jail. • Your spot was minor or a misdemeanor. • You've been on LPR for a long time. • and/or • All the other members of your family are US citizens.	Undocumented people with relatives or connections Be aware: You may be a key target if you: • are undocumented and have a connection (for example, DAD) "hiding under the influence," drugs, domestic violence, unlawful gun possession, or child endangerment, or • You entered the US on or after January 3, 2014 and/or you have been ordered deported since January 1, 2014.
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Immigration and Customs Enforcement (ICE) is one of the federal government agencies responsible for deporting people. ICE is part of the U.S. Department of Homeland Security (DHS).

Are ICE agents approaching anyone they think they can deport?
ICE agents usually identify the person they want to arrest ahead of time. Then, they go to homes, courthouses, shelters and other workplaces to look for the person. Sometimes they wait on the street to make the arrest.

It's important to know what you can do!

- **Make a plan** with your loved ones to ease you are picked up by ICE!
- **Avoid contact with Immigration** - don't apply to change your immigration status or to renew your green card and don't travel outside of the United States without talking to a lawyer first!
- **Avoid contact with the Criminal Justice System** (the police show your fingerprints with Immigration!)

IF YOU OR A LOVED ONE IS DEPORTABLE, HAVE A PLAN!

To find out if you or a loved one is deportable, call the Immigrant Defense Project's free legal helpline at 212-724-6422.

Knowing which rights you have and exercising them is complicated. For more information on ICE community arrests, please see IDP's longer booklet at www.immdefense.org/community-arrests or contact IDP@immdefense.org.

These materials are provided for informational purposes only and do not constitute legal advice. ©P January 2014

<http://www.immdefense.org/ice-home-and-community-arrests/>

QUESTIONS OR COMMENTS?

Connecticut-Specific Resources

Center for Children's Advocacy
kidscounsel.org

**Esperanza Center for
Law and Advocacy**
facebook.com/esperanzalaw

**International Institute of
Connecticut**
iiconn.org

Connecticut Legal Services
connlegalservices.org

**UCONN School of Law
Asylum & Human Rights Clinic**
law.uconn.edu

New Haven Legal Assistance
nhlegal.org

Click 'academics' then 'clinics'

Connecticut-Specific Resources

**Integrated Refugee &
Immigration Services**
irisct.org

**Spanish Community of
Wallingford**
scowinc.org

Unidad Latina en Acción
ulanewhaven.org

**New Haven Trauma Coalition |
Clifford Beers Clinic**
cliffordbeers.org/new-haven-trauma-coalition-2/

CT Students for a Dream
ct4adream.org

**The Community Foundation of
Greater New Haven**
cfgnh.org

National Resources

Immigrant Legal Resource Center

ilrc.org and click 'info on immigration law' then 'remedies . . .'

ilrc.org/resources/unaccompanied-immigrant-children-resources

U.S. Committee for Refugees and Immigrants

refugees.org/resources/for-lawyers/special-immigrant-juvenile-status

ATLAS DIY

findingatlas.wordpress.com

U.S. Committee for Refugees and Immigrants

refugees.org/resources/for-lawyers

National Resources

Immigration Advocates Network

<https://www.immigrationadvocates.org/probono/volunteer/>



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