

# Ohio Custody Orders for Immigrant Children



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# Definition of Unaccompanied Alien Child (UAC)



Person in the US who:

- Has no lawful immigration status;
- Is under 21\* years of age; and
- Has either<sup>†</sup>:
  - no parent or legal guardian in the US; or
  - no parent or legal guardian in the US available to provide care and physical custody.

See 6 U.S.C. § 279(g)(2) adopted by TVPRA § 235(g)

# Who are the children crossing the border?

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- **Gender:**
  - Mostly male (about 1/4 female)
- **Age:**
  - Mostly between 15-17
  - 24% below the age of 14
- **Countries of Origin:**
  - Small percentage from Mexico, mainly Central America

# Countries of Origin

Guatemala (37%)  
Honduras (30%)  
El Salvador (26%)



# Why are they coming to the US?



- **Formerly:**

- Reunification
- Secondary reasons (work or fleeing gang or local violence, poverty, abuse)

- **Current:**

- Fleeing violence, poverty, abuse
- Reunification is secondary

# What happens when they arrive?



Border Patrol



Immigration and Customs Enforcement



Office of Refugee Resettlement

(HHS) See 6 U.S.C. § 279(g)(2)



Released and placed in Immigration Proceedings



Relief

OR



Removal by ICE

# Background



- ORR custody can take several forms including: shelter care, short term foster care, or long term foster care.
- When a parent, legal guardian, other relative, or individual designated by a parent can be located, children are released these “sponsors” after a background check is completed (to rule out criminal history involving child abuse or neglect).
- Children released to sponsors will typically have no case management or assistance after release
- Sponsors may themselves be undocumented and have limited English proficiency and little understanding of the situation of sponsored children
- Becoming a “sponsor” does not create a legal custodial relationship between Sponsor and Child. The child still needs a person in the United States that can consent to medical care, enroll the child in school, sign permission slips, and be responsible for the child.

# Subject to 2 Jurisdictions



## Unaccompanied Minor

Custody / Best Interest  
EXCLUSIVE state jurisdiction

- State action needed to establish a legal custodian
  - to enroll in school
  - to consent to medical treatment
- State action needed to ensure best interest
  - to prevent abuse, neglect, or abandonment

Immigration Matter  
EXCLUSIVE federal jurisdiction

- Federal immigration relief available through:
  - Asylum (refugee)
  - U Visa
  - T Visa
  - Violence Against Women Act (VAWA)
  - Special Immigrant Juvenile Status
  - Parent or Step-parent sponsorship

# Special Immigrant Juvenile Status



- Enacted by Congress in 1990 to respond to undocumented minors within the jurisdiction of the state courts
- Limited provision to address: abused, neglected or abandoned minors whose best interest is to remain in the U.S.
- Recognizes the exclusive jurisdiction of state court to determine abuse, neglect, abandonment and best interest
- Defined at 8 U.S.C. § 1101(a)(27)(J)
  - present in the U.S.
  - “dependent” on a state juvenile court or has been placed in the custody of an individual
  - reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar basis in state law
  - for whom it has been determined that it is not in the child’s best interest to be returned to his or her country of nationality

# SIJS: the “Predicate Order”



- Children released to sponsors will need to find their own vehicle into state court: they will generally not have a petitioner and will need an acceptable guardian in order for the child to become a court dependent or be placed in someone’s custody.
- Per USCIS, the predicate order must be “sought primarily for the purpose of obtaining relief from abuse, abandonment, or neglect and not primarily for the purpose of obtaining lawful immigration status.” *USCIS Memorandum, Donald Neufeld and Pearl Chang, “Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions” HQOPS 70, 8.5 (Mar. 24, 2009).*
- SIJ Predicate Order does not, itself, confer any immigration benefit.
- One or both. . .

# Anatomy of an SIJS case



SIJS cases generally will include these stages:

1. Removal Proceedings in Immigration Court (if applicable) – Show potential relief from removal and stay proceedings... then terminate or adjust
2. State Domestic Relations/Juvenile/Probate/Delinquency Court – Must issue a “predicate” order with special findings
3. Special Immigrant Juvenile Status Petition – Predicate state court order is basis for filing SIJS Petition (Form I-360) with U.S. Citizenship and Immigration Services (USCIS)
4. Adjustment of Status Application (Lawful Permanent Residency, i.e., “Green Card;”) – Approval of I-360 is basis for filing for Adjustment of Status (Form I-485) with Immigration Court or terminating court proceedings for adjudication by USCIS

# Ohio Juvenile Courts



## Jurisdiction

- R.C. 2151.23

(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

... (2) ... to determine the custody of any child not a ward of another court of this state;

- R.C. 3127.18

(A) A court of this state has temporary emergency jurisdiction if a child is present in this state and either of the following applies:

(1) The child has been abandoned.

(2) It is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

# Ohio Juvenile Courts



## Best Interest

- R.C. 2151.01

The sections in Chapter 2151. of the Revised Code, . . . shall be liberally interpreted and construed so as to effectuate the following purposes:

(A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;

# SIJS Eligibility Criteria - "magic language"



## 8 C.F.R. § 204.11

- "Dependent on a state juvenile court or placed in someone's custody"
  - A local juvenile court has taken jurisdiction
- "Cannot be Reunified with One or Both Parent(s)"
  - On account of "abuse, neglect, or abandonment or similar basis under state law"
    - Dependency finding NOT sufficient
    - Consider abandonment if no contact for any 90 day period (R.C. 2151.011(C))
- Juvenile court **MUST** make a **FINDING** that
  - It is "NOT in the child's best interest to be returned to her county of origin or last habitual residence"
- Under 21 & Not Married

# Special Immigrant Juvenile Status



- Clarifications

- “dependent” on a juvenile court as used in the federal immigration law is not defined and does NOT equate to any particular state’s definition of dependency
- Forums
  - i. Juvenile Court—the most common place to obtain custody orders, with jurisdiction over juvenile matters and custody. O.R.C. 2151.23(A)
  - ii. Probate Court—in Ohio, probate courts have the power to grant guardianships (over the person). A minor under 18 can seek a minor guardianship. A child that is over the age of 18 and has reason to need an adult guardian (for example, due to “mental incompetence”) may seek an order of adult guardianship from a probate court.
  - iii. Any court with jurisdiction over dependency, guardianship/probate as well as delinquency proceedings that can place the child in the custody of a person or entity and make best interest determinations
- The federal regulations refer to “long term foster care,” e.g. 8 C.F.R. 2014.11(a) but NOTE that the law was amended to reflect 1 or both parents, but the regulations have not been amended since 2009.

# I-360 Petition for SIJS



- Additional requirements: Under 21 when SIJS petition filed & Unmarried
  - Documents: Order, Evidence of age, Other supporting evidence
- Adjudicators may not generally “look behind” the order and re-examine the basis for the state court findings i.e. USCIS must defer to the state court findings of abuse, abandonment, and neglect and the best interests of the child.
- However, there must be sufficient information in the record to support the factual findings of abuse, neglect, abandonment, etc. (to allow agency to grant “consent”).
- I-360 interview (discretionary) - limited to information on the application and credibility.
  - Expeditious adjudication required = processed within 180 days after the application is filed (TVPR).

# SIJS and Adjustment



- Following the approval of an I-360 application for Special Immigrant Juvenile Status, most practitioners seek termination of removal proceedings to allow adjustment of status before USCIS
- Many grounds of inadmissibility are not applicable to approved SIJs, and many more may be waived:
  - ILRC “cheat sheet”:  
[http://www.ilrc.org/files/inadmissibility\\_2009.pdf](http://www.ilrc.org/files/inadmissibility_2009.pdf)

# Ethical Issues in Representing Children



- Client directed attorney v. best interests attorney
- Client-centered representation
  - risk of substantial physical, financial, or other harm – protective action
  - can't express wishes – protect legal interests, i.e. recognized by law and protected through courts – e.g. services, placement, support, visitation, due process, etc.
- Incapacitation:
  - “as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”
  - Disabled, impaired, incompetent – contextual, incremental, and may be intermittent
- “Developmentally appropriate” communication – age, education level, language acquisition, suggestibility, memory, etc.
- Conflicts

# Thank you!



QUESTIONS?

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