

# SPECIAL IMMIGRANT JUVENILE STATUS

SAFEGUARDING THE FUTURES OF  
UNDOCUMENTED YOUTH IN FOSTER  
CARE

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## What is it?

- Immigration benefit for undocumented children who have been mistreated by one or both parents
- Provides a path to lawful permanent residence and eventual citizenship
- Requires factual determinations from state court with regard to (1) dependency or custody; (2) viability of parental reunification; and (3) best interests.

## Who qualifies?

- Unmarried persons under 21 years of age who are
- Dependent on a juvenile court or placed in the custody of an individual or agency appointed by the court and
- Cannot reunify with one or both parents due to abandonment, abuse, neglect, or a similar basis under state law.

## What is required?

- State court order (aka "predicate order")
- Filing of I-360, Petition for Special Immigrant Juvenile Status
- Filing of I-485 Adjustment of Status Application (pending visa availability for child's country of origin).

## SIJS OVERVIEW

## ACCESSIBILITY & COMMON ISSUES

### Spotting for eligibility

- Was child born outside of the United States?
- If not, **consult with an immigration attorney/ non-profit organization to determine client's status whenever possible!**
- Is child in removal proceedings?

### Making findings

- Consider timing
- Factual determinations—clear, clean, accurate
- Cite the Code!

### Why?

- No other form of relief may be available
- Lack of immigration counsel = higher chance of deportation
- Affects future prospects: education, career, safety, etc.

## TRUE OR FALSE? COMMON MISCONCEPTIONS ABOUT SIJS.

Children can't get SIJS findings past age 18.

- False

Children cannot be deemed abandoned because parent(s) died.

- False

The abuse, abandonment, or neglect must have occurred in child's home country.

- False

## CALIFORNIA LAW & SIJS



### "Abuse, neglect, abandonment or similar basis"

- **Abuse:** Physical harm inflicted nonaccidentally (WIC § 300(a)); Victim of sexual trafficking (WIC § 300(a)); Sexual abuse (WIC § 300(d)); Act of cruelty (WIC § 300(i)); Abuse defined – bodily injury, sexual assault, etc. (Fam. Code § 6203); History of abuse (Fam. Code § 3011(b)); History of sexual abuse (Fam. Code § 3030(a)); Domestic violence (Fam. Code § 6211); Criminal child abuse (Penal Code §§ 11165.1, 11165.3, 1116.4, 273.5)
- **Neglect:** Conduct of parent resulting in serious emotional damage (WIC § 300(c)); Harm as a result of failure or inability to supervise or protect (WIC § 300(b)); Neglect/cruel treatment (Fam. Code § 7823(a)); Criminal child neglect (Penal Code § 270, 11165.2)
- **Abandonment:** Child left without provision for support (WIC § 300(g)) [including death of parent(s)]; Child left in the care of one parent without support or communication from the other parent for 1 year, or child left in the care of a non-parent without support or communication from a parent for 6 months, with intent to abandon (Fam. Code § 7822(a); (b)); "Abandoned" defined as child left without provision for reasonable and necessary care or supervision (Fam. Code § 3402(a)); Death, inability or refusal to take custody, or abandonment (Fam. Code § 3010(b)); Criminal child abandonment (Penal Code § 270)
- **Similar basis under state law:** Death (leaves the child "without any provision for support" - WIC § 300(g)); Finding that placement with a parent would be detrimental to the child's health, safety, or welfare (Fam. Code § 3041); Inability to protect (WIC § 300(b)); Other emerging arguments
- **"Best interests" of the child:** Defined by reference to the child's health, safety, and welfare. See Fam. Code §§ 3011, 3020(a)

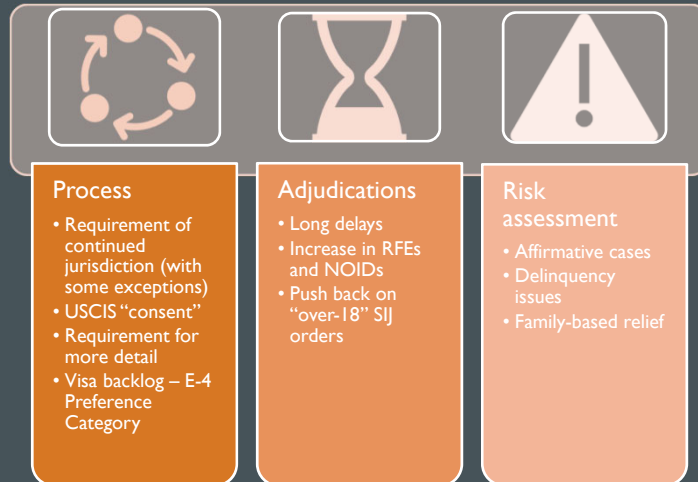
### State and Case Law

- SB 873 (2014)—clarified that state courts in California (juvenile, family, and probate) have jurisdiction to make the necessary findings for SIJS.
- AB 1324 (pending)—proposed law to provide undocumented foster children with immigration counsel
- *Blanka M. v. Superior Court* (2018) 5 Cal. 5th 1004 (holding that a parentage action could proceed even if a parent who resides out of the country and was notified but did not act, might have been a necessary party.)
- *Eddie E. v. Superior Court* (2015) 234 Cal. App. 4th 319 (holding that the plain language of the SIJS statute means that a petitioner can satisfy the second SIJS finding by showing an inability to reunify with one parent due to abandonment, abuse, neglect or a similar basis).
- *In re Israel O.* (2015) 233 Cal. App. 4th 279 (holding that a child may be eligible for SIJS even if a safe and suitable parental home in the United States is available).

### Issues to Flag

- Youth in dependency with delinquency records
- WIC § 827 prevents the disclosure of information in the dependency file
- Youth without birth certificates/ with fraudulent birth certificates

## IMMIGRATION CHANGES & TRENDS



## IDENTIFYING UNDOCUMENTED FOSTER YOUTH

Children who came into state child welfare system for abuse and/or neglect and happen to be undocumented

Children in immigration removal proceedings

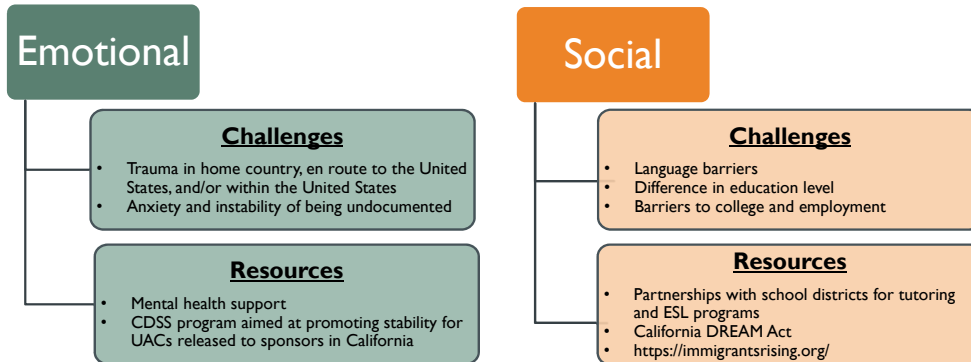
Children who have not had any contact with immigration officials

Children who entered the US and lived with their parents their entire lives

Children who entered the US as UACs and were released to a sponsor who abused, abandoned, or neglected them

Children who were trafficked into the US or enter the US without family or contacts

## CHALLENGES UNDOCUMENTED FOSTER YOUTH FACE AND RESOURCES FOR ASSISTANCE



## LEGAL CHALLENGES- ASSISTING UNDOCUMENTED FOSTER YOUTH IN THEIR IMMIGRATION CASES

### Identify the need for immigration representation

- 1) Determine if child was born outside of the United States
  - Getting the child's birth certificate
    - California law (WIC Section 361.5(j) and Section 366.21(h)) requires that a court order that the child's caregiver and children over 16 years old receive the child's birth certificate **if** the court either determines that reunification services won't be ordered or terminates reunification services
    - Local rules and practice may vary
  - Asking parents/ guardians if the child was born in the United States
- 2) Refer the child to an immigration attorney for assistance whenever possible
  - Immigration attorney can assess whether the child has already received status and, if not, screen the child for potential forms of relief
  - If no direct representation is available, consult with an immigration organization or mentor



# LEGAL CHALLENGES- ASSISTING UNDOCUMENTED FOSTER YOUTH IN THEIR IMMIGRATION CASES (CONTD)

Assess whether the child is in immigration removal proceedings

- Failure to attend a hearing in immigration court can lead to an automatic in absentia deportation order
- Arranging transportation to the immigration hearing
- May require coordinating with parents/guardians or their counsel to obtain copies of the child's immigration documents
- Look for the A number (A123 456 789)
  - EOIR automated hotline: 1-800-898-7180

U.S. Department of Homeland Security Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID # \_\_\_\_\_ IIN # \_\_\_\_\_ File No. \_\_\_\_\_  
 00011 \_\_\_\_\_ Branch No. 4 \_\_\_\_\_

In the Matter of:

Respondent: \_\_\_\_\_ currently residing at \_\_\_\_\_  
 (Number, street, city and ZIP code) (Area code and phone number)

1. You are an arriving alien.  
 2. You are an alien present in the United States who has not been admitted or paroled.  
 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a relative of an SAUVAGNON and a relative of an SAUVAGNON;
3. You entered in the United States at or near MIDLAND, TEXAS, on or about October 5, 2012;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

§11(a) (5) (A) (1) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
 Section 235(b)(1) order was vacated pursuant to:  ICFR 208.30(c)(2)  ICFR 235.30(c)(5)(i) or (j)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

Office of the Immigration Judge 335 W. Van Ness St. Chicago Illinois 60610

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above. (Time)

Signature: \_\_\_\_\_ (Type)  
 SUPERVISORY DEPORTATION OFFICER

Date: October 17, 2012 Chicago, Illinois  
 This notice is subject to approval by the Office of the Inspector General on October 17, 2012 (City and State)

See Reference for Important Information Form I-862 (Rev. 08/06/07)

# SIJS IN DEPENDENCY COURT

Declared a dependent of the juvenile court

- Occurs at disposition when the child is declared a ward of the court under California Welfare and Institutions Code Section 300
- Dependency court must retain jurisdiction at the time of filing the I-360, Petition for Special Immigrant Juvenile Status with USCIS and through the adjudication of the petition (with some exceptions)

Reunification with one or both parents is not viable due to abuse, abandonment, or neglect

- Family reunification or enhancement services not offered to one or both parents
- Reunification services terminated for one or both parents
- One or both parent(s) is/ are deceased
- Case closes with a family law order awarding sole physical and legal custody to one parent

Not in child's best interest to be returned to their previous country of nationality/ habitual residence, and it is in their best interest to remain in the US

- Factual finding based on child's best interests
- Consider why the child left home country, what the child's life would be like if they are forced to return, who they would live with, if they could go to school, etc.
- Consider the child's social support network (friends, family, etc.)

## HYPOTHETICAL

Erikson is a 14-year-old boy who lives with his mother and her boyfriend. He speaks Spanish and very limited English. Erikson's teacher noticed that Erikson frequently came to school with suspicious bruises. When Erikson could not explain how he got the bruises, his teacher made a report to county child welfare agency. A social worker went to Erikson's home to investigate saw that Erikson had a large bruise on his upper arm. Erikson told the social worker that his mother's boyfriend hit him during an argument. Erikson also informed the social worker that he has not had contact with his father for many years and he does not know where he is. The county child welfare agency detained Erikson and filed a petition against his mother, alleging her failure to protect Erikson from her partner. Today is Erikson's first hearing in dependency court. Erikson's mother no longer has contact with her boyfriend and the county child welfare agency is recommending that Erikson be released to his mother's home under agency supervision.

- What kinds of questions do you ask Erikson to determine if he needs immigration assistance?
- After receiving permission from her attorney, what kinds of questions would you ask Erikson's mother?
- Is Erikson eligible for SIJS? Why/why not?

THANK YOU!

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