LEGAL COMPLEXITIES OF DEPENDENT YOUTH

DEPENDENCY SUMMIT

2015
Immigration RELIEF AVAILABLE TO CHILDREN
(a focus on SIJS and T VISAS)

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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 was brought 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.
Common myths

- That individuals who have a social security number have immigration status
- That individuals who have been in the U.S. for most of their life will not be deported
- That all children who are adopted by US citizens become automatic US citizens
- That once you have immigration status you cannot be deported
- That everyone in the US can apply for a work permit
- That people are undocumented by choice ("get in line" argument)
- That anyone can assist someone in filing out their immigration forms (issues with notaries)
- That 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?

- A person with lawful immigration status may:
  - Work lawfully in the U.S.
  - Obtain a state-issued ID or Driver’s License
  - Obtain a social security number
  - Receive 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.

- 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 HOTLINE- 1 888 3737 888
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
- Many victims of domestic violence or extreme economic deprivation
- Often, they “pay” for their visa and “working papers”
- They arrive, and are forced into the sex industry (prostitution, pornography, sexual slavery)
- They must “repay” their purchase price and/or their travel advance under these highly exploitive conditions
How are the Victim’s Controlled?

- Psychological abuses
- Beatings, burnings, sexual abuse, starvation
- Isolation/Limited Freedom of Movement
- Threats of deportation
- Threats against the victims family members
- Drug/alcohol dependency
- Withholding of documents
RED FLAGS AND SIGNS OF HUMAN TRAFFICKING

- 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
- Some sort of 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
- Is the victim a juvenile engaged in commercial sex?
- 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.
- 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.
- Eligibility Letters do not expire.
Benefit Options for Minors with Eligibility Letters

- URM Program
- 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)
T Visa Requirements

- Be a victim of a severe form of human trafficking
- The 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.
T Visa Continued...

- Duration = 4 years (can be extended)
- I-914 Supplement B, LEA certification not mandatory
- 5,000 visas available for principal
- No number limitation for spouses, sons, daughters, siblings or parents.
- Adjustment of status after three years or upon completion of criminal case with DOJ recommendation (See, INA §245(l))
What do I do if I encounter a victim of human trafficking?

- For immediate emergencies, call your local police department or emergency access number 911.

- Call the National Human Trafficking Resource Center (NHTRC) at 1-888-373-7888 or e-mailing NHTRC@PolarisProject.org.

  The NHTRC is a national toll-free hotline for the human trafficking field in the United States and operates 24 hours a day, seven days a week, every day of the year. The NHTRC will connect you with a service provider that can assist the victim.

- *Do not call Homeland Security Investigations, ICE, without the victim first speaking to an immigration attorney, unless the victim is in immediate danger.*
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 – not updated since the early 1990s.
- 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.
Requirement One

• “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.”
- This makes clear that the child need not be in formal state foster care in order to be eligible for SIJS.
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
  - It appears that the TVPRA did away with this requirement. If the child is no longer under juvenile court jurisdiction because of “age” (i.e., turning 18), then he should not be denied SIJS for this reason.

- 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)
WHO ARE WE?
(1) There is created in the Department of Legal Affairs an **Office of Statewide Prosecution**.

The office may: (a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

3. Any violation of the provisions of the Florida **RICO** (Racketeer Influenced and Corrupt Organization) Act,
7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

13. Any criminal violation of the Florida Money Laundering Act;

15. Any violation of the provisions of chapter 787, as well as any and all offenses related to a violation of the provisions of chapter 787 (Human Trafficking); (July 1, 2012)

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.
(b) Investigate and prosecute any crime enumerated in subparagraphs (a) 1.-14. facilitated by or connected to the use of the Internet. Any such crime is a crime occurring in every judicial circuit within the state.

(c) Upon request, cooperate with and assist state attorneys and state and local law enforcement officials in their efforts against organized crimes.
FLORIDA LAW ON HUMAN TRAFFICKING
Human Trafficking F.S. 787.06

The law effective July 1, 2012:

- Combined Florida’s three existing human trafficking statutes into one statute making it more user-friendly for law enforcement;

- Increased penalties for crime of human smuggling from a first-degree misdemeanor to a third degree felony;

- Provided that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
Human Trafficking F.S. 787.06

The law effective July 1, 2012:

- Provided that any property used for human trafficking is subject to forfeiture;

- Required massage establishments/employees to present valid photo identification upon request; and

- Gave jurisdiction for human trafficking to the Statewide Prosecutor and the Statewide Grand Jury.
Human Trafficking F.S. 787.06

The law **Effective October 1, 2014**: 

- Amended s. 960.199, F.S., to specify that victims of human trafficking of a minor for labor or human trafficking for commercial sexual activity are **eligible for victim relocation assistance**;

- Amended s. 775.15, F.S., to **remove the statute of limitations** for human trafficking violations;

- Amended s. 787.06, F.S., to **increase certain penalties** relating to the trafficking of children;
Human Trafficking F.S. 787.06

The law Effective October 1, 2014:

• Amended s. 787.06, F.S., to create a new penalty if a trafficker permanently brands their victim;

• Created s. 796.001, F.S., to provide legislative intent that adults who involve children in any prostitution-related act should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws;
Human Trafficking F.S. 787.06

The law Effective October 1, 2014:

- Amends s. 796.05, F.S., to increase penalties for those who derive support from the proceeds of prostitution; and (1st Offense=F2; 2nd Offense=F1; 3rd Offense=10 Year Min. Man)

- Amends s. 943.0583, F.S., to expand provisions relating to the expunction of criminal history records for victims of human trafficking
(3) Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a) 1. For labor or services of any child under the age of 18 commits a felony of the first degree,
2. Using coercion for labor or services of an adult commits a felony of the first degree;

(b) Using coercion for commercial sexual activity of an adult commits a felony of the first degree,
(c) 1. For labor or services of any child under the age of 18 individual who is an unauthorized alien commits a felony of the first degree,

2. Using coercion for labor or services of an adult who is an unauthorized alien commits a felony of the first degree,

(d) 1. Using coercion for commercial sexual activity of an adult who is an unauthorized alien commits a felony of the first degree,
Human Trafficking F.S. 787.06

(e) 1. For labor or services who does so by the transfer or transport of an adult from outside this state to within the state commits a felony of the first degree,

2. Using coercion for labor or services who does so by the transfer or transport of an adult 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,

2. *Using coercion* for *commercial sexual activity* who does so by the transfer or transport of an *adult* from outside this state to within the state commits a felony of the *first* degree,
(g) For commercial sexual activity in which any child under the age of 18 or in which any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), is involved commits a life felony,

(For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.)
(4)(a) Any **parent, legal guardian, or other person having custody or control** of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking commits a **life felony**,

(b) Any person who **permanently brands**, or directs to be branded, a victim of an offense under this section commits a **second degree felony**, For purposes of this subsection, the term "**permanently branded**" means a mark on the individual's body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure,
(8) In a prosecution under this section, the defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the defendant's bona fide belief of the victim's age cannot be raised as a defense.

Previously: [“In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 15/18”]
Defining “Coercion”

“Coercion” means:

1. Using or threatening to use physical force against any person;

2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;

3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
Defining “Coercion”

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;

5. Causing or threatening to cause financial harm to any person;

6. Enticing or luring any person by fraud or deceit; or

7. Providing a controlled substance as outlined in Schedule [I] [II] of Florida Statute 893.03 to any person for the purpose of: [Human Trafficking].
NEW LEGISLATION

- Section 787.29, F.S. relating to human trafficking public awareness signs. It requires:
- Department of Transportation to display human trafficking public awareness signs in every rest area, turnpike service plaza, weigh station, primary airport, passenger rail station, and welcome center open to the public.
- Emergency rooms at general acute care hospitals to display human trafficking public awareness signs.
- Employer at each of the following establishments to display human trafficking public awareness signs in a conspicuous location that is clearly visible to the public and employees of the establishment: a strip club or other adult entertainment establishment; a business or establishment that offers massage or bodyworks services for compensation that is not owned by a health care profession.
“If you or someone you know is being forced to engage in an activity and cannot leave—whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity—call the National Human Trafficking Resource Center at 1-888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of human trafficking are protected under United States and Florida law.”
Relating to Public Records/Human Trafficking Victims

*Expands the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include:

-- any information that reveals the identity of a person under the age of eighteen who is the victim of a crime of human trafficking for labor or services;

--any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity; and a photograph, videotape, or image of any part of the body of a victim of a crime of human trafficking involving commercial sexual activity.

--provides that this confidential and exempt information related to victims of human trafficking is also exempt from public records requirements

--authorizes release of the confidential and exempt information by a law enforcement agency in the furtherance of its official duties and responsibilities or for print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person the agency believes to be missing or endangered. The information provided will be limited to information needed to identify or locate the victim.

--provides for retroactive application of the public records exemptions.
Relating to Pub. Rec./Residential Facilities Serving Victims of S.E.

- creates a public record exemption for information about the location of safe houses, safe foster homes, residential facilities serving victims of sexual exploitation, and residential facilities serving adult victims of human trafficking.

- provides that information regarding the location of these facilities held by an agency is confidential and exempt from Section 119.07(1), Florida Statutes, and Article I, Section 24(a) of the State Constitution.

- provides for retroactive application of the public records exemptions.
Relating to Human Trafficking

- increases the criminal penalties for solicitation as follows:
- first offense is increased from a second degree misdemeanor to a first degree misdemeanor;
- second offense is increased from a first degree misdemeanor to a third degree felony; and
- third or subsequent offenses are increased from a third degree felony to a second degree felony.

The bill requires the court to sentence a person convicted of solicitation a second or subsequent time to serve a minimum of ten days in jail.

- requires the court to order a person convicted of solicitation to perform one hundred hours of community service, and
- attend and pay for an educational program about the negative effects of prostitution and human trafficking.
Relating to Human Trafficking

- allows a judge to impound or immobilize the vehicle of a person convicted of solicitation for up to sixty days if the vehicle was used in the course of the violation.
- clarifies which court may expunge from the criminal record of a human trafficking victim those crimes related to the trafficking by specifying that any court in the circuit in which the petitioner was arrested may order the expunction, as long as the court has jurisdiction over the class of offense or offenses sought to be expunged.
- clarifies that a human trafficking expunction petition need not be filed in the court where the petitioner’s criminal proceeding or proceedings originally occurred.
- The bill also allows an advocate to be present with the petitioner during any human trafficking court proceedings.
Relating to Human Trafficking

- HB 439 creates Section 960.196, Florida Statues, that addresses relocation assistance for victims of human trafficking. The bill also extends the time that a human trafficking victim may file for relocation assistance.
No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter, except as provided in s. 119.071(2)(h) or unless the court determines that such information is no longer confidential and exempt pursuant to s. 92.56. An offense under this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in s. 787.06(3)(a)1., (c)1., or (e)1., in s. 787.06(3)(b), (d), (f), or (g), or in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child pornography as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.
Fla. R. Jud. Admin. 2.420
Public Access to Judicial Branch Records

• (2) Any person filing any document containing confidential information shall, at the time of filing, file with the clerk a “Notice of Confidential Information within Court Filing” in order to:

• (A) indicate that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed;
Signs of Sex Trafficking

- Is the victim in possession of her/his own identification and/or travel documents?
- Does the victim’s answers to questions seem rehearsed or ‘coached’?
- Is the victim combative or fearful?
- Does the victim appear malnourished or sleep deprived?
- Does the victim know her/his address?
- Is there a big age difference?
- Does the victim refer to the suspected trafficker as ‘boyfriend’ or ‘daddy’?
- Does the victim have any tattoos?
- Does the victim have any injuries/bruises?
- Are there locks on the outside of interior doors or windows; are the windows nailed shut?
BRANDING
A Trafficker’s Perspective
PIMP CONTROL

“You'll start to dress her, think for her, own her. If you and your victim are sexually active, slow it down. After sex, take her shopping for one item. Hair and/or nails is fine. She'll develop a feeling of accomplishment. The shopping after a month will be replaced with cash. The love making turns into raw sex. She'll start to crave the intimacy and be willing to get back into your good graces. After you have broken her spirit, she has no sense of self value. Now pimp, put a price tag on the item you have manufactured.”

The Pimp Game; An Instructional Manual (Royal, 1998)
Why didn’t you just leave?
Why didn’t you call the police?
Why didn’t you ask a ‘date’ for help?

“He’s not a pimp, he’s my boyfriend!”

VICTIMS DO NOT SELF IDENTIFY

Victims blame themselves, believe it was a choice
Maria after she tried to leave
TRAUMA BONDING

is the misuse of fear, excitement, sexual feelings, and sexual physiology to entangle another person.

*a term developed by Patrick Carnes
http://www.abuseandrelationships.org/Content/Survivors/trauma_bonding.html
WHAT DOES A TRAUMA BOND LOOK LIKE?
Dear "King"

I really miss you a lot. No matter how many times you hit me and hurt me. You were the first man to comfort me and take care of me. You might have not truly loved me but you acted like it. You showed me things I would never have see if it weren't for you. You taught me how to survive on my own and do things for myself. You let me get sexually abused, physically, emotionally, and physically abused me. From this point on I am letting you go and breaking the bondage between us. The saying I got taught that I love to say is "You bent me not broke me". There is nothing in this world that can hurt me or stop me from doing anything I want to do. Nobody can hurt me more than you have hurt me. You showed me how it feels to be hurt and not cared about, and showed me how it feels to be all alone. I'll never make the mistake I made by being with a man like you that would treat me so bad and hurt me so much. I'm a lady and I deserve way better than being beat and abused. I love you King but goodbye forever!!!
QUESTIONS?
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<th>Phone Numbers</th>
<th>Fax Numbers</th>
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<tr>
<td>Tallahassee Office</td>
<td>PL-01, The Capitol, Tallahassee, FL 32399-1050, Tallahassee, FL 32399-1050</td>
<td>(850) 414-3300, SC 994-3700, (850) 922-6191</td>
<td>Fax (850) 922-6191</td>
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<tr>
<td>West Palm Beach Office</td>
<td>Flagler Waterview Building, 1515 N. Flagler Drive, Suite 900, West Palm Beach, FL 33401</td>
<td>(561) 837-5000, (561) 837-5107</td>
<td>Fax (561) 837-5107</td>
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<tr>
<td>Jacksonville Office</td>
<td>1300 Riverplace Blvd., Suite 405, Jacksonville, FL 32207</td>
<td>(904) 348-2720, Fax (904) 348-2783</td>
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<tr>
<td>Orlando Office</td>
<td>Century Plaza, 135 West Central Blvd, Suite 1000, Orlando, FL 32801</td>
<td>(407) 245-0893, Fax (407) 245-0356</td>
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<tr>
<td>Tampa Office</td>
<td>Concourse Center 4, 3507 Frontage Road, Suite 200, Tampa, FL 33607</td>
<td>(813) 287-7960, Fax (813) 281-5520</td>
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<tr>
<td>Ft. Lauderdale Office</td>
<td>The 110 Tower, 110 S.E. 6th St., Suite 900, Ft. Lauderdale, FL 33301</td>
<td>954-712-4600, Fax (954) 712-4958</td>
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<tr>
<td>Ft. Myers Office</td>
<td>Riverfront Center, Suite 338, 2075 West First Street, Fort Myers, FL 33901</td>
<td>(239) 338-2440, Fax (239) 338-2341</td>
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<tr>
<td>Miami Office</td>
<td>Rivertgate Plaza, Suite 650, 444 Brickell Avenue, Miami, FL 33131</td>
<td>(305) 377-5850 ex 201, Fax (305) 377-5927</td>
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MINOR’S HEALTH RIGHTS

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Macro Level

• Federal – Generally allows for minors to make health care decisions regarding
  • Family Planning
    • Not abortion
    • Has faced numerous “attacks” in the Congress
  • Supreme Court Rulings tie this to Constitutional Right to Privacy which extends to all people, regardless of age
  • Substance Abuse
  • Emotional or Psychological Issues

• State – Generally the same as Federal
  • Mature Minor Rule
  • Some require doctors to inform parents, others prohibit
Florida Specific

- General Rule: FL requires a minor seeking medical treatment to obtain the consent of the parent/guardian
  - Exception: The minor who understands the benefits and risks of CERTAIN procedures, may give informed consent without the requiring consent of a parent/guardian

- Certain Minors May Consent If:
  - Is married or has been married
  - 16 or older and emancipated
  - Is already a parent
Minor’s Consent Allowed

- Contraceptives/Preg Test
  - If married, pregnant or a parent
- Emergency Contraceptives
  - “Morning After/Plan-B”
  - Can be confidential
  - Generally within 120 hours of intercourse
  - Unsure if covered by Medicaid
- STI Testing
  - Confidential
  - Positive results MAY be released to gov’t agencies for tracking purposes or when criminally required by law
Minor’s Consent Allowed

- Abortion
  - Reasonable efforts required to contact parent/guardian
  - May not be performed without 48 hours notice to parent/guardian
- Exceptions
  - Court waiver (allows for free attorney)
  - Notice waived in writing by parent/guardian
  - Married
  - Emancipated
  - Already a parent
  - Medical emergency
Minor’s Consent Allowed

- **Emergency Care**
  - When the parent/guardian is unavailable and delaying care would endanger the minor
  - Parent/Guardian must be notified as soon as possible

- **Substance Abuse Care**
  - Outpatient only
  - Confidential
  - Disclosure of records requires minor’s consent
Minor’s Consent Allowed

- Mental Health Care
  - Confidential
  - Outpatient only
  - 13 years and older
  - Does not cover
    - Medication
    - Certain “evasive” procedures
    - No more than 2 outpatient visits per week

- Incarcerated Minors
  - If prosecuted as an adult
    - Considered emancipated for purposes of consenting to medical treatment
  - Except
    - Abortion
    - Sterilization
Minor’s Consent Allowed

- Minor’s in Foster Care
  - Reproductive health care (same)
  - If there is no TPR, even after adjudication, parents retain the same rights as if the minor was never sheltered
  - May require judicial intervention
    - DCF consent required?
    - GAL consent required?
    - AAL?
Closing Thoughts

- Make sure to talk to the youth
- Appoint AAL if necessary
- CM as potential point person for medical procedures?
- Suspected sexual/trafficking abuse
- If the minor is covered by parent’s insurance
- Safety v. Best Interest v. Express Interest
- Does the Court REALLY need to know?
- Who can the youth talk to about all of this
- Medical records follow minors out of “The System” – what is the minor’s perspective?
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

**TOP 3 SEX TRAFFICKING VENUES**

1. Hotel/Motel-Based
2. Online Ad, Venue Not Specified
3. Street-Based

**TOP 3 LABOR TRAFFICKING VENUES**

1. Traveling Sales Crews
2. Begging Rings
3. Peddling Rings

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**Potential Human Trafficking Cases Involving Minors***

- Cases of trafficking involving minors: 1,607
- Cases referencing child welfare system: 121

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

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

KEISHA’S STORY OF SEX TRAFFICKING*

After running away from her foster family due to sexual harassment, Keisha met an older man who offered to help her find her biological family. Then he forced her into commercial sex to pay him back for the travel costs.

He physically assaulted her and told her she would never see anyone in her family if she did not make money for him through commercial sex. With no money or other options, Keisha complied.

A year later, Keisha was arrested for a second time on solicitation charges.

Keisha learned about sex trafficking during an outreach group at the detention center and reached out to Polaris. Polaris helped Keisha talk to her probation officer to understand the options for supportive services instead of detention or returning to her abusive foster family.

Keisha now has a protection order against her trafficker and was able to go to an out-of-state residential program for young girls who were victims of sex trafficking. Keisha is doing well in her program and is almost finished with her GED.

* To protect the identity of those we serve, Polaris has changed the name of the girl in this story.
Immigration Options for Undocumented Immigrant Children

July 2013

A collection of fact sheets on:

- Special Immigrant Juvenile Status (SIJS)
- Violence Against Women Act (VAWA)
- U Visa
- Trafficking Visa
- Asylum
- Temporary Protected Status (TPS)
- Family Visas
- Conditional Permanent Residence
- Deferred Action for Childhood Arrivals (DACA)

Note: Advocates should only use these fact sheets for quick reference. For additional information and/or assistance, please see the Immigration Resources section at the back of this packet.

Immigrant Legal Resource Center
www.ilrc.org
SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

Special Immigrant Juvenile Status (SIJS) provides lawful permanent residency to children who are under the jurisdiction of a juvenile court and cannot be reunified with one or both parents due to abuse, neglect, abandonment or a similar basis in state law.

What are the benefits of Special Immigrant Juvenile Status (SIJS)?

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.

Who is eligible for SIJS?

A child who is under the jurisdiction of a juvenile court or has been legally committed to the custody of a state agency, department, entity, or individual by such court, where the court has found (a) that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law, and (b) that it would not be in the child’s best interest to be returned to the home country. “Juvenile court” is a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. The Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA) broadened and clarified who is eligible for SIJS, although some ambiguities remain as the regulations have not been updated.

What are the requirements for SIJS?

1. The juvenile court must declare the child to be a court dependent, must legally commit the child to a state department or agency, or must legally commit the child to the care of an individual or entity appointed by a state or juvenile court in the United States, including children in dependency, delinquency, custody, guardianship, or adoption proceedings.

2. The SIJS application must include a special order signed by the juvenile court finding that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law. The court’s order, or a social worker’s statement, must provide at least a brief reference to facts supporting the finding of abuse, neglect, abandonment or a similar basis in state law.

3. The juvenile court must find that it is not in the child’s best interest to return to her/his country of origin. This can be proven through an interview with the child, a home study in the home country, or other evidence showing there is no known appropriate family in the home country.

4. The child must be under 21 and unmarried. The child’s age can be proven with a birth certificate, passport, or other official foreign identity document issued by a foreign government. The child can be a parent of his or her own children. SIJS cannot be denied based on age if the noncitizen was under 21 and unmarried on the date of the SIJS application. Until further guidance is provided, the juvenile court should retain jurisdiction over the case until the entire application is decided, unless jurisdiction is terminated solely due to age. If this is the case, the proceedings should indicate that they were terminated due to age.

For more information, order the ILRC’s publication “Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth.”

Immigrant Legal Resource Center
www.ilrc.org
July 2013
VIOLENCE AGAINST WOMEN ACT (VAWA)

The Violence Against Women Act permits certain abused family members of U.S. citizens or permanent residents to self-petition for a green card without the cooperation of the abuser.

What are the benefits of VAWA?

- Allows the abused family member to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the abused family member to work and serves as a government-issued identification card.
- Allows the abused family member to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

Who is eligible?

- An abused noncitizen child or spouse of a U.S. citizen or permanent resident parent.
- A child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse. In other words, a child can receive VAWA benefits even if he or she was not abused, as long as the child’s parent qualifies for VAWA due to abuse.

NOTE: Both male and female abused children (or spouses) are eligible to apply.

What are the requirements for VAWA?

1. The abusive family member is or was a U.S. citizen or lawful permanent resident.

2. The abused family member resided at some point in time with the abusive U.S. citizen or lawful permanent resident parent, in or out of the United States.

3. The child or spouse qualifies as a “child” or “spouse” under immigration law.
   - For children, the child must unmarried and under the age of 21. Includes step-children if the relationship was established before the child’s 18th birthday and adopted children if the adoption was finalized before the child’s 16th birthday and the child has been in the adoptive parent’s physical and legal custody for two years.
   - For spouses, the marriage must have been legal and valid in the location in which it took place.
   - There are some exceptions to these requirements.

4. The abused family member must be a person of “good moral character.”

5. The abuse must constitute battery or “extreme cruelty” which can include psychological or emotional abuse – the abused family member need not suffer physical abuse to be eligible.

For more information, order the ILRC’s publication “The VAWA Manual: Immigration Relief for Abused Immigrants.”
**U NONIMMIGRANT STATUS**

_U nonimmigrant status (the “U Visa”) is for noncitizens who are victims of serious crimes and can be helpful in the investigation or prosecution of those crimes._

**What are the benefits of U nonimmigrant status (also known as a “U visa”)?**

- The U visa begins as a temporary visa that allows the noncitizen to remain legally in the United States for four years. After three years in this status, the U visa-holder can apply to obtain lawful permanent residency (a “green card”).
- Provides employment authorization to allow the noncitizen to work.
- The U.S. Citizenship and Immigration Service (USCIS) can issue a U visa to the eligible noncitizen and to certain other family members.
- In some states, allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

**What are the requirements for the U visa?**

1. The noncitizen must have suffered substantial physical or mental abuse as a result of having been the victim of one of the following crimes: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, stalking or fraud in foreign labor contracting or attempt, conspiracy, or solicitation to commit these or similar offenses in violation of federal, state or local criminal law. In certain cases, where the direct victim is deceased due to murder or manslaughter or is incompetent or incapacitated, certain family members (if the direct victim is under 21 years of age) may also qualify for U nonimmigrant status.

2. The noncitizen has information about the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. If the child is under 16 years of age, a parent, guardian or next friend of the child may fill this role.

3. The noncitizen must obtain certification from a federal, state of local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a USCIS official that shows that he or she has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. A Child Protective Services (CPS) agency may also certify the noncitizen’s helpfulness if it has criminal investigative jurisdiction.

_for more information, order the ILRC’s publication “_The U Visa: Obtaining Status for Immigrant Victims of Crime._”_
TRAFFICKING VISA

T nonimmigrant status (the “T Visa) is for noncitizens who have been the victims of severe forms of human trafficking.

What are the benefits of a T Visa?

- The T visa begins as a temporary visa that allows the noncitizen to remain legally in the United States for four years. After three years in this status, the T visa-holder can apply to obtain lawful permanent residency (a “green card”).
- Provides employment authorization to allow the noncitizen to work.
- The U.S. Citizenship and Immigration Service (USCIS) can issue a T visa to the eligible noncitizen and to certain other family members.

What are the requirements for the T visa?

1. The noncitizen must have been the victim of a severe form of human trafficking. Severe forms of human trafficking is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 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. This severe form of trafficking requirement may be proven by a certification by law enforcement, evidence that immigration authorities have arranged for the individual’s continued presence in the United States as a victim of trafficking, or sufficient credible secondary evidence.

2. The noncitizen must be physically present in the United States, American Samoa, or the Commonwealth of North Mariana Islands, or at a port of entry on account of such trafficking.

3. The noncitizen must have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. Children and youth under 18 years of age, however, are exempt from this requirement.

4. The noncitizen would suffer extreme hardship involving unusual and severe harm upon removal.

Individuals who do not meet all the requirements for T nonimmigrant status may be eligible for U nonimmigrant status, VAWA relief, or even SIJS.

Identifying Trafficking Victims:

- Trafficking victims are often unlikely to self-identify or able to escape.
- They may not perceive themselves as victims.
- They may be working long hours, every day of the week and often live where they work.
- They may be more fearful of law enforcement than of their traffickers.
- They may be ashamed of what they have done.
- They may owe a debt to their traffickers.
- Their family members may have been threatened by the traffickers.

For more information, order the ILRC’s publication “Representing Survivors of Human Trafficking: A Promising Practice Handbook.”
ASYLUM

Asylum is for noncitizens who fear persecution in their home country because of their race, religion, nationality, political opinion or membership in a particular social group.

What are the benefits of asylum?

- Allows the noncitizen to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the noncitizen to work and serves as a government-issued identification card.
- Allows the noncitizen to travel outside the United States with a refugee travel document, but generally one cannot return to their home country.
- A person granted asylum can petition for spouse and children to enter as asylees.
- Allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

What are the requirements for asylum?

1. Generally, a noncitizen must apply within one year of arriving in the United States unless he or she was prevented from applying by changed or extraordinary circumstances. Changes in home country conditions may constitute changed circumstances. Some forms of family abuse and domestic violence might be considered extraordinary circumstances. Status as a minor may also be considered a legal disability so as to qualify as an extraordinary circumstance. In addition, unaccompanied minors are exempt from the one-year bar. An unaccompanied minor is defined as an undocumented person under the age of 18 who does not have a parent or legal guardian who is willing or able to provide care and physical custody.

2. The noncitizen must have suffered persecution or fear persecution from the government of his or her home country or from a group or individual that the government is unwilling or unable to control (for example, guerrillas or death squads).

3. The persecution must be on account of the noncitizen’s race, religion, political opinion, nationality or membership in a social group.

4. The noncitizen must not be subject to certain mandatory bars to asylum. These include persecution of others, conviction of a particularly serious crime, commission of a serious non-political crime before coming to the U.S., posing a risk to U.S. security, engaging in terrorist activity, firm resettlement in a third country, or removal to a safe third country.

- In some cases, asylum has been granted based on severe domestic violence or issues involving gender (such as threat of female genital mutilation in the home country), even if the persecution and abuse was committed by family members.

Note: This form of relief is very complicated. Noncitizens who may qualify for asylum must consult with an expert immigration practitioner before applying.

For more information, order the ILRC’s publication, “Essentials of Asylum Law.”
TEMPORARY PROTECTED STATUS

*Noncitizens from certain countries that have experienced devastating natural disaster, civil war or other unstable circumstances may be able to obtain Temporary Protected Status (TPS).*

**What are the benefits of Temporary Protected Status (TPS)?**

- Provides temporary permission to stay in the United States.
- Provides temporary work authorization.

**What are the requirements for TPS?**

1. The noncitizen only needs to prove that he or she is a national of a current TPS designated country and has been in the United States since a required date.

2. The noncitizen does not need to prove that he or she will be singled out for persecution in the home country.

3. The noncitizen cannot be subject to one of the criminal (no conviction of any felony or two or more misdemeanors in the U.S.), security-related, or other bars to TPS.

4. The noncitizen has met all the requirements for TPS registration or re-registration as specified for the country including filing during the open registration or re-registration period, or meeting the requirements for late initial registration regardless of whether there is currently an open registration or re-registration period.

**Which countries are currently designated for Temporary Protected Status?**

The countries on the TPS list change. Recently they have included:

- El Salvador
- Haiti
- Honduras
- Nicaragua
- Somalia
- Sudan
- Note that Liberia was previously a TPS designated country, but is no longer. Now Liberians formerly granted TPS may be eligible for Deferred Enforced Departure, which is not an immigration status, but rather a designation in discretion of the President that eligible individuals are not deportable.

For updated information about which countries are currently designated TPS and what requirements nationals of those countries must meet to qualify, go to the USCIS website at [www.uscis.gov/TPS](http://www.uscis.gov/TPS).

For more information, order the ILRC’s publication “*A Guide for Immigration Advocates.*”
FAMILY VISAS

Some noncitizens may be able to immigrate legally through a U.S. citizen or lawful permanent resident family member.

What are the benefits of immigrating through a family member?

A family visa permits a noncitizen to immigrate to the United States through a family member. To immigrate means to become a lawful permanent resident (“green card” holder).

Who is eligible to immigrate through a family member?

Children and youth who have certain qualifying family relationships with U.S. citizen (USC) or lawful permanent resident (LPR) family members may be eligible for family visas to obtain lawful status. They may qualify as immediate relatives if they are the spouse, unmarried child under 21, or parent (if the son or daughter is 21 years or older) of a U.S. citizen. These persons can immigrate quickly. Others may have to wait up to several years to immigrate. They may qualify to immigrate through the preference categories which includes sons or daughters of U.S. citizens who are married or over the age of 21; spouses and unmarried sons and daughters of permanent residents; and siblings of U.S. citizens where the citizen is 21 years or older. How long a family member will have to wait to immigrate through a family petition depends upon the noncitizen’s native country and the relationship to the family member who submitted the visa petition. The family-based immigration application process generally involves two steps, filing of the family visa petition and then the adjustment of status application to become a lawful permanent resident. The second step can happen in the United States for some people that are already here. Others will have to consular process, meaning that they will have an interview at the consulate in their home country. Those that entered the United States without inspection often have to leave the U.S. to consular process, but this should be discussed with an attorney.

What are the requirements for immigrating through a family member?

1. The U.S. citizen or lawful permanent resident parent must prove his or her citizen or resident status and must prove the required family relationship with the noncitizen.

2. The U.S. citizen or lawful permanent resident family member must be willing to help the noncitizen through the process by attending immigration interviews and submitting an affidavit of support.

3. Some noncitizen family members will have to wait many years (approximately 4-22 years) before they are eligible to apply for lawful permanent residency. During that waiting time, they may not be able to remain in the United States.

For more information, order the ILRC’s publication “Families & Immigration: A Practical Guide.”
CONDITIONAL PERMANENT RESIDENCE

Conditional permanent residence is for noncitizens who have immigrated through a spouse within the first two years of the marriage. Because of immigration processing times, this is effectively only available to the spouses of U.S. citizens.

What are the benefits of Conditional Permanent Residence?

- Provides two years of resident status in the United States that may be extended to lawful permanent residence.
- Provides work authorization.

What makes this type of status “conditional?”

The conditional permanent resident and his or her spouse must apply together to remove the conditions on this residence within the 90 days prior to the second anniversary of being granted conditional permanent residence. If the conditional permanent resident does not do this, he or she may lose conditional permanent residence and be removed from the United States. If the conditional permanent resident does this successfully, he or she will become a lawful permanent resident (have a regular “green card”).

Are there any exceptions to the rule above?

Yes. There are waivers available to those conditional permanent resident spouses who cannot apply with the petitioning (U.S. citizen) spouse to have the conditions removed. In these cases, the conditional resident spouse may file the waiver on their own. They are available in the following situations:

- The conditional permanent resident spouse entered the marriage in good faith, but the petitioning spouse subsequently died.
- The conditional permanent resident spouse entered the marriage in good faith, but the marriage was later terminated due to divorce or annulment.
- The conditional permanent resident spouse entered the marriage in good faith, but has been battered or subjected to extreme cruelty by the petitioning spouse.
- The termination of permanent resident status and removal of the conditional resident spouse would result in extreme hardship to the conditional permanent resident spouse.

For more information, order the ILRC’s publication “Families & Immigration: A Practical Guide.”
DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Deferred Action is a form of prosecutorial discretion that provides a work permit and relief from removal for two years to certain eligible undocumented youth.

What are the benefits of Deferred Action for Childhood Arrivals (DACA)?

- Protects the youth from being placed into removal proceedings and from being removed.
- Provides an employment authorization document that allows the youth to work.
- Can obtain a Social Security Number.
- DACA can be renewed after two years.
- In certain states, a DACA-recipient can apply for a state identification card and a driver’s license.

Who is eligible for DACA?

An undocumented youth that is currently living in the United States may be eligible for DACA. The youth can request DACA, even if they are currently in removal proceedings or have a final order of removal. If the youth is detained, he or she can also request DACA or ask to be released based on prima facie DACA eligibility.

What are the requirements for DACA?

A youth can request DACA if he or she:

1. Is at least 15 years old at the time of filing his or her request.
   - Exception: a youth that is currently in removal proceedings or has a final order of removal, or a voluntary departure order can request DACA under the age of 15.
2. Was under the age of 31 as of June 15, 2012;
3. Came to the United States before his or her 16th birthday;
   - However, if the youth has entered and left the United States before age 16, he or she will also have to show established residency in the U.S. before age 16.
4. Has continuously resided in the United States since June 15, 2007, up to the present time;
5. Was physically present in the United States on June 15, 2012, and at the time of making his or her request for DACA;
6. Entered without inspection before June 15, 2012, or his or her lawful immigration status expired as of June 15, 2012 (i.e. person was undocumented as of June 15, 2012);
7. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
8. Has not been convicted (as an adult) of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.

For more information, order the ILRC’s publication “DACA: The Essential Legal Guide.”
IMMIGRATION RESOURCES

This list of resources is by no means exhaustive but provides some services available and national organizations willing to provide technical assistance and materials.

TECHNICAL ASSISTANCE PROVIDERS & PRO BONO SUPPORT

SPECIAL IMMIGRANT JUVENILE STATUS, VAWA AND U VISAS

Asista
2925 Ingersoll Ave., Suite 3
Des Moines, IA 50312
Tel. (515) 244-2469
questions@asistahelp.org
www.asistahelp.org

Asista’s purpose is to centralize assistance for advocates and attorneys facing complex legal problems in advocating for immigrant survivors of domestic violence and sexual assault. They provide free technical assistance and training to legal services providers that receive grant funding from the U.S. Department of Justice Office on Violence Against Women.

Immigrant Legal Resource Center (ILRC)
1663 Mission Street, Suite 602
San Francisco, CA 94103
T: (415) 255-9499
F: (415) 255-9792
www.ilrc.org

The ILRC provides technical assistance via Monday through Thursday from 10:00am to 3:00pm through its Attorney of the Day (AOD) service. This service is free to all California IOLTA-funded legal services programs, all San Francisco Bay Area nonprofit agencies, and Vera DUCS project subcontractors and pro bono attorneys assisting these subcontractors. To submit a question to our (AOD) service, please send an email to aod@ilrc.org and include your contract number.

National Immigration Project of the National Lawyers Guild
14 Beacon Street, Suite 602
Boston, MA 02108
Tel. (617) 227-9727
ellen@nationalimmigrationproject.org
www.nationalimmigrationproject.org
The Project provides technical assistance, advice and resources to its members. It sponsors seminars and produces publications on a variety of subjects to develop and improve legal and advocacy skills.

**National Immigration Law Center (NILC)**
3435 Wilshire Blvd., Suite 2850  
Los Angeles, CA 90010  
Tel. (213) 639-3900  
Fax (213) 639-3911  
www.nilc.org

NILC provides advice over the telephone and some training in the Los Angeles area. Special expertise in public benefits law and in T visas for victims of human trafficking. Also engages in impact litigation to defend fundamental and constitutional rights of low-income immigrants and their families. Also create toolkits to inform advocates and other organizations about changes to immigrant law.

**ASYLUM**

**The Center for Gender and Refugee Studies**
U.C. Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102  
Tel. (415) 565-4877  
Fax (415) 581-8824  
http://cgrs.uchastings.edu/

The Center for Gender and Refugee Studies (CGRS) provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender related harm, at both the practice and policy levels, and seeks to track decisions in these cases. CGRS also works to coordinate legal and public policy advocacy efforts through domestic and international networking, and engages in public education efforts in order to educate decision makers and the public and contribute to the formulation of national and international policy and practice.

**CHILDREN’S ISSUES**

**Public Counsel**
601 South Ardmore Avenue  
Los Angeles, CA 90005  
Tel. (213) 385-2977  
Fax (213) 385-9089  
www.publiccounsel.org

Public Counsel provides legal services to immigrant children and youth in the Los Angeles area; advice over the telephone and some training available.
CLINIC matches unaccompanied immigrant children who have recently been released from government custody with pro bono attorneys; trains and supports pro bono attorneys across the country to assist unaccompanied children in need of legal representation.

KIND has an infrastructure of pro bono coordinators that assign, monitor, mentor and coordinate legal representation for unaccompanied minors provided by law firms and corporate legal departments in targeted cities. KIND also partners with NGOs with expertise in working with unaccompanied children.

The National Center provides pro bono legal and social services for unaccompanied immigrant children in the immigration process.

WRITTEN AND OTHER MATERIALS

Immigrant Legal Resource Center Publications

The ILRC publishes the following books about areas of immigration law relevant to family and juvenile court issues. For a complete list of ILRC publications, including pricing, please visit our website at www.ilrc.org/publications.

Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth is a practical manual that includes a detailed and clear explanation of SIJS since the enactment of the Trafficking Victims Protection and Reauthorization Act of 2008, step-by-step guidance on SIJS procedure for
both affirmative and defensive cases, sample completed application forms, sample juvenile court judge’s orders, and chapters on working with children and youth, other types of immigration relief for children, the immigration consequences of delinquency, and an overview of immigration detention of children and youth.

**The VAWA Manual: Immigration Relief for Battered Immigrants** is a comprehensive guide for advocates working with immigrant survivors of domestic violence. This manual includes in-depth information on the VAWA self-petitioning requirements and process, adjustment of status, inadmissibility and waivers, consular processing, conditional permanent residency, VAWA cancellation of removal, special immigrant juvenile status, and U visas.

**Representing Survivors of Human Trafficking – A Promising Practices Handbook** is a handbook containing lessons learned and promising practice tips in the context of a team-based approach to serving human trafficking survivors. The objective of this manual is to provide a roadmap based on real cases, including the mistakes and lessons learned and promising practices, that will hopefully save other advocates time and energy as you continue to build more effective capacity for assisting trafficked persons.

**Essentials of Asylum Law** combines up-to-date case law, cutting edge legal arguments on currently developing issues and decades of expertise from accomplished practitioners who have successfully represented clients through the years. This guide offers an expansive explanation of the legal theories and rules underpinning current asylum claims.

**Families & Immigration - A Practical Guide** is an essential tool for practitioners who assist in all aspects of family-sponsored immigration. It is a single volume resource designed for everyday practice by the beginning immigration attorney, immigration paralegal, community-based organization or family immigration advocate.

**The U Visa: Obtaining Status for Immigrant Victims of Crime** can guide you through the entire process of handling an immigration case for a U visa applicant – from eligibility screening through adjustment of status to assisting eligible family members and helping U nonimmigrants travel.

**A Guide for Immigration Advocates** is a comprehensive, two volume book about immigration law, written for beginning immigration attorneys, immigration law firms employing paralegals, and non-profit community-based organizations. It includes clearly written material discussing forms of relief that would apply to noncitizens such as family visa petitions, suspension and asylum.

**Defending Immigrants in the Ninth Circuit: Impact of Crimes Under California and Other State Laws** is a comprehensive manual on the representation of non-citizens who have been accused or convicted of crimes. It discusses all the
grounds of inadmissibility and deportability related to criminal offenses. Topics include drug convictions, admissions, addiction and abuse, aggravated felon status, crimes involving moral turpitude, and firearms offenses, as well as recent legislation. The manual includes an annotated chart analyzing 70 offenses under California law. It also features a comprehensive chapter on how to obtain post-conviction relief, including a discussion of legal requirements, practice tips, and sample briefs and papers, as well as a chapter on immigration holds and detainers.

**DACA: The Essential Legal Guide** is a comprehensive manual for advocates assisting DACA applicants with their deferred action requests. This manual includes practical, detailed chapters that outline the legal eligibility requirements, the entire process of representing a DACA applicant from the initial client meeting to the closing of the case, tips on how to help clients obtain the necessary documents to apply, essential best practices on how to fill out all of the immigration forms, and helpful suggestions on both procedural issues and ways to effectively work with DACA applicants. There’s an entire chapter that provides detailed information on the DACA criminal bars, including examples, legal discussion, and practice tips on how to request DACA for a client with a juvenile adjudication.

**Free Online Materials**

In addition to publishing the manuals described above, the ILRC provides free materials and publications on immigrant children and youth issues at [www.ilrc.org](http://www.ilrc.org), click on “Immigrant Youth” tab. These materials include:

* **Immigration Benchbook for Juvenile and Family Courts.** A manual discussing immigration issues that affect juvenile and family courts.


The ILRC also provides free written materials, podcasts, and videocasts on DACA. These resources are available at: [http://www.ilrc.org/info-on-immigration-law/deferred-action-for-childhood-arrivals](http://www.ilrc.org/info-on-immigration-law/deferred-action-for-childhood-arrivals).

**LISTSERVES**

**VAWA Updates**

The VAWA Updates listserve is maintained by the ASISTA Technical Assistance Project and provides ongoing updates about changes in VAWA and the new U visa provisions. To join the listserve, contact ASISTA at questions@asistahelp.org.
Child Immigration Updates

The Lutheran Immigration and Refugee Service (LIRS) maintains a listserv for advocates working with children in immigration proceedings. To join the listserv, go to http://lists.lirs.org/mailman/listinfo/childimmigration.

National DACA Experts Listserv

The ILRC maintains and facilitates a listserv for advocates working on DACA requests. To join the listserv, please email Barbara Pinto at bpinto@ilrc.org.

WEBSITES

Asista
www.asistahelp.org

The Asista website includes a resource library of all of the INS and USCIS policy memoranda relevant to VAWA, U visa and T visa cases as well as many sample materials, motions, declarations, etc.

Immigrant Legal Resource Center (ILRC)
www.ilrc.org

The ILRC website is the central repository for information about training events, including seminars and webinars, publications on a variety of immigration law topics, and numerous resources including podcasts, videos, charts, practice advisories, and memos that can be downloaded for free. Additionally, the website contains information about ILRC’s activities around civic engagement and policy work.

National Center for Refugee and Immigrant Children
www.refugees.org/our-work/child-migrants/

The National Center’s website contains a resource library on various legal topics affecting immigrant children and youth.

Migration and Child Welfare National Network (MCWNN)
http://www.americanhumane.org/children/programs/child-welfare-migration/about.html

The MCWNN website is hosted on American Humane’s website and has information and resources on improving the child welfare system’s services to immigrant families including a Social Worker’s Tool Kit for Working With Immigrant Families -- A Child Welfare Flowchart (August 2009) and A Social Worker’s Tool Kit for Working With Immigrant Families -- Immigration Status and Relief Options (June 2009).

U.S. Citizenship and Immigration Service
www.uscis.gov
The USCIS website includes many links to the latest USCIS policy and procedural 
information, the status of applications, and easy access to downloadable USCIS forms.

**National Immigration Law Center (NILC)**  
[www.nilc.org](http://www.nilc.org)

NILC staff specializes in immigration law, and the employment and public benefits rights 
of immigrants. Their website contains links to their policy analysis and impact litigation, 
publications, technical advice, and trainings information.

**National Immigration Project of the National Lawyers Guild**  
[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)

The “domestic violence” link on the website of the National Immigration Project of the 
National Lawyers Guild contains extensive materials on VAWA, SIJS and U visas, 
including links to background information, USCIS policy memoranda and strategy 
articles.
Additional Tips

**Be familiar with current immigration standards.** The Immigration and Nationality Act (INA) section 101(a)(27)(J) establishes the definition of a Special Immigrant Juvenile. It is important to note that this definition has altered over time. For example, the Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457 amended the INA definition and these statutory changes supersede portions of the Code of Federal Regulations relating to SIJ status (8 CFR 204.11).

**Be timely.** A child or the child’s legal representative or advocate must request the juvenile court order and apply to USCIS for SIJ status before the child ages-out of the juvenile court’s jurisdiction (usually before 18 years of age), and before he or she turns 21 (even in states where court jurisdiction extends beyond age 21). In some cases, children may need to obtain SIJ status prior to turning 18 years of age to access certain benefits (such as federally funded foster care).

**Provide the factual basis for juvenile court order findings.** DHS must consent to the grant of SIJ classification. This means that for a child to be eligible for SIJ status, DHS must determine that the court order was sought primarily for protection from abuse, neglect or abandonment, rather than primarily to obtain an immigration benefit. Template orders are usually not sufficient to establish this. The court order should include the factual basis for the findings on parental reunification, dependency/custody, and best interests. Alternatively, the child or the child’s attorney may submit separate findings of fact, records from the judicial proceedings, or affidavits summarizing the evidence presented to the court.

**Ensure the court order remains current.** The court order must remain in effect at the time USCIS makes a decision on the case, unless it terminated solely based on age.

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Visit the “Humanitarian” section of the USCIS website [www.uscis.gov](http://www.uscis.gov)

Case inquiries may be made by contacting USCIS at [1 800 375 5283](tel:1-800-375-5283) or by making an INFOPASS appointment.

Case-specific status may be checked by visiting the “My Case Status” section on the USCIS website at [www.uscis.gov](http://www.uscis.gov)

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**Eligible Population**

Some foreign-born children present in the United States may be in need of humanitarian protection because they have been abused, abandoned, or neglected by a parent. Special Immigrant Juvenile (SIJ) status is an immigration classification that may allow for these vulnerable children to immediately apply for lawful permanent resident status (“LPR” status or “a Green Card”).

Certain children who cannot be reunified with one or both parents because of abuse, abandonment or neglect, and for whom it would not be in their best interests to return to their country of origin, may be eligible for SIJ status.

Without a Green Card, these children may not be able to work legally, attend college or qualify for most state and federal benefits. Some of these children, especially if they entered the United States at a young age, may not know that they do not have legal immigration status.

**SIJ eligible children may:**

- Be, or have been, in federal custody due to their undocumented status.
- Be in a state’s child welfare system.
- Be living with a foster family, an appointed guardian, or the non-abusive parent.
- Have been the victim of child abuse that occurred while residing in the U.S.
- Have been the victim of child abuse that occurred in the child’s home country.

**Note:** this is not an exhaustive list.

The biological or prior adoptive parents of a child with SIJ status cannot get any immigration benefits through the SIJ child.
Eligibility Requirements

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

1. Be unmarried.
2. Be under 21 years of age and under the jurisdiction of a juvenile court at time of filing the SIJ petition.
3. Be physically present in the U.S.
4. Have an order from a juvenile court that makes the following three findings:

Family Reunification: Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. The abuse may have occurred in the United States or prior to the child’s arrival in the United States.

Dependency/Custody: Declares the juvenile dependent on the court, or legally commits or places juvenile under the custody of either an agency, department of a state, or an individual or entity appointed by a state or juvenile court. (This can include adoption or guardianship).

Best Interests: It would not be in the child’s best interest to be returned to his or her country of origin.

Note: If a child currently in the custody of the U.S. Department of Health and Human Services (HHS) seeks a juvenile court order that also alters his or her custody status or placement, the child must have HHS consent. If the order simply restates the child’s current HHS placement, and does not make any decisions about the child’s placement, specific consent is not required.

Juvenile Court Judges, Child Welfare Workers and Other Professionals

Juvenile court judges, child welfare workers, health care professionals, and educators are important participants in the SIJ process. Judges play a critical role because they see these children in their court rooms, and the juvenile court order helps determine a child’s eligibility for SIJ status. Child welfare workers and other professionals such as health care providers and educators are often the first to see the signs of child abuse or neglect, and are uniquely positioned to provide information and assistance to victims of abuse. Since child victims are often unaware of potential immigration protections, these professionals serve as a vital link for children who may be eligible for SIJ status. This brochure is designed to help these key professionals understand their roles in the SIJ process.

Child welfare workers identify children who may be eligible, ensure that an immigration attorney or accredited representative is working on the child’s case, and coordinate communication with the child’s legal representative and foster family or guardian. Under the legal representative’s direction, child welfare workers may provide psycho-social assessments and reports that may assist the juvenile court in making factual findings needed to establish SIJ eligibility. Child welfare workers may also collect important documents, such as proof of the child’s age.

Juvenile court judges issue juvenile court orders that help determine a child’s eligibility for SIJ status. A child cannot apply to USCIS for SIJ classification without a court order from a juvenile court. However, juvenile judges should note that providing a qualifying order does not grant SIJ status or a Green Card—only USCIS can grant or deny these benefits. The role of the court is to make factual findings based on state law about the abuse, neglect, or abandonment, family reunification, and best interests of the child. The order must be issued by a “juvenile” court as defined by USCIS. A juvenile court is a court in the United States that has jurisdiction under state law to make judicial determinations about the custody and care of children.

Examples of courts that may issue a qualifying order:

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Filing with USCIS for the SIJ benefit

USCIS approval of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition) only confers SIJ status. A child with SIJ status must take additional steps to obtain lawful permanent resident (LPR) status and other benefits. He or she is eligible to immediately apply for LPR status and work authorization. If possible, a child should generally file the Form I-485, Application to Register Permanent Residence or Adjust Status, (application to become an LPR) at the same time as the SIJ petition. (If the child is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the child’s application for LPR status.) Even if a child obtains SIJ status, the child still must qualify for LPR status in order to be eligible for a Green Card. Certain factors may make the child ineligible to become an LPR if they constitute a “ground of inadmissibility.”

However, there are exceptions and waivers available under the law that the child’s legal representative can explore.

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