

UNIVERSITY of **HOUSTON**

LAW CENTER

Special Immigrant Juveniles

JOSEPH A. VAIL ASYLUM / UAC WORKSHOP
October 3, 2014

Presentation Created By:
Verónica E. Bernal
Clinical Supervising Fellow
University of Houston Law Center Immigration Clinic
vebernal@central.uh.edu



Where do they come from?

- **57,000** children have been caught crossing the border since October 2013 (*NY TIMES*)
 - Not all are Spanish-speaking
 - Indigenous languages
- **66, 127** UACs have been apprehended by Border Patrol in the Texas Southwest Border for FY 2014(*U.S. Border Patrol Statistics*)
- Estimated **1.6 million** undocumented children under 18 in the U.S. (*Urban Institute*)



Who are these children?

- **Age**
 - 0-17 year olds
 - 16% under age 12 (Pew Research Center)
- **Gender**
 - 72% male
 - 28% female (Pew Research Center)
- **Place of Origin**



Unaccompanied Alien Children Encountered by Fiscal Year

Fiscal Years 2009-2013; Fiscal Year 2014 through August 31

Country	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
El Salvador	1,221	1,910	1,394	3,314	5,990	15,800
Guatemala	1,115	1,517	1,565	3,835	8,068	16,528
Honduras	968	1,017	974	2,997	6,747	17,975
Mexico	16,114	13,724	11,768	13,974	17,240	14,702



Why do they come?

- To **escape**:
 - Domestic Violence
 - Sexual Exploitation
 - Life as a Street Child
 - Child Marriage
 - Female Genital Mutilation
 - War
 - Threats by Gangs/Gang Violence
 - Threats/Abuse/Violence due to Sexual Orientation
 - Gender-based Threats/Abuse/Violence
 - Poverty or Famine
- In search of family members
- Brought by others for exploitation/ trafficking victims



What are their journeys like?

- **Children suffer on their journeys:**
 - They often witness horrific crimes
 - They are victims of abuse including rape and kidnapping
 - They are forced to walk for days
 - They are packed into trailers and required to stand for days without food or water
 - They typically have no one on the journey to protect them



What happens when they are apprehended?

- **Not assigned free legal counsel**

- When questioned about fear, many do not express fear to officer; do not trust or are intimidated by authorities.
- Children are taken into federal custody and housed by the ORR in shelters, foster care, or secure facilities.
 - 582 kids are admitted into ORR custody per month
 - ORR may release children to adult “sponsors”

<https://www.youtube.com/watch?v=HBCAgSCGM04>



United States Immigration System

Department of Homeland Security



Citizenship and Immigration Services



Immigration and Customs Enforcement



Customs and Border Protection



SIJS: Specific Agencies



**U.S. Citizenship &
Immigration
Services**

**U.S. Citizenship
and Immigration
Services(USCIS)**

**Adjudicates
Affirmative
Immigration
Petitions**



**Executive Office for
Immigration
Review (EOIR)**

**IJs hear removal
cases; Adjudicates
Defensive
Immigration
Petitions**



**Administration for Children & Families
Office of Refugee Resettlement**

**Office of Refugee
Resettlement
(ORR)**

**Part of Dept. of
Health and Human
Services**



Solution for Some: Special Immigrant Juvenile Status (SIJS)

- Provides eligible children a route to lawful permanent residency (green card)
- Can prevent an eligible child's removal from U.S.
- Provides child with work authorization, which can also be used as a form of ID
- Beneficiaries cannot confer immigration benefits on parents



Statutory and Regulatory Overview

- In 1990, Congress enacted an avenue for unauthorized alien children who became dependents of the state juvenile courts to remain in the United States legally and permanently
- In December of 2008, congress enacted provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA) which altered the eligibility criteria for UACs



Trafficking Victims Protection Reauthorization Act (TVPRA)

Expands and clarifies the definition of a Special Immigrant Juvenile

DHS must adjudicate filings within 180 days

Can't reunify with 1 or both parents; removes "long-term foster care"

"Age out" Protection for children who file before 21

Jurisdiction for Specific Consent transferred to HHS

Provides additional inadmissibility waivers to adjust status



SIJS Requirements

- Under 21
- Unmarried
- Not in the child's best interest to be returned to home country
- Reunification with 1 or both of the child's parents is not viable due to abuse, abandonment, neglect, or similar basis found under state law
- Declared dependent on a juvenile court or placed in the custody of a state agency, department, entity, or individual by such court
- See INA 101(a)(27)(J) and TVPRA 235(d)(1)



Unmarried and Under 21 Requirement

- The child must be under 21 years of age.
 - Deadline: Once the child turns 21, there is no hope of getting SIJS
 - TVPRA clarified that age is as of filing I-360
 - State definition of “child” is often under 18 whereas federal definition is 21
 - Perez-Olano Memo
- The child must be unmarried.
 - A child’s having her own children or if she is pregnant is not a bar to SIJS



Child's Best Interest Requirement

- It must not be in the “[child]’s best interest to be returned to the [child]’s or parent’s previous country of nationality or country of last habitual residence.” 8 USC § 1101(a)(27)(J)(ii).
- This determination must be made in judicial proceedings.
- Both the downsides of the child’s returning to her home country and the upsides of remaining in the United States are relevant:
 - In country of origin: abusive family members, does not speak language, no access to medical, educational, or social services
 - In USA: personal ties are here (siblings, caregiver), educated here, acculturated to life here



Reunification with Parents Not Viable Requirement

- Reunification with 1 or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law. 8 USC § 1101(a)(27)(J)(i).
- Does not require termination of parental rights.
- Can be mother or father—possible to be living with one parent
- The terms “abuse,” “neglect,” and “abandonment” are not defined in the immigration statute or regulations—look to relevant state law.



Declared Dependent on Juvenile Court Requirement

- Declared dependent on a juvenile court or placed in the custody of a state agency, department, entity, or individual by such court. 8 USC § 1101(a)(27)(J)(i).
- “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. 8 CFR § 204.11(a).
 - 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.
 - In practice, has included children in dependency, delinquency, custody, guardianship, parentage, or adoption proceedings.



SIJS Procedural Posture

UACs applying affirmatively

- Either have temporary legal status or presence not known to the government
- Apply to USCIS
- If denied, may face removal proceedings

UACs in removal proceedings

- Child does not have legal status in the U.S.
- DHS/ICE seeks to remove child from U.S.
- Child may claim SIJS as defense to removal



SIJS: Affirmative Cases

State court
predicate
order

Petition for
SIJ status
before USCIS

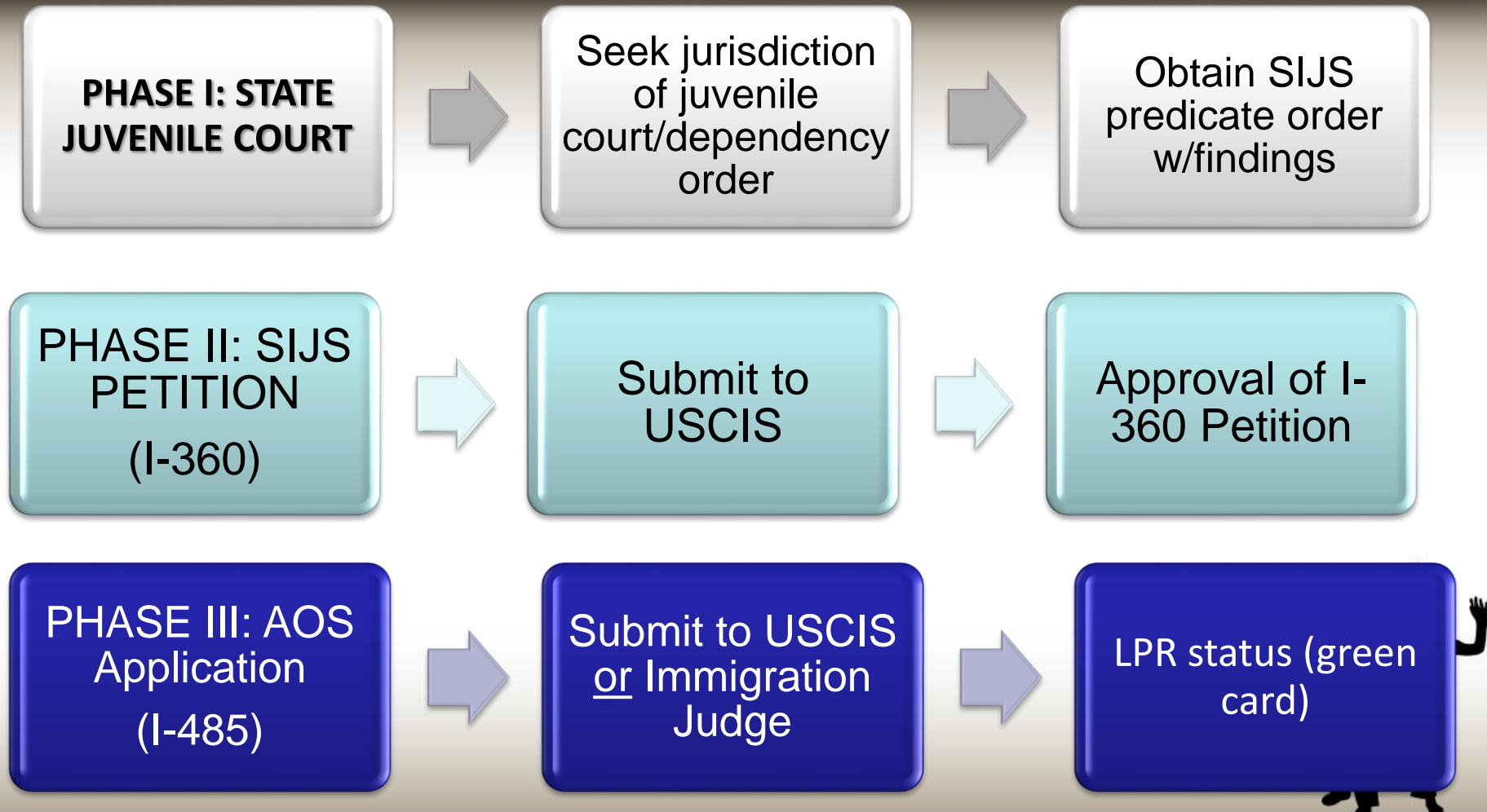
Lawful
permanent
residence
before USCIS



SIJS: Defensive Cases



The Road to SIJS



Phase I: State Court Orders

- **Potential ways to obtain requisite findings in SIJ order:**
 - Suit Affecting Parent-Child Relationships (SAPCRs)
 - SAPCR for Post-18 Child Support (TFC 154.002)
 - Suit to Adjudicate Parentage
 - Guardianships in Probate Court
 - Adoptions
 - Delinquency Proceedings
 - Declaratory Judgment



Phase I: State Court Orders with SIJS Findings

A state “juvenile” court must find that the child is:

- **Dependent upon the court or committed to the custody of a state agency or an individual or entity;**
- **Reunification with one or both parents is not viable for the child due to abuse, neglect, abandonment or similar grounds under state law;**
- **It would not be in the child’s best interest to return to her or his country of nationality (or last residence)**



Phase I: State Court Orders with SIJS Findings Example

An example of a SIJS predicate order would include these findings:

- 1) The above-named child, NAME, is under 21 years of age.
- 2) NAME, is unmarried.
- 3) NAME, is dependent upon the Juvenile Court (e.g. Harris County Family Court)
- 4) NAME's reunification with the his parents is not viable due to the fact that they have neglected, abused and/or abandoned him, for the following reasons: the child's father has abandoned him, in that he has not had any contact with the child since the child was two years old, and he has never provided any material, financial or emotional support for the child; the child's mother neglected him, in that she failed to take any action to protect him from regular beatings and physical abuse by her paramour in Honduras.
- 5) It is not in the best interests of the above-named child, NAME, to be returned to his country of origin, Honduras.



Phase I: State Court Order Supporting Evidence

- ✓ Birth Certificates
- ✓ Death Certificates
- ✓ Adoption Orders
- ✓ ORR Sponsor Info
- ✓ School Records
- ✓ Medical Records
- ✓ Counselor's Reports
- ✓ Psych Evaluations
- **Follow local filing rules

- ✓ Police Reports
- ✓ Parents' Criminal Records
- ✓ Client's Affidavit
- ✓ Affidavits of Friends/Relatives
- ✓ Country Conditions Evidence
- ✓ Immigration Statute
- ✓ Case law
- **Certified translations



Phase I: Additional Issues

Make sure child remains under jurisdiction (despite TVPRA)

If child is in ORR custody and changing care or custody, need specific consent from HHS before entering juvenile court

Timing and deadlines: 18 years or extension of jurisdiction

If child in ORR custody only seeking dependency order without seeking to alter placement or custody, no consent required. See Perez-Olano Settlement Agreement.



Phase II: SIJS Petition (I-360)

Only the USCIS has the jurisdiction to adjudicate the I-360. Mail to USCIS Lockbox.

Application materials includes:

- Cover letter
- No Filing fee for Juveniles
- SIJS Predicate Order—Certified Copy (from state court)
- Form I-360, (and possibly I-485, I-765)*
- G-28 (Attorney Entry of Appearance)
- Proof of Age & Identity
- Case Summary

* If not in removal proceedings or proceedings terminated, file I-360 petition along with I-485 adjustment of status application



Phase II: SIJS Petition- I-360 Interview

- USCIS must adjudicate the I-360 within 180 days of the submission
- USCIS may request an I-360 interview with the child (discretionary)
- Interview is limited to information on the application.
- Cannot inquire into the abuse, abandonment, or neglect.
 - **Must defer to the state court's order**



Phase II: I-485 (Adjustment of Status Application)

- Affirmative
 - File concurrently with I-360 and I-765 (work permit application)
- In Removal Proceedings
 - If I-360 is approved, can terminate removal proceedings to allow adjustment before USCIS
 - File I-485 with Immigration Court
 - A copy of the application must be filed with the Texas Service Center to comply with biometrics requirements



Phase III: I-485 (Adjustment of Status Application) Package

The I-485 adjustment of status package includes:

- Cover letter
- Fee (or waiver)
- I-485 (Application for Adjustment of Status)
- I-765 (Employment for Employment Authorization)
- Copy of approved I-360
- G-28 (Notice of Attorney Entry of Appearance)
- G-325A (Request for Biographic Information)
- Proof of Age & Identity
- Medical Exam
- 4 passport photos



Revocation of SIJS

- **SIJ Status shall be revoked if prior to obtaining permanent residency (green card), client:**
 - Marries;
 - Ceases to be under juvenile court jurisdiction (except for age); or
 - Is the subject of a determination in an administrative or judicial hearing that it is in her best interest to return to her country of nationality. 8 CFR § 205.1(a)(3)(iv).



Phase III: Adjustment of Status- Must be Admissible

- All applicants adjusting their status to lawful permanent resident (LPR) must prove that they are eligible and that they do not fall under any **grounds of inadmissibility** (or if so, provide a waiver)
- There are special rules for SIJS applicants to be able to adjust status (follow INA 245(h) instead of 245(a))



Grounds of Inadmissibility: SIJS Exemptions!

Public Charge
INA 212(a)(4)

No labor
certification
INA 212(a)(5)(A)

Entry w/o valid
entry document
INA 212(a)(7)(A)

Present Without
Admission or
Inspection
INA 212(a)(6)(A)

Document Fraud,
Misrepresentation,
False claim to USC
INA (a)(6)(C)

Stowaway
INA (a)(6)(D)

Unlawful Presence
INA 212(a)(9)(B)



Grounds of Inadmissibility: Discretionary Waiver Required

Waivers are available for the following grounds of inadmissibility:

- Mental or physical disorder
- Prostitution
- Drug addicts or abusers
- Individuals who helped other enter the US illegally
- Waivers are based on humanitarian factors, family unity, and public interest



Inadmissibility – Criminal Issues

When assessing whether a child qualifies for SIJS, it is essential to consider any potential bars to adjustment based on criminal behavior.

Criminal Bars

Adult
Crimes
may bar
adjustment

e.g. CIMT,
drug offenses

Security Related Grounds

Terrorist
Activities,
foreign policy,
torture, etc

Juvenile Delinquency

Not
considered
convictions
for
immigration
purposes

“Conduct
grounds” may still
trigger

Discretion

May serve
as
negative
evidence

Mitigated by
positive equities



Asylum vs. SIJS

- Gov't is, or fails to control, the persecutor
- Grantee waits 1 year to apply for LPR
- May sponsor parents for immigration
- Cannot return to country of origin

- Mistreatment/abuse is by parent(s)
- Grantee may apply immediately for LPR
- Cannot sponsor parents
- Can visit country of origin (once status is finalized)



Life after SIJS

A child who becomes an LPR enjoys the right to:

- Live and work permanently in the US
- Travel outside the US
- Apply for limited public benefits
- Apply for U.S. citizenship after 5 years



Call for Volunteers

- A child without an attorney must face the following alone:
 - Adversarial hearing opposite a trained government lawyer, before an Immigration Judge
 - Pleading to allegations set forth in a charging document
 - Requesting relief under U.S. immigration law
 - Testifying under oath, including about traumatic events
 - Meeting the burden of proof in an adversarial hearing
 - Filing forms and supporting documents in English by certain deadlines
 - Trying to understand complex proceedings and the consequences of the Immigration Judge's Order

