Due Process for Immigrant Youth: Updates and Strategies for Advocating for Youth in Immigration Cases

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Immigrant Legal Defense (ILD)

IMMIGRANT
LEGAL
DEFENSE

ILD is a nonprofit agency dedicated to providing immigration legal services. ILD's mission is to promote justice through the provision of legal representation to underserved immigrant communities.

- Through our higher education partnerships, we provide **free immigration legal services** at 9 CSU and 34 CCC campuses.
- We provide free immigration legal services at specific TK-12 school districts.
- We provide immigration consultations and case representation
- All of our immigration services are free & confidential.
- Our services include: DACA, family petitions, U & T visas, SIJS, VAWA, detained and non-detained deportation (court) defense, asylum, applications for lawful permanent resident status,and citizenship.

Fresno County Public Defender

We are appointed by the court to represent individuals with pending criminal matters in Fresno County who are unable to afford counsel. If we declare a conflict, the court will appoint conflict counsel. **We are not appointed until the first court date.**

The **Clean Slate Unit** assists community members with expungements, regardless of whether they were prior clients.

The **Padilla Unit** advises public defenders on all noncitizen clients' cases, assists with post-conviction motions, and represents current juvenile clients with SIJ petitions in juvenile court.

Who’s in the room?

Agenda

- Immigration Court
- Special Immigrant Juvenile Status
- Asylum
- DACA
- What to keep in mind if your client is arrested
- Questions!

The system is intentionally creating barriers, launching attacks, and causing harm – designed to wear down both immigrant communities and the advocates who fight alongside them.

But we rest. We reset. And tomorrow, we rise and fight again.
We are stronger together.

Who are we talking about today?

Sample ORR notification of release:

OMB Control No: 0970-0498
Expiration date: 07/31/2020

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
OFFICE OF REFUGEE RESETTLEMENT (ORR)
DIVISION OF UNACCOMPANIED CHILDREN OPERATIONS (DUCO)
VERIFICATION OF RELEASE

VERIFICATION OF RELEASE

Name of Minor:	[redacted]	Aliases (if any):	
Minor's Date of Birth:	[redacted]	Minor's A#:	[redacted]

The Office of Refugee Resettlement (ORR) has released the above named minor from Federal custody pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to the care of:

Photo of child here

Name of Sponsor:	[redacted]		
Aliases (if any):			
Address:	[redacted]		
City:	[redacted]		
State:	[redacted]	Zip Code:	[redacted]
Telephone#:	[redacted]		
Relationship to Child:	Brother		

Trends in Immigration Court Affecting Youth

Immigration Court Updates for Youth

- Cases are being moved! Check the hearing date often.
  - The San Francisco Immigration Court is now closed. Many cases were moved to the Concord Immigration Court.
  - At least 130 immigration judges have been fired nationwide. New judges are under close scrutiny.
- Cases that were paused (administratively closed) are being recalendared, i.e. turned back on.
- New negative case law is coming out on a weekly basis.
- Asylum cases being referred to court with more frequency.

**** Concentrated efforts to deport more youth. ****



how to find out when the immigration court is scheduled?

And the country of origin.

It’s critical to attend scheduled court hearings: A judge can deport someone *in absentia*, including children, if they do not come to court.

Special Immigrant Juvenile Status (SIJS)

What is SIJS?

Special Immigrant Juvenile Status (SIJS) is a humanitarian form of immigration relief for certain immigrant youth who cannot live with one or both of their parents because they have been mistreated or left without support or protection from one parent or both parents AND it is also in their best interest to continue living in the U.S. It is a pathway to lawful permanent residency - also known as a “green card.”

Who is eligible for SIJS?

1) A young person **under age 21**
2) Living in the U.S
3) **Unmarried** (through approval of the I-360 Petition for SIJS)
4) State court determines
    a) The young person is dependent on the state court or placed under the custody of an individual appointed by the state court;
    b) The young person cannot live with one or both parents due to abuse, neglect, abandonment, and/or a similar reason;
    c) It is not in the best interest of the young person to be returned to their home country.

Potentially eligible for SIJS

- The young person doesn’t know the identity of one of their parents.
- One or both of the young person’s parents passed away and didn’t leave a plan to care for the child.
- The young person’s parent stopped caring for and financially supporting them, maybe even before birth.
- The young person’s parent may have some contact with them but drops in and out of the youth’s life without caring for them or supporting them.

Potentially eligible for SIJS

- The young person's parent physically mistreats them.
- The younger person's parent used physical force to punish them.
- The young person's parent verbally abuses them causing emotional distress.
- The young person's parent provides financial support but abuses them.

Potentially eligible for SIJS

- The young person's parent either could not, even though they wanted to, or did not try to protect the child from harm or threats of harm by gangs, cartels, family members, or strangers.
- The young person's parent is very ill and cannot care for them.
- The young person's parent wants to provide support but can't earn enough to provide basic necessities such as sufficient food and housing.

What are the steps to apply? Step 1

IMMIGRANT
LEGAL
DEFENSE

State court: A state court makes a custody order and finds that it is not in the best interest of the young person to be returned to their home country. This must happen **before the 21st birthday**.

State court

In California, SIJS findings are made in

- Guardianship: asking the court to appoint a guardian for a young person under 21. The guardian can be a relative or family friend. For young people between ages 18 and 20, the guardian can be a parent.
- Family court: asking the court to award full custody to one parent when the young person is under 18.
- Juvenile court: if the young person is involved in the juvenile justice (delinquency) system under 18.
- Dependency court: if the young person is placed in foster care due to caretaker abuse, neglect or abandonment.

Who can be a guardian?

- A trusted adult in the young person's life who shows care and support for the young person.
- If the young person is 18 or older, they do not necessarily need to live with the guardian.
- If the young person is under 18, the guardian cannot be their parent - instead, this case would be in family court. If the young person is 18-20 years old, the guardian can be their parent.
- Lawful immigration status is not required for the guardian under state law. If they have any concerns about their own immigration case, they should seek a separate consultation.

What are the steps to apply? Step 2

IMMIGRANT LEGAL DEFENSE

Petitioning to be a Special Immigrant Juvenile: The young person files a form called the I-360 Petition with USCIS. This petition has to arrive before the young person's **21st birthday** [mail or potentially in-person]. This step does not yet give the young person legal status.

Newish filing fee of $250 and no fee waiver - great chance to help support youth by creating a fund or donating!

What are the steps to apply? Step 3

IMMIGRANT LEGAL DEFENSE

Applying for a green card: The young person is eligible for legal permanent residency, also called a green card. There is currently a long wait time - referred to as the SIJS backlog - before they can apply for this final step.

What does “best interest” mean?

The state court must find that it is not in the best interest of the young person to be returned to their country of origin or last residence.

Is the minor’s health, safety, and welfare better served by living in the U.S. or being returned to their home country?

- Is there a family member in home country to take care of them?
- Will they be able to pursue education/career?
- Will they be safe from violence?
- Does the young person “know” the home country and speak the language?
- What support systems do they have in the U.S.?

Visa Backlog

- SIJS cases are part of the employment-based 4 (EB-4) preference in the Department of State visa bulletin.
- When there are more young people granted a special immigrant classification like SIJS than visas available, there is a delay between being granted SIJS and applying for a green card.
- The number of young people granted SIJS has increased, but the number of visas available in the EB-4 preference has not changed.

Where is the Priority Date?

Receipt Number [redacted]		**Case Type** I360 - PETITION FOR AMERASIAN, WIDOWER, OR SPECIAL IMMIGRANT
Received Date 06/06/2022	**Priority Date** 06/06/2022	**Petitioner** [redacted]
Notice Date 03/22/2023	**Page** 1 of 1	**Beneficiary** [redacted]
[redacted]		Notice Type: Approval Notice Class: SL6 Section: Special Immigrant-Juvenile

Reading the Visa Bulletin

- The Department of State visa bulletin tells us which cases are current. You will need your **priority date** from your I-360 receipt or approval. Your priority date will tell you where you are “in line.”
- Compare the priority date - the date USCIS received the I-360 Petition - with the appropriate chart in the visa bulletin.
- If the priority date is before the date in the chart, you can file their I-485.
- The visa bulletin does not move at a consistent rate. It also goes backwards when there are fewer visas available.

Deferred Action Policy…No More

- Deferred action = lower priority for immigration enforcement and a c14 work permit during the four year deferred action period.
- Biden admin created DA policy for SIJ youth.
- The Trump administration cancelled DA June 6, 2025.
- USCIS “re-terminated” the deferred action program on April 10, 2026.
- Follow the A.C.R. v. Noem litigation and the End SIJS Backlog Coalition.

How Does This Affect SIJ Youth?

- Youth with deferred action retain it and their EAD until the expiration date.
- Youth granted SIJS between April 7 and June 6, 2025, are automatically considered for deferred action. [Talk to a lawyer if your SIJS was granted during this timeframe.]
- After May 10, USCIS is not considering deferred action for SIJs, but it can be requested. NOTE this can carry risk of a denial and youth being placed in removal.

Asylum Office Updates

Where do youth apply for asylum?

- Affirmative cases are before the Asylum Office (AO).
- Unaccompanied minors apply for asylum before the Asylum Office **even if** they are in immigration court.
- Youth with families in proceedings apply before the immigration court.
- The JOP settlement protects unaccompanied minors even after they turn eighteen.

What's happening at the AO?

- Interviews are coming! Rescheduling is more and more complex.
  - Practice tip: stay in touch with clients.
- The AO can now deny a case - without an interview! - based on the initial filing.
  - Lawsuit filed 8/19/26!
- If the youth is not eligible for asylum, the case will be transferred to immigration court and the youth will put in deportation proceedings.

Fees & EADs

- Since July 2025, there are new fees for asylum cases:
  - $100 initial asylum fee
  - $102 annual asylum fee
- EADs valid now for 18 months (not five years)

DACA Updates

- Unfortunately, there are no updates regarding pathways to permanence for DACA recipients or updates regarding initial filings.
- Fifth Circuit litigation
- Long delays with renewals
- Online filings
- Traveling on Advance Parole post *Matter of Delcarmen-Lara* (BIA 2026).

For many youth, they are waiting in long backlogs and with uncertainty.

What happens if they get arrested?

Empowering Youth *before* contact with police

KNOW YOUR RIGHTS!

All individuals in the United States have certain constitutional rights, regardless of their immigration status. These rights include:

- Remain Silent
- Legal Process
- Refusal to sign documentation
- Not produce documents
- Protection against unlawful searches

If youth is arrested…

Initial questions:

- Is the youth over 18?
- Is the client in custody?
- When did the incident happen?
- When is the first court date?
- Who is the client's defense attorney?

CONFIDENTIALITY (WIC 827)

- Strong protections under CA law to limit disclosure of *any* aspect of juvenile proceedings
- Must obtain ROI to discuss case with juvenile defense attorney
- May also be able to provide G-28 or E-28 to show that you represent client in immigration proceedings

Who is my client's defense attorney?

- Public defender (PD) (Note that the process for appointment will vary by county and counsel is not appointed for infractions or traffic court.)
- Conflict counsel
- Private counsel

How to get in touch

- Call the PD's office first (need ROI)
- Call the court clerk's office

Juvenile adjudications

- Adjudications are NOT criminal convictions
- Admissions to delinquency are NOT admissions to "crimes" for immigration purposes.
  - See, e.g., *Matter of Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000).

But some juvenile adjudications still cause serious problems for noncitizen youth…

Juv. Adjudication	Immigration Consequences
Violation of *any* DV stay-away order	Deportable = lose LPR status.
Drug trafficking	Inadmissible and barred from almost all relief. LPR does not lose status but cannot travel.
Gang-related or violent offenses	Kidnapping, robbery, etc. Not removal grounds, but probable bar to getting any relief, per discretion.
Drug addict/abuser	Inadmissible, deportable, but not as severe as trafficking.
Multiple DUIs or Sex offenses	Inadmissible for a condition posing current risk to self/others – and bad for discretion.

Confidentiality and RFEs

What if USCIS requests more information about a juvenile adjudication or case?

The juvenile court must grant permission for the youth or their attorney to share any part of the juvenile file with USCIS or the immigration court. Failure to do so can result in civil or criminal liability.

See Welfare and Institutions Code 827, 831.

Requests to disclose juvenile records (JV-570) may be made on a case-by-case basis.

Can a juvenile adjudication bar a client from SIJS?

SIJS has generous waivers for grounds of inadmissibility.

> See ILRC Practice Advisory: Special Immigrant Juvenile Status & the Grounds of Inadmissibility (August 2020) (https://www.ilrc.org/sites/default/files/resources/sijs_and_grounds_of_inadmissibility_8.27.20.pdf)

Always consult a crim-imm expert before filing the I-360 if a youth has had any prior arrests.

Criminal bars to DACA

1) **Any felony**
2) **Any "significant" misdemeanor** (i.e. domestic violence, DUI, burglary, or anything with a sentence >90 days)
3) ***Any* three non-significant misdemeanors**

What to do for a DACA client?

- be aware of filing deadlines and expiration of DACA
- consider expungement possibility
- work with defense attorney to see if possible pre-plea options are available or alternative pleas
- be cautious, but don't give up just because client has a pending case!

How to access our services

- ILD serves 9 CSU campuses, 34 community colleges, and TK-12 partners in the greater Bay Area. We also provide mentorship to orgs and schools seeking to build these partnerships. For more information, click here.
  - Contact Linda Barreto (linda@ild.org) or Katie Annand (katie@ild.org).
- Fresno PD
  - For immigration-related questions, email Elizabeth Lincoln at elincoln@fresnocountyca.gov
  - For Clean Slate Unit, see Public Defender website
  - All other inquiries, call 559-600-3546 / 559-600-6155 for Juvenile matters

Additional Resources

- Quick Guide: Defending SIJS Clients in Removal Proceedings
- Guidance for SIJS state court predicate orders
- SIJS and grounds of inadmissibility
- NIPNLG JOP practice advisory
- Annual Asylum Fee
- California Caregiver Affidavit

Questions?