



Pro Bono and Special Immigrant Juveniles

Best Practices for Family Court Practitioners

Presented by VSB Access to Legal Services Committee, Legal Aid Justice Center, Ayuda, and Poarch Law Firm



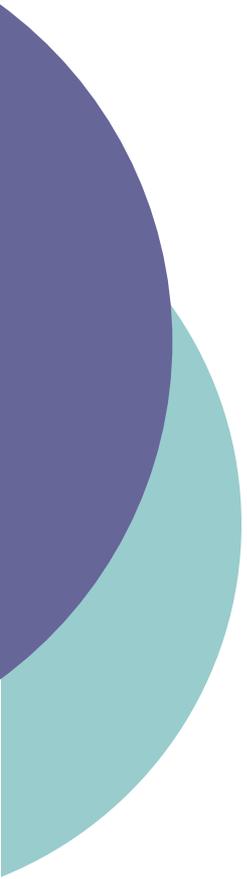
Presenters

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Agenda

- Intro and presentation of panelists
- National and state perspective
- Overview of SIJ
- Specifics for family practitioners:
 - Identifying eligibility and issue-spotting
 - Preparing the filing
 - Initiating the case
 - Proceedings in court
 - Traps and pitfalls to avoid
- How to get involved
- Q&A – 10m



National and State Perspective

Guatemala, Honduras, and El Salvador: Conditions forcing children to flee

- **Poverty:** among the poorest countries in Latin America, with **30%** (Guatemala) **of inhabitants living on less than \$2/day.**
- **Homicide:** Honduras has become the murder capitol of the world, with **90 people killed per 100,000 inhabitants in 2012.**
- **Gangs:** street gangs are **responsible for a substantial amount of crime,** including **killings and extortions.** There are approximately **70,000 gang members in all of Central America.**
 - Ex: Uncle of 2 Honduran boys, ages 7 and 13, killed by street gangs, in May 2014 interview: "When prosecutors wanted to discuss the case, they asked us to meet at their office, because they were afraid to come to our neighborhood. If they were afraid, imagine us . . . Everyone has left. How is it that an entire country is being brought to its knees?"
- **Political Instability:** in a **2009 coup, Honduran President Zelaya** was held at gunpoint and exiled to Cuba in his pajamas following a Congressional vote for his removal. The coup resulted in **at least 20 deaths.**



Domestic Violence, Child Abuse, and Child Abandonment/Neglect

- **Guatemala:** appr. **5,800 children in temporary care facilities**, many victims of abuse and violence, with little or no family access. Local reports of babies left in hospitals, found on buses and in dumpsters.
- **Honduras:** in April 2014 alone, **24 children were murdered** across the country due to gang violence and domestic abuse.

Influx of minors to the United States

- 10/1/13 – 8/31/14:
 - **66,127 unaccompanied minors** apprehended at the US-Mexico border (88% increase from 2013), of these 50,303 were from Guatemala, El Salvador, and Honduras.
 - **66,142 family units** apprehended at the border (412% change from 2013)
 - How many kids in each family?

High numbers of children arriving in Virginia

- 1/1/2014 – 7/31/14: **2,856 unaccompanied minors** released to VA sponsors (#5 state in the US)
 - **Fairfax County: 1,023** (#6 county in the US)
 - Prince William County, 361; Loudoun County, 210; City of Alexandria, 205; Arlington County: 133; City of Richmond, 112; Chesterfield County: 104; City of Manassas, 103; City of Harrisonburg, 65; City of Norfolk, 58; Henrico County: 50.
 - All corners of the state, even Eastern Shore
- How many families with children?



SIJS Overview



SIJS Overview

- A federal immigration law that helps certain undocumented children in the state juvenile court system obtain lawful permanent residency
- Available only to children who have been abused, abandoned or neglected.

SIJS History

- Created by the Immigration Act of 1990.
 - SIJS: 8 USC § 1101(a)(27)(J).
 - SIJS adjustment: 8 USC § 1225(h)
- Amended in TVPRA of 2008.
- *Perez-Olano* settlement: age-out protection (December 2010).



Requirements for SIJS

- The child must be unmarried and under 21.
- The Court must have jurisdiction under state law to make determinations about the care & custody of children
- The child must be dependent on the Juvenile Court or legally committed to/placed under the custody of a State agency or department or an individual or entity appointed by a State or Juvenile Court.
- Reunification with 1 or both parents is not viable due to abuse, abandonment, neglect, or similar basis under state law.
- It must not be in the child's best interests to return to his/her country.



SIJS Process

1. Obtain predicate order from J&DR Court showing requisite findings
2. Apply for SIJS with USCIS using Form I-360
3. Apply for permanent residency using Form I-485 (adjustment of status)
 - If in removal proceedings child has two options:
 - apply with the immigration court, or
 - ask the immigration court to terminate her proceedings so that she can file with USCIS (and avoid another court appearance).
 - If not in removal proceedings child must file with USCIS



OBTAINING AN SIJS PREDICATE ORDER IN VIRGINIA JUVENILE COURT

JURISDICTION

- **Child's Home State-** VA Code § 20-146.12
 - Child has been living with a parent or person acting as a parent for past 6 months
- **Jurisdiction of the J&DR Courts-** VA Code § 16.1-241

Venue is proper in the city/county where “the child resides” or where child is “when the proceedings are commenced” VA Code § 16.1-243(A)(1)(d)



5 ELEMENTS OF AN SIJS PREDICATE ORDER

1. The child must be unmarried and under 21
2. The Court must have jurisdiction under state law to make determinations about the care & custody of children
3. The child must be dependent on the Juvenile Court or legally committed to/placed under the custody of a State agency or department or an individual or entity appointed by a State or Juvenile Court.
4. Reunification with 1 or both parents is not viable because of abuse, abandonment, neglect, or similar basis under state law.
5. It must not be in the child's best interests to return to his/her country.



Element 1: Child is under 21

- For practical purposes, in Virginia, a child must be under 18 for the Juvenile Court to have jurisdiction
- Can request that the court retain jurisdiction for a child aging-out but most likely will face difficulty



Element 2: Child is unmarried

- Child must be unmarried to qualify for SIJS
- However, the child may be divorced
- Child must remain unmarried until they receive legal permanent residency or SIJ status will be automatically revoked

Element 3: Declared dependent/placed in custody

- Child must be “declared dependent on a juvenile court or legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by the State or juvenile court.”
- What does this mean?
 - Child must have a legitimate legal case in the J&DR Court (would be properly before the Court even if there was no SIJS involved)

Element 3: Declared dependent/placed in custody

- “...**dependent on a juvenile court or legally committed to**, or placed under the custody of, **an agency or department** of a State...”
- **What constitutes an “agency or department”?**
 - Department of Social Services
 - Child Protective Services
 - Foster Care
 - Juvenile Detention Facility

Element 3: Declared dependent/placed in custody

- “...or placed under **the custody of**, an agency or department of a State, or **an individual** or entity **appointed by the State or juvenile court.**”
- **What constitutes an “individual appointed by the juvenile court”?**
 - A non-abusive parent or other family member who is seeking legal custody of the child
 - A third-party who is seeking legal custody or visitation with the child

Element 3: Declared dependent/placed in custody

- **What kinds of matters in Virginia J&DR Court constitute a “dependency” proceeding for SIJS purposes?**
 - Custody petition
 - Delinquency matter
 - CHINS petitions
 - Visitation
- The elements of SIJS are findings inherent in custody determinations, as well as most other Juvenile Court matters involving minor children

Element 4: Reunification not possible

- Reunification with **one OR both** of child's parents is not possible **due to abuse, abandonment, neglect, or similar basis under state law**

CHILD ABUSE DEFINED:

Virginia Code defines an abused or neglected child as one whose parent(s) “create or inflict, threaten to create or inflict, or allow to be created or inflicted upon the child, **a physical or mental injury.**” VA Code § 16.1-228(1).



Element 4: Reunification not possible

- Virginia Code defines an abused or neglected child as one whose parents abandoned him or her. VA Code § 16.1-228(3)
- Abandonment is defined as “the renunciation or abdication of responsibility over the child...or a voluntary relinquishment of the child without cause.” Todd v. Copeland, 55 Va. App. 773, 794-95 (2010).
- Refer to Virginia Department of Social Services Child and Family Services Manual for definitions of abuse, neglect, and abandonment

Element 4: Reunification not possible

○ **What Has Worked in Virginia?**

Abandonment:

- Child abandoned at birth in home country
- Parent leaves child and fails to maintain contact or provide consistent financial support for child
- Parent sends child with smugglers to the U.S. to protect other children or family members (ex: sixteen-year-old boy is being forcibly recruited by gangs, and mom sends him to U.S. from the gang violence)

Element 4: Reunification not possible

What Has Worked in Virginia?

Neglect:

- Child's mother fails to protect child from abusive stepfather/exposes child to domestic violence by failing to leave relationship
- Child's parents do not provide adequate food
- Child's parents force child to work instead of attending school
- Lack of parental supervision leads to sexual abuse of child by third party
- Parents do not protect child from gang violence

Element 4: Reunification not possible

What Has Worked in Virginia?

Abuse:

- Physical abuse of child by parent
- Sexual abuse of child by stepparent
- Verbal and emotional abuse of child by parent
- Rejection of child because of inherent characteristic (such as gender, sexual orientation)
- Failure to intervene or protect child from physical and verbal abuse of grandparent or other family member

Element 4: Reunification not possible

What Has Worked in Virginia?

Constructive abandonment:

- The argument that a parent sending a minor child alone with a coyote/human smuggler on the dangerous journey to the US is child neglect/abandonment as a matter of law



Element 5: Child's Best Interest

- According to Virginia Code §20-124.3, in assessing the best interests of a child, the court shall consider several factors, including:
 - age of child
 - physical, mental condition of child
 - needs of the child
 - child's relationship with custodian/other family members in the US
 - Reasonable preference of the child

VIRGINIA J&DR COURT PROCEDURES FOR SIJS

SERVICE ON PARENT(S) IN SIJS PROCEEDING

Parent(s) must have notice of custody proceeding in VA pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Some courts also require that parents be served with notice of the motion for SIJS.

International Service Issues-

VA Code § 20-146.7-Notice to persons outside state

- Notice may be by certified mail addressed to the last known address of the person to be served
 - Certified mail needs to be signed for by the person receiving service to be effective
- *Notice must be in a manner “reasonably calculated to give actual notice and an opportunity to be heard”*
- Service by publication/posting

VIRGINIA J&DR COURT PROCEDURES FOR SIJS

Waiver of Service and Consent to Custody/SIJS for Willing parents

- Consent to proceeding involving SIJS findings should specifically state that parent is consenting to custody, SIJS findings, and waiver of service (See sample consent/waiver)
- Most judges will require that it be notarized

Age-Outs

- May need to request emergency hearing before child's 18th birthday or request that it be heard on a motions docket
- Should argue that separate service on abusive parent is not required for SIJS (especially if abusive parent has been properly served with custody petition)
- Avoid problem of SIJS service by alleging facts needed for SIJS in custody petition

VIRGINIA J&DR COURT PROCEDURES FOR SIJS

How To File

- Motion for SIJS
 - See sample motions
- Every Court is different- check local rules and procedures
- Might be beneficial to attach a Memorandum of Law, or additional evidence explaining SIJS for VA jurisdictions where SIJS is new
- Child **MUST** have another J&DR matter pending with the Court (custody, visitation, CHINS, etc.) in order to request SIJS
 - Submit motion for SIJS simultaneously with underlying petition (i.e. custody petition) or once the underlying petition has already been filed

TYPES OF EVIDENCE FOR SIJS

- Relevant portions of federal law
 - 8 U.S.C. § 1101(a)(27)(J)
 - Section 235(d)(1) of The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA 2008”), 8 U.S.C. § 1232
 - 8 C.F.R. § 204.11
- Child’s testimony and sworn affidavit
- Birth certificate or other documents to prove child’s age and identity
- Testimony and/or sworn affidavit from petitioner
- Letters from teachers, social workers, therapists
- Psychological evaluations, medical exams documenting physical injuries
- Country conditions evidence (including U.S. Department of State Country Reports, Country Conditions Experts)
- For very young children, drawings or journal entries may be the best evidence



Proceedings in VA J&DR Courts

- Status hearing
 - Judge may be willing to hear motion. In the alternative, the Judge will set motion for separate hearing
 - If set for separate hearing, do not allow judge to enter final order on custody (or whatever underlying case is giving the court jurisdiction). Temporary custody order is okay.
- Judge may accept facts as stated in motion or have questions
 - Attorney proffers evidence/argument and/or answers questions from judge
 - If judge wants testimony - direct examination of child and/or petitioner

HELPFUL HINTS AND REMINDERS

Not in J&DR Courts for the sole purpose of immigration benefits

- In the custody context, be prepared to discuss the reasons, aside from SIJS, why the petitioner is seeking custody, i.e. obtaining a passport, medical decisions, enrolling in school, etc.

Refuting the “floodgate” argument

- VA Juvenile judges tend to be wary of opening the “floodgates” to an influx of immigrant children if they grant these cases
- Remind judges that Congress explicitly chose to protect **only** immigrant children who have independent standing to seek legal protection in a state Juvenile Court
- Remind judges of the individual circumstances that motivated the child’s migration

Differences among the jurisdictions

- Be prepared for each J&DR court to operate differently in terms of procedure as well as substantive issues. In many jurisdictions there are differences among the judges.

HELPFUL HINTS AND REMINDERS

One-parent SIJS

- Many judges are still under the impression that SIJS is only available for children in foster care, as was the case under the previous version of the law
- The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (2008), amended the requirements for eligibility for SIJS at 8 U.S.C. §§ 101(a)(27)(J) and 245(h)
- USCIS clarified to its field offices that the amendments “expanded the group of aliens eligible for SIJS status” in Memorandum from Donald Neufeld, Acting Associate Director, March 24, 2009.

USCIS retains final authority to grant/deny SIJS

- Although Juvenile Court makes findings about the child, only USCIS grants SIJS. See Federal Register, Volume 76, No. 172 at 54980

Parents have nothing to gain from a child’s SIJS

- No parent can gain lawful immigration status through an SIJS-eligible minor. See Federal Register, 54981- 54983.



What happens after the J&DR Court Proceedings

- Petition USCIS for special immigrant juvenile status
- If child is in removal proceedings, those proceedings will have to be terminated
- Petition USCIS for legal permanent residence
 - biometrics appointment
 - adjustment interview



Other Options for Undocumented Children

- Deferred Action for Childhood Arrivals (DACA)
- U Visa
- Violence Against Women Act (VAWA)
- T Visa
- Asylum
- Prosecutorial Discretion
- Family Petition
- Adoption
- Voluntary Departure
- Deportation

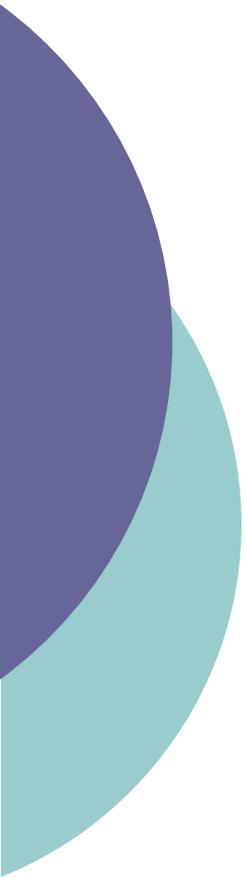
Resources

- USCIS Website - www.uscis.gov
- Immigration Court Practice Manual - www.justice.gov/eoir/
- Immigrant Legal Resource Center – www.ilrc.org
- National Immigration Law Center – www.nilc.org
- National Immigration Project of the National Lawyers Guild – www.nationalimmigrationproject.org
- Legal Momentum – www.legalmomentum.org
- Asista – www.assistahelp.org



Materials available through this webinar

- CAIR practice manual
- Sample motions for SIJS
 - Foster care
 - Abandonment
 - Abuse
- Sample consent to SIJS and custody and waiver of service



How to Get Involved

Questions?

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Upcoming VSB Trainings

Upcoming VSB Pro Bono Webinars/Events

- Representing Victims of Domestic Violence: Pt 1 – Introduction and Opportunities, Oct. 7
- Before You Say “Yes” to Serving on a Board, Know What Is Expected: Pt. 2 – Ethical Issues for Attorneys, Oct. 15
- Representing Victims of Domestic Violence: Pt 2 – Protective Orders, October 16
- VSB Pro Bono Conference, Portsmouth, VA , Oct. 22
- Representing Victims of Domestic Violence: Pt 3 – Custody, Support and Visitation, Oct. 28
- Before You Say “Yes” to Serving on a Board, Know What Is Expected: Pt. 3 – Nine Key Components, Nov. 19

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